MYKOLAS ROMERIS UNIVERSITY
FACULTY OF MYKOLAS ROMERIS LAW SCHOOL
INSTITUTE OF PRIVATE LAW

ANA ŠURPICKAJA
EUROPEAN AND INTERNATIONAL BUSINESS LAW

REGULATION OF INTERNATIONAL JURISDICTION IN NEW LUGANO CONVENTION: IS THE EFFICIENT HEARING OF CIVIL CASES BETWEEN SELECTED JURISDICTIONS ENSURED?

Master Thesis

Supervisor –
doctor,
Darius Bolzanas

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LIST OF ABBREVIATIONS

Brussels I bis regulation – Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Brussels I regulation – Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Brussels II bis regulation – Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000

Brussels III regulation – Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

Brussels convention – 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters

CK – Civil code

CLC convention – International convention on civil liability for oil pollution damage

CMR convention – Convention on the contract for the international carriage of goods by road

CPK – Code of civil procedure

CS – Contracting State

EC – European Community

ECJ – European Court of Justice

EFTA – European Free Trade Association

EU – European Union

Hague convention for the protection of children – Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children

Lugano Convention – Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (88/592/EEC)

MS – Member State

New Lugano Convention – Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Regulation on insolvency – Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings

Rome IV regulation – Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European certificate of succession

UK – United Kingdom

UNIDROIT – The International Institute for the Unification of Private Law

UNIDROIT convention – UNIDROIT convention on stolen or illegally exported cultural objects

INTRODUCTION

Relevance of the final thesis. According to Statistics department of Lithuania in 2018, 32 206 residents emigrated from Lithuania and 28 914 people immigrated to Lithuania. For example, in Norway the emigration increased from 22 503 persons leaving the country in 2006, to 36 843 emigrates as of 2017. In the same year 58 192 persons immigrated to Norway. In 2017, 1 134 641 people emigrated from Germany and 1 550 721 - immigrated. In 2018, in Denmark 22 909 persons emigrated from this state and 87 329 – immigrated. Thus, the movement of people, creation of family between citizens of various countries, estate succession and similar changes are usual phenomenon throughout the world. All these questions are solved in combining international jurisdiction rules. Determination of jurisdiction is very important question, because from it depends whether the judgement given in one state will be recognized and enforceable in another country. The legal acts regulating international jurisdiction rules become a part of the national legal systems, which must be applied by the national courts of the Contracting States (hereinafter – CS) and this leads to unequal judicial practice. For all these reasons, the uniform and efficient application and treatment of international jurisdiction rules in all CS is relevant both at the international level and at national level, including the Lithuanian case law.

Also, this question is relevant at present because since 10 January 2015 the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter – Brussels I bis regulation) applies which is revised version 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 (hereinafter – Brussels I regulation). Although, the Brussels I regulation was revised, but the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter – New Lugano Convention) which extended the rules of Brussels I regulation to states members of the European Free Trade Association (hereinafter – EFTA) and acted parallelly with this regulation, was not changed, thus, it is important to assess whether after these changes the uniform and efficient application and treatment of international jurisdiction is still ensured.

Research problem. The problematic issues related with international jurisdiction regulation is manifested in ability to understand and apply its rules enshrined in different

international legal instruments in the same way in various countries. In order to investigate whether international jurisdiction rules enshrined in the New Lugano Convention are implemented and ensured effectively, it is examined: 1) What international jurisdiction rules are enshrined in the New Lugano Convention? 2) Does the efficient hearing of civil cases between Lithuania and Norway, a state member of the EFTA ensured? 3) Whether the parallelism remained and exists between the New Lugano Convention and Brussels I bis regulation after its entry into force? If not, provide rules regulating exceptions.

Novelty of the final thesis and level of the analysis of a researched problem of the final thesis. Some authors have already discussed the international jurisdiction rules. The literature about these rules can be found in both languages: in Lithuanian and in English. From the Lithuanian authors which discussed this question may be mentioned the following: Gintautas Bužinskas and Jurgita Grigienė („Teismingumas tarptautiniame civiliniame procese: monografija“), Jurgita Grigienė („Jurisdikcijų konfliktai ir jų sprendimo būdai“ and „Kai kurie sutartinio teismingumo ypatumai tarptautiniame civiliniame procese“), Agnė Kisieliauskienė („Jurisdikcijos prorogacija pagal „Briuselis I-bis reglamentą: galiojančių susitarimų dėl teismingumo sudarymas ir jų veiksmingumo užtikrinimas“), Ramūnas Kontrauskas („Tarptautinis civilinis procesas: samprata ir vieta nacionalinės teisės sistemoje“) and for example, Vytautas Nekrošius („Europos Sąjungos civilinio proceso teisė“). Foreign authors may be mentioned: Adrian Briggs („Private international law in English courts“), Trevor C. Hartley („International commercial litigation: text, cases, and materials on private international law“), Thalia Kruger („Civil jurisdiction rules of the EU and their impact on third states“), Louise Merrett („Interpreting non-exclusive jurisdiction agreements“, „Orally agreed jurisdiction agreements under the Brussels I regulation“ and „The future enforcement of assymetric jurisdiction agreements“), Peter Stone („EU private international law“), Geert Van Calster („European private international law“) and others.

Very useful information about application of the international jurisdiction rules of the New Lugano Convention was found in an explanatory report written by Fausto Pocar („Convention on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, signed in Lugano on 30 October 2007“) and in a publication written by the Council of the European Union („European judicial cooperation“). The publication was useful not only with research of the application of international jurisdiction rules of the New Lugano Convention, but also, of the Brussels I bis regulation.

Although there are enough literature providing guidance on the application of the international jurisdiction rules enshrined either in the New Lugano Convention and in the Brussels I bis regulation, however, the aforementioned authors have discussed this question generally or usually, the rules determined in both legal acts were assessed separately. The assessment how the international jurisdiction rules enshrined in both these legal acts cooperate with each other and how they are applied in practice by Lithuanian and Norwegian national courts was poorly investigated and previously addressed only fragmentary. Thus, the master thesis will provide more detailed research on the raised issue.

Significance of research. The research is important because the disclosure of international rules enshrined in the New Lugano Convention and assessment whether they are ensured efficiently in civil cases between Lithuania and Norway, a state member of the EFTA, is performed in comparison with current applicable law and recent case law of Lithuanian and Norwegian courts. Furthermore, the provisions of the convention are compared with analogous provisions of the Brussels I bis regulation and there is provided assessment whether there is any conflict between them. Thus, the master thesis could be useful for other scholars and students for further research in the area of determining and application of international jurisdiction rules. It also can assist to national Lithuanian courts and other institutions because there is also provided some relevant case law of European Court of Justice (hereinafter – ECJ) on problematic issues faced by national courts in various Member States (hereinafter – MS).

Aim of research. The aim of the master thesis is to identify the international jurisdiction rules enshrined in the New Lugano Convention and investigate whether it is ensured the efficient hearing of civil cases between Lithuania and Norway, a state member of the EFTA.

Objectives of research. In order to achieve such aim the following objectives were formulated:

1. To define the concept of international jurisdiction and assess its relation with national jurisdiction;
2. To disclose the legal acts regulating international jurisdiction in civil cases and determine their applicability order;
3. To identify the need of adoption of the New Lugano Convention and evaluate its place between other legal acts regulating international jurisdiction in civil cases;

4. To disclose international jurisdiction rules enshrined in the New Lugano Convention and evaluate whether there is ensured parallel acting of the provisions of this legal act and of the Brussels I bis regulation; and
5. To assess whether the hearing of civil cases between Lithuania and Norway, a state member of the EFTA, is efficiently ensured. If it is not, to provide suggestions for legislation improvement or other possible solution.

Research methodology. Various qualitative methods are used in the master thesis: comparative, systemic, analysis and historical. The choice of methods is determined by the aim, objectives and nature of the master thesis. The comparative method is used in order to compare various international jurisdiction rules enshrined in different legal acts. The systemic method is used in order to disclose how concrete rule is interpreted in various legal acts and in case law. The analysis method is applied in investigating case law. The historical method is used in order to identify the adoption reasons of Lugano Convention and its development into New Lugano Convention.

Structure of research. The master thesis consists of five main chapters which are divided into smaller subchapters. In the first chapter there is defined the concept of international jurisdiction and assessed its relation with national jurisdiction. Also, there is disclosed the main element dividing these two concepts. There are provided some views and opinions of various scholars. The second chapter deals with identifying of various legal acts regulating the international jurisdiction in civil matters. There is disclosed procedure and scope of application of these legal acts. The third chapter identifies the grounds of adoption of the New Lugano Convention. The evolution process of legislation in the field of international jurisdiction in civil cases is assessed since the adoption of the first EU legal act till the New Lugano Convention and the Brussels I bis regulation. Also, there is evaluated the relation and procedure of application of the New Lugano Convention and other legal acts regulating international jurisdiction in civil cases.

The fourth chapter is the widest in which there are disclosed certain international jurisdiction rules enshrined in the New Lugano Convention. This chapter is divided in some subchapters in order to examine certain rules of international jurisdiction, grouped into types, separately and compare them with analogous provisions of the Brussels I bis regulation. The fifth chapter evaluates the working of *lis pendens* rule within the scope of the New Lugano Convention

and assess whether the provisions determined by the convention do not contradict with the relevant provisions of the Brussels I bis regulation. In order to perform detailed research there is analysed various case law held either by the ECJ and by the national courts of Lithuania and Norway, mostly the case law is provided in the last two chapters.

Defence statements. 1) Due to adoption of Brussels I bis regulation there is lost parallesim, established between the Brussels I regulation and the New Lugano Convention. Therefore, the New Lugano Convention should be supplemented by the new provisions of the Brussels I bis regulation. 2) Although protocol 2 of the New Lugano Convention determines that the courts of non EU MS cannot apply for preliminary rulings of the ECJ and such courts are not obliged to follow the ECJ's decisions, but to pay due account on it, however, the courts of non EU MS follow the ECJ's decisions and thus, there is ensured the efficient hearing of civil cases between Lithuania and Norway, a state member of the EFTA. Therefore, there is no need to change the existing provisions of protocol 2 of the convention.

1. THE CONCEPT OF INTERNATIONAL JURISDICTION AND ITS RELATION WITH DOMESTIC (INTERNAL) JURISDICTION

This chapter deals with the concepts of domestic (internal) jurisdiction and international jurisdiction, and their mutual relation. It is important to distinguish these two concepts, because every country has its own rules on jurisdiction which differ from country to country and in practice usually problems arise when one country's court made a decision which has to be recognized and enforced in another state. In order to avoid such problems there are established special rules regulating international jurisdiction and it is important to know in which situation these special rules will be applicable and in which – domestic (internal) jurisdiction rules. During the analysis of above mentioned questions, there are provided different opinions and examples of various scholars.

Having considered the meaning of the state, the main point is made on the concepts of sovereignty and territory[1]. Some scholars define sovereignty using such concepts as „the power of states"[2] or „supreme and independent authority within a certain social and territorial framework"[3]. Territory of the state is the spatial sphere within which a certain state can normally perform its sovereignty. Historically, the territoriality in the law of jurisdiction rose to prominence in the seventeenth century owing to the centralization of administrative power within the state, as well as the rise of the science of cartography that allowed for more certain borders to be drawn.

Thus, it can be said that every country, based on the principle of sovereignty, adopts different legal rules regulating relations within that state. All individuals which are inside that country are bound of its legal rules. Hence, a state's domestic law is effective only on legal relations, juridical facts or their consequences which have arisen or happened on its territory[4]. Although every state's domestic law is valid only on its territory, it is possible that state law will be also recognized in another country, but this will be only because the courts of that other state recognize and apply the law of state concerned.

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[1] Enrico Milano, *Unlawful territorial situations in international law: reconciling effectiveness, legality and legitimacy* (Leiden / Boston: Martinus Nijhoff Publishers, 2006), 64; Ramūnas Kontrauskas, „Tarptautinis civilinis procesas: samprata ir vieta nacionalinės teisės sistemoje," *Jurisprudencija* 7, 109 (2008): 71, http://www.mruni.eu/lt/mokslo_darbai/jurisprudencija/archyvas/dwn.php?id=257484

[2] Cedric Ryngaert, *Jurisdiction in international law. Second edition* (Oxford: Oxford University Press, 2015), 5.

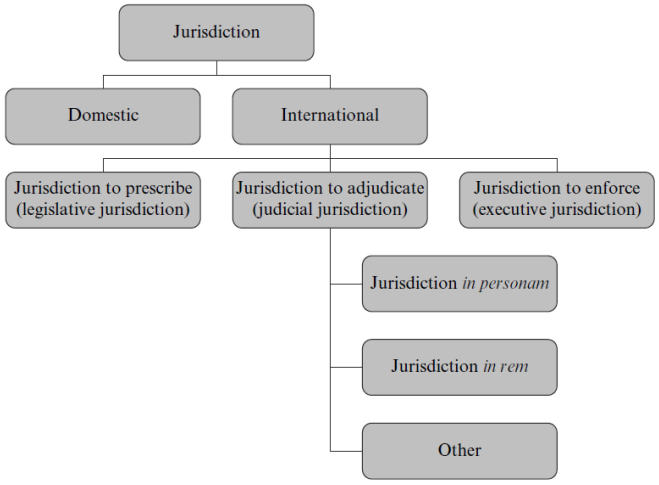
[3] Milano, *op. cit.*, 64.

[4] Alex Mills, „Rethinking Jurisdiction in International Law," *British Yearbook of International Law* 84, 1 (2014): 202, https://doi-org.skaitykla.mruni.eu/10.1093/bybil/bru003

If confine only to relations within a particular country, then the source of such relations would be one – domestic (internal) law. Though, frequently the country has to deal with relation that is characterized by a foreign, international, element. In such cases state's domestic courts are faced with the problem of determining jurisdiction which, usually is characterized as a court's competence to adjudicate a claim or matter[5].

Generally, jurisdiction is divided into domestic (internal) jurisdiction and international jurisdiction which can also be expanded into other sub-types, for example – judicial jurisdiction and executive jurisdiction. The following figure shows the possible example how jurisdiction can be divided:

Figure No. 1 Jurisdiction[6]



Domestic (internal) jurisdiction is concerned with the competence of courts to settle a dispute within the country concerned. It covers only the jurisdiction of its state, but does not specify which particular court should deal with one or another case.

International jurisdiction concerns the division of powers between different states or other international entities. In some states, there is a similar division of power internally between different sub-units, in the sense that the same principles may apply at this level. In order to provide possible

[5] Thalia Kruger, *Civil jurisdiction rules of the EU and their impact on third states* (Oxford: Oxford University Press, 2008), 60; Adrian Briggs, *Private international law in English courts* (Oxford: Oxford University Press, 2014), 168; Vytautas Nekrošius, *Europos Sąjungos civilinio proceso teisė. Pirma dalis* (Vilnius: Justitia, 2009), 21; Gintautas Bužinskas and Jurgita Grigienė, *Teismingumas tarptautiniame civiliniame procese: monografija* (Vilnius: Teisinės informacijos centras, 2007), 28.

[6] Trevor C. Hartley, *International commercial litigation: text, cases, and materials on private international law* (Cambridge: Cambridge University Press, 2009), 13.

examples to this, there can be mentioned the relations between Scotland and England (and Wales) within the United Kingdom or between different states in the United States. This is also treated as involving international jurisdiction.

According the above provided figure, international jurisdiction includes legislative, executive and judicial jurisdiction. The legislative and executive jurisdiction are out of object of this scientific work and that will not be analysed further. Further analysis will be concerned with the judicial jurisdiction. Hereinafter in this scientific work international jurisdiction will be used as a synonim of international judicial jurisdiction. Some authors suggest international judicial jurisdiction analyse on the basis of the effect that the judgment is intended to have, and divide it into jurisdiction *in personam*[7] and jurisdiction *in rem*[8]. It shall be mentioned that there are certain proceedings, for example, divorce or custody proceedings, that do not fit into either category and they fall into „other" sub-type.

A judgement *in personam* is a judgement that binds only a specific person or several specific persons and requires that person or persons to do or not to do something. This judgement is the most common form of judgement. Jurisdiction *in rem* – is jurisdiction over property. A judgement *in rem* is binding on everyone in the world though only to the extent they have an interest in the property with regard to which the action is brought (*the res*).

Some authors in explaining international jurisdiction usually confine this concept with a particular *connection* with the forum[9]. International jurisdiction is defined as the competence of a court to hear cases with a foreign element[10]. According to Supreme Court of Lithuania overview of the application of international and European Union law in issues of jurisdiction in family matters, a relationship of dispute in civil cases are recognized as having an international (foreign) element when at least one of the following circumstances exist:

- One of the parties (the subject) is a foreign person. A party to a dispute might be a foreign national, a stateless person or a foreign legal person.

[7] Briggs, *supra note* 5: 168-171.
[8] Hartley, *supra note* 6: 12.
[9] Hélène van Lith, *International Jurisdiction and Commercial Litigation: Uniform Rules for Contract Disputes* (The Hague: T.M.C. Asser Press, 2009), 22; Geert Van Calster, *European private international law* (Oxford: Hart Publishing, 2013), 3.
[10] Ian Brownlie, *Principles of public international law. 7th ed.* (New York (N.Y.): Oxford University Press, 2008), 298.

- The object of the dispute is abroad. The object could be movable, immovable objects located in a foreign country or work carried out in a foreign country or performed services being subject of the dispute.
- The legal fact occurred or was committed in a foreign country because of which emerged, changed or terminated the legal relationship between the parties.
- A court or arbitration ruling is taken in a foreign state and is requested to be executed in Lithuania.
- Evidence required in a civil case are in a foreign state.
- Court notifications and summonses must be sent to a person in a foreign state or other procedural steps shall be performed in a foreign state[11].

