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

HUNGARY

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GENERAL INTRODUCTION TO INTERNATIONAL JURISDICTIONAL RULES IN HUNGARY

a) Legislation

After the second world war and after the introduction of the socialist society and socialist legal system in Hungary, the sporadic rules of the international procedure law were regulated by the case law, by the decision of principle of the Supreme Court of Hungary which are (were) binding upon the courts and are adopted by the presidential council of the Supreme Court, by the relevant provisions of the Code of Civil Procedure, and by the Decree-Laws which provided for the introduction and execution of the Code of Civil Procedure and other acts and decrees of the private law. The opening of the economy and tourism of Hungary in the seventies induced the preparation of the codification of the international private and procedural law. The first general and systematic codification of the Hungarian international private law with the international procedure law was enacted in 1979 by the Decree-Law no. 13 of 1979 ("IPL-Decree-Law"). The IPL-Decree Law entered into force on 1st July 1979. The draft proposal of Professor István Szászy from 1948, which remained only a draft in the stone-mills of the history, served as a very important pattern for the codification.

Even today it is generally accepted that it is quite impossible to define the rules of the law of international procedure "on the basis of their sources, because they have no uniform sources." The multi- and bilateral international treaties are traditionally important in the international procedure law, Hungary has bilateral agreement with procedural aspects with numerous countries (see Annex 3 below).

The original version of the IPL-Decree-Law provided for a very wide jurisdictional scope of the Hungarian Courts in all international disputes. Section 54 of the IPL-Decree-Laws stated that "Hungarian court or another authority may proceed in all cases in which this Law-Decree does not exclude the jurisdiction of Hungarian courts or other authorities." This rule did not require any connection to Hungary to bring any legal action before the Hungarian courts, however the judicial practice made it a condition that a minimum link to Hungary or to a Hungarian nationality needed.

The reform of the international civil procedure law were introduced in 2000, taking into account the proposed accession of Hungary to the Lugano Convention. Act no. CX of 2000 completely changed the original structure of the international civil procedure of the IPL-Decree-Law. The rules of the reform came into force on 1st May 2001. The rules of jurisdiction being currently in force were introduced by the reform of 2000 which was based on the pattern of the Lugano Convention (and Lugano has same structure and same rules on jurisdiction like the Brussels Convention's in 1989).

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3 The Decree-Law was a special written source of law in the socialist legal system, instead of the parliament, a selected committee with true communist politicians, regulated in the constitution of Hungary, was entitled to pass Decree-Laws in the period, when the parliament was not in session. The Decree-Law had same legal effect like the act enacted by the parliament. This unique undemocratic legislation was diminished during the political changes in Hungary. The Decree-Laws can be changed only by acts of the parliament.
4 Szászy: International Civil Procedure (n. 1.) 16.
5 Vékás, Lajos: Die Reform des internationalen Zivilverfahrensrechts in Ungarn, IPRax 2002, 142-145;
Kengyel Miklós: Die neue Regelung des ungarischen Zivilprozessrechts, in Festschrift für Reinhold Geimer, München 2002, 397-415;
Not even now is Hungary a party to the Lugano Convention. The reformed IPL-Decree-Law were not changed after Hungary joined the EC. From 1st May 2004 Hungary is the member of the EC and EU, so since then the rules of the European procedural law, including but not limited to Brussels I regulation, are in force.

b) The structure of the regulation of the international procedure law in the Hungarian law.

In Hungary, being a member-State of the EC, the principle of priority of the EC-law over other sources of law is also applicable. In addition thereto section 2 of the IPL-Decree-Law states that “the Decree-Law shall not apply in matters which are regulated by international conventions.” This general provision is to be applied both for material and procedural questions.

The first level of the regulation of the Hungarian law of international procedure is the EC-laws and the international multi- and bilateral agreements, provided that the agreements are ratified and promulgated by the Hungarian law. Hungary joined the EU on 1st May 2005, the EU law is from this date on, of course with some exceptions, generally applicable. In case of the conflict of treaties the special convention shall prevail (art. 71 of the Brussels I Regulation), Hungary is listed in the article 69, having concluded bilateral treaties with Poland (1959), Greece (1979), France (1980), Cyprus (1981), Check and Slovak Republics (1989), among the states which have bilateral treaties on mutual legal assistance. Pursuant to article 70 of Brussels I Regulation those treaties shall continue to have effect in relation to matters to which the Regulation does not apply. The relation to specific convention regulated in art. 71 and third countries convention in art. 72. Accordingly, all of those conflicts are governed basically by Brussels I.

The second level of the regulation is to be found in three chapters of the IPL-Decree-Law. Chapter IX of the IPL-Decree-Law under the title “Jurisdiction” contains twenty sections, chapter X “Provisions of Procedural Law” with eight sections on personal capacity, international legal aid, chapter XI “Recognition and Enforcement of Foreign Decisions” with six sections.

The third level of the rules in the Hungarian legal regime is the special provisions of the Code of Civil Procedures. The relation of the IPL-Decree-Law and the Code of Civil Procedure is expressly not clarified by legal provisions, but we are of the opinion that to the extent the IPL-Decree-Law contains special rules for international matter, this regulation shall prevail as lex specialis, and the Code of Civil Procedure is applicable only for cases not covered by the IPL-Decree-Law. There is, however, some duplication for instance section 57 IPL-Decree-Law is the same as section 32(3) of the Code of Civil Procedure.

The forth level is the special rules of special matters and procedures, like tort cases in connection with a Hungarian criminal procedure.

c) Reported case law

In Hungary traditionally the reported case law is very important in the civil law. The simple reason for this that Hungary did not have a Civil code only from 1959. Over centuries before the codification of the civil law, the civil and private law was basically a judge made law with several acts and other rules. After the second world war Hungary neither published nor collected the case

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law in the field of the international private and procedural law like in Germany. The reported and not reported case law was published partially since the first edition of the in Mádl-Vékás IPL-Book and its latest editions. A few cases were published in the monthly official journal of the Supreme Court of Hungary, the so called “Bírósági Határozatok” [Court Decisions, in Hungarian: “BH”] and the more important decisions are in “Legfelsőbb Bíróság határozatainak hivatalos gyűjteménye” [Official Collection of the Decisions of the Supreme Court of Hungary, in Hungarian: “EBH”), which is the yearly publication of the Supreme Court, unfortunately only in Hungarian.

Additionally, the judges are still not able to recognize the international cases, the conflict of law issues, or the conflict of international procedures, however since the second half of the eighties, after having introduced the private international law at the universities, this blindness seems to me getting better.

d) The sciences and scholars of the international civil procedure law

For these reasons such as only few reported cases available, blindness of judges, lack of international cases, the scholars and university professors and their teaching is more important in this field of law compared with other branches of law.

Before the second world war the international civil procedure was only a chapter of the national rules of the civil procedure. However the Hague conferences, the multi- and bilateral treaties were shortly elaborated, this presentation was only a small part of the civil procedure. The first internationally recognized book on international civil procedural law was written Prof. István Szászy. Another Hungarian scholar, István Réczei published his book in German, Internationales Privatrecht, (1960) before the IPL-Decree-Laws. Ferenc Mádl and Lajos Vékás published in 1981 [“Nemzetközi magánjog és a nemzetközi gazdasági kapcsolatak joga”, the Law of Conflicts and Foreign Trade] (second Hungarian edition in 1985, third 1992, forth 1997, fifth in 2000 and sixth 2004). This basic book of the international private and procedure law was translated into English and published first in 1987, and the second edition appeared in 1998. A new book was published for university students in 1997 by three professors, Burján László, Keckskés László and Vörös Imre (“Magyar Nemzetközi Kollíziós Magánjog”, “Hungarian International Law Conflict”). The revised and enlarged version of the university book was published in 1999. This book is shorter and less complex than the Hungarian IPL-classics of Mádl-Vékás. The officers of the Ministry of Justice, Brávácz Ottóné and Szűcs Tibor, published a practical guide-book for international legal disputes, which can be used in the everyday practice. We need to mention here a new book under the title “European Civil Procedure Law” published in Hungarian by Kengyel Miklós and Harsági Viktória in 2006 which provides a detailed picture on the topic through 610 pages.

e) Classification of jurisdiction

Traditionally in the Hungarian jurisprudence the following classification of jurisdiction is followed: (i) exclusive (or unconditional or reserved) jurisdiction; (ii) the competitive (or parallel, facultative, cumulative, accidental, conditional) jurisdiction; and (iii) the precluded or declined jurisdiction. To this classification was added the so called (iv) general jurisdiction and (v) the jurisdiction based on the agreement of the parties; and (vi) jurisdiction stated in the multi- or bilateral treaties. This

12 MAGYAR GÉZA – NIZSALOVSKY ENDRE: Magyar Polgári Perjog. 3. kiad. [Hungarian Civil Procedure. 3rd ed.] Budapest 1939, 10. §, 45-53, 142-143,
13 BRÁVÁCZ OTTÓNÉ – SZŰCS TIBOR: Jogviták határok nélkül [Litigations without borders], Budapest 2003
14 SZÁSZY: International Civil Procedure (n. 1.) p. 298 (Hungarian edition, p. 322)
classification was changed by the reform of 2000. The classification of the IPL-Decree-Law follows
the system of the Lugano Convention, the IPL-Decree-Law provides for (i) general jurisdiction; (ii)
special jurisdiction; (iii) exclusive; (iv) excluded and (v) prorogation jurisdiction (jurisdiction agreed
by the parties).

Article 4 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the
recognition and enforcement of judgments in civil and commercial matters set forth as follow:

1. If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each
Member State shall, subject to Articles 22\textsuperscript{16} and 23\textsuperscript{17}, be determined by the law of that Member
State.

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\textsuperscript{16} Article 22
The following courts shall have exclusive jurisdiction, regardless of domicile:
1. in proceedings which have as their object rights in rem in immovable property or tenancies of immovable
property, the courts of the Member State in which the property is situated.
However, in proceedings which have as their object tenancies of immovable property concluded for temporary
private use for a maximum period of six consecutive months, the courts of the Member State in which the
defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the
landlord and the tenant are domiciled in the same Member State;
2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of
companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of
their organs, the courts of the Member State in which the company, legal person or association has its seat. In
order to determine that seat, the court shall apply its rules of private international law;
3. in proceedings which have as their object the validity of entries in public registers, the courts of the Member
State in which the register is kept;
4. in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar
rights required to be deposited or registered, the courts of the Member State in which the deposit or registration
has been applied for, has taken place or is under the terms of a Community instrument or an international
convention deemed to have taken place.
Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of
European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive
jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European
patent granted for that State;
5. in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the
judgment has been or is to be enforced.

\textsuperscript{17} Prorogation of jurisdiction

Article 23
1. If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a
Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection
with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be
exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:
(a) in writing or evidenced in writing; or
(b) in a form which accords with practices which the parties have established between themselves; or
(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to
have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to
contracts of the type involved in the particular trade or commerce concerned.
2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent
to "writing".
3. Where such an agreement is concluded by parties, none of whom is domiciled in a Member State, the courts of
other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have
declined jurisdiction.
4. The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have
exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between
these persons or their rights or obligations under the trust are involved.
2. As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in Annex I, in the same way as the nationals of that State.

The national legislation is free to determine the rules on jurisdiction under this section. Special rules under section 71 shall prevail. Should the defendant have more domiciles, section 4 is not applicable. However articles 22 and 23 of the Brussels I Regulation provide special jurisdictional rules, so-called exclusive jurisdiction, I will refer to the special Hungarian rules in connection with the same matters.

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

1) Main legal Sources

The main legal jurisdictional rules of Hungary regarding international disputes (that is disputes with "international element"), as discussed in the Introduction, are provided for by Chapter IX (sections 54-62/H) of the Law Decree No. 13 of 1979 - on International Private Law (hereinafter referred to as "IPL-Decree-Law" or simply "Decree"). In addition to the Decree there are few scattered jurisdictional provisions pertaining to particular legal issues in other internal regulations and international treaties (see (B)/8., and further below).

An also important legal source of the rules of jurisdiction and competence of the Hungarian courts regarding internal disputes is Act. III of 1952 - on the Civil Procedure (hereinafter referred to as "Civil Procedure Act"). Sections 29 - 40 of the Civil Procedure Act set out the exact factors and rules to be followed for determining which Hungarian court has jurisdiction and competence over internal disputes.

Also we need to mention Act LXXI of 1994 on Arbitration ("Hungarian Arbitration Act"). The parties may provide for the jurisdiction of an arbitral tribunal with respect the dispute concerning their business relationships and by doing so exempt the dispute from the jurisdiction of the ordinary courts.

2) Specific Rules (or Not) for Transnational Disputes

We need to clarify in the first place what is to be understood under "transnational disputes". Hungary, although divided up into 19 counties, has one unified legal system. Therefore, for the purposes of the present questionnaire we consider "transnational disputes" to be tantamount with "international disputes".

The provisions of the Decree are specific to the jurisdictional and competence rules of the Civil Procedure Act. In cases international element is involved in the dispute the provisions of the Decree should apply. If it has been ruled that, in pursuance of the Decree, the Hungarian courts shall have jurisdiction over a certain international dispute, the aforementioned provisions of the Civil Procedure Act shall determine which exact Court of Hungary is to entertain the case. Furthermore,

5. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 13, 17 or 21, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

any procedural instrument (e.g.: “preliminary proving” - section 207 of the Civil Procedure Act) shall be governed by the respective provision of the Civil Procedure Act.

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

Brussels I came into force with the accession of Hungary to EC without any special national rules to the implementation of the Regulation. So there is no specific set of national rules designed to govern jurisdictional issues under Article 4(1) of the Brussels I Regulation. The general and special rules of the Hungarian international procedures are apply that are applicable irrespective from the Brussels I.

4) Influence of EU Law

The reform of the jurisdictional rules of the IPL-Decree Law came into force on 1 May 2001. Since that no relevant case law was reported on which the influence of Brussels I regulation and the case law of the European court of Justice could be verified or examined. After having reviewed of the few reported case law on jurisdiction, the Hungarian courts are influenced neither the Brussels I Regulation nor the case law of the European Court of Justice.

5) Impact of Other Sources of Law

In General the Hungarian case law are not inspired and influenced by human rights principle and fundamental rights like the German law. Only one reported case should be referred to, but this relates the family law, a German-Hungarian case, maintenance of contact with the child of the parent living in another State (EBH2001.418). The Supreme Court of Hungary called article 9(3)19 of the New York Convention (1989) on the Rights of the Child and based on this rules declared that a child has a fundamental right to maintain personal relations with his or her parent living separately - similar cases are not known in the scope of the Brussels I.