The author of this scientific work (hereinafter – the author) agrees with some scholars' view that the concepts of domestic (internal) and international jurisdiction define the same things, but emphasize different features. Domestic (internal) jurisdiction emphasizes the situations when a case is assigned to national courts. International jurisdiction – that jurisdiction is determined to cases with a foreign element[12].

In the Republic of Lithuania (hereinafter – Lithuania) jurisdiction is determined in the Code of civil procedure (hereinafter – CPK)[13] chapter IV „Jurisdiction" and chapter LIX „Jurisdiction and application of norms". In case of conflict of laws between these two chapters, chapter LIX should apply. This is determined according to the principle – in the existence of a collision of two legal norms, priority is given for special legal norms, while the provisions entrenched in the chapter LIX are considered as special legal norms in respect of chapter IV.

Other states, including Lithuania, regulate domestic (internal) jurisdiction and international jurisdiction by national legal acts. However, various countries establish in their domestic civil procedure law different rules of jurisdiction, leading to a number of conflict of laws between the states. For example, article 14 of French civil code determines that alien might be sued in French

[11] „Tarptautinės ir Europos Sąjungos teisės taikymo sprendžiant jurisdikcijos nustatymo klausimą šeimos bylose apžvalga," LAT, accessed 2019 January 5, https://www.lat.lt/data/public/uploads/2018/01/jurisdikcija_seimos_bylose_apzvalga_i_dalis.docx
[12] Bužinskas and Grigienė, *supra note* 5: 30-31.
[13] „Lietuvos Respublikos civilinio proceso kodeksas," *Valstybės žinios* 36, 1340 (2002).

courts if the dispute arises from a contract concluded with a French citizen[14]. In case law this article is interpreted extensively because French courts assumed competence to consider all cases in which one of the parties is French national. Hence, in France the main criterion of jurisdiction rules is nationality. Most other states, including Lithuania, do not provide such privilege for their nationals. The general rule, according to which the court's jurisdiction is determined – defendant's domicile.

In the event of conflict of laws between several states regarding the rules of jurisdiction, a situation may arise when the decision was made by the court of one state, and the decision that entered into force must be enforced in another state, and the court of that other state may refuse to enforce first judgement by its domestic (internal) jurisdiction rules. The author agrees with Hélène van Lith that such situation is more likely appear in the sense when jurisdiction is founded on a (very) weak link between the dispute and the forum – then the recognition and enforcement of the judgement by another state might be really problematic[15]. Example of such weak link might be French nationality rule provided above. For example, if the contract was concluded in United Kingdom (hereinafter – UK) between French national and UK national, it shall be executed in UK and national of UK failed to perform his obligations, then, according to French jurisdiction rule based on nationality, French national can sue defendant in France, but later the judgement shall be enforced in UK and there is a real disputable question whether UK court will recognize and enforce such judgement because it can establish that there was a weak link between the dispute and the French forum. In order to avoid such problems, alongside general jurisdiction rules, there should be special jurisdiction rules which can be determined both in domestic (internal) civil procedure law and in international treaties (bilateral and multilateral)[16]. The main focus on inter-state relations, and the focus in private international law on private rights and interests was observed around the beginning of the twentieth century, and the efforts toward the international harmonisation of private international law through treaties, spearheaded by the Hague Conference on private international law.

In conclusion, it can be said that various scholars offer division of jurisdiction in different ways. For example, T. C. Hartley divides jurisdiction into domestic and international which is divided into legislative, executive and into judicial jurisdiction. However, in most cases, jurisdiction

[14] „Code civil," Legifrance, accessed 2019 January 7, https://www.legifrance.gouv.fr/affichCode.do;jsessionid=FE2A601BA62E5A3BD05AC22FBB7E36F6.tplgfr34s_1?cidTexte=LEGITEXT000006070721&dateTexte=20190319
[15] Van Lith, *supra note* 9: 5.
[16] Peter Stone, *EU private international law. Third edition* (Cheltenham; Northampton (Mass.): Edward Elgar, 2014), 3.

is divided at least into domestic (internal) and international jurisdiction. Such differentiation is recognized broadly. Domestic (internal) from international jurisdiction can be distinguished by the presence of a foreign element in a case. If there is no foreign element in the case, it will be a domestic (internal) jurisdiction which defines the competence of courts to settle a dispute within the country concerned. If the foreign element is in the case, then it will be an international jurisdiction whose rules determine which country's courts have jurisdiction over the case, but do not deal with the competence of courts within the state.

The case will be with the foreign element if: one of the parties is a foreign person (a party to a dispute might be a foreign national, a stateless person or a foreign legal person), the object of the dispute is abroad (the object can be movable, immovable objects located in a foreign country or work carried out in a foreign country or performed services being subject of the dispute), the legal fact occurred or was committed in a foreign country (because of which emerged, changed or terminated the legal relationship between the parties), a court or arbitration ruling is taken in a foreign state, evidence required in a civil case are in a foreign state or other procedural steps shall be performed (it must be sent court notifications and summonses to a person) in a foreign state. If there is at least one of the above mentioned features, it is treated that the case is with the foreign element.

2. LEGAL ACTS REGULATING INTERNATIONAL JURISDICTION IN CIVIL CASES AND THE PROCEDURE FOR THEIR APPLICATION

In this chapter, the main attention is made on analysis of the legislation regulating international jurisdiction in civil matters. It is not enough to know such legal acts, but it is necessary to understand in which cases which particular legal act applies. Therefore, in this chapter there is provided detailed explanation which legal acts have precedence over other legal acts in the case of conflict of laws. Also, there is performed investigation in order to determine what legislation is addressed to specific civil cases and there are given examples of scope of some legal acts, basically: some Hague conventions, multilateral conventions and EU regulations.

Whereas each country itself determines in which international treaty it wants to participate and in which not, thus the list of legal acts regulating international jurisdiction differs in each state. And whereas it is impossible to provide the list of legal acts of each state, besides it is out of object of this scientific work, the author, examining the legislation on international jurisdiction in civil cases, will confine himself to the analysis of relevant legal acts of Lithuania. It should be noted that, although this chapter analyzes legislation relevant to Lithuania, the principles of setting and application of legal acts are quite similar in all states, at least in civil law countries. Furthermore, EU legislation is an integral part of legal sources of each MS.

International jurisdiction is regulated by various levels: it can be international treaties (bilateral, multilateral), Hague Conference conventions, EU legislation, national legal acts and case law.

In order to improve cooperation and ensure equal protection of rights of citizens and legal persons of the CS, Lithuania has concluded thirteen contracts on legal aid and settlement of legal relations in civil, family and criminal matters. The contracts are concluded with neighbouring countries: Belarus, Poland, Latvia and Estonia. Also, bilateral agreements are concluded with Russia, Moldova, Ukraine, Kazakhstan, Uzbekistan, China, Turkey, Azerbaijan and Armenia.

Some of above mentioned contracts are of little relevance today and are rarely applicable or are irrelevant at all and not applicable. This is so, because Lithuania and other countries have joined EU, which itself regulates a number of issues of international jurisdiction that are binding on the MS. It means that in any event, once it has been determined that an EU civil jurisdiction regulation

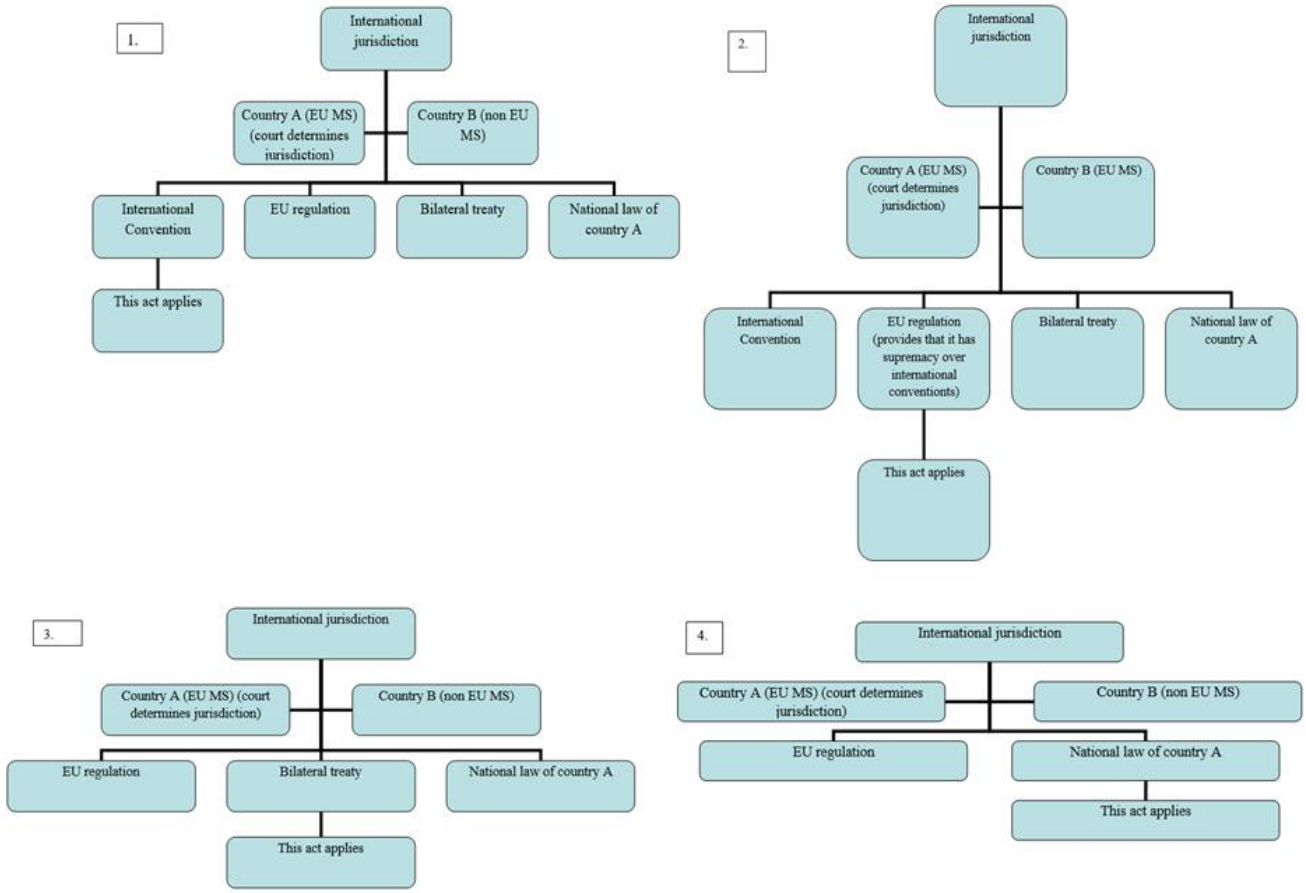
applies, these rules have precedence over the rules of national law[17]. This principle was enunciated by the ECJ and applied in several cases, for example, such as *Sophia Marie Nicole Sanders v David Verhaegen and Barbara Huber v Manfred Huber*[18], *Corman-Collins SA v La Maison du Whisky SA*[19] and *Bianca Purrucker v Guillermo Vallés Pérez*[20].

In Supreme Court of Lithuania overview of the application of international and European Union law in issues of jurisdiction in family matters is explained the application of multilateral international treaties and their relation with national legislation. There is determined the supremacy of multilateral international treaty over the national legal act, except if the multilateral treaty establishes otherwise[21]. Paragraphs 1 and 2 of article 1.13 of the Civil code of Lithuania (hereinafter – CK)[22] determine that where the provisions established in the international treaties of Lithuania are different from those determined by the CK and other laws of Lithuania, the provisions of the international treaties of Lithuania shall apply. The international treaties shall apply to civil relationships directly, except in cases where an international treaty establishes that a special national legal act is necessary for its application. This means that if international jurisdiction rules are governed by international multilateral or bilateral treaty, then that treaty will be applicable, irrespective of whether the same jurisdiction is determined by domestic (internal) legal act. However, some countries are not participating in some conventions, then relations with such countries are governed by bilateral treaties, which are perhaps the only mean to facilitate cooperation and avoid conflicts of court jurisdiction.

In order to clarify in more detail how above described rules apply, the figure below is submitted which visually repeats earlier provided explanation:

[17] Kruger, *supra note* 5: 33.
[18] Joined cases 400/13 and 408/13, Sophia Marie Nicole Sanders v David Verhaegen and Barbara Huber v Manfred Huber, 2014, ECLI:EU:C:2014:2461.
[19] Case 9/12, Corman-Collins SA v La Maison du Whisky SA, 2013, ECLI:EU:C:2013:860.
[20] Case 256/09, Bianca Purrucker v Guillermo Vallés Pérez, 2010, ECR I-07353.
[21] „Tarptautinės ir Europos Sąjungos teisės taikymo sprendžiant jurisdikcijos nustatymo klausimą šeimos bylose apžvalga," *supra note* 11.
[22] „Lietuvos Respublikos civilinis kodeksas," *Valstybės žinios* 74, 2262 (2000).

Figure No. 2 Determination of international jurisdiction *(created by author)*



As already noted, multilateral conventions (for their MS) have precedence over bilateral treaties and national law and as an important source of private international law can be mentioned the Hague Conference on private international law, established in 1893. It is active in largely three areas: protection of children, family and property relations; international legal co-operation and litigation (including the 2005 Convention on choice of court agreements[23]); and international commerce and finance law[24]. As an examples of Hague conventions applicable in Lithuania can be the following: The 2005 Convention on choice of court agreements and Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and

[23] „Council decision of 26 February 2009 on the signing on behalf of the European Community of the convention on choice of court agreements (2009/397/EC),“ *Official Journal of the European Union*, L 133/1 (2009).
[24] Van Calster, *supra note* 9: 3.

measures for the protection of children (hereinafter – Hague convention for the protection of children)[25].

In order to determine which convention to apply, the answer is to be found in the convention itself. For example, the scope of The 2005 Convention on choice of court agreements is specified in article 1: „this convention shall apply in international cases to exclusive choice of court agreements concluded in civil or commercial matters; [...]“. It is noted that article 2 of this convention provides a list of cases to which this convention does not apply, for example, to the status and legal capacity of natural persons, maintenance obligations and etc.

Hague convention for the protection of children applies to children from the moment of their birth until they reach the age of 18 years (article 2 of the Hague convention for the protection of children). According to points (a-g) of article 3 of this convention, its measures may deal in particular with: the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation; rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence; [...]“. Article 4 of the convention determines in which cases this legal act does not apply, for example, to the establishment or contesting of a parent-child relationship, decisions on adoption, measures preparatory to adoption and etc.

Lithuania is a participating party to many multilateral conventions and it is not possible to provide a full list of them, but as examples, not belonging to Hague conventions, can be mentioned, such as: Convention on the contract for the international carriage of goods by road (CMR) (hereinafter – CMR convention)[26], UNIDROIT convention on stolen or illegally exported cultural objects (hereinafter – UNIDROIT convention)[27] and International convention on civil liability for oil pollution damage (CLC) (hereinafter – CLC convention)[28].

Generally, CMR convention applies to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a

[25] „Konvencija dėl jurisdikcijos, taikytinos teisės, pripažinimo, vykdymo ir bendradarbiavimo tėvų pareigų ir vaikų apsaugos priemonių srityje,“ *Valstybės žinios* 91(1), 4125 (2003).
[26] „Tarptautinio krovinių vežimo keliais sutarties konvencija (CMR),“ *Valstybės žinios* 107, 2932 (1998).
[27] „UNIDROIT konvencija dėl pavogtų ar neteisėtai išvežtų kultūros objektų,“ *Valstybės žinios* 8, 139 (1997).
[28] „1992 metų Tarptautinė konvencija dėl civilinės atsakomybės už taršos nafta padarytą žalą,“ *Valstybės žinios* 43, 1224 (2000).

contracting country, irrespective of the place of residence and the nationality of the parties (article 1(1) of CMR convention). This convention does not apply to carriage performed under the terms of any international postal convention, to funeral consignements or to furniture removal (points (a-c) of article 1(4) of CMR convention.

UNIDROIT convention is applicable to claims with an international character for the restitution of stolen cultural objects or for the return of cultural objects removed from the territory of a CS contrary to its law regulating the export of cultural objects for the purpose of protecting its cultural heritage (points (a-b) of article 1 of UNIDROIT convention).

CLC convention applies exclusively to pollution damage caused in the territory including the territorial sea of a CS and to preventive measures taken to prevent or minimize such damage (article 2 of CLC convention). It does not apply to warships or other ships owned or operated by a State and used, for the time being, only on government non-commercial service (article 11(1) of CLC convention).

After Lithuania became a member of the EU, a number of new rules governing the jurisdiction entered into force that Lithuania has to follow. The first step to create a unified law on civil procedure in EU was the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters[29] (hereinafter – Brussels convention)[30], which entered into force in 1973 when it was ratified by six original member states. Such interest and possibility of the EU in civil jurisdiction stemmed from article 220 of the Treaty of Rome, which committed the six original states of Belgium, France, Germany, Italy, Luxembourg and the Netherlands to develop a system for mutual recognition and enforcement of judgements in civil and commercial matters[31]. It shall be mentioned that Brussels convention did not give the ECJ jurisdiction to interpret its provisions, but with adoption of Luxembourg protocol the ECJ has acquired such a right[32]. The ECJ, interpreting Brussels convention's provisions, provided preliminary rulings when the case was considered in the courts of the EU MS or the determinative conclusions regarding to applications of

[29] Vigita Vėbraitė, *Introduction to European civil procedure: study material* (Vilnius: Vilniaus universiteto leidykla, 2014), 5.
[30] „1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (consolidated version). Protocol on the interpretation of the 1968 Convention by the Court of Justice (consolidated version)," *Official Journal of the European Communities*, C 27/1 (1998).
[31] Briggs, *supra note* 5: 175.
[32] Hartley, *supra note* 6: 20; Jurgita Grigienė, „Jurisdikcijų konfliktai ir jų sprendimo būdai civilinėse bylose," *Teisė* 50, (2004): 45, http://www.lvb.lt/ELABA:LABTALL:TLITLIJ.04~2004~1367189882760; Council of the European Union, *European judicial cooperation* (Luxembourg: Publications Office of the European Union, 2017), 24, https://publications.europa.eu/en/publication-detail/-/publication/803b3b93-f280-11e6-8a35-01aa

other EU institutions[33]. The rulings of the ECJ on the interpretation of the law are binding on all courts of the MS, but difficulties may arise when one of the countries is not a MS. In such a case, the judgement of the ECJ is not mandatory to that state and it is not required to follow that decision.