(a) Strasburg Human Rights case law

Hungary signed the European Convention of 4 November 1950 on the Human Rights and Fundamental Freedoms on November 5, 1992. Furthermore, Hungary ratified the Protocols pertaining to the convention on the following dates:

- Protocol No. 1, 2, 4 and 9 on November 5, 1992; Protocol No. 6 on December 1, 1992; Protocol No. 7 on February 1, 1993 [promulgation: Act. XXXI of 1993];
- Protocol No. 11 on April 26, 1995 [promulgation: Act. XLII of 1998];

The convention contains a list of the rights and guarantees that the Contracting States have to adhere to/enforce. Upon accession to the convention the judgments of the European Court of Human Rights are binding upon Hungary. So the case law of Strasburg are binding Hungarian courts as well.

b) Fundamental rights control

19 Art.9. (3) States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
If conflict arises between the provisions of an international norm and the provisions of an internal regulation there is a possibility to file a so called "constitutional appeal" to resolve the given controversy. According to Section 48 of the Act. XXXII of 1989 on the Constitution Court ("Constitutional Court Act"), anyone may lodge a constitutional appeal with the Constitution Court for the violation of his/her rights guaranteed by the Constitution if the injury is consequential to the application of the unconstitutional rule of law and if he/she exhausted all other possible legal remedies or no further legal remedies are available to him/her. It may be lodged in writing within sixty days of the delivery of the non appealeable resolution.

6) Other Specific Features

N/A

7) Reform

N/A

(B) Bilateral and Multilateral Conventions

8) Conventions with Third States

Bilateral Conventions

Hungary has entered into Bilateral Investment Treaties with numerous Countries. All of such treaties contain jurisdictional clauses by exempting the investment dispute from the jurisdiction of the Parties and usually provide among others for International Arbitration.

The other related group of bilateral conventions are the Agreements on Judicial (legal) Assistance that Hungary concluded with a great number of countries. However, out of such Agreements only few contain jurisdictional elements.

See Annex 2 for the Bilateral Investment Treaties and the Agreement on Judicial Assistance containing jurisdictional provisions.

Multilateral Conventions

Hungary also adopted the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Both conventions contain jurisdictional provisions that is the execution may be refused only if according to the internal law the claim/action at hand belongs to the exclusive or excluded jurisdiction of the State.)

Hungary acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. [accession document was submitted on March 5, 1962; promulgated by Law Decree no. 25 of 1962, further enforcing regulation: Decree of Minister of Justice no. 12/1962 (X.31)] This convention is implemented by the Hungarian law, thus its provisions (requirements regarding the arbitral awards) are in conformity with the Hungarian Arbitration Act.
There are further multilateral conventions containing jurisdictional provisions, but not falling under the scope of Brussels I.\(^{20}\)

9) **Practical Impact of international conventions with third states**

According to section 2. of the Decree this Law-Decree shall not apply in matters which are regulated by international conventions.

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

10) **Structure**

Based on that the structure of the jurisdictional provisions of the Decree in the matters regulated by Brussels I Regulation can be described as follows:

- **General Jurisdiction.** (Section 54 of the Degree, see more on General Jurisdiction in paragraph 11 below) (place of residence or domicile of the defendant in Hungary; the seat of the legal person is located in Hungary)

- **Special Jurisdiction.** If the general does not establish jurisdiction, the Decree provides special connections for: contract related disputes, section 55; matters relating to maintenance, section 56; disputes concerning torts, section 56/A; disputes relating to operation of branch offices or representations of foreign enterprises, section 56/B (1). Additionally, Hungarian courts have jurisdiction in lawsuits filed against foreign nationals who have settled in Hungary as independent entrepreneurs if the litigation pertains to the economic activities of such persons in Hungary. (Section 56/B (2) of the Decree).

- The Hungarian courts have jurisdiction over disputes if the defendant has property in Hungary (section 57 of the Decree);

- There are further cases of special jurisdiction provided for by the Decree which, however, do not fall under the scope of Brussels I.\(^{21}\)

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\(^{20}\) Hungary acceded to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. The Convention provides for the jurisdiction of the Country where the Child has been taken to. (The applicable law, however, is the law of the permanent residence of the Child.) [Accession document was submitted on April 7,1986; promulgated by Law Decree no. 14 of 1986];

- Hungary acceded to the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. Pursuant to this convention the country, where the permanent residence of the Child is, has jurisdiction. (In case of abduction the country of the last residence has jurisdiction over the dispute.) [Signed on October 19, 1996, promulgated by Act CXL of 2005];

- According to the Section 3 of the Convention on 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children the court having jurisdiction is the court of the State in which the permanent residence of the obligee or obligor is. [Accession Document was submitted on October 20, 1964; promulgated by Law Decree no. 7 of 1965].

\(^{21}\) Hungarian courts shall have jurisdiction in lawsuits pertaining to inheritance if the testator held Hungarian citizenship at the time of his death. A Hungarian notary public shall have jurisdiction in probate proceedings if the testator held Hungarian citizenship at the time of his death or if the estate is in Hungary, section 58. Hungarian court or some other Hungarian authority shall have jurisdiction in child custody cases and proceedings pertaining to visitation rights and parental supervision when the child's parents are separated if the domicile or residence of the child is in Hungary. Hungarian courts shall have jurisdiction in proceedings pertaining to property by contract of marriage if the domicile or residence of one of the parties is in Hungary.
- **Jurisdiction in legal disputes concerning consumer contracts and employment contracts.** Sections 60-62, (see more on protective rules of jurisdiction in paragraph 13 below);

- **Exclusive Jurisdiction.** By exclusive Jurisdiction the Degree expresses that within the scope of this category the State (Hungary) is willing to secure the jurisdiction exclusively for itself. (Based on section 62/A it entails disputes pertaining to (i) 'in rem' right in connection with real estate that is located in Hungary, (ii) probate proceedings where the estate is located in Hungary and the testator is also Hungarian, (iii) cases filed against Hungary provided that there is no immunity, (iv) Hungarian citizens abroad who were granted immunity (v) destruction of securities issued in Hungary, (vi) proceedings regarding industrial rights in Hungary, proceedings concerning legal entities registered in Hungary, (vii) proceedings concerning the registration of rights, facts and data into official records in Hungary, (viii) enforcement in Hungary. Based on 62/B it entails all cases concerning the personal status of Hungarian citizens with exception as set forth in the same section. We should remind that (i), (vi), (vii) and (viii) shall fall under article 22 of the Brussels I Regulation as well, the general rules of exclusive jurisdiction of the Brussels I, which shall prevail the Hungarian national rules.

- **Excluded Jurisdiction.** Under the excluded jurisdiction the Hungarian Courts shall have no rights to entertain the cases arisen. This category is the mirror image of the scope of Exclusive Jurisdiction being referred to a third Country accordingly. (Sections 62/C-62/E) The excluded jurisdiction contains hence: (i) in rem in connection with real estate that is located outside Hungary, (ii) probate proceedings where the estate is located outside Hungary and the testator is also foreigner, (iii) cases filed against foreign state provided that the state did not waived its immunity, (iv) claims brought against a foreign citizen who is on a diplomatic mission in Hungary or is otherwise granted immunity, unless the foreign country in question has expressly waived the right to immunity, (v) destruction of securities issued in Hungary, (vi) proceedings regarding filing, deleting and scope of foreign industrial rights, (vii) proceedings concerning legal status of legal entities registered outside Hungary, (viii) proceedings concerning the registration of rights, facts and data into official records outside Hungary, (ix) enforcement in Hungary. In accordance with 62/D all cases concerning the personal status of foreign citizens fall under excluded jurisdiction with exceptions as set forth in the same section.

- **Jurisdiction Stipulated by the Parties** (Sections 62/F-62/H). Parties are entitled to stipulate the jurisdiction of a specific court, unless the dispute at hand falls into the category of the exclusive (section 62/A, see above) or excluded (section 62/C, see above) Jurisdiction, subsection 1 of section 62/G. Also, the Parties can not opt out of the protective rules of jurisdiction of the Degree.

- The Hungarian court shall be deemed having jurisdiction if the defendant fails to file a contest concerning the lack of jurisdiction and makes a statement on the merits of the case (admission of suit), unless the jurisdiction of the Hungarian court is excluded under the provisions of this Act, section 62/H.

When any of the cases defined above is adjudicated in a proceeding that also involves personal status, a Hungarian court or some other Hungarian authority shall be entitled to proceed if it has jurisdiction in matters affecting personal status, section 59. Hungarian courts shall have jurisdiction in cases pertaining to guardianship if the person under guardianship is a Hungarian citizen or has a domicile or residence in Hungary, section 59/A.
11) General Jurisdiction

There is no general rule applicable special defendant domiciled in non-EU states. The general jurisdiction provision, Section 54 (1) of Degree provides that Hungarian courts shall have jurisdiction in all cases in which the defendant's domicile or residence or, if the defendant is a legal entity (or de facto corporation), its seat\(^{22}\) is in Hungary, unless its jurisdiction is precluded by this Law-Decree. Accordingly the relevant factors are the domicile or the residence (registered address) of the defendant.

Section 54(2) further provides that when a legal action involves more than one defendant, it may be adjudicated in a Hungarian court with all of the defendants involved if the domicile (registered address) or residence of at least one of the defendants is in Hungary, provided that either the subject of the litigation is a common right or a common liability that can only be resolved uniformly, or the ruling would affect all defendants - even those not appearing at the court -, or the claims under litigation originate from the same legal relationship. In respect of a lawsuit filed against both the principal and the secondary obligee, the Hungarian court shall have jurisdiction regardless of the domicile or residence of the secondary obligee if the domicile (registered address) or residence of the principal obligee is in Hungary. Whenever a Hungarian court has jurisdiction in a lawsuit, it shall also have jurisdiction in respect of any counterclaim filed against it.

\(^{22}\) In pursuant of section 30 of the Hungarian Civil Procedure Act if the seat of the Company raises doubts, the place of the administration of the Company shall be considered as the seat thereof.
Specific Rules of Jurisdiction

a) Contract

Section 55 of the Degree stipulates the connecting factors applicable in contract matters, if the place of the performance is Hungary. Hungarian courts shall have jurisdiction over contract-related legal disputes if the place of performance is in Hungary. The place of performance is defined by the Decree as follows:

Primarily, the place the parties stipulated as such in the contract.

In the absence of such stipulation the place of performance is, the Decree provides special connections, irrespective from the applicable law on the contract:

- with respect to sale of goods, the place where the subject of the purchase is to be delivered to;
- with respect to a contract the subject of which is the performance of a specific activity (performance), the place where the activity is to be performed in accordance with the terms and conditions of the contract;
- with respect to contracts other than the aforementioned, the place of performance as provided for by the Hungarian law. *(note: This connecting factor is interesting because irrespective of the law to be applied to the contract (which can be the law of a foreign state) the provision states that from procedural point of view the place of the performance is to be considered and qualified under Hungarian law. This can be a nice collisio between the material qualification and the procedural connecting rule (factor)).*
- There is one exception to the rule regarding the contract that is the lease and usufruct agreements. Pursuant to subsection 62/A (a) of Decree the Hungarian courts have exclusive jurisdiction with respect to proceedings concerning lease and usufruct agreements relating to Hungarian real estates, and have no jurisdiction - based on subsection 62/C (a) - regarding lease and usufruct agreements pertaining to foreign real estate.

b) Tort

Hungarian courts have jurisdiction over legal disputes concerning torts if the torts are committed in Hungary or if the consequences (damages) of the damaging conduct occurs (manifests) in Hungary. (Subsection 1 of Section 56/A of the Degree) This rule differs from art. 5 (3) of the Lugano Convention, because it distinguishes clearly between the place of the harmful event occurs and the place of the damages occurs ("Handlungsort" – "Erfolgsort"). This distinction follows of the case law of Brussels I Regulation.23

The same section goes on to say that Hungarian courts have jurisdiction in lawsuits filed for establishing or increasing compensation payments if the recipient is domiciled or has residence in Hungary, subsection 3 of section 56/A.

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23 See KROPHOLLER op.cit. (n. 8) p.152-153.
Not only have the Hungarian courts jurisdiction over damages as elaborated above but also over claims filed concerning a danger of imminent injury if the place where the injury is likely to occur is in Hungary, subsection 4 of section 56/A.24 (Please note that in the Civil Code special rule relates against the threatening actions in section 341.25)

Please note that there are cases where the question whether a contractual or tortious liability to be considered, for example in case of liability for medical malpractice, this is traditionally tortious liability, not contractual, under Hungarian material law. Similar issue is the product liability, this is not a contractual relation, rather than an extension of the tortious liability of the producer and/or distributor.

c) Criminal Proceedings

The Degree (in subsection 2 of section 56/A) provides that Hungarian courts shall have jurisdiction in liability(assumpsit's) actions concerning acts of criminal misconduct if the act in question is punishable under Hungarian criminal law and the crimination falls under the jurisdiction of the Hungarian Courts.

Pursuant to section 54 of Act. XIX. of 1998 on the Criminal Procedure the private party or its heir shall be entitled to file civil claim against defendant (the accused) if the civil claim arose as a consequence of the act being subject of the accusation. Also the state prosecutor may file the civil claim under circumstances specified in the Criminal Procedure Act.

Bringing the civil claim before the criminal court is a tool of obtaining a ruling in an expedited way thereon. Nevertheless, it is only an option that is the private (damaged) party may opt for enforcing its claim by other legal means (such as at a civil court), subsection 3 of section 54 of the Criminal Procedure Act. The other means, however, may take much more time.

Pursuant to sections 3 and 4 of Act. IV of 1978 on the Criminal Code Hungarian Courts have jurisdiction over crimination in the following cases:

- Hungarian law shall apply to crimes committed in Hungary, as well as to any conduct of Hungarian citizens abroad, which are deemed criminal in accordance with Hungarian law.

- Hungarian law shall also apply to criminal acts committed on board of Hungarian ships or Hungarian aircraft situated outside the borders of the Republic of Hungary.

- Hungarian law shall apply to any act committed by non-Hungarian citizens in a foreign country, if:
  a) it is deemed a felony in accordance with Hungarian law and is also punishable in accordance with the laws of the country where committed;
  b) it is a crime against the state (Chapter X), excluding espionage against allied armed forces (Section 148), regardless of whether or not it is punishable in accordance with the law of the country where committed;

24 Section 340 of the Hungarian Civil Code provides for the obligation of the potentially damaged party to mitigate and prevent the damage of an imminent harm. which rule is conformity with the case law of Brussels I.  
25 Section 341 of Civil Code (1) In the event of the presence of threatening danger, the endangered person shall be entitled to request the court to restrain the person imposing such danger from continuing such conduct and/or to order such person to take sufficient preventive measures and, if necessary, to provide a security. (2) This provision shall be applied also if the danger of imminent damage has been caused as a result of unfair market practice.
c) it is crime against humanity (Chapter XI) or any other crime that is to be prosecuted under the strength of an international treaty.

- Espionage (Section 148) against allied armed forces by a non-Hungarian citizen in a foreign country shall be punishable according to Hungarian penal laws, provided that such offense is also punishable by the law of the country where committed.

- In the cases described in Subsections (1)-(2) the indictment shall be ordered by the Attorney General. (Act IV on Criminal Court).

**d) Secondary Establishment**

Section 56/B Hungarian courts have jurisdiction in lawsuits filed against foreign enterprises if the enterprise has a branch office or representation in Hungary and the litigation pertains to the operations of the latter. The existence of the two requirements (having a branch office/representation and the dispute should relate to the operations thereof) does limit the jurisdiction over such disputes.