It should be noted that in many cases the ECJ has interpreted the provisions of the Brussels convention by applying principle of autonomous interpretation. The principle has first been established by the ECJ in a *Mrs M.K.H. Hoekstra (née Unger) v Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten (Administration of the Industrial Board for Retail Trades and Businesses)* case[34] and till it has not been changed and applied very broadly[35]. The principle of autonomous interpretation of EU means that there is only one correct interpretation of a term used in EU legislation, and that this one correct meaning must be found independently from the law of MS. The importance of this principle is emphasized by V. Nekrošius[36]. The principle of autonomous interpretation is to be welcomed, since it ensures that, irrespective of the law of the MS in which the person resides, the law of the EU will be interpreted uniformly.

How EU legislation has developed after the Brussels convention and why the Lugano convention was adopted will be explained in next chapter. The object of this chapter – to explain which legal acts regulate international jurisdiction in civil cases and the procedure of their application and not the reasons and history of their adoption. It shall be only mentioned that after the signing and entry into force (1 May 1999) of the Treaty of Amsterdam, the EU acquired the right to directly legislate in the civil matters[37]. It actively uses this competence and currently these regulations on determination of jurisdiction are in force:

- Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I bis regulation)[38].
- Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (hereinafter – Regulation on insolvency)[39].

[33] Bužinskas and Grigienė, *supra note* 5: 62.
[34] Case 75/63, Mrs M.K.H. Hoekstra (née Unger) v Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten (Administration of the Industrial Board for Retail Trades and Businesses), 1964, ECR 00177.
[35] Vėbraitė, *supra note* 29: 9.
[36] Nekrošius, *supra note* 5: 19-20.
[37] Aude Fiorini, „The evolution of European private international law," *International & Comparative Law Quarterly* 57, 4 (2008): 973, https://doi.org/10.1017/S0020589308000729
[38] „Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters," *Official Journal of the European Union*, L 351/1 (2012).

- Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (hereinafter – Brussels II bis regulation)[40].
- Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (hereinafter – Brussels III regulation)[41].
- Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European certificate of succession (hereinafter – Rome IV regulation)[42].

Analysing the scope of above-mentioned regulations the answer shall be sought in legal acts themselves. Each regulation (usually, article 1) provides information in which cases it applies and in which – not. It should be noted that provisions of the Brussels I bis regulation and the New Lugano Convention are very similar, but their scope is different. The convention applies when one of the countries is a member of the EFTA: Iceland, Norway or Switzerland. If both states are EU MS, then Brussels I bis regulation applies (article 64(1) of the New Lugano Convention).

Considering the scope of above-mentioned regulations it is concluded that Brussels I bis regulation is the general legal act (*lex generalis*), and Brussels II bis regulation, Brussels III regulation, Rome IV regulation and Regulation on insolvency – special legal acts (*lex specialis*).

Brussels II bis regulation covers civil cases, related to „divorce, legal separation or marriage annulment; the attribution, exercise, delegation, restriction or termination of parental responsibility“ (points (a-b) of article 1(1) of Brussels II bis regulation). These cases may, in

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[39] „Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings,“ *Official Journal of the European Union*, L 141/19 (2015).

[40] „Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000,“ *Official Journal of the European Union*, L 338/1 (2003).

[41] „Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations,“ *Official Journal of the European Union*, L 7/1 (2009).

[42] „Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European certificate of succession,“ *Official Journal of the European Union*, L 201/107 (2012).

particular, according to points (a-e) of article 1(2) of this regulation, deal with „rights of custody and rights of access; guardianship, curatorship and similar institutions; [...]“. It is noted that, according to points (a-h) of article 1(3), this regulation does not apply to „the establishment or contesting of a parent-child relationship; decisions on adoption, measures preparatory to adoption, [...]“.

Brussels III regulation is intended to regulate „maintenance obligations arising from family relationship, parentage, marriage or affinity“. In this regulation, the term „Member State“ means MS to which this regulation applies (article 1(1) and 1(2) of Brussels III regulation).

Rome IV regulation applies „to succession to the estates of deceased persons. It does not apply to revenue, customs or administrative matters“ (article 1(1) of Rome IV regulation). Points (a-l) of article 1(2) of Rome IV regulation provide that the following is excluded from the scope of this regulation: „the status of natural persons, as well as family relationships and relationships deemed by the law applicable to such relationships to have comparable effects; the legal capacity of natural persons, without prejudice to point (c) of article 23(2) and to article 26; questions relating to the disappearance, absence or presumed death of a natural person; [...]“.

According to points (a-c) of article 1(1) of Regulation on insolvency, it applies to public collective proceedings (including interim proceedings) which are based on laws relating to insolvency and in which, for the purpose of rescue, adjustment of debt, reorganisation or liquidation an insolvency practitioner is appointed because a debtor is totally or partially divested of its assets; the assets and affairs of a debtor are subject to control or supervision by a court; [...]. This regulation does not apply to proceedings that concern insurance undertakings, credit institutions, investment firms and other firms, institutions and undertakings to the extent that they are covered by Directive 2001/24/EC or collective investment undertakings (points (a-d) of article 1(2) of regulation).

Civil cases which are not covered by the above-mentioned regulations, are covered by Brussels I bis regulation. Article 1(1) of this regulation provides that: „regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*)“. In which cases this regulation does not apply, provides points (a-f) of article 1(2): „the status of legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage; [...]“.

The concept „civil and commercial matters“ is not defined in the regulations or other legal acts, but in article 1(1) of the Brussels I bis regulation is established, that it does not apply to revenue, customs or administrative matters or to the liability of the state for acts or omissions in the exercise of State authority. This means that regulation does not apply to public law cases. This issue was also discussed by the ECJ. For example, in *Hellenische Republik v Leo Kuhn* case, the ECJ held that the claim made by the applicant on the basis of an act of public authority committed in the exercise of public authority is sufficient to consider the claim as beyond the scope of Brussels I bis regulation[43]. In other case (*Eirini Lechouritou and Others v Dimosio tis Omospondiakis Dimokratias tis Germanias*) the ECJ ruled, that the fact that the action brought before the referring court was of a civil nature is irrelevant, since the action seeks to recover the pecuniary and non-pecuniary damage caused to the claimants in the main proceedings by the actions of public authorities[44].

Relying on the Brussels I bis regulation, it is notable that the concept of „civil cases“ is broad, covering wide range of areas, such as individual contracts of employment, insurance and consumer contracts. In many countries, these areas are governed by separate, specially established legal acts.

In the event of conflict of laws, when national law provisions of a state are contrary to the provisions of the EU regulation, then the rules of the regulation prevail. This statement is confirmed by article 2 of the Constitutional act of the Republic of Lithuania on membership of the Republic of Lithuania in the European Union: „the norms of European Union law shall be a constituent part of the legal system of the Republic of Lithuania. [...], the norms of European Union law shall be applied directly, while in the event of the collision of legal norms, they shall have supremacy over the laws and other legal acts of the Republic of Lithuania“[45]. The principle of direct applicability is enshrined in the ECJ cases: *Götz Leffler v Berlin Chemie AG*[46], *Roda Golf & Beach Resort SL*[47] and *Emmanuel Lebek v Janusz Domino*[48].

[43] Case 308/17, Hellenische Republik v Leo Kuhn, 2018, ECLI:EU:C:2018:911.
[44] Case 292/05, Eirini Lechouritou and Others v Dimosio tis Omospondiakis Dimokratias tis Germanias, 2007, ECR I-1540.
[45] „The law supplementing the Constitution of the Republic of Lithuania with the Constitutional act „On Membership of the Republic of Lithuania in the European Union“ and supplementing article 150 of the Constitution of the Republic of Lithuania,“ *Valstybės žinios* 111, 4123 (2004).
[46] Case 443/03, Götz Leffler v Berlin Chemie AG, 2005, ECR I-09611.
[47] Case 14/08, Roda Golf & Beach Resort SL, 2009, ECR I-05439.
[48] Case 70/15, Emmanuel Lebek v Janusz Domino, 2016, ECLI:EU:C:2016:524.

In conclusion, generally, the legal acts regulating international jurisdiction in civil cases are divided the following – national legal acts (in Lithuania – CPK), bilateral and multilateral conventions and treaties, Hague conventions and EU legislation.

Lithuania has concluded thirteen contracts on legal aid and settlement of legal relations in civil, family and criminal matters. Also, it has ratified a number of multilateral conventions and treaties from which there can be mentioned the following: Convention on the contract for the international carriage of goods by road (CMR), UNIDROIT convention on stolen or illegally exported cultural objects, International convention on civil liability for oil pollution damage (CLC).

As an important source there can be mentioned the Hague Conference. Some of conventions adopted by Hague Conference are also applicable in Lithuania. The conventions which are the source of international jurisdiction in civil cases and which apply for Lithuania, can be mentioned the following: the 2005 Convention on choice of court agreements and Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children.

Multilateral conventions and treaties, including Hague conventions, have precedence over bilateral treaties, except when multilateral conventions themselves establish otherwise. In turn, bilateral contracts have precedence over the national law.

EU legal acts, regulating international jurisdiction in civil cases, are the following: Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations and Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European certificate of succession.

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is considered as a general legal act (lex generalis) and other regulations – as special legal acts (lex specialis). If the civil case are not governed by special legal acts, then it falls within a scope of general legal act. It is noted that EU regulations applies directly in MS and have supremacy over the national law.

The title of each legal act, it does not matter whether it is multinational convention, bilateral treaty or EU regulation, indicates the direction in determining which civil cases will be covered by a specific legal act.

3. TOWARDS THE NEW LUGANO CONVENTION AND ITS RELATION WITH REGULATIONS OF THE EUROPEAN UNION

This chapter is designate to explain the development of international jurisdiction inside the European Union and between it and third states. The process is explained since the adoption of the first EU legal act on jurisdiction in civil cases till the adoption of the New Lugano Convention and the Brussels I bis regulation. To know the history of international jurisdiction in civil cases is important because in such a way the reasoning and importance of particular legal acts and their provisions are clarified. As was already explained, it is not enough just to know the legislation, but also it is necessary to understand in which cases which particular legal act applies. This is why in this chapter is explained how the New Lugano Convention co-works with Brussels regulations.

This chapter does not deal with all EU legislation on the field of jurisdiction in civil cases. Whereas the object of this work is the New Lugano Convention, therefore the chapter confines on the EU legal acts which are related with this convention.

As was already mentioned in previous chapter, the history of EU legislation on jurisdiction rules in civil cases starts since 1957 and relates to article 220 of the Treaty of Rome. This article gave the possibility to six original countries to adopt the first unified law on civil procedure in EU: Brussels convention. Since then, this convention has been amended many times because it was regarded as community law and thus engendered the requirement that new MS ratify it. However, being an international convention meant that a new version had to be negotiated and concluded every time more states joined the EU. In this way the Brussels convention was modified several times, for example, when Denmark, Ireland and the UK became party to it or when Spain and Portugal acceded[49]. In essence, the provisions of those new conventions, with some modifications, were in line with the provisions of the Brussels convention.

Alongside the development and redevelopment of the Brussels convention, in 1988 a parallel Convention was adopted (Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (88/592/EEC) (hereinafter – Lugano convention)[50], at Lugano, by states then party to the Brussels convention and six states which were members only of the EFTA. This convention came into existence because direct neighbouring countries to the EU had witnessed

[49] Kruger, *supra note* 5: 14; Nekrošius, *supra note* 5: 15; Stone, *supra note* 16: 23.

[50] „Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (88/592/EEC)," *Official Journal of the European Communities*, L 319/9 (1988).

the benefits of an easy system for recognition and enforcement of judgements which brought the Brussels convention.

It shall be noted that the rules of the Brussels convention and of the Lugano convention were almost identical. At the same time there were small differences, which might prove pertinent in a particular case. There is one large difference between the two: the interpretative authority of the ECJ. It was already mentioned that the ECJ performed interpretation function in relation to the Brussels convention. This was not possible in relation to the Lugano convention. This convention contained a protocol providing that in the interpretation of the convention, any preliminary rulings on the Brussels convention will be taken into account, as well as national case law[51].

The significant change for civil jurisdiction brought the Treaty of Amsterdam (1 May 1999). It afforded the EU power to directly legislate in the field of private international law[52]. The EU actively uses this competence as proves the earlier provided list of EU regulations on jurisdiction in civil matters.

Whenever the European Community (hereinafter – EC) obtained the power to adopt legislation in the field of civil jurisdiction, the Brussels convention was replaced by Brussels I regulation[53]. One of the reasons to renew the Brussels convention was the aim to achieve that EU jurisdiction rules would be directly effective in MS[54].

As it constitutes EC legislation, the ECJ has an automatic right to interpret it on a preliminary reference[55]. However, as it is a reanactment of the Brussels convention, the ECJ's case law on the convention continues to apply under the Brussels I regulation, except where the provisions of the Brussels convention have been amended (recital 8 of Brussels I regulation). This is extremely important because over a period of almost thirty years the ECJ had built up a considerable body of case law on the Brussels convention.

After the adoption of Brussels I regulation the gap with the Lugano convention was created as some of new rules in regulation were changed or updated. It made sense that the gaps which had opened up between the two instruments be closed up again. But then, the negotiations to allow for the updating of the Lugano convention to bring its rules into line with Brussels I regulation were

[51] Kruger, *supra note* 5: 38.
[52] Fiorini, *supra note* 37: 973.
[53] „Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters," *Official Journal of the European Communities*, L 12/1 (2001).
[54] Briggs, *supra note* 5: 177.
[55] Hartley, *supra note* 6: 20.

stalled by a dispute between the EU MS and the EU. It has happened so, because the new powers conferred on the EC by the Treaty of Amsterdam gave rise to the question whether the New Lugano Convention should be negotiated and concluded by the EC alone or by the EC together with the MS[56]. In order to resolve this dispute, the Council submitted the request for an opinion to the ECJ. The ECJ in this situation held that the New Lugano Convention (which has then being planned) fell entirely within the sphere of exclusive competence of the EC[57]. This meant that the MS could not be parties to it. On the EC side, only the EC itself could be a party. However, the MS would be bound by it because the EC had concluded it[58]. After the ruling of the ECJ, negotiations were taken up again and the New Lugano Convention[59] came into being in 2007. It extended the rules of Brussels I regulation to EFTA MS, namely Iceland, Norway and Switzerland. With its entry into force, the parallelism with the Brussels I regulation was reinstated.

Although it is a parallel convention to the Brussels I regulation, the New Lugano Convention remains an independent instrument. This emerges clearly from the provisions coordinating its sphere of application. Article 64(1) of the convention states that it shall not prejudice the application by MS of the Brussels I regulation, the Brussels convention and its Protocol of interpretation of 1971, or the EC – Denmark agreement. This means that the scope of these instruments remains unaltered, and is not in principle limited by the New Lugano Convention[60]. Thus, the jurisdiction of the courts of MS bound by the Brussels I regulation or by the EC – Denmark agreement continues to be exercised in accordance with the regulation with regard to persons domiciled in the states referred to, and also with regard to persons domiciled in other states that are not party to the convention[61].

However, according to article 64(2) of the New Lugano convention, this legal act shall be applied in certain situations, whether by the courts of a state bound both by the Brussels I regulation and by the New Lugano Convention, or by the courts of a state bound only by the convention. Examples of such certain situations can be the following:

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[56] Fausto Pocar, „Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007: explanatory report," *Official Journal of the European Union*, C 319/1 (2009): 2-3, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1223(04)&from=EN

[57] Opinion 1/03, Competence of the Community to conclude the new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, 2006, ECR I-01145.

[58] Hartley, *supra note* 6: 21.

[59] „Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters," *Official Journal of the European Union*, L 339/3 (2007).

[60] Council of the European Union, *supra note* 32: 33.

[61] Pocar, *op. cit.*, 6.

- When the defendant is domiciled in the territory of a state bound only by the convention and not by the regulation.
- When there applies exclusive jurisdiction rules, regulated by article 22 or article 23 of the convention.
- When there are applicable *lis pendens* or related actions rules, regulated by article 27 or article 28 of the convention, the convention applies to all proceedings instituted in a state bound by this convention, whether or not that state is bound by the regulation, thereby ensuring in any event that there is coordination of jurisdiction.

The interpretation of the New Lugano Convention is addressed by its protocol 2. Article 1 of protocol stipulates that national courts shall pay due account not only, as provided for in the corresponding rules of protocol 2 of the convention, to decisions rendered by the courts of the states bound by the convention but also to decisions rendered by the ECJ concerning the provisions of the New Lugano Convention and any similar provisions of the Brussels I regulation. Of course, the courts of EU MS are obliged not simply pay due account to decisions of ECJ where the latter has delivered a judgement following a request for a preliminary ruling on the interpretation of the convention, but the national court that has referred the question is required to follow the ECJ's decision when ruling on the case before it. Also, it shall be mentioned, that when the procedure for interpretation by way of preliminary rulings is activated in respect of the Brussels I regulation, the existence of identical provisions in the New Lugano Convention means that any interpretation by the ECJ also has effect of clarifying the provisions of convention. But such ECJ rulings are bound on EU MS and apply for preliminary ruling can courts of EU MS. In relation to the courts of non EU MS, then it shall be noted that they cannot activate the procedure for interpretation by way of preliminary ruling. Article 2 of the protocol 2 of the convention provides that states which are not EU MS are entitled to submit statements of case or written observations, in accordance with article 23 of the protocol on the statute of the ECJ, in procedures initiated by courts of the EU MS.