Act CXXXII of 1997 sets out the determination of the “branch offices” and “commercial representatives” of foreign-registered companies: (i) “branch office: an organizational unit of a foreign company, without legal personality, vested with financial autonomy and registered as an independent form of company in Hungarian company registration records as a branch office of a foreign company” (ii) “commercial representative office: shall mean an organizational unit of a foreign company not involved in entrepreneurial activities, which organizational unit is registered as an independent business entity in the Hungarian register of companies and is engaged - in the name and on behalf of the foreign parent company - in the mediation, preparation and conclusion of contracts, provision of information to clients and partners and other related client service activities;”

Separately for so called independent entrepreneurs, which a business man or woman with license to do business without establishing a company, subsection 2 of section 56/B provides that Hungarian courts have jurisdiction in lawsuits filed against foreign nationals who have settled in Hungary as independent entrepreneurs if the litigation pertains to the economic activities of such persons in Hungary.

The definition of independent entrepreneurs under Hungarian law is given by subsection 2 of section 3 of the Act V of 1990 on Private Entrepreneurs:

„When a foreign national who is regarded as non-resident within the scope of foreign exchange regulations is authorized by specific other legislation to establish residence for self-employment purposes, this person may also engage in activities as a private entrepreneur, provided he has legal competency, has a valid residence permit and is not barred from working in self-employment”. 26

**e) Trust**

Hungarian law does not know the common law “trusts” as such, and no specific provision on trusts was filed in the international procedural rules. Hungary is not signatory to the Hague Convention on the Law applicable to Trusts and on their Recognition either. Jurisdictional issues as regards legal instruments not known under Hungarian law are to be resolved on the basis of the general jurisdictional provision, section 54 of the Degree.

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26 In accordance with the Act. LXXII of 1998 foreigners willing to engage in entrepreneur activity in Hungary should meet the same requirements than the Hungarian nationals (licensing) if there is a national treatment provided for by international treaty or agreements with respect to the economic activities of those foreigners.
f) Arrest and/or location of Property

 Hungarian courts have jurisdiction in lawsuits for material, financial claims (property law, contract law) where the defendant has no domicile or residence in Hungary but does have assets in Hungary that can be attached. Any claim due a defendant shall be considered as the defendant’s asset in Hungary if the residence of the person owing the claim is in Hungary or if the claim is secured by a thing situated in Hungary, Section 57.

 Hungarian courts have exclusive jurisdiction in proceedings concerning execution/enforcement in Hungary (subsection (i) of section 62/A). On the other hand Hungarian courts do not have jurisdiction (excluded jurisdiction) in proceedings concerning execution/enforcement abroad (subsection (i) of section 62/C).  

 A special attachment-procedure in the Hungarian law a preliminary arrest procedure. Preliminary shall mean that this request can be filed only in connection with a claim already filed. In this case the jurisdiction of the “basic” claim determines the jurisdiction for arrest procedure, provided that the defendant has bank account or assets in Hungary. The creditor can bring a claim for arrest before a final judgment. If the creditor can presume that any delay in the enforcement of his or her claim is endangered, the court procedure will takes for a long time, the court should order the following protective measures upon the creditor’s request: (a) pledge of bank account or other monetary claims, or (b) arrest of specific things (movables or real estate) (section 185 of the Act LIII of 1994 on Judicial Enforcement – “Enforcement Act”). Section 187 of the Enforcement Act states this special rule for arrest (we call protective measures) as follows: (1) A protective measure may be ordered for the enforcement of a claim for which another action has been filed in a Hungarian court with public documents or private documents with full probative force attached in proof of the inception, volume and expiration of the claim. (2) The protective measure shall be ordered by the court at which the legal action has been filed. Where protective measures are requested, a hearing shall be held if necessary. (3) Protective measures may also be ordered under the same section if the legal action has been lodged under Council Regulation 44/2001/EC in another Member State of the European Union. (forum arresti, so called attachment-procedure).

 13) Protective Rules of Jurisdiction

 Pursuant of section 62 of the Degree in employment-related or consumer-related disputes the special protective rules (as set forth below), or the general rules of jurisdiction (section 54,) or the jurisdiction stipulated by the parties (section 62/F) shall apply any other connection is excluded. Accordingly, with respect to issues not covered by the special protective rules, the general rules and the provisions on the jurisdiction chosen by the parties serve as default rules.

 No stipulation of jurisdiction regarding legal disputes in connection with consumer contracts or contracts of employment (i) may result in having the consumer or the employee exposed to being sued in courts other than the courts of the state in which his/her domicile or residence is located; or (ii) may exclude the opportunity for the consumer or the employee to file a lawsuit in the courts of

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27 The main legal source of the execution/enforcement is Act LIII of 1994 on Judicial Enforcement. Special emphasis should be made to the provisions of this act concerning the protective measures (sections 185-190) that may be requested if the debt is in jeopardy and no enforcement order could be issued.

28 Subsection a) and b) of section 187: a) an action for matrimonial property right has been filed; b) an action for infringement of a patent, encroachment of a protected design or of the patented topography of micro-electronic semiconductors, violation of plant variety rights, infringement of a trademark, infringement of a geographical indication, infringement of a design, infringement of a certificate for the extension of protection, or for any copyright violation has been filed in a Hungarian court under the conditions laid down in the relevant laws;
the state in which his/her domicile or residence is located or in which the place of regular employment is located. These provisions do not apply if the parties implement the stipulation after the legal dispute has materialized, Subsection (2) and (3) of Section 62/G.

a) Consumer Contracts

Hungarian courts have jurisdiction in actions filed by consumers in connection with the consumer contracts, if the consumer's domicile or residence is in Hungary and the other party that is in contractual relationship with the consumer with respect to its professional or economic services

(i) operates in Hungary, including the operations performed elsewhere (outside Hungary) but aimed at Hungarian consumers; or
(ii) has a branch office or representation in Hungary or is a foreign national who has settled in Hungary as an independent entrepreneur. (Section 60)

Section 28/A interprets the notion of “consumer contracts” that is a contract for the provision of an object or services for a party acting outside the sphere of economic or professional activities, or a loan or credit contract in connection thereto.

b) Individual Employment Contracts

Hungarian courts have jurisdiction in employment-related actions filed by employees against employers if

- the place of regular employment is in Hungary or was last in Hungary; and/or
- the place where work was actually performed is in Hungary, provided that the place of regular work neither is nor was in the same country.(Section 61)

There is an important exception to this rule, namely, if the employer is a foreign State Authority (Organ), or otherwise protected by immunity (e.g. embassy, diplomats) it can only be sued before Hungarian courts if it has expressly waived its right to immunity, section 62/A. (The same was ruled in the case BH 1998.248 under the old legal regime of the international jurisdiction where the dispute arose between a foreign embassy in Hungary (employer) and a Hungarian national employee.)

As regards the right of an employer to bring a claim before the Hungarian courts against an employee domiciled in a non-EU state the general rules (Section 54.) should apply.

c) Insurance Contracts

There are no special jurisdictional rules for such insurance claims.

It is a question of interpretation whether any insurance related contracts are to be considered consumer contract. If they do, the rules of consumer contracts shall apply.

If the dispute arisen pertains to an insurance matter the general rules apply. Based on the general rules (section 54) both the insured and insurer may bring a claim before the Hungarian courts if the requirements of section 54 of Decree have been met.

If the insurance contract is not be considered as consumer contract the general factor of the contract-related disputes (place of performance) shall also apply.
If the insurer is a branch or representation, see point 12) d).

Theoretically it can not be excluded a connection a tortious case with insurance case, so the rules on tort may be applicable.

**d) Distribution Contracts**

There are no protective rules of Jurisdiction with respect to distribution, commercial agency or franchise agreements. (Although there are several internal regulations that provide for the protection of the commercial agents, they do not contain any protective jurisdictional provisions.29) If a dispute arises as to the above mentioned agreements the general rules (section 54.) and the rules governing contract-related issues apply (section 55).

Considering that the distribution agreement and the franchise agreements are qualified as “atypical contracts” under Hungarian law they are interpreted and handled always on the basis of the rules of the nearest type of contract or the general contract rules. If either the distribution or the franchise agreement involves lease or usufruct questions the jurisdiction of the Hungarian courts may be exclusive or excluded depending on the location of the real estate they are relating to, section 62/A or 62/C, see paragraph 12/a above.

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29 Act. CXVII of 2000 on the independent commercial agency agreements. This Act is fully in conformity with the 86/653 EU Directive.
e) Protective Rules in Other Matters

Under the Code of Civil Procedure a preliminary procedure to take evidence can be brought if it is proved that the hearing would not be successful on later on or it would be difficult to take evidence later (or this procedure would help to speed up the process or in case of warranty case)(section 207 of the CCP). This procedure shall be filed at the competence court but if such a claim in not lodged yet the claim can be filed either (i) at the local court of the residence of the plaintiff or (ii) where taking evidence seems mostly appropriate and reasonable (section 208 (1) CCP).

14) Rules for the Consolidation of Claims

a) Co-Defendants

According to Section 54 (2) of Decree, a defendant domiciled in a non-EU sate can be sued before Hungarian courts as a co-defendant in a proceeding brought against a defendant domiciled in Hungary, provided that

- the object of litigation is a common right or a common liability that can only be resolved uniformly, or
- if the ruling would affect all defendants, even those not appearing in court, or
- if the claims under litigation originate from the same legal relationship.

According to Section 63 of IPL-Decree-Law, the Hungarian law shall apply to the proceedings of Hungarian courts or other authorities, unless the IPL-Decree-Law provides otherwise. There are two types of joinders, according to Sections 51-53 of Code of Civil Procedure (hereinafter referred to as "CCP"), the "compulsory joinder" is a joinder, where the lawsuit can only be decided when all parties are involved (Section 51 a) of CCP); the "no compulsory joinder" is regulated in Section 51 b) and c) of CCP (please see below).

b) Third Party Proceedings

The Decree does not provide any special rule for an action third party in an action on warranty or guarantee (where guarantee means a remedy for breach of implied or expressed warranty). In this case the third party can be called as joinder in the procedure. Another possibility that the tortious liability of this third party can be referred to as connection to the Hungarian jurisdiction.

30 [Section 51 of CCP] Two or more plaintiffs may start a lawsuit together, or two or more defendants may be sued together, if (a) the object of the lawsuit is such common right or common obligation, that can only be decided uniformly, or the decision would apply to the joinders without taking part in the lawsuit; (b) the claims of the lawsuit derive from the same legal relationship; (c) the claims of the lawsuit derive from similar factual and legal base, and the jurisdiction of the same court can be determined regarding to all defendants without applying the provisions of Article 40.

31 [Section 52 of CCP](1) In case of a joinder according to Section 51. a), the acts within the lawsuit of any joinder - apart from settlement, acknowledgement and waiver of rights - apply to joinder who missed a deadline, closing date or an act, if the default was not supplied later. (2) In case the acts or statements of joinders according to Section 51. a) differ from each other, the court shall judge them in accordance with the other data of the lawsuit. [Section 53 of CCP] (1) In case of a joinder according to Section 51. b) or c), any acts or defaults of one of the joinders cannot cause the other joinders any advantages or disadvantages. (2) In case of joinder according to Section 51. b) or c), the summons for closing date and resolution on merits shall be disclosed to the joinder who is not directly concerned; although in case of the separation of the trial, the summoning of the joinder who is not directly concerned can be disregarded.
According to Section 54 (3) of IPL-Decree-Law, a defendant, as a secondary obligee (collateral obligee), domiciled in a non-EU state can be sued before Hungarian courts as a third party in an action on a warranty or guarantee or any other secondary obligation (collateral), if the domicile of the principal obligee is in Hungary.

c) Counter-Claims

If, pursuant to Section 63 of IPL-Decree-Law, Hungarian law shall apply to the proceedings, according to Section 54 (4) of IPL-Decree-Law, whenever a Hungarian court has jurisdiction in a lawsuit, it shall also have jurisdiction in respect of any counterclaim. The counterclaim shall be interpreted under the Hungarian CCP31.

d) Related Claims

There are no other rule to consolidate related claims except those mentioned above under 14) a) to c).

e) Any Problems Pertaining to Lack of Harmonisation

We have no knowledge of any specific problem.

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

(Please see first Introduction, there were a few reported cases on this point.)

a) The rules listed in annex I

Similarly to Section 23 of the German Code of Civil Procedure and according to Section 57 of IPL-Decree-Law and Section 32 Subsection (3) of CCP, Hungarian courts shall have jurisdiction in lawsuits for financial claim in relation to assets (in German: “Vermögensklage”)32 where the defendant has no domicile in Hungary but does have assets in Hungary that can be declared enforceable. Any claim due a defendant shall be considered as the defendant’s asset in Hungary if the domicile of the person owing the claim is in Hungary or if the claim is secured by a thing situated in Hungary.

Assets as such is not defined under Hungarian law, however, assets shall mean anything which qualifies, according to Act C of 2000 on Accounting, as an asset in the balance sheet of a company; or movables and real estates, tangible and intangible assets, right or claim.

31 According to Section 147 of CCP, the rules of counterclaim are the followings: (1) The defendant may enter a counterclaim against the plaintiff until the adjourn of the trial before passing the first instance judgment, if the right which the defendant wishes to enforce in this way is the same as the claim of the plaintiff or it derives from a legal relationship connected to it, or the object of the counterclaim can be set off against the claims of the plaintiff. The court may dismiss the counterclaim without trial on the merits, if it is obvious that the counterclaim was submitted late to obstruct the conclusion of the trial; (2) A counterclaim which regarding to the whole amount of the claim would be in the county court competence, can only be entered before local court, if this counterclaim is also suitable of off-setting, and the local court has competence regarding the amount of the claim above the claim of the plaintiff; (3) The trial court in an action in property law is competent regarding a counterclaim in the absence of any other ground of jurisdiction.

32 Please note that Hungarian “vagyonjogi per” can not be translated in English (In German: “Vermögensklage” –’assets-claim’) “lawsuits for financial claim in relation to assets” in this memorandum does not only mean “in rem” lawsuits, but also “contract law” and similar lawsuits.
Under the old legal regime of the jurisdiction, before 1 May 2001, it was published in the reported case law that both the plaintiff and the defendant were Russian companies, the dispute related an escrow agreement signed by them in Russia, under Russian law, the defendant was a Russian bank. Plaintiff brought a claim to a Hungarian state court for damages arising from the breach of the escrow account. Plaintiff referred to the old version of section 54 IPL-Decree Law, and to the fact that defendant has assets in Hungary, the defendant is shareholder of a bank established, registered and operating in Hungary. All three levels of the Hungarian courts, first instance, the revision court and the court of supervision terminated the procedure on the basis that Hungary has no jurisdiction in this case, since the facts show a clear Russian case rather than an international case. The place of the shares in the Hungarian bank were not proved, so this special provision of the jurisdiction could not be referred to (EBH 2004.1047.). The courts referred to sections 1, 54 and 56 of the IPL-Decree-Law, and sections 130 (1)(a) and 157 (a) of CCP. We think that a Hungarian relation was a minimum requirement under the old regime of jurisdictional rules of the Decree.

b) Practical use of the rules listed in Annex I

Hungarian courts definitely apply this rule whenever the facts of the case it require, however, there is no precedent published in any law digest.

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

We have no knowledge of any special case.