Generally, Brussels scheme, and the original Brussels I regulation were successful, but despite the regulation's success in 2009 the Commission proposed a number of amendments. Following discussions with interested parties, on 14 December 2010, the European Commission published its draft amendments to the Brussels I regulation, which provided for: the abolition of exequatur (the intermediate procedure for the recognition and enforcement of judgements); the

extention of the jurisdiction rules in the Brussels regulation to disputes involving defendants who are not domiciled in EU MS; the enhancement of effectiveness of choice of court agreements; better coordination of parallel proceedings; improvement of the interface between the Brussels regulation and arbitration[62].

In 2012 the revised version of the Brussels I bis regulation was approved and on 20 December 2012 it was published in the „Official Journal of the European Union". It came into force 20 days later and applies from 10 January 2015 (article 81 of the Brussels I bis regulation).

This regulation is mentioned in explaining the history of the New Lugano Convention, because it replaced the Brussels I regulation and as was already explained – the New Lugano Convention was parallely applied together with the Brussels I regulation. Thus, the renewal of provisions of Brussels I regulation might have impact on the convention rules. Paragraph 1 of article 73(1) of the Brussels I bis regulation provides that it shall not effect the application of the New Lugano Convention. So, the idea is that the convention will work parallelly with the Brussels I bis regulation. However, the convention remained the same as was harmonized with the Brussels I regulation. Thus, the question remains – whether some provisions of the New Lugano Convention do not contradict with the provisions of the Brussels I bis regulation? Perhaps, the New Lugano Convention should be revised taking into account that the Brussels I regulation was replaced? Also, taking into account the ECJ's interpretation function regarding to the convention and the role of the courts of non EU MS there, the following question arises: whether the aim of uniformity between both Lugano Convention and the Brussels regulations (including the Brussels convention) is indeed achieved? The author will research the New Lugano Convention and the Brussels I bis regulation in the next chapters and will try to answer into all these questions.

In conclusion, the first EU legal act in the field of jurisdiction in civil cases was the Brussels convention, adopted in 1957. Alongside the development and redevelopment of this convention, in 1988 a parallel convention was adopted: the Lugano convention. The Lugano convention was adopted in order to extend the Brussels convention into neigbouring countries which had realised the benefits of an easy system for recognition and enforcement of judgements which brought the Brussels convention.

[62] Philip Clifford and Oliver Browne, „Reform of the Brussels regulation – latest developments and the „Arbitration exception"," *The London disputes newsletter*, April, 2013: 2, https://www.lw.com/thoughtLeadership/Reform-of-the-Brussels-Regulation

The rules of the both conventions were almost identical except some differences, for example: the interpretative authority of the ECJ. The ECJ could not perform interpretation function in relation to the Lugano convention. In the protocol of the Lugano convention were provisions establishing that in the interpretation of the convention, any preliminary rulings on the Brussels convention will be taken into account, as well as national case law.

After the entry into force of the Treaty of Amsterdam, the EU acquired a power directly legislate in the field of private international law. Thus, the Brussels convention was replaced by Brussels I regulation which was directly applicable in EU MS. The ECJ was given an automatic right to interpret the Brussels I regulation on a preliminary reference.

In order to close the opened gap between the Lugano convention and Brussels I regulation after its adoption, the New Lugano Convention was adopted between the EC and EFTA MS. This convention came into being in 2007 and it extended the rules of the Brussels I regulation to Iceland, Norway and Switzerland.

The New Lugano Convention did not prejudice the application by MS of the Brussels I regulation. This means that the scope of the regulation remained unaltered. However, the convention, according to its article 64(2) applies in certain situations, whether by the courts of a state bound both by the Brussels I regulation and by the New Lugano Convention, or by courts of a state bound only by the convention, for example, when the defendant is domiciled in the territory of a state bound only by the convention and not by the regulation.

In relation to the ECJ's interpretation function, then it shall be mentioned that courts of EU MS are obliged to follow the ECJ's decision when its ruling on the case before it. Any interpretation by the ECJ also has effect of clarifying the provisions of the New Lugano Convention. But such rulings of the ECJ are bound on EU MS and apply for preliminary ruling can courts of EU MS. The courts of non EU MS cannot apply for preliminary ruling. They, according article 2 of the protocol of the New Lugano Convention, are entitled to submit statements of case or written observations, in accordance with article 23 of the protocol on the statute of the ECJ, in procedures initiated by courts of the EU MS.

Currently, from 10 January 2015, the Brussels I bis regulation applies which is revised version of the Brussels I regulation. Paragraph 1 of article 73(1) of the Brussels I bis regulation provides that it shall not effect the application of the New Lugano Convention. So, the convention remains applicable and now it works parallelly with the Brussels I bis regulation.

4. TYPES OF INTERNATIONAL JURISDICTION ENSHRINED IN THE NEW LUGANO CONVENTION

In this chapter, there are analyzed all types of international jurisdiction enshrined in the New Lugano Convention. This is not enough to know which types are determined in the convention, but also, it is necessary to understand in which cases which type applies in the first place in a particular situation. Also, it is important to understand whether the provisions of jurisdiction in the New Lugano Convention do not conflict with the provisions of the Brussels I bis regulation. Therefore, this chapter provides an explanation in which particular case, which type of jurisdiction applies. Also, the provisions of the New Lugano Convention are compared with particular provisions of the Brussels I bis regulation and there is provided a conclusion wthether there is any conflict of laws between these two legal acts.

In order to analyze this information comprehensively, there is provided the ECJ case law. Also, seeking to ascertain how these types of the international jurisdiction are applied in the practice, there is provided the national case law of Lithuanian and Norwegian courts.

4.1. General Jurisdiction

General jurisdiction – is one of the types of international jurisdiction, understood as a general rule used to determine international jurisdiction.

Basically, general jurisdiction refers to the basis upon which a court can always assume jurisdiction with regard to a particular defendant, irrespective of the legal nature of the action, i.e. whether it is based in tort, maintenance, divorce, or the non-performance of a contractual obligation. This type of international jurisdiction is based on a link between the court and the defendant[63].

Domicile of the defendant. The general rule of jurisdiction in the New Lugano Convention is based on the principle of *actor sequitur forum rei*, and remains anchored to the domicile of the defendant in a state bound by the convention disregarding to the nationality of the defendant[64]. This general rule is determined in article 2(1) of the convention which provides that: „[...] persons domiciled in a state bound by this convention shall, whatever their nationality, be sued in the courts

[63] Kruger, *supra note* 5: 60.
[64] Council of the European Union, *supra note* 32: 38.

of that state". Article 2(2) supplements this rule and additionally provides that persons who are not nationals of a state bound by the convention in which they are domiciled are subject to the same jurisdiction as nationals of that state. It shall be mentioned that the convention assigns jurisdiction to the country in whose territory the defendant is domiciled without prejudice to the determination of a specific court with jurisdiction in that state on the basis of the national law of that state.

The same, identical, general rule is determined in article 4(1) and 4(2) of the Brussels I bis regulation. It means that the New Lugano Convention does not contradict to the Brussels I bis regulation's rule. Thus, it can be assumed that by such rule established in both legal acts was pursued to achieve the same purpose.

The rationale of the general rule in favour of the defendant's domicile was considered by the ECJ in *Feniks Sp. z o.o. v Azteca Products & Services SL* and in *Granarolo SpA v Ambrosi Emmi France SA* cases. It explained that the rule reflects the purpose of strengthening the legal protection of persons established within domicile that a defendant can most easily conduct his defence. The ECJ added that domicile must be interpreted in such a way as to enable a normally well-informed defendant reasonably to foresee the court before which he may be sued[65]. Another reason for the such general rule is that it is presumably at his domicile that the defendant keeps most of his assets and that the eforcement against his person or property can most easily be affected. Thus, by such rule is attempted to concentrate both adjudication of the merits and enforcement of the judgement in the same country, thereby avoiding unnecessary procedural complications[66].

In order to determine the domicile the actions can be divided in the following way:

- Domicile of natural persons (individuals) and
- Domicile of legal persons (corporations).

There is no autonomous definition of the domicile of natural persons, neither in the New Lugano Convention, neither in the Brussels I bis regulation. In order to determine the domicile of natural persons (individuals) applies article 59(1) and 59(2) of the New Lugano Convention. According article 59(1), the court, which is seised of a matter, shall apply its internal law in determining whether a party is domiciled in its state (*lex fori* rule). Article 59(2) applies in the situation when a defendant is not domiciled in the state whose courts are seised of the matter. This

[65] Case 337/17, Feniks Sp. z o.o. v Azteca Products & Services SL, 2018, ECLI:EU:C:2018:805; Case 196/15, Granarolo SpA v Ambrosi Emmi France SA, 2016, ECLI:EU:C:2016:559.
[66] Stone, *supra note* 16: 53.

rule provides that in such situation determining whether the party is domiciled in another CS, the court shall apply the law of that state. It means that according this rule, if the court decides that a person is not domiciled within its territory, then in order to determine whether he is domiciled in the territory of another CS, it must apply the law of that state. Consequently, for example, if a matter is seised in England, then its court in order to determine whether defendant is domiciled in Lithuania must apply Lithuanian law. It means, that English court will rely not on its domestic (internal) law, but should rely on a foreign law. Such situation is seen as negative, because in such case, the court must have good knowledge of not only the legislation of its state, but also be competent in interpreting and applying properly foreign law and have good language knowledge of that state, which may lead to various interpretations and different court rulings determining domicile of natural persons.

The rule determining the domicile of natural persons in the Brussels I bis regulation is regulated by article 62. This article provides identical rule as is established in the New Lugano Convention. Thus, these two legal acts do not contradict with each other and act parallelly as was aimed.

Contrary to the domicile of natural persons, in order to determine the domicile of legal persons (corporations) applies autonomous rule established by article 60 of the New Lugano Convention. Points (a-c) of article 60(1) provide some alternative criteria of the domicile of legal persons: statutory seat, central administration or principal place of business. Neither of these alternative criteria have priority, all of them are equal and such situation may lead to forum shopping which has one positive effect on the enforcement stage: if the three connecting factors lead to different jurisdictions, plaintiff is likely to opt for one where enforcement of the judgement against assets of the defendant is the easiest[67]. In justification it may be pointed out that, for example, if a company decides to keep its central administration in a place separate from its principal place of business, it chooses to expose itself to the risk of being sued in both places[68].

However, the concept „statutory seat“ is not an appropriate connecting factor for a legal person in the UK or Ireland, where the legal systems refer instead to the place where a company is entered in the register that exists for the purpose, or to the place in which it was incorporated. The registration criterion allows for the fact that the rule concerns not just companies or firms as such

[67] Van Calster, *supra note* 9: 43-44.
[68] Pocar, *supra note* 56: 8.

but also any body that is not a natural person, so that a registered office is of greater relevance than a „seat“ indicated in the founding documents[69]. Therefore, for the UK and Ireland article 60(2) of the convention applies which specifies that in these countries „statutory seat“ means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.

Article 60(3) is dedicated for determination of a special institute – domicile of a trust. This article provides that in order to determine whether a trust is domiciled in the CS whose courts are seised of the matter, the court shall apply its rules of private international law. Some authors, such as F. Pocar, state that problems with application of this provision do not arise in states whose legal systems recognise the trust as an institution, but difficulties may arise in countries in which this institution is unknown because in the absence of appropriate conflict rules for determining the domicile of trusts in the legal system of the court seised, the question may be made to depend on the law to which the trust is subject[70].

In order to determine whether the provisions of the domicile of legal persons in the New Lugano Convention match with the provisions laid down in the Brussels I bis regulation, these two legal acts shall be compared. Domicile of legal persons in the regulation is regulated in article 63. In comparison to article 60 of the convention, it is ascertained that the provisions in both legal acts are similar. Thus, these legal acts do not contradict with each other. It shall be noted that there is only one difference between article 60(2) of the convention and article 63(2) of the regulation: the convention provides different explanation of „statutory seat“ for the UK and Ireland, while the regulation includes also Cyprus. There is no information that, because of this difference some difficulties occured, therefore it can be concluded that this difference is not essential and does not have impact for proper operation of these legal acts.

Analysing national case law in applying general jurisdiction rule established in article 2(1) of the New Lugano Convention in Lithuania, there were analysed thirteen cases (held from 2015 until now) ruled by national courts related directly and indirectly with general jurisdiction rule in the convention. After analysis of these cases it is concluded, that in most cases courts of Lithuania correctly applied and interpreted the general jurisdiction rule. It is observed, that usually the courts applied article 2 together with article 3, and determined correctly, that jurisdiction shall be

[69] Pocar, *supra note* 56: 8.
[70] *Ibid.*, 9.

determined by the domicile of the defendant and that this general rule of the person's domicile may be replaced only by sections 2 to 7 of jurisdiction's title in the convention[71]. The courts applied article 2 when they did not determine special, protective or exclusive jurisdiction or prorogation of jurisdiction. Also, the courts held correctly that the special jurisdiction rules are not mandatory for the parties and that the plaintiff has a right to choose whether he wants to sue the defendant according the special jurisdiction rules or under the general jurisdiction rule[72]. It shall be mentioned that in some cases the national court of first instance made incorrect decisions regarding to establishment of jurisdiction, however these mistakes were corrected by the appeal court[73].

In determining the domicile of natural persons, the national courts correctly relied on article 59(1) of the convention and applied their internal law provisions[74].

Regarding to Norway, there were found less rulings of national courts related with general jurisdiction rule determined in the New Lugano Convention than in Lithuania. However, some peculiarities after the reading of that cases can be distinguished. It was observed that Norwegian courts despite the plaintiff's claim based on article 2(1), rejected to apply the convention in the claims regarding bankruptcy proceedings. The courts correctly relied under point (b) of article 1(1) of the convention (that the convention does not apply to bankruptcy proceedings)[75]. Also, the courts correctly refused to apply this legal act if there was determined that the defendant's domicile is in a third state, not a party to the convention[76]. Also, the courts in several cases interpreted article 2 together with article 3, and held correctly, that jurisdiction shall be determined by the domicile of the defendant and that this general rule of the person's domicile may be replaced by sections 2 to 7 of jurisdiction's title of the New Lugano Convention[77].

It was an interesting case held by the Norwegian Supreme Court. In that case a company from Singapore brought an action before a Norwegian court relied on article 2(1). The claimant

[71] Case 2-4134-653/2016, J. E. P. v A. B., 2016; Case E2-20307-466/2018, UAB „Nord Profil" v IDEAL BYGG GROUP AS, 2018; Case E2S-1331-619/2018, V. Ž. v A. L., 2018.
[72] Case 2S-172-227/2015, K. E. v R. J., 2015; Case 2-1363-760/2018, A. Ž. v J. Ž., 2018.
[73] Case E2S-19-661/2019, UAB „WB21" and „WB21 Pte.Ltd" v UAB „(-)" and (-) A/S, 2019; Case 2S-172-227/2015, *op.cit.*
[74] Case E2S-735-883/2016, V. R. v M. S. and E. K., 2016; Case 3K-3-454-969/2016, K. I. C. v K. M., 2016; Case 2S-172-227/2015, *op. cit.*
[75] Case LB-2018-178187, Scotch & Soda BV v Brandment AS, 2018; Case TOBYF-2018-111203, Scotch & Soda BV v Brandment AS, 2018; Case HR-2017-1297-A, 2017, 2017/445.
[76] Case HR-2018-936-U, Euro Tv AS (Euro Tv) v Gaming Innovation Group Inc. (GIG), 2018; Case 17-049514TVI-BERG, Euro Tv AS (Euro Tv) v Gaming Innovation Group Inc. (GIG), 2017.
[77] Case LH-2018-43284, ECO DGAS AS v Charles Patrick Mckenna, 2018; Case TVTRA-2017-102835, ECO DGAS AS v Charles Patrick Mckenna, 2017.

applied regarding the domicile of the defendant which was in Norway. The Supreme Court rejected the claim and stated that it did not follow from the convention that claimants from third countries were automatically entitled to file actions in Norway[78]. There might be two possible solutions in this situation. The first one is opposite to the Norwegian court's decision and can be argumented in the following way: in the New Lugano Convention there are no provisions precluding the plaintiff from third country rely under its article 2. The general rule of jurisdiction provides the rule that the defendant shall be domiciled in a CS. However, it does not provide any rule regarding the plaintiff. Thus, it can be concluded that this rule does not preclude the possibility for the plaintiff domiciled in a non CS, to sue the defendant under the general jurisdiction rule.

The second opinion can be the same as the decision held by the Supreme Court and is the following: the plaintiff is from the third state which is not a CS to the New Lugano Convention, thus, the convention does not apply in such situation, because it applies only between the CS of the convention. Besides, if the court ruling would be held according this legal act and later, such ruling would be required to be enforced in that third state, there would be a high probability that such ruling would not be enforced in that third state, because its courts are not bind by this convention. Thus, the Supreme Court in such situation shall apply its international private law rules.

4.2. Special Jurisdiction

Special jurisdiction – is one of the types of international jurisdiction giving the plaintiff a choice between several alternative forums. This type of international jurisdiction does not eliminate the general rule of international jurisdiction but supplements it.

While the general rule of jurisdiction is based on a factor connecting the defendant to the court, the special rules recognise a link between the dispute itself and the court which may be called upon to hear it. These jurisdictions reflect a principle of the efficacious conduct of proceedings, and will be justified only when there is a sufficient connection in terms of the proceedings between the dispute and the court before which the matter is to be brought, from the point of view of the gathering of evidence or the conduct of the proceedings, or in order to secure better protection of the

[78] Case HR-2012-2393-A, 2012, 2012/881.

interests of the parties against which the proceedings are directed. It shall be noted that these rules apply whether or not they correspond to jurisdictions provided for by the national laws of the CS[79].