16) Forum necessitatis

The Hungarian rules do not use the principle “forum necessitates.” Under Hungarian law, there are no rules of forum necessitatis, not even the court praxis knows it. However, according to Section 62/F of IPL-Decree-Law, if the parties stipulate the jurisdiction of a foreign court of law and this court declares that it has no jurisdiction, a Hungarian court may declare its jurisdiction under the general rules.

Furthermore, according to Section 62/H of IPL-Decree-Law, the Hungarian court shall be deemed having jurisdiction if the defendant fails to file a contest concerning the lack of jurisdiction and makes a statement on the merits of the case (admission of suit), unless the jurisdiction is excluded under the provisions of IPL-Decree-Law. There is a reported case (EBH 2002.650) connected to this provision, according to which the parties stipulated the jurisdiction of the Arbitration Court to the Vienna Federal Chamber of Industry, but the defendant failed to file a contest concerning the lack of jurisdiction and made a statement on the merits. This lawsuit on a compensation matter which qualifies as assets-related lawsuit.33

33 Please see the previous note 29.
(D) National Jurisdiction & Enforcement of Non-EU Judgments

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

According to Section 70 (1) of IPL-Decree-Law, the judgments of foreign courts and other foreign authorities shall not be recognized if a Hungarian court or another Hungarian authority has exclusive jurisdiction concerning the matter to which the decision pertains.

According to Section 62/A of IPL-Decree-Law, a Hungarian court shall have exclusive jurisdiction in cases defined in subsections a) through i) as follows:

Subsection a) in actions pertaining to some 'in rem' right in connection with real estate that is located in Hungary and in proceedings concerning lease and usufruct agreements;

In rem rights shall mean under Hungarian law the proprietary rights and the so-called limited proprietary rights (in rem rights), such as (a) beneficial use, such as (i) tenure in land; (ii) usufruct; (iii) use; (iv) servitude; (v) public interest use; (b) lien and mortgage.

Subsection c) in cases filed against the Hungarian State or a Hungarian government agency, provided the Hungarian State has expressly waived the right to immunity, or if the subject matter of the case in question pertains to a legal relationship to which the Hungarian State or a Hungarian government agency is a party and which does not grant foreign countries immunity from Hungarian jurisdiction;

Subsection d) in actions filed against a Hungarian citizen who is on a diplomatic mission abroad or is otherwise granted immunity, unless the Hungarian State has expressly waived the right to immunity;

Subsection e) in actions filed for the destruction of securities and official instruments issued in Hungary;

Subsection f) in proceedings in connection with registering, extending or terminating industrial property rights in Hungary;

Subsection g) in proceedings concerning the establishment, insolvency and voluntary winding up of a Hungarian-registered legal entity or de facto company (company without legal personality); in proceedings concerning the validity of the contract or charter (deed of foundation) on the basis of which the legal entity (association) is registered; and in proceedings concerned with reviewing the resolutions passed by an organ of the legal entity (association);

Subsection h) in proceedings concerning the registration of rights, facts and data into official records in Hungary;

Subsection i) in proceedings concerning inland enforcement in Hungary.
(E) Declining Jurisdiction

18) Forum Non Conveniens

The courts do not use the expression “forum non conveniens”, but in the practice similar techniques can be discovered.

Please see a reported case slightly connected to this point referred to in point 15 a) above. (EBH 2004.1047.) Based on the reported case law (EBH2004.1047= BH2004.376) if the facts of the case do not connected to Hungary anyhow, the Hungarian courts would declare the “forum non conveniens”. This behavior of the Hungarian judges can be understand on the following reasons: (i) the Hungarian courts are traditionally overloaded and they try to terminate the cases based on procedural hindrances; (ii) secondly the judges are still very cautious with the non-Hungarian matters, especially in cases of east-European (Russian, Bulgarian, Ukrainian) or unique states; (iii) the judges are not really fitted for international cases.

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

(a) Non-EU Jurisdiction Agreements

According to Section 62/F (1) and (2) of IPL-Decree-Law, the parties may stipulate the jurisdiction of a specific court (even the court of a non-EU state) in respect of property-related legal disputes. Unless the parties agree to the contrary, the court chosen by the choice-of-court clause shall have exclusive jurisdiction.

However, if,
- in respect of either of the cases where Hungarian courts have exclusive jurisdiction (see under point 17) above, the parties stipulate the jurisdiction of a foreign court of law or,
- in respect of either of the cases where the jurisdiction of Hungarian courts is excluded, the jurisdiction of a Hungarian court shall be null and void.

No stipulation of jurisdiction regarding legal disputes in connection with consumer contracts or contracts of employment
- may result in having the consumer or the employee exposed to being sued in courts other than the courts of the state in which his domicile or residence is located; or
- may exclude the opportunity for the consumer or the employee to file a lawsuit in the courts of the state in which his domicile or residence is located or in which the place of regular employment is located.

These provisions shall not apply if the parties implement the stipulation after the legal dispute has materialized.

(b) Parallel Proceedings in a non-EU court

According to Section 65 of IPL-Decree-Law, if proceedings arising from the same factual basis and for the same rights are in progress between the parties before a foreign court in which the ruling can be recognized as valid and ready to be executed in Hungary in accordance with the IPL-Decree-Law, the Hungarian court may terminate the proceedings instituted before it subsequently.
This means, that if the proceeding is already started, the court may terminate it (the decision is up to the court), legal scholars regard it as a must for the courts to terminate the proceeding.

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

According to Sections 62/C to 62/E of IPL-Decree-Law, Hungarian courts shall not have jurisdiction. Section 62/C refers to subsections from subsection a) until subsection i), as follows.

Subsection a) actions pertaining to some in rem right in connection with real estate that is located abroad or in proceedings concerning lease and usufruct agreements;

On in rem rights pls. see point 17 above.

Subsection b) cases filed against a foreign country or a foreign government agency, provided the state in question has expressly waived the right to immunity, or if the subject matter of the case in question pertains to a legal relationship of the foreign country or the foreign government agency under civil law as defined under Subsection (1) of Section 62/E;

Subsection c) actions filed against a foreign citizen who is on a diplomatic mission in Hungary or is otherwise granted immunity, unless the foreign country in question has expressly waived the right to immunity;

Under the old legal regime of the jurisdiction, before 1 May 2001, there is a reported case according to which Hungarian courts have no jurisdiction in lawsuits against a foreign diplomatic mission unless it has expressly waived the right to immunity. The plaintiff was a Hungarian employee of the defendant, a diplomatic mission employer. Plaintiff brought claim against defendant but the court rejected it without issuing summons saying that Hungarian courts have no jurisdiction unless the diplomatic mission expressly waived the right to immunity. (BH 1998.248.)

Subsection d) actions filed for against a foreign citizen who is on a diplomatic mission in Hungary or is otherwise granted immunity, unless the foreign country has expressly waived the right to immunity;

Subsection e) actions filed for the destruction of securities and official instruments issued abroad;

Subsection f) proceedings in connection with registering, extending, and terminating industrial property rights abroad;

Subsection g) proceedings concerning the foundation, insolvency and termination of a foreign-registered legal entity or de facto corporation, in proceedings concerning the validity of the contract or charter (deed of foundation) on the basis of which the legal entity (association) is registered, and in proceedings concerning the review of the resolutions passed by an organ of the legal entity (association);

Subsection h) proceedings concerning the registration of rights, facts and data into official records abroad;

Subsection i) actions concerning enforcement abroad,
Section 62/E of the Decree states that Hungarian court shall have jurisdiction in actions filed against a foreign country or a foreign government agency if the subject matter of an action is

- a right or obligation of the foreign country (or foreign government agency) proceeding from a contract under civil law if the contracted place of performance is in Hungary unless the other party is another state or the agency of another state;
- is a right or obligation stipulated in a contract of employment or another work-related legal relationship between a foreign country (foreign government agency) and a natural person who holds Hungarian citizenship or has a domicile in Hungary provided that the place or regular employment is or was last in Hungary, unless the employee is a citizen of the foreign country that employs him;
- is a claim filed against a foreign country (foreign government agency) on the grounds of injury or material damage to life, limb, health or property, provided that the injury was committed in Hungary and the injured person was in Hungary at that time;
- is a right to in rem to real property in Hungary that a foreign country (foreign government agency) owns or would like to acquire;
- is the membership, share or interest of a foreign country (foreign government agency) in a domestic-registered legal entity or de facto corporation, or any right or obligation that derives therefrom;
- is the registration, extension or termination of industrial property rights in Hungary when the authorized is a foreign country (foreign government agency).