Also, it shall be mentioned that the choice is given to the plaintiff, and it is not open to any of the courts involved to override the plaintiff's choice on such grounds as the relative appropriatness or convenience of such courts[80].

In cases to which apply the special jurisdiction rules, a defendant will be sued outside the courts of his domicile, with all the associated trouble which this may be thought to cause him. Therefore, the jurisdictional fight may be complex and hard. This is why, the ECJ has ruled on the most sensitive questions relating to these rules. For example, in *Harald Kolassa v Barclays Bank plc* and in *Česká spořitelna, a.s. v Gerald Feichter* cases[81] the ECJ ruled that special jurisdiction provisions are to be interpreted no more broadly than is necessary to achieve their proper aims, but without permitting the national court to exercise any jurisdictional discretion.

There are a number of examples of the special jurisdiction rules, but further will be discussed the rules established by the New Lugano Convention.

The place of performance of the obligation in the contract. This rule is regulated by point (a) of article 5(1) of the New Lugano Convention which provides that in matters relating to a contract a person may be sued in the courts for the place of performance of the obligation in question. In this provision there are several main points which shall be further clarified: matters relating to a contract, the place of performance and the obligation in question. It is noticed that provisions of article 5(1) are identical to provisions of article 7(1) of the Brussels I bis regulation. This means not only that the provisions do not contradict with each other, but should be applied in uniform way. This means that the interpretation of the ECJ relating to article 7(1) of the regulation should be applied also to article 5(1) of the convention.

On the definition of „matters relating to a contract" the ECJ has taken the approach that the concept is an independent one. The ECJ has not provided any general or obstract definition, but in individual cases has given pointers indicating when there is a contractual obligation and when there is not. For example, in *Petra Engler v Janus Versand GmbH* and in *Harald Kolassa v Barclays Bank*

[79] Pocar, *supra note* 56: 10.
[80] Stone, *supra note* 16: 73; Briggs, *supra note* 5: 260.
[81] Case 375/13, Harald Kolassa v Barclays Bank plc, 2015, ECLI:EU:C:2015:37; Case 419/11, Česká spořitelna, a.s. v Gerald Feichter, 2013, ECLI:EU:C:2013:165.

plc cases[82] the ECJ ruled that matters will be recognised as contractual when one party voluntarily commits to the other party, however, as the ECJ stated in *Jakob Handte & Co. GmbH v Traitements Mécano-chimiques des Surfaces SA.*, in *Frahuil SA v Assitalia SpA.* and in *Feniks Sp. z o.o. v Azteca Products & Services SL* cases[83], if there is no obligation freely assumed by one party toward another, then there are no contractual relations. The existence or validity of a contract is also treated as a matter relating to a contract[84]. If there is a situation that an action relates both to breach of a contractual obligation and to non-contractual liability, then there is no accessory jurisdiction: for the first claim jurisdiction is to be determined in accordance with article 5(1) of the convention, and for the second it is to be determined in accordance with article 5(3) which will be analysed further in this subchapter (on liability arising out of a tort or *delict*), even if that might face the plaintiff with the prospect of separate actions before different courts[85]. However, the plaintiff can avoid such situation – relying on the general rule of the domicile of the defendant.

Usually, it is treated that requirements arise from a contract – are the requirements for performance of obligations, claims for damages arising from the non-performance or improper performance of the contract or other breaches of the contract, claims arising from the responsibility of co-founders or chief executive manager of a company, in the field of bills of exchange – requirements of a contractual nature imposed on the acceptor, the issuer of the bill of exchange or endorsee's requirements for the acceptor. This concept does not include, for example, the requirements arising from quasi-contractual relations; unjust enrichment or relations between manufacturer which is not a seller, and the subsequent acquirer[86].

Concerning the determination of „the obligation in question" shall be applied point (b) of article 5(1) which provides that in the case of the sale of goods, it refers to the place in CS, where, under the contract, the goods were delivered or should have been delivered. In the case of the provision of services, it refers to the place in a CS where, under the contract, the services were provided or should have been provided. In cases, to which point (b) of article 5(1) does not apply,

[82] Case 27/02, Petra Engler v Janus Versand GmbH, 2005, ECR I-00481; Case 375/13, *supra note* 81.
[83] Case 26/91, Jakob Handte & Co. GmbH v Traitements Mécano-chimiques des Surfaces SA., 1992, ECR I-3967; Case 265/02, Frahuil SA v Assitalia SpA., 2004, ECR I-01543; Case 337/17, *supra note* 65.
[84] Case 366/13, Profit Investment SIM SpA v Stefano Ossi and Others, 2016, ECLI:EU:C:2016:282.
[85] Case 191/15, Verein für Konsumenteninformation v Amazon EU Sàrl, 2016, ECLI:EU:C:2016:612; Joined cases 359/14 and 475/14, „ERGO Insurance" SE v „If P&C Insurance" AS and „Gjensidige Baltic" AAS v „PZU Lietuva" UAB DK, 2016, ECLI:EU:C:2016:40.
[86] Nekrošius, *supra note* 5: 33.

„the obligation in question“ refers to the contractual obligation on which the plaintiff's sole or principal claim is based[87].

For the determination of the place of performance the same point (b) of article 5(1) applies according to which the place of delivery of the goods is the place where, under the contract, the goods were delivered or should have been delivered. In the case of the provision of services – where, under the contract, the services were provided or should have been provided. This general rule applies except when parties agreed otherwise. This means that parties' autonomy is accepted and respected. If there is another type of a contract which does not follow under point (b) of article 5(1), point (a) of article 5(1) applies and it means that in such cases shall be determined the place of performance of the obligation.

The place of performance of the obligation is the place where the obligation was actually fulfilled. If a good is delivered to the domicile of a buyer, then all claims can be provided in this place arising from a contract. If the good is not delivered, then the place of performance will be established relying on a contract.

The ECJ ruled that where there are several places of delivery within a single CS, the court having jurisdiction to hear all the claims based on the contract for the sale of goods is that for the principal place of delivery, which must be determined on the basis of economic criteria. In the absence of determining factors for establishing the principal place of delivery, the plaintiff may sue the defendant in the court for the place of delivery of its choice[88]. After some years the ECJ supplemented his decision in other case and determined that the principal place of services rule also applies where services are provided in several MS[89].

The domicile of the maintenance creditor or the place of the court which, has jurisdiction to entertain proceedings concerning the status of a person or concerning parental responsibility. This special jurisdiction rule is enshrined in points (a-c) of article 5(2) of the New Lugano Convention and provides that in matters relating to maintenance the jurisdiction will have: courts where the maintenance creditor is domiciled or habitually resident; or the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to the maintenance is ancillary to those proceedings; or the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental

[87] Stone, *supra note* 16: 83; Pocar, *supra note* 56: 11.
[88] Case 386/05, Color Drack GmbH v Lexx International Vertriebs GmbH., 2007, ECR I-03699.
[89] Case 19/09, Wood Floor Solutions Andreas Domberger GmbH v Silva Trade SA, 2010, ECR I-02121.

responsibility, if the matter relating to maintenance is ancillary to those proceedings. The last two rules do not apply if proceedings concerning the status of a person or concerning parental responsibility are based solely on the nationality of one of the parties.

It is noted that this maintenance rule was determined in Brussels I regulation, but it is not enshrined in Brussels I bis regulation. This is so, because this rule at present is determined in special legal act: Brussels III regulation. Thus, it might be said that there is broken parallelism of Brussels I bis regulation and the New Lugano Convention. However, comparison of points (a-d) of article 3 of the Brussels III regulation and points (a-c) of article 5(2) of the New Lugano Convention revealed that there are no conflicts of maintenance provisions in these two legal acts. The rules in both acts are similar except some insignificact differences: in Brussels III regulation there is a rule that court also will have jurisdiction where defendant is habitually resident. This rule is not present in article 5 of the convention, however as was already mentioned above, the special jurisdiction does not replace a general rule of jurisdiction which in the New Lugano Convention is based on the domicile of defendant. Other slight difference is that the special maintenance jurisdiction rule in the Brussels III regulation is based on habitual residency rule. Meanwhile, the convention relies on both: domicile and habitual residency rule. However, the author agrees with F. Pocar that there are no substantive points of conflict of maintenance rules with the Brussels III regulation[90].

It shall be mentioned that the concept „maintenance creditor" is an independent concept and it shall be determined in the light of the purpose of the rules of the New Lugano Convention, without reference to the national law of the court seised[91]. This concept covers not only a person whose right to maintenance has already been established by a previous judgement, but also a person who is applying for maintenance for the first time[92]. The ECJ ruled that „maintenance creditor" concept does not include a public body that brings an action to recover sums it has paid to the maintenance creditor, to whose rights it is subrogated against the maintenance debtor, thus in that case there is no need to deny the maintenance debtor the protection offered by the general jurisdiction rule (domicile of the defendant) because a public body is not a weaker party in relation to the maintenance debtor[93].

[90] Council of the European Union, *supra note* 32: 34.
[91] Pocar, *supra note* 56: 13.
[92] Case 295/95, Jackie Farrell v James Long, 1997, ECR I-01683.
[93] Case 347/08, Vorarlberger Gebietskrankenkasse v WGV-Schwäbische Allgemeine Versicherungs AG, 2009, ECR I-08661.

The place where the harmful event occurred or may occur in matters relating to tort, *delict* or *quasi-delict*. This rule is enshrined in article 5(3) of the New Lugano Convention and it provides that in matters relating to tort, *delict* or *quesi-delict*, the jurisdiction have courts where the harmful event occurred or may occur. Article 7(2) of the Brussels I bis regulation is identical to this rule determined in convention. Thus, there is no contradiction between these two legal acts.

The reference to the place where the harmful event may occur makes it clear that article 5(3) extends to a preventive action in respect of a threatened or future tort[94]. Moreover, this article extends to an action for a negative declaration seeking to establish the absence of liability in tort[95]. Determining „the place where the harmful event occurred" the ECJ held that this concept must be understood as covering the place where the damage occurred and the place of the event giving rise to it, and that the defendant could be sued, at the option of the plaintiff, in the courts of either of the two places[96]. However, the ECJ stated that this concept does not cover the place where the claimant is domiciled or where „his assets are concentrated" by reason only of the fact that there he has suffered financial damage[97]. Also, it does not cover the place where the adverse consequences of an event, which has already caused damage actually arising elsewhere, can be felt[98].

In particular article 5(3) is very broad because the ECJ held that the concept of „matters relating to tort, *delict* or *quasi-delict*" covers all actions which seek to establish the liability of a defendant and which are not related to a contract[99]. However, article 5(3) does not cover *actio pauliana* claims which are covered by point (a) of article 5(1)[100].

The place of criminal proceedings in which a civil claim for damages or restitution is provided. This rule is determined in article 5(4) of the convention. This article provides that if a civil claim for damages or restitution is based on an act giving rise to criminal proceedings then the court in which these proceedings are seised has jurisdiction over that civil claim. This rule applies only if that court has jurisdiction under its own law to entertain civil proceedings. Comparing this

[94] Case 191/15, *supra note* 85; Joined cases 509/09 and 161/10, eDate Advertising GmbH and Others v X and Société MGN LIMITED, 2011, ECR I-10269.
[95] Case 133/11, Folien Fischer AG and Fofitec AG v Ritrama SpA, 2012, ECLI:EU:C:2012:664.
[96] Case 304/17, Helga Löber v Barclays Bank PLC, 2018, ECLI:EU:C:2018:701; Case 27/17, AB „flyLAL-Lithunian Airlines" v Starptautiskā lidosta „Rīga" VAS and „Air Baltic Corporation" AS, 2018, ECLI:EU:C:2018:533.
[97] Case 12/15, Universal Music International Holding BV v Michael Tétreault Schilling and Others, 2016, ECLI:EU:C:2016:449.
[98] Case 304/17, *op. cit.*
[99] Case 147/12, ÖFAB, Östergötlands Fastigheter AB v Frank Koot and Evergreen Investments BV, 2013, ECLI:EU:C:2013:490.
[100] Case 337/17, *supra note* 65.

rule with the Brussels I bis regulation there is determined that article 5(4) is identical to article 7(3) of the regulation. Thus, there is no conflict between provisions of civil claims in criminal proceedings enshrined in the both legal acts.

The place in which the branch, agency or other establishment is situated. Article 5(5) of the convention establishes that the courts where the branch, agency or other establishment is situated have jurisdiction over the dispute arising out of the operations of that branch, agency or other establishment. Article 7(5) of the Brussels I bis regulation is the same as article 5(5) of the convention. Thus, they shall act parallelly and without any conflict. In relation to the concept of branch, agency or other establishment, the ECJ has identified two criteria determining whether an action can be assigned to it. First, this concept implies a centre of operations which has the appearance of permanency, such as the extention of a parent body. It must have a management and be materially equipped to negotiate business with third parties. Secondly, the dispute must concern acts relating to the management of those entities or commitments entered into by them on behalf of the parent body, if those commitments are to be performed in the state in which the entities are situated[101].

The domicile of the trust. This rule is provided in article 5(6) and establishes that a person as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by written instrument, or created orally and evidenced in writing may be sued in the courts of CS in which the trust is domiciled. This article is identical to article 7(6) of the Brussels I bis regulation.

The place where the cargo or freight has been arrested. This special rule is enshrined in points (a-b) of article 5(7) of the New Lugano Convention. This rule is identical to rule in points (a-b) of article 7(7) of the Brussels I bis regulation and determines that regarding a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, the court has jurisdiction under the authority of which the cargo or freight in question: has been arrested to secure such payment or could have been so arrested, but bail or other security has been given. However, this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Another special jurisdiction rules are established in articles 6(1), 6(2), 6(3), 6(4) and 7 of the convention which provides that a person may also be sued: where he is one of a number of **defendants**, in the courts for **the place where any one of them is domiciled**, provided the claims

[101] Case 154/11, Ahmed Mahamdia v People's Democratic Republic of Algeria, 2012, ECLI:EU:C:2012:491.

are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgements resulting from separate proceedings (the ECJ held that this rule applies where claims brought against different defendants are connected already when the proceedings are instituted[102]); as a third party in an action on a warranty or gurarantee, or in any other third party proceedings, in **the court seised of the original proceedings** (except these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in this case); on a counter-claim arising from the same contract or facts on which the original claim was based, in **the court in which the original claim is pending**; in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of CS in which **the property is situated**; over claims for limitation of liability in **court** of CS that has jurisdiction **in actions relating to liability from the use or operation of a ship**.

The provisions in articles 6 and 7 of the convention are similar to provisions of articles 8 and 9 of the Brussels I bis regulation. Thus, there is no contradiction in relation to these provisions between that two legal acts.

After analysis of the special jurisdiction rules it is observed that Brussels I bis regulation has one additional rule of the special jurisdiction: the place where the cultural object is situated (article 7(4) of the regulation) which was absent in Brussels I regulation and accordingly in the New Lugano Convention. This rule establishes that the person may be sued as regards a civil claim for the recovery, based on ownership of a cultural object, initiated by the person claiming the right to recover such an object, in the courts where the cultural object is situated at the time when the court is seised.

According the convention in claims arising due to cultural objects applies the rule of general jurisdiction. Thus, there is a slight conflict between the convention and Brussels I bis regulation regarding this type of a claim. Therefore, the author suggests to amend article 5 of the New Lugano Convention and include the place where the cultural object is situated as it is provided in article 7(4) of the regulation in order to close a gap between these two legal acts in relation to claims of cultural objects.

[102] Case 352/13, Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Evonik Degussa GmbH and Others, 2015, ECLI:EU:C:2015:335.

In order to see how the special jurisdiction rules operate in practice, there were examined twenty cases of Lithuanian national courts (held from 2015 until now). Generally, it can be concluded that mostly, Lithuanian courts dealed with articles 5(1), 5(2), 5(3) and 6(1) of the special jurisdiction provisions under the convention. In most cases, the national courts of Lithuania correctly interpreted article 5(1): first of all, they checked the applicability of point (b) of article 5(1), and only after, when have determined that point (b) did not apply, relied on points (c) and (a) of article 5(1)[103]. It shall be mentioned, that the courts held correctly that article 5(1) does not apply to unjust enrichment cases[104]. Also, the courts correctly established that the convention's provisions are similar to Brussels I bis regulation's and Brussels I regulation's provisions and thus, relied on the case law of the ECJ held on either of these legal acts[105]. In several cases, the national courts checked whether in the case the exclusive or protective jurisdiction exists, and applied the special jurisdiction only when determined that neither exclusive, neither protective jurisdiction could not be applied[106].

Regarding to article 5(3), the national courts held correctly that „the place where the harmful event occurred" is understood as covering the place where the damage occurred and the place of the event giving rise to it[107], and they established properly that this concept does not cover the place where the claimant is domiciled or where „his assets are concentrated" by reason only of the fact that there he has suffered financial damage[108].

Regarding article 5(2), in most cases this article was applied together with the Brussels II bis regulation, because usually the plaintiff sued the defendant for several matters, relating with maintenance and for example, with matters of parental responsibility, divorce or other matters covering by the Brussels II bis regulation. In such cases, the courts of Lithuania held correctly, that the jurisdiction must be determined separately for every claim and usually, regarding to maintenance

[103] Case E2-20307-466/2018, *supra note* 71; Case E2S-2060-803/2018, UAB „Nord Profil" v IDEAL BYGG GROUP AS, 2018;
[104] Case 2-4134-653/2016, *supra note* 71; Case E2-20307-466/2018, *op. cit.*
[105] Case E2-291-464/2015, N. A. v N. M. A., O. S. and M. A., 2015; Case E2S-576-198/2015, N. A. v A. D., 2015; Case E2S-19-661/2019, *supra note* 73.
[106] Case 2-1415-619/2017, BAB bank Snoras v East-West United Bank S.A. and Multiasset S.A., 2017; Case 2-18-178/2018, BAB bank Snoras v East-West United Bank S.A. and Multiasset S.A., 2018.
[107] Case 3K-3-368-687/2018, AB bank „Snoras" v „Bank Julius Baer & Co. Ltd.", N. S. and R. B., 2018; Case 2-1415-619/2017, *op. cit.*
[108] *Ibid.*; Case 3K-3-368-687/2018, *op. cit.*

applying article 5(2) of the convention, and for other matters (for example, parental responsibility) – the Brussels II bis regulation[109].

Although, generally, the national courts interpreted the New Lugano Convention correctly, however, there were several cases when the first instance or even appeal court – made mistake in interpretation or application of the provisions of the convention which was corrected by the court of the higher instance. For example, there was a case when the national court applied the Brussels convention, instead of the New Lugano Convention[110] (however the decision was correct, because the court of the higher instance determined that the provisions of the New Lugano Convention is the same to the provissions of the Brussels I bis regulation or Brussels I regulation). Also, there was a case when national court relied on the case law of the ECJ, but interpreted it incorrectly[111]. In several cases, there were observed that the national courts applied point (a) of article 5(1) of the convention and did not checked whether point (b) of article 5(1) should be applied[112]. In one case, the Supreme Court determined that the appeal court determined together the jurisdiction for the maintenance and divorce according the New Lugano Convention [113]. Also, there were several cases when the courts incorrectly refused to apply the special jurisdiction rules[114].

One interesting interpretation of the national court was regarding article 6(1) of the convention. The court refused its jurisdiction because according to him the dominant dispute was against the defendant which was domiciled abroad. Thus, it concluded that the defendant domiciled in Lithuania, also should be sued in the courts abroad according to article 6(1). The appeal court, cancelled the decision of the court of first instance and held that article 6(1) cannot be interpreted broadly and it does not require to determine where the dominant dispute is[115].

The national courts of Norway mostly had cases in relation to articles 5(1), 5(3) and 6(1) of the convention. These courts relying on the ECJ case law, correctly held that special jurisdiction rules are to be interpreted strictly and no more broadly than is necessary to achieve their proper aims[116]. Norwegian courts, the same as Lithuanian courts, first of all checked the applicability of point (b) of article 5(1), and only after, when have determined that point (b) did not apply, relied on

[109] Case 2-1363-760/2018, *supra note* 72; Case E2S-363-544/2017, K. G. v B. G., 2017.
[110] Case E2-291-464/2015, *supra note* 105.
[111] Case 3K-3-368-687/2018, *supra note* 107.
[112] Case E2S-576-198/2015, *supra note* 105; Case E2-291-464/2015, *op. cit.*
[113] Case e3K-3-73-378/2018, E. Č. v R. Č., 2018.
[114] Case 2S-172-227/2015, *supra note* 72; Case E2-291-464/2015, *op. cit.*
[115] Case E2S-19-661/2019, *supra note* 73.
[116] Case LB-2018-136341, Posten Norge AS and others v Volvo Group Trucks Central Europe GmbH and others, 2018; Case HR-2009-00972-U, A v X AS, 2009.

points (c) and (a) of article 5(1) of the convention[117]. Also, the courts properly held that the provisions of the convention are similar to the provisions of the Brussels regulations and thus, relied their decisions on the case law of the ECJ regarding to each these legal acts[118]. Also, regarding article 5(3), the national courts checked where the damage occurred and the place of the event giving rise to it[119], and as the ECJ ruled, they did not recognize as „the place where the harmful event occurred" – the place where the plaintiff has suffered financial loss[120]. Also, the courts correctly held that article 5(3) does not apply to *action pauliana* claims which are covered by point (a) of article 5(1)[121].

Also, it was observed that the courts of Norway provided comprehensive argumentation regarding the claim and detailed reasoning of their ruling. For example, there was a case regarding the application of article 6(1) where the national court very comprehensively analyzed all elements of this article and argumented them in very detailed way (whether the claims are so closely connected, wthether there is a possibility of irreconcilable judgements and etc.)[122].

Although, usually, the courts of Norway interpreted the convention correctly, however there were several cases, when the higher instance did not agree with the lower instance and repealed or changed the decision of the lower instance[123]. For example, there was one case when the court of the first instance relied on article 2 of the convention and did not apply the special jurisdiction rule, and later, the appeal court held that such decision was incorrect and that the general jurisdiction can be replaced by the special jurisdiction rule[124].

4.3. Protective Jurisdiction

Protective jurisdiction – is a type of international jurisdiction regulating specific relations one party of which is weaker than other one. There are three distinct set of rules on protective jurisdiction in the New Lugano Convention: jurisdiction in matters relating to insurance, consumer

[117] Case LH-2018-43284, *supra note* 77.
[118] Case LB-2018-136341, *supra note* 116; Case HR-2009-00972-U, *supra note* 116.
[119] Case LG-2016-99101, PGS Geophysical Limited v Banco Popular SA and Armada Seismic Invest II AS, 2016; Case LB-2018-136341, *op. cit.*
[120] Case HR-2011-1240-A, 2011, 2010-1972.
[121] Case HR-2009-00972-U, *op. cit.*
[122] Case LB-2018-136341, *op. cit.*
[123] *Ibid.*; Case TOSLO-2017-115740, Posten Norge AS and others v Volvo Group Trucks Central Europe GmbH and others, 2017; Case LH-2018-43284, *op. cit.*
[124] *Ibid.*

contracts and individual contracts of employment. It shall be noted that these provisions are exclusive and it is not possible for litigants to fall back on the other provisions of the convention unless expressly authorised by the relevant provisions[125].

4.3.1. Jurisdiction in Matters Relating to Insurance

Court's jurisdiction in matters relating to insurance is regulated by section 3 of the New Lugano Convention. The concept „in matters relating to insurance" applies expressly to certain specific types of insurance contracts, such as compulsory insurance, liability insurance, insurance of immovable property and marine and aviation insurance[126]. Meanwhile, claims due to social insurance are not covered by section 3.

The aim of this section is to protect a weaker party – the policyholder, irrespective whether he indeed is a weaker party. After analysis of the above mentioned section it is concluded that the claimant can be not only the policyholder, but also the insured and a beneficiary.

As already mentioned, jurisdiction in matters relating to insurance is determined by section 3, but without prejudice to provisions determining the rules of jurisdiction when the defendant is not domiciled in CS and provisions of jurisdiction relating to disputes arising out of the operations of a branch, agency or other establishment (article 8 of the convention).

Since the policyholder is a weaker party, there are several alternative jurisdiction rules established for him in articles 9 and 10 according to which he may sue the insurer: **where the insurer is domiciled**; in another CS **where the plaintiff is domiciled**, in the case of actions brought by the policyholder, the insured or a beneficiary; if the insurer is a co-insurer – in the courts of a CS **where proceedings are brought against the leading insurer**; if the insurer is not domiciled in a CS, but disputes arise out of the operations of its **branch, agency or establishment** which are in a CS – such insurer is deemed as domiciled in that state; in respect of liability insurance or insurance of immovable property where **the harmful event occurred** (this rule applies also if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency).

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[125] Christopher M.V. Clarkson and Jonathan Hill, *The conflict of laws. Third edition* (Oxford: Oxford University Press, 2006), 84.

[126] Case 412/98, Group Josi Reinsurance Company SA v Universal General Insurance Company (UGIC), 2000, ECR I-05925.

According to article 11(1) of the convention, in respect of liabiliy insurance where the proceedings has been brought by the injured party against the insured, the insurer may also join that proceedings if the law of the court permits it.

Since the insurer is a stronger party, therefore the convention applies for him stricter jurisdition rules than for the policyholder, the insured and a beneficiary. According to article 12(1) he may bring proceedings only in the courts of a CS **in which the defendant is domiciled**, irrespective of whether defendant is the policyholder, the insured or a beneficiary. This article is supplemented by article 12(2), which permits to bring a counter-claim in the court in which the original claim is pending.

In order to protect a weaker party, article 13 provides rules according to which the contractual agreement of jurisdiction between the parties are permitted. These rules are sufficiently strict and parties cannot derogate from them. If they will not follow these rules, then according to article 35(1) such judgement shall not be recognised. Hence, the contractual agreement of jurisdiction in matters relating to insurance is permitted only by an agreement: which is entered into after the dispute has arisen; or which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in section 3; or which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of a contract domiciled or habitually resident in the same CS, and which has the effect of conferring jurisdiction on the courts of that state even if the harmful event was to occur abroad, provided that such an agreement is not contrary to the law of that state; or which is concluded with a policyholder which is not domiciled in a CS, except insofar as the insurance is compulsory or relates to immovable property in a CS; or which relates to a contract of insurance insofar as it covers one or more of the risks set out in article 14.

Thus, a policyholder, as a weaker party may choose from several options to which court to apply, whereas an insurer does not have such possibility.

After comparison of jurisdiction rules in matters relating to insurance in the New Lugano Convention and in Brussels I bis regulation, there is noticed that the provisions are similar in both legal acts, except one insignificant discrepancy – article 14(5) of the convention relies on „all large risks“ without giving further specifications, meanwhile article 16(5) of the regulation extends the simple reference to large risks by adding that these are as defined in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the

business of Insurance and Reinsurance (Solvency II). That there is no link to this directive in the convention is logical, because it would not have been appropriate to make a precise reference to Community rules in the convention, to which states that are not members of the EU are party.

While there is no explicit reference to Community directive, it is nevertheless recognised as clear that the general reference to „all large risks" in article 14(5) should be taken to mean the same risks as those referred to in aforementioned directive[127]. This view is supported by protocol 2 of the New Lugano Convention, which seeks to implement uniform interpretation of the convention and the Brussels I bis regulation.

4.3.2. Jurisdiction over Consumer Contracts

Jurisdiction over consumer contracts is governed by articles 15-17 of the New Lugano Convention. After analysis of article 15(1) and the case law of the ECJ, there are distinguished the main features of legal consumer relations which are the following: the subject-matter – a case, whose subject-matter is a contract or claim arising out of a contract; the parties – a person who pursues commercial or professional activities in a CS of the consumer's domicile or, by any means, directs such activities to that state (for example, by internet[128]) or to several states including that state and a consumer which concludes a contract outside his trade or profession, i.e. for his personal needs (if a contract concluded with a view to pursuing a trade or profession in the future he is not regarded as a consumer[129]). Whether a person concluded a contract for his personal needs depends on the substance of the contract, i.e. it shall be determined for what purpose the good is acquired. However, the ECJ regarding the purchase for dual use (partly for professional needs, partly – for personal) held that the national court should take into consideration not only the content, nature and purpose of the contract, but also the objective circumstances in which it was concluded[130] and the person could rely on protective jurisdiction rules only if the link between the contract and the trade of profession of the person concerned is so slight as to be marginal and, therefore, had only a negligible role in respect of entire contract[131].

[127] Council of the European Union, *supra note* 32: 34.
[128] Case 585/08; Case 144/09, Peter Pammer v Reederei Karl Schlüter GmbH & Co. KG (C-585/08) and Hotel Alpenhof GesmbH v Oliver Heller (C-144/09), 2010, ECR I-12527.
[129] Case 630/17, Anica Milivojević v Raiffeisenbank St. Stefan-Jagerberg-Wolfsberg eGen, 2019, ECLI:EU:C:2019:123.
[130] *Ibid.*
[131] Case 498/16, Maximilian Schrems v Facebook Ireland Limited, 2018, ECLI:EU:C:2018:37.

Regarding a contract, it shall be concluded for the sale of goods on instalment credit terms or for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods or in all other cases, it has been concluded with a person who pursues commercial or professional activities in a CS of the consumer's domicile or, by any means, directs such activities to that state or to several states including that state, and the contract falls within the scope of such activities (points (a-c) of article 15(1)).

There has been some discussions due to provision that other party shall be a professional who does not necessary pursues commercial activity in a CS, but it is enough if he, by any means, directs such activity to particular country, in particular, some uncertainty was regarding commercial activity by internet. The ECJ helped to overcome these uncertainties by setting certain criteria for concluding that a person directs activity to a CS: namely the international nature of the activity, mention of itineraries from other CS for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the CS in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other CS, use of a top-level domain name other than that of the CS in which the trader is established, and mention of an international clientele composed of customers domiciled in various CS. The ECJ stated that the mere accessibility of the trader's or the intermediary's website in the CS in which the consumer is domiciled is insufficient[132].

It shall be noted that article 15(3) determines that consumer jurisdiction rules do not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation. This means that the protective jurisdiction rules apply only to „package travel"[133].

A consumer, according article 16(1), may bring proceedings against the other party to a contract either in the courts of the CS **in which that party is domiciled** or in the courts **where the consumer is domiciled**. The domicile of the consumer is considered to be the place at the time of the claim. Also, the consumer may rely on article 5(5) with article 15(2) and may bring proceedings

[132] Case 585/08; Case 144/09, *supra note* 128.
[133] *Ibid*.

at the place where is situated the branch, agency or other establishment of other party if the dispute arises out of operations of that branch, agency or other establishment.

Similarly as in matters relating to insurance, proceedings may be brought against consumer only in the courts of the CS **in which the consumer is domiciled** (article 16(2)). Thus, unlike the consumer, the other party to a contract does not have alternative options where to sue a consumer, but must follow the provision in article 16(2) except the right to bring a counter-claim in the court in which, in accordance with jurisdiction rules over consumer contracts, the original claim is pending (article 16(3)).

The contractual agreement of jurisdiction in consumer contracts is also permitted but, the same as in matters relating to insurance, only in particular cases determined in article 17. The parties may agree on jurisdiction by an agreement which is entered into after the dispute has arisen or which allows the consumer to bring proceedings in courts other than those indicated before (additional option of jurisdiction is given to the consumer), or which is entered into by consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same CS, and which confers jurisdiction on the courts of that state, provided that such an agreement is not contrary to the law of that state.

With regard to consumer contracts the Brussels I bis regulation introduces a new element. Article 18(1) of the regulation allows the consumer to bring proceedings against the other party, regardless of the domicile of that party, in the courts for the place of the consumer's domicile. Thus, according this rule, a defendant not domiciled in a MS may be sued in the courts of a MS in an action brought by a consumer. Article 16(1) of the convention does not have this element, but it seems that there is no conflict between these two legal acts, because by article 18(1), the regulation is extended to defendants from third states which are not MS not only to the Brussels I bis regulation, but also to the New Lugano Convention, because if defendant will be from CS bound by the convention, accordingly the provision of this convention applies. However, it is recommended, in order to increase protection to a weaker party from EFTA CS, to include a new element of article 18(1) of the regulation also into article 16(1) of the convention.

4.3.3. Jurisdiction over Individual Contracts of Employment

Employment relations are also subject to the rules of protective jurisdiction with the aim of protecting a weaker party – an employee. These relations are regulated by section 5 of the New Lugano Convention. The concept „employment relations" is a matter of autonomous interpretation consisting of the following elements: an employee performs work that has a particular economic value, the work is performed for the benefit of another person, the employee follows the instructions of that person and receives remuneration[134].

Likewise, in matters relating to insurance or consumer contracts, and in this case the employee has several alternative options where to sue the employer. According to article 19(1) and points (a-b) of article 19(2) of the convention an employee may sue an employer domiciled in a CS **where he is domiciled** or in another CS **where the employee habitually carries out his work** or in the **last place where he did so**, or if the employee does not or did not habitually carry out his work in any one country – in the place **where the business which engaged the employee is or was situated**.

The provision related to the performance of work in several CS is also consistent with the case law of the ECJ. The ECJ held that where the employee performs his work in more than one CS, the habitual place of work can be defined as the place where or from which the employee principally discharges his obligations towards his employer[135].

Article 18(2) provides other alternative option to an employee in a case if he enters into an individual contract of employment with an employer who is not domiciled in a CS. If such situation exists, but the employer has a branch, agency or other establishment in a CS and dispute arises out of operations of the branch, agency or other establishment, then the employer is deemed to be domiciled in that state. Accordingly, the employee can sue him in that country where is his branch, agency or other establishment. Also, it shall be mentioned that article 18(1) adds that jurisdiction rules over individual contracts of employement can be applied but without prejudice to articles 4 (provisions in the case if the defendant is not domiciled in a CS) and 5(5) (provisions regarding to branch, agency or other establishment).

[134] Nekrošius, *supra note* 5: 53-54; Bužinskas and Grigienė, *supra note* 5: 182.
[135] Joined cases 168/16 and 169/16, Sandra Nogueira and Others v Crewlink Ireland Ltd and Miguel José Moreno Osacar v Ryanair Designated Activity Company, 2017, ECLI:EU:C:2017:688.

The ECJ established case law when an embassy of a third state situated in a CS must be treated as an „establishment". The ECJ held that it is an „establishment" in a dispute concerning a contract of employment concluded by the embassy on behalf of the sending country, where the functions carried out by the employee do not fall within the exercise of public powers[136].

An employer under article 20(1) may bring proceedings only in the courts of the CS **in which the employee is domiciled**. Since he is a stronger party in employment relations, the convention does not provide him alternative rules of jurisdiction, but only one option – the domicile of the defendant. One exception to this provision is provided in article 20(2) which recognizes the right to bring a counter-claim in the court in which, in accordance with jurisdiction rules over individual contracts of employment, the original claim is pending.

The contractual agreement of jurisdiction in individual contracts of employment is also permitted (article 21 of the convention), but, unlike in matters relating to insurance and consumer contracts, the agreement is possible only in two cases: after the dispute has arised or the employee is given additional options to bring proceedings in courts other than those indicated in section 5 (provisions about jurisdiction over individual contracts of employment). Failure to comply with the provisions of this article shall lead that such contractual agreement will be treated by a court as invalid.