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

a) Non-EU Choice of court clause

According to the first sentence of Section (4) of 62/F of IPL-Decree-Law, the particular court chosen by the parties shall have exclusive jurisdiction. In our understanding this provision shall apply independently from the fact whether the court chosen is a court of a non-EU state or EU state.

b) Non-EU Parallel proceeding

According to Section 65 of IPL-Decree-Law, if proceedings arising from the same factual basis and for the same rights are in progress between the parties before a foreign court in which the ruling can be recognized as valid and ready to be executed in Hungary in accordance with the Law-Decree, the Hungarian court may terminate the proceedings instituted before it subsequently or the shall reject the statement of plaint without issuing summonses.

This means, that if the proceeding is already ongoing, the court may terminate it, legal scholars regard it as a must for the courts to terminate the proceeding. If the proceeding is not ongoing yet, pursuant to the above-mentioned provision of IPL Law-Decree, in accordance with the national rules of CCP (Section 130), the court shall reject the statement without issuing summonses.

c) Non-EU Exclusive jurisdiction

This is not expressly regulated by Hungarian law, however, in our understanding it is only a question of recognition in the other state\textsuperscript{34}. Hungarian courts have no obligation to reject the statement of plaintiff on the basis of exclusive jurisdiction in a non-EU state. Nonetheless, if there is a bilateral treaty or reciprocity between Hungary and the other state, Hungarian court shall decline jurisdiction.

(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

There is no reported case law on this point.

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

(a)-(c)

There is no reported case law on these points.

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

There is no reported case law on this point.


There is no reported case law on this point.
(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 Section 59 (1) of IPL-Decree-Law, a Hungarian court or some other Hungarian authority shall have jurisdiction in proceedings pertaining to parental supervision (i.e. a part of parental responsibility) when the child’s parents are separated if the domicile or residence of the child is in Hungary.

According to legal scholars, this provision shall not apply to the termination or reinstatement of parental supervision of a child, only to lawsuits for custody or change of custody and to out-of-court proceedings related to unsettled questions of the parental supervision of separated parents.

According to Section 62/B of IPL-Decree-Law, a Hungarian court shall have jurisdiction in any and all cases that concern the personal status of Hungarian citizens. This jurisdiction is exclusive, unless the case is filed in a foreign country for the termination or reinstatement of parental supervision of a child who is a Hungarian citizen and if the domicile of both the child and the parent whose right of supervision is contemplated is in the country where the proceeding court is located (subsection 62/B (d) of the Decree).

According to officers of the Ministry of Justice, these sections are not in complete accordance with Brussels IIa regulation, since the regulation provides for jurisdiction on the basis of the domicile of the child, but the Hungarian law is rather based on the citizenship. The exceptions from the citizenship-based rules are too narrow, e.g. the parent whose right of supervision is touched upon shall be domiciled in the same state as the child.

The contradiction between section 59 (1) and 62/B of the IPL-Decree-Law can be solved because section 59 (1) provides a parallel jurisdiction if child has residence or domicile in Hungary, section 62/B (d) states an exclusive jurisdiction with parallel exception, that in cases of a Hungarian nationality child the Hungarian courts have always jurisdiction with the exception if both of the parent whose right of supervision is contemplated and the child has foreign domicile or residence. In this case the state might have also jurisdiction where the domicile and residence of the parties located. My opinion is that in this case parent and child must have a domicile or residence in the same state.

35 Section 59 (1) of the Decree: A Hungarian court or some other Hungarian authority shall have jurisdiction in child custody cases and proceedings pertaining to visitation rights and parental supervision when the child's parents are separated if the domicile or residence of the child is in Hungary.

36 According to Article 2 point 7 of Brussels II regulation (2201/2003), the term “parental responsibility” shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access.

37 According to Subsection (2) of Section 71 of Act IV of 1952 on Marriage, Family and Custody, the term “parental supervision” shall mean all rights and duties relating to the custody, upbringing, administration of the fortune and the legal representation of the child (minor) and the right to appoint a guardian and exclude someone from being a guardian of the minor.


The Articles 5 to 14 of the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children provide for the jurisdictional rules in such matters. Among many states, Hungary joined this Convention and promulgated it with the Act CXL of 2005. Since many non-EU States joined this Convention, the jurisdictional provisions refer to these non-EU States as well.
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)?

Bilateral treaties:

- Convention between the People’s Republic of Hungary and the People’s Republic of Albania on legal assistance in civil law, family law and criminal law matters, Concluded on January 12, 1960;
- Convention between the People’s Republic of Hungary and the Socialist Federal Republic of Yugoslavia on mutual legal assistance, Concluded on March 7, 1968;
- Convention between the People’s Republic of Hungary and the People’s Democratic Republic of Korea on legal assistance in civil law, family law and criminal law matters, Concluded on October 5, 1970;
- Convention between the People’s Republic of Hungary and the Republic of Cuba on legal assistance in civil law, family law and criminal law matters, Concluded on November 27, 1982;
- Convention between the People’s Republic of Hungary and the People’s Republic of Mongolia on legal assistance in civil law, family law and criminal law matters, Concluded on November 22, 1968;
- Convention between the People’s Republic of Hungary and the Federation of Soviet Socialist Republics on legal assistance in civil law, family law and criminal law matters, Concluded on July 15, 1958;
- Convention between the People’s Republic of Hungary and the Socialist Republic of Vietnam on legal assistance in civil law, family law and criminal law matters, Concluded on January 18, 1985.39

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39 Brávácz Ottóné dr. - Dr. Szőcs Tibor: Jogviták határok nélkül, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2003, p.141-144
Multilateral conventions:

- Hague Convention concerning the recognition and enforcement of decisions relating to maintenance obligations towards children (concluded 15 April 1958);

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.)

According to Section 62/B of IPL Law-Decree, a Hungarian court or another Hungarian authority shall have jurisdiction in any and all cases that concern the personal status of Hungarian citizens. Such jurisdiction is exclusive. There is, however, an exception concerning the scope of the present memo that is when the case is filed in a foreign country for the termination or reinstatement of parental supervision of a child who is a Hungarian citizen and if the domicile or residence of both the child and the parent whose right of supervision is contemplated is in the country where the proceeding court or other authority is located. If these conditions are not met, the resolutions/decisions of foreign authorities will not be enforceable in Hungary, given that according to Section 70 of IPL Law-Decree, the decisions of foreign courts and other foreign authorities shall not be recognized if a Hungarian court or another Hungarian authority has exclusive jurisdiction concerning the matter to which the decision pertains.41

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40 Although the Luxembourg Convention does not contain direct provisions on jurisdiction, it does, however, affect the enforcement and recognition of the judgments on custody whereas in Article 7, it provides: "A decision relating to custody given in a Contracting State shall be recognized and, where it is enforceable in the State of origin, made enforceable in every other Contracting State".

41 Naturally the scope of the Luxembourg Convention (mentioned above) should be taken into consideration and if custody enforcement issues arise between contracting States, the provisions of the Convention shall prevail over the Hungarian rules.