After comparison of jurisdiction rules over individual contracts of employment in the New Lugano Convention and in Brussels I bis regulation, there is noticed that the provisions are similar in both legal acts, except three insignificant differences. Firstly, as in the consumer contracts, the regulation extends the protective jurisdiction afforded to employee in the same way as it extends that afforded to the consumer. Article 21(2) of the regulation makes closer forum available to the employee also in proceedings against an employer not domiciled in a MS. Section 5 of the convention does not have such provision, but as was already concluded with jurisdiction over consumer contracts – there is no conflict between the New Lugano Convention and Brussels I bis regulation in relation to individual contracts of employment because article 21(2) of the regulation is extended to defendants from third states and does not influence parties to which the convention applies. However, it is recommended to include this provision also in jurisdiction rules over individual contracts of employment into article 19 of the New Lugano Convention in order to increase protection to an employee.

[136] Case 154/11, *supra note* 101.

The second difference is that subpoint (i) of point (b) of article 21(1) of the regulation includes a new provision according to which an employee may sue an employer also in the courts for the place from where the employee habitually carries out his work. That such rule is not determined in article 19(2) of the convention does not create a conflict between the New Lugano Convention and Brussels I bis regulation, because this rule was already established in practice by the ECJ in relation to the Brussels I regulation[137], accordingly – this rule applies also interpreting the New Lugano Convention. However, in order to exercise more clarity, it is recommended to extend point (a) of article 19(2) of the convention by new element of subpoint (i) of point (b) of article 21(1).

The third difference is that article 20(1) of the regulation provides that jurisdiction rules over individual contracts of employment can be applied not only without prejudice to article 6 (provisions in the case if the defendant is not domiciled in a MS) and article 7(5) (provisions regarding to branch, agency or other establishment), but also, in the case of proceedings brought against an employer, article 8(1) (provisions where an employer is one of a number of defendants). This provision gives additional option to an employee where to sue an employer, which is absent in the convention. Though this difference is not significant to distort proper operation between the convention and regulation, because this provision in the regulation is an alternative option and also, because in most cases the employee will sue his employer in the place with strongest connection with forum (usually, where he habitually carries out his work in order to circumspect additional costs of travel and etc.), nevertheless it is recommended to include this provision into article 18(1) of the convention because this rule provides not only additional jurisdiction option to an employee, but also is established in order to avoid the risk of irreconcilable judgements resulting from separate proceedings.

Since 2012 until now (the period was extended because of a small number of cases related with protective jurisdiction) there are only several cases in Lithuania related directly or indirectly with application of the protective jurisdiction rules under the New Lugano Convention. Thus, there is difficult to conclude whether Lithuanian national courts apply this type of jurisdiction correctly. Even regarding to small number of examined cases there is possible to highlight a few noticed things. Firstly, there were some cases where the plaintiff was Bureau of the Republic of Lithuania which brought an action to the court asking the defendant to pay damages due to car accident. The

[137] Joined cases 168/16 and 169/16, *supra note* 135.

Bureau payd compensation for injured party because the car was not insured and then the Bureau sued a defendant in order to recover paid amount. In such cases the courts held that the legal relationship between the parties originates from a tort and not an insurance relationship, and therefore the provisions governing non-contractual relations, rather than insurance, must be applied[138]. The author agrees with such rulings because between the parties' was not concluded any contract of insurance, thus the defendant could not be treated as the policyholder, insured or a beneficiary and the Bureau could not be treated as an insurer. Consequently, defendant responsible for car accident when the car was not insured could not benefit from the provisions of jurisdiction rules in matters relating to insurance.

In some cases the courts properly checked whether there can be established protective jurisdiction rules and only after applied the special or the general jurisdiction rules[139].

Although, there were not a big number of cases related with the protective jurisdiction rules, however, there were observed several disputable court rulings. For example, in one case the national court of Lithuania had a dispute in matters relating to insurance and established that the insured was a consumer (not applying the provisions of the convention, but domestic legal acts of Lithuania) and did not analyse the provisions regarding to insurance at all[140]. Also, in several cases the courts improperly ruled that the New Lugano Convention replaced the Brussels I regulation, and for the relations between the parties from the EU MS applied the convention[141]. For example, there was one case related with individual contract of employment where the parties to the dispute were from Lithuania and Latvia, and national court of the first instance applied the New Lugano Convention[142].

In Norway regarding the protective jurisdiction rules regulated by the convention were several interesting cases which were related with matters relating to insurance and over consumer contracts. Regarding the jurisdiction over the consumer contracts it can be mentioned that the Norwegian courts held correctly that the protective jurisdiction provisions established by the convention apply between the parties in which one is a consumer and other – professional pursuing

[138] Case 2S-35-252/2015, Lietuvos Respublikos transporto priemonių draudikų biuras v N. K. and D. K., 2015; Case 2S-376-198/2017, Lietuvos Respublikos transporto priemonių draudikų biuras v A. S. and S. S., 2017.
[139] Case 2-1415-619/2017, *supra note* 106; Case 3K-3-367-969/2018, AB bank Snoras v „East-West United Bank S.A." and „Multiasset S.A.", 2018.
[140] Case 3K-3-377-684/2016, AB „Lietuvos draudimas" v A. B., 2016.
[141] Case 2S-395-357/2012, Lietuvos Respublikos transporto priemonių draudikų biuras v M. D., 2012; Case 2S-67-798/2014, Lietuvos Respublikos transporto priemonių draudikų biuras v J. M., 2014.
[142] Case 2A-820-212/2015, R. J. v SIA „Auto Kada", 2015.

commercial or professional activity. If this requirement is not met – then section 4 of the convention does not apply[143]. Other case was related with consumer relations where plaintiff tried to establish Norwegian jurisdiction on the ground that in Norway was his domicile. But, the court of first instance and an appeal court, relying on the Norwegian law, did not determine that the consumer's domicile was in Norway and correctly refused the claim relying on the lack of jurisdiction[144].

Very interesting and complicating case was regarding the jurisdiction in matters relating to insurance. The dispute was related with the interpretation of the general and protective jurisdiction rules. Under the discussions were whether the general or special jurisdiction rules can be applied if the protective jurisdiction rules in matters relating to insurance do not establish jurisdiction (concretely were discussed articles 11(2), 11(3), 8 and point (c) of article 9(1) of the convention). The court of the first instance relying on articles 11(2) and 11(3) refused the claims because under the Norwegian law (it was governing law in this case) such direct actions were not permitted[145]. The appeal court cancelled the decision of the first instance. The appeal court made the same conclusion, that under the section 3 of the convention the Norwegian courts did not have jurisdiction, but the appeal court then established jurisdiction of Norwegian courts relying on articles 2(1) and 6(1)[146]. The Supreme Court, relying on the ECJ case law, cancelled the decision of the appeal court and held that section 3 of the convention provided a self-contained regulation of jurisdiction in insurance matters except for the express reservations in article 8. Consequently, the Supreme court stated that the Norwegian courts did not have jurisdiction over the dispute because the conditions for asserting Norwegian jurisdiction under articles 11(2), 11(3) and 9(1) were also not met[147].

4.4. Exclusive Jurisdiction

Exclusive jurisdiction – is a type of international jurisdiction, imperiously ordering which court can hear a case. Article 22 of the New Lugano Convention provides for exclusive jurisdiction

[143] Case HR-2010-00175-U, Kristine Lund Zeiner v Sylke Wiebusch and others, 2010.
[144] Case LB-2018-44631, A v Betsson AB, 2018; Case TOSLO-2017-62914, A v Betsson AB, 2017.
[145] Case TAUAG-2016-1267, A Line Corporation Trust Company Complex and Marship MPP GmbH Co. KG v Assuranceforeningen Gard – gjensidig – and others, 2016.
[146] Case LA-2016-170365, A Line Corporation Trust Company Complex and Marship MPP GmbH Co. KG v Assuranceforeningen Gard – gjensidig – and others, 2016.
[147] Case HR-2018-869-A, A Line Corporation Trust Company Complex and Marship MPP GmbH Co. KG v Assuranceforeningen Gard – gjensidig – and others, 2018.

over certain proceedings by reason of their principal subject-matter[148]. The purpose of this article is to protect the interests of the state which has exclusive jurisdiction[149]. Hence, the rules laid down in article 22 apply regardless of domicile (article 22 itself), appearance (article 24) or contrary agreement between the parties to the dispute (article 23(5)). A court seised contrary to article 22 must decline jurisdiction of its own motion (article 25), and a judgement given in contraversion of this article must be refused recognition and enforcement in other CS (articles 35(1) and 45(1)).

The place where the property is situated. Article 22(1) determines the exclusive jurisdiction rule in respect of disputes which have as their object rights *in rem* in immovable property or tenancies of immovable property. Under this article the exclusive jurisdiction is granted to the courts of a CS in which the property is situated. The object of the dispute shall be rights *in rem*, besides, the ECJ has stated that: the exclusive jurisdiction of the courts of the CS in which the property is situated does not encompass all actions concerning rights *in rem* in immovable property, but only those [...] which seek to determine the extent, content, ownership or possession of immovable property or the existence of other *rights in rem* therein and to provide the holders of those rights with protection for the powers which attach to their interest"[150]. Thus, this provision only covers proceedings under real estate law (*in rem*), and not the right instruments (*in personam*) such as: the rescission action, the action based on tort liability for violations of the real estate right and etc.[151]

In article 22(1) an additional condition is determined providing that in proceedings which have as their object tenancies of immovable property concluded for temporary use for a maximum period of six consecutive months, the courts of a CS 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 state. However, this provision does not apply to an action for damages for taking poor care of premises and causing damage to accommodation which a private individual has rented for a few weeks holiday, even where the action is not brought directly by the owner of the property but by a professional tour operator from whom the person in question had rented the

[148] Stone, *supra note* 16: 147; Van Calster, *supra note* 9: 52.
[149] *Ibid.*; Hartley, *supra note* 6: 72.
[150] Case 630/17, *supra note* 129.
[151] Cătălina Georgeta, „The jurisdiction of private international law regarding the claims of immovable property," *Bulletin of the Transilvania University of Brasov* 7(56), 1 (2014): 65, http://search.ebscohost.com.skaitykla.mruni.eu/login.aspx?direct=true&db=a9h&AN=117764822&site=ehost-live

accommodation and who has brought legal proceedings after being subrogated to the rights of the owner of the property[152].

The seat of the company, legal person or association. The exclusive jurisdiction by article 22(2) over the claims 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, have the courts of the CS in which the company, legal person or association has its seat. In determining that seat, the court applies its rules of private international law. All other claims which do not fall within the scope of article 22(2) are considered by general rules of jurisdiction.

The example of applicability of this provision can be the *E.ON Czech Holding AG v Michael Dědouch and Others* case[153] there the ECJ held that this provision applies for an action for review of the reasonableness of the consideration that the principal shareholder of a company is required to pay to the minority shareholders of that company in the event of the compulsory transfer of their shares to that principal shareholder.

The place where the register is kept. Article 22(3) rules that in proceedings which have as their object the validity of entries in public registers, the exclusive jurisdiction have the courts of a CS in which the register is kept.

The place where the deposit or registration has been applied for, has taken place or is deemed to have taken place. By article 22(4) is established that in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the exclusive jurisdiction have the courts of the CS 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. The second part of this article provides an alternative option of exclusive jurisdiction according to which the exclusive jurisdiction have the courts of each CS, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that state irrespective of whether the issue is raised by way of an action or as a defence, but without prejudice to the jurisdiction of the European Patent Office under

[152] Council of the European Union, *supra note* 32: 24.
[153] Case 560/16, E.ON Czech Holding AG v Michael Dědouch and Others, 2018, ECLI:EU:C:2018:167.

the Convention on the grant of European patents, signed at Munich on 5 October 1973. It shall be noted that article 22(4) does not apply to the infringement of the patent, trademark or similar rights.

Where the judgement has been or is to be enforced. This is the last rule of exclusive jurisdiction enshrined in article 22(5). According this rule, in proceedings concerned with the enforcement of judgements, the exclusive jurisdiction have the courts of the CS in which the judgement has been or is to be enforced. From this provision it appears that it includes an enforcement process based on a previously accepted judicial ruling of the dispute.

The exclusive jurisdiction is regulated by article 24 in the Brussels I bis regulation. After analysis and comparison of its provisions with the provisions of the New Lugano Convention it is concluded that exclusive jurisdiction rules established in both legal acts are similar, except one insignificant difference in the second part of article 22(4) of the convention and the second part of article 24(4) of the regulation. In the second part of article 22(4) is written that that rule applies „irrespective of whether the issue is raised by way of an action or as defence". Meanwhile, the provision of second part of article 24(4) is silent about it. However, in the first part of this article the term „irrespective of whether the issue is raised by way of an action or as defence" is present. Thus, it is concluded that this rule applies also to the second part of article 24(4) and this means that exclusive jurisdiction rules in the New Lugano Convention and the Brussels I bis regulation are similar and there is no conflict between them. Such position is also approved in the publication of the Council of the European Union „European judicial cooperation"[154].

Because of a small number of cases directly related with exclusive jurisdiction provisions under the New Lugano Convention, the period of examined cases held by the national courts of Lithuania was extended: since 2012 until now. Although, there were still not a large number of such cases, however some peculiarities were observed. Firstly, the national courts correctly stated that the exclusive jurisdiction has priority over other types of international jurisdiction[155]. In some cases the applicant tried to justify an exclusive jurisdiction of Lithuanian courts by the fact that in Lithuania was immovable property of a defendant, but the courts held properly that only fact that immovable property was in Lithuania did not establish itself an exclusive jurisdiction[156]. In several cases an applicant tried to prove that Lithuanian courts had an exclusive jurisdiction because his claim was

[154] Council of the European Union, *supra note* 32: 25.
[155] Case 3K-3-377-684/2016, *supra note* 140; Case 3K-3-367-969/2018, *supra note* 139.
[156] Case 2-4134-653/2016, *supra note* 71; Case E2-5-878/2015, D. R. v R. B., 2015; Case E2S-949-153/2015, D. R. v R. B., 2015.

related to the previous court ruling held in Lithuania, but the courts properly stated that this argument of an applicant was out of the scope of article 22 of the convention[157].

There were several cases where the claimant tried to prove an exclusive jurisdiction of national courts of Lithuania by article 22(2) of the convention. In one such case the defendant which validity of the decision was disputed was from Lithuania and the plaintiff tried to connect with this article also the defendant's contract concluded with legal person from Ukraine. The national courts (all instances) held correctly that the contract between the defendant and legal person from Ukraine did not fall within the scope of article 22(2)[158]. There was other case, related with the interpretation of article 22(2) where the appeal court held that even related action with the object of article 22(2) can be ruled under this article[159]. However, the Supreme court corrected such misinterpretation, relying on the ECJ case law it stated thatarticle 22(2) cannot be interpreted widely and actions only related with article 22(2) are not covered by this article[160].

In Norway was a case related to an enforcement of a judgement regarding to the dissolution of joint ownership decided by Swedish courts. The courts of Norway correctly held that article 22(1) of the convention was not applicable in such case because this case was related to the enforcement of a judment and not with rights *in rem* in immovable property. Thus, the courts held that article 22(5) shall be applicable in that case, because this article determines the exclusive jurisdiction in proceedings concerned with the enforcement of judgements[161].

4.5. Contractual Jurisdiction

Contractual jurisdiction – is a type of an international jurisdiction, permitting the parties agree which certain court will hear a dispute or disputes between them. There are provided a number of different types of contractual jurisdiction in the doctrine. For example, in international financial markets are widely used an assymetric jurisdiction agreements. It is agreements which contain

[157] Case 2-1363-760/2018, *supra note* 72; Case E2S-363-544/2017, *supra note* 109.
[158] Case E3K-3-431-1075/2018, V. Z. and A. Ž. v UAB „Goverlus", UAB „Lucrosus" and limited liability company „Investicionnaja vagonnaja kampanija", 2018; Case E2-312-196/2018, V. Z. and A. Ž. v UAB „Goverlus", UAB „Lucrosus" and limited liability company „Investicionnaja vagonnaja kampanija", 2018.
[159] Case 2-240/2012, R. P. v K. G., A. R., T. F. and L. F., 2012.
[160] Case 3K-3-574/2012, R. P. v K. G., A. R., T. F. and L. F., 2012.
[161] Case LH-2018-137098, A v B, 2018; Case TSALT-2018-54223, A v B, 2018.

different provisions regarding jurisdiction for each party[162]. Also, many parties use multi-faceded or hybrid agreements which provide for tiers of dispute resolution mechanisms, including, for example, arbitration as an alternative to court proceedings. Parties also choose between exclusive (obliges the parties to sue in a particular court) and non-exclusive (while the parties submit to the particular court, they remain free to sue in any other court) jurisdiction[163]. Contractual jurisdiction agreements also can be divided as containing positive or negative obligations or both of them. The agreement with positive obligation is undertood as an agreement in advance by a party that it will submit to the jurisdiction of a particular court or courts. An agreement which has a negative effect contains an obligation not to sue in any other or certain other jurisdictions[164].

Under article 23(1) of the New Lugano Convention, the parties, one or more of whom shall be domiciled in a CS, can agree that a court or courts of a CS have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship. As is seen from this provision, at least one of the parties should be domiciled in a CS and they can agree that only the court of a CS can have jurisdiction. This means, that they cannot agree that courts of third states will have jurisdiction over particular legal relationship[165]. It shall be noted that article 23(1) determines that contractual agreement of jurisdiction is exclusive unless the parties have agreed otherwise.

Though, article 23(1) requires that at least one party shall be domiciled in a CS, but the New Lugano Convention also establishes rules in cases when none of the parties are domiciled in a CS. Article 23(3) provides that if contractual agreement of jurisdiction is concluded by parties, none of whom is domiciled in a CS, the courts of other CS shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction. This means that convention respects party's autonomy from third states regarding prorogation of jurisdiction.

Points (a-c) of article 23(1) specify the formal requirements for a contractual agreement of jurisdiction: in writing or evidenced in writing; or in a form which accords with practices which the

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[162] Louise Merrett, „Interpreting non-exclusive jurisdiction agreements," *Journal of Private International Law* 14, 1 (2018): 38, http://search.ebscohost.com.skaitykla.mruni.eu/login.aspx?direct=true&db=a9h&AN=129811863&site=ehost-live; Louise Merrett, „The future enforcement of asymmetric jurisdiction agreements," *International & Comparative Law Quarterly* 67, 1 (2018): 37, https://doi.org/10.1017/S0020589317000410

[163] Merrett, „Interpreting non-exclusive jurisdiction agreements," *op. cit.,* 39.

[164] Merrett, „The future enforcement of asymmetric jurisdiction agreements," *op. cit.,* 41.

[165] Alexander Richard Eduard Kistler, „Effect of exclusive choice-of-court agreements in favour of third states within the Brussels I Regulation Recast," *Journal of Private International Law* 14, 1 (2018): 81-83, http://search.ebscohost.com.skaitykla.mruni.eu/login.aspx?direct=true&db=a9h&AN=129811862&site=ehost-live

parties have established between themselves; or 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. Article 23(2) supplements that any communication by electronic means which provides a durable record of the agreement is equivalent to „writing". There were some discussions whether it is possible to agree on jurisdiction orally and the doctrine provides the view that in order to accelerate trade, it must be possible to conclude agreements orally, but it recognizes that later such oral agreement can be required to be confirmed in writing[166].

The ECJ held that a jurisdiction clause, set out in the general conditions of sale mentioned in invoices issued by one of the contracting parties does not satisfy the requirements of article 23(1)[167].

Determining the existence of an international trade or commerce, the ECJ stated that it cannot be determined by reference to the law of one of the CS or in relation to international trade or commerce in general, but in relation to the branch of trade or commerce in which the parties to the contract operate[168].

Other provision laid down in article 23(4) determines that the court or courts of a CS on which a trust instrument has conferred jurisdiction has 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. However, article 23(5) provides that such agreements will have no legal force if they are contrary to the provisions determining contractual agreement of jurisdiction in matters relating to insurance, over consumer contracts and over individual contracts of employment or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of article 22.

Article 24 provides other possible form of prorogation of jurisdiction: when the parties were not agreed about jurisdiction in advance, but when a dispute arises and it is brought before a court of a CS then such court will have jurisdiction if a defendant enters an appearance. However, this rule does not apply if appearance was entered to contest the jurisdiction or if other court has exclusive jurisdiction by virtue of article 22.

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[166] Louise Merrett, „Orally agreed jurisdiction agreements under the Brussels I Regulation recast," *Cambridge Law Journal* 77, 3 (2018): 473, https://doi.org/10.1017/S0008197318000880

[167] Case 64/17, Saey Home & Garden NV/SA v Lusavouga-Máquinas e Acessórios Industriais SA, 2018, ECLI:EU:C:2018:173.

[168] Case 366/13, *supra note* 84.

The prorogation of jurisdiction in the Brussels I bis regulation is regulated by articles 25 and 26. There are determined that in this type of international jurisdiction there are more differences between the New Lugano Convention and the Brussels I bis regulation than were in previous types. The first difference is article 25(1) of the regulation. Article 23(1) of the convention requires that at least one of the parties shall be domiciled in a CS, meanwhile article 25(1) provides „regardless of their domicile". This means that the regulation extends the scope of the provision. Such extention is welcomed by the doctrine, because there is considering that it will remove the possibility for the national courts to disrespect the will of the parties to the agreement[169]. Secondly, such new provision of the regulation has lead to the deletion of the provision in article 23(3) of the Brussels I regulation (the same as the provision in article 23(3) of the New Lugano Convention). The third difference between article 23 of the convention and article 25 of the Brussels I bis regulation is the addition in article 25(1) of a sentence intended to clarify which law applies to the question as to whether or not a jurisdiction agreement is null an void. This new rule spells out that the chosen MS court or courts have jurisdiction „unless the agreement is null and void as to its substantive validity under the law of that MS". This is a new rule and the Brussels I regulation did not have this provision, consequently – this rule is absent in the New Lugano Convention. This rule established more clarity for all parties to the Brussels I bis regulation, because when the Brussels I regulation was applied, there were some discussions about this rule, but were no clarity because the case law by the ECJ was ambiguous on this issue[170]. So, by this rule the legal certainty and clarity was established, therefore it is recommended to extend article 23(1) of the convention by this provision.

The fourth difference is the addition of a new paragraph 5 in article 25 of the Brussels I bis regulation on the severability of a jurisdiction agreement which forms part of a contract. This new provision clearly states that jurisdiction agreement must be treated as an agreement independent of the other terms of a contract. A second subparagraph makes it clear that the validity of the agreement cannot be contested solely on the ground that the contract is not valid. That article 23 of the convention does not have this provision, cannot be treated as conflict between these two legal acts, because by this rule in the regulation was written already established rule applied in practice[171].

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[169] Agnė Kisieliauskaitė, „Jurisdikcijos prorogacija pagal „Briuselis I-bis" reglamentą: galiojančių susitarimų dėl teismingumo sudarymas ir jų veiksmingumo užtikrinimas," *Jurisprudencija* 24, 2 (2017): 434-435, http://search.ebscohost.com.skaitykla.mruni.eu/login.aspx?direct=true&db=sih&AN=128336747&site=ehost-live

[170] *Ibid*., 439-440; Hartley, *supra note* 6: 174-175.

[171] Jurgita Grigienė, „Kai kurie sutartinio teismingumo ypatumai tarptautiniame civiliniame procese," *Jurisprudencija* 67, 59 (2005): 105, http://www.lvb.lt/ELABA:LABTALL:ELABAPDB4667031

This rule was already recognized by the ECJ[172] when the Brussels I regulation was applied which did not have this rule in written. Thus, this rule also is recognized applying the New Lugano Convention even if it is not written in this legal act. Of course, if it will be written, it will create more clarity, thus, it is recommended to extend article 23 of the convention by this rule.

The fifth and last difference is that article 26 of the Brussels I bis regulation was extended by paragraph 2 which has established new provision. This new rule was determined in order to protect weaker party (when the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant) and it provides for an obligation on the part of the court to ensure, before it assumes jurisdiction, that the weaker party is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering appearance. This rule is not about determining jurisdiction, but only about party's right to be informed, so, it does not create conflict of jurisdiction rules between the Brussels I bis regulation and the New Lugano Convention, although the convention does not have this rule. However, in order to increase the protection to a weaker party, it is recommended to extend article 24 of the convention by this provision.

After examining the case law of Lithuanian national courts regarding the prorogation of jurisdiction under the New Lugano Convention, it can be concluded that: mostly the national courts dealt with articles 23(1) and 24(1) of the convention. There were observed the following positive peculiarities of courts' rulings: firstly, the courts comprehensively determined whether agreement of jurisdiction met all requirements established by article 23 and the case law[173] (for example, formal requirements, whether there was given consent by both parties to jurisdiction and etc.), secondly, the courts following the ECJ case law recognized that an agreement conferring jurisdiction shall be treated as an agreement independent of the other terms of the contract[174], thirdly, when the agreement of jurisdiction was related with the third party to the contract, the courts relied on the ECJ case law and broadly examined whether that third party have given its consent to such jurisdiction[175]. In relation to article 24(1) the courts declined their jurisdiction when the defendant or its representative contested the jurisdiction[176], but applied article 24(1) when the defendant

[172] Case 375/13, *supra note* 81.
[173] Case 2-1415-619/2017, *supra note* 106; Case 3K-3-367-969/2018, *supra note* 139.
[174] Case 2-18-178/2018, *supra note* 106; Case 3K-3-367-969/2018, *op. cit.*
[175] Case 2-18-178/2018, *op. cit.*; Case 3K-3-367-969/2018, *op. cit.*
[176] Case E2S-949-153/2015, *supra note* 156; Case E2-5-878/2015, *supra note* 156.

participated in the court proceedings, provided objections to the claim, but did not contest the jurisdiction and etc[177].

Although, usually the courts relied on the ECJ case law, but there were some cases when the higher instance did not agree with the lower instance and repealed or changed the ruling of the lower instance. For example, there was a case related with the application of article 23(1) in which was a dispute whether the matter related with a contractual relation are covered by article 23(1) or by article 5(3) of the convention. The court of the first instance held that the matter related with the contractual relation fells within the scope of article 23(1). The appeal court held differently and repealed the decision of the first instance. Later, this dispute was heard in the Supreme Court which held, after examining all the circumstances of the case, that the parties gave the broad scope to their jurisdictional agreement (in agreement of jurisdiction was a statement that it applies to all legal relationships, that such an agreement will apply to disputes between the parties irrespective of their legal nature or legal basis, if the claim relates to the relevant contract) and therefore, the disputes related to contractual matters, when there was a link between the tort and the contract, were covered by article 23(1)[178].

There were found several cases in Norway related with the prorogation of jurisdiction under the convention. It is observed that the national courts respected the prorogation of jurisdiction and checked whether the agreement of jurisdiction was made[179]. For example, there was a case where the parties agreed that legal proceedings could only be brought in Norway if the plaintiff would have domicile there at the time of the summons. The courts rejected the jurisdiction of Norway courts because they determined that the plaintiff did not have a domicile there[180].

In conclusion, the rules of international jurisdiction enshrined in the New Lugano Convention are grouped into the following types: general, special, protective, exclusive and contractual jurisdiction. The general jurisdiction is understood as a general rule which relies on the domicile of the defendant. The special jurisdiction provides the plaintiff a right to choose a forum. This type of jurisdiction does not eliminate the general jurisdiction, but supplements it. The examples of the special jurisdiction in the convention are the following: the place of performance of

[177] Case 2A-65-407/2017, K. K. v R. S. O., 2017; Case E2A-377-513/2018, E. B. v G. V., 2018; Case E2S-1158-459/2017, A. F. v K. Ž., 2017.
[178] Case 3K-3-368-687/2018, *supra note* 107.
[179] Case LH-2018-43284, *supra note* 77; Case TVTRA-2017-102835, ECO DGAS AS v Charles Patrick Mckenna, 2017.
[180] Case LB-2018-44631, *supra note* 144; Case TOSLO-2017-62914, *supra note* 144.

the obligation in the contract; the domicile of the maintenance creditor or the place of the court which, has jurisdiction to entertain proceedings concerning the status of a person or concerning parental responsibility; the place where the harmful event occurred or may occur in matters relating to tort, delict or quasi-delict; the place of criminal proceedings in which a civil claim for damages or restitution is provided; the place in which the branch, agency or other establishment is situated and etc. The protective jurisdiction is designed in order to protect a weaker party in specific relations. In the convention the rules of protective jurisdiction apply in matters relating to insurance, over consumer contracts and over individual contracts of employment. This type of jurisdiction gives a right to a weaker party to choose a forum, while a stronger party, with some exceptions, can brought the claim under the domicile of the defendant. Also, there are some limitations to the agreement of jurisdiction in such relations, failure to comply with which results that the court will declare such agreement as invalid. The exclusive jurisdiction imperiously orders which court can hear a case. The purpose of this type of jurisdiction is to protect the interests of the state and thus, the rules of exclusive jurisdiction apply regardless of domicile, appearance or contrary agreement between the parties to the dispute. This type of jurisdiction covers cases with specific subject-matter and in the New Lugano Convention it is: disputes due to rights in rem in immovable property or tenancies of immovable property; disputes due to 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; disputes due to the validity of entries in public registers; disputes due to the registration or validity of patents, trade marks, designs, ot other similar rights required to be deposited or registered; and due to the enforcement of judgements. The contractual jurisdiction permits the parties to agree which certain court will hear a dispute or disputes between them. If the parties concluded an agreement of jurisdiction, then such jurisdiction is deemed as exclusive.

After complexive investigation of the types of jurisdiction in the convention, it can be noted, that the determination of the court having jurisdiction in particular case is the following: firstly, it should be checked whether the exclusive jurisdiction applies, if not, then – contractual, protective, then general and special jurisdictions.

The provisions enshrined in the New Lugano Convention are similar to the relevant provisions determined in the Brussels I bis regulation except several observed differences. Although there are some differences between these two legal acts, but it can be concluded that such

differences are not essential and cannot create conflict of laws between the convention and the regulation.

After analysis of the case law of the national courts of Lithuania and Norway it can be concluded that usually the national courts of both countries applied and interpreted the provisions of the convention correctly. Although, there were noticed the cases where the decision of the national court were argued or even cancelled by the higher instance, but the positive point is that the parties have an ability to apply to the court of the higher instance and that court will review whether the decision of the lower instance is correct. Also, there was determined a positive peculiarity in both countries – the national courts relied and applied the ECJ case law.

5. MECHANISM FOR LEGAL REGULATION OF CONFLICTS OF JURISDICTION IN THE NEW LUGANO CONVENTION – *LIS PENDENS* RULE

This chapter deals with the concept of *lis pendens* rule regulated in the New Lugano Convention. Because the convention covers different types of international jurisdiction and thus, there are a number of possible ways to establish a court's competence, in practice, could appear situations that two or more courts of different CS will be competent to hear a particular case. Therefore, it is important to understand how this situation can be solved. In practice there are more mechanisms for legal regulation of conflicts of jurisdiction, however, the aim of this chapter is to clarify how works a mechanism determined in the New Lugano Convention (*lis pendens* rule). Also, there is clarified whether the provisions of *lis pendens* rule regulated by the convention do not contradict with the relevant provisions of the Brussels I bis regulation and there are provided an analysis of national case law of Lithuania and Norway.

Lis (alibi) pendens – is a rule, determining that any court other than the court first seised must decline jurisdiction in favour of the court first seised, where that court's jurisdiction is established[181]. This rule is designed to avoid situations when proceedings involving the same object and cause of action and between the same parties are brought simultaneously in the courts of different CS and thus, there is a risk that those courts arrive at mutually incompatible judgements[182].

Lis pendens rule and institute of related actions are regulated in the section 9 of the convention. In this section there is a predominant view that proceedings initiated earlier in a CS prevent the opening of later proceedings until the previous court will provide an opinion about its competence to hear the case. Article 27(1) determines: where proceedings involving the same cause of action and between the same parties are brought in the courts of different CS, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. Paragraph 2 of this article supplements that where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court. Thus, it can be distinguished the following requirements: the dispute should be between the same parties and involving the same cause of action. If this

[181] Council of the European Union, *supra note* 32: 25; Chrispas Nyombi and Dickson Oruaze Moses, „Tactical litigation in the post-recast Brussels Regulation era," *European Competition Law Review* 38, 10 (2017): 458, https://create.canterbury.ac.uk/id/eprint/16689

[182] Case 476/16, Brigitte Schlömp v Landratsamt Schwäbisch Hall, 2017, ECLI:EU:C:2017:993.

requirements are met, the jurisdiction has the court first seised, and other courts should decline jurisdiction in favour of the first court.

Article 28 provides rules for related actions. This article provides some flexibility, because here, any court other than first seised is merely given the option of staying proceedings, but not required to do so (article 28(1)). The other court may also decline jurisdiction, upon the application of one of the parties, if the court first seised has jurisdiction over the actions in question and its law permits their consolidation (article 28(2)). According paragraph 3 of this article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together in order to avoid the risk of irreconcilable judgements resulting from separate proceedings.

Article 29 establishes the priority of the exclusive jurisdiction: if actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 30 provides the criteria determining when a court is deemed to be seised: at the time when the document instituting the proeedings or an equivalent document is lodged with the court, with the condition that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or if the document has to be served before being lodged with the court at the time when it is received by the authority responsible for service, with condition that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Lis pendens rule in the Brussels I bis regulation is regulated by section 9. There are determined also some new important elements which were absent in the Brussels I regulation and consequently – are absent in the New Lugano Convention. Firstly, article 29 of the Brussels I bis regulation has new paragraph determining the duty to inform other court about the date of seizure of proceedings. This new paragraph establishes that upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised. As it was already written, article 27 of the convention does not provide such rule. However, the extention of article 29 in the regulation does not create a conflict with article 27 of the convention, because this rule does not establish the rule of jurisdiction, but provides a duty to inform other court. However, in order to make the cooperation between the courts more effective and *lis pendens* rule acting more efficiently it is recommended to extend article 27 of the convention by this provision.

Other difference is determined in article 31 of the Brussels I bis regulation which has been expanded (relevant article 29 of the New Lugano Convention). The new provisions in the regulation (article 31(2) to 31(4)) set out an exception from the general *lis pendens* rule for the situation where a court not designated in an exclusive jurisdiction agreement is seised of an action as the court first seised and the designated court is seised subsequently. The rule is then that the court first seised shall stay its proceedings until such time as the designated court has decided on its jurisdiction under agreement. Once the designated court has established its jurisdiction in accordance with the agreement, the court first seised must decline jurisdiction in favour of that court. This rule does not apply to matters relating to insurance, over consumer contracts and over individual contracts of employment, where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the claimant and the agreement is not valid under the provision contained within the sections of the protective jurisdiction. The aim of creating these new provisions in the regulation was to enhance the effectiveness of exclusive choice of court agreements and to avoid abusive litigation tactics[183], therefore, it is recommended to extend article 29 of the convention by these new provisions. Such extension will ensure that choice of court agreements between the parties will be respected and will provide a remedy for tactical litigation.

Also, the other difference is that article 32 of the regulation is wider than article 30 of the convention. The article was extended by new provisions clarifying the concept of „authority responsible for service" (according article 32(1) it is the first authority receiving the documents to be served) and provides the explanation what exactly the court, or authority responsible for service shall note (according to article 32(2) it shall note, respectively, the date of the lodging of the document instituting the proceedings or the equivalent document, or the date of receipt of the documents to be served). These new provisions ensure more clarity and thus, it is recommended to extend article 29 of the convention by these provisions.

Finally, the Brussels I bis regulation has two new articles determining *lis pendens* rule at international level. The new article 33 gives discretionary powers to a court of a MS to stay its proceedings if proceedings involving the same course of action and between the same parties were pending before a court of a third state at the time when the court of MS was seised. The provision sets out under which conditions such a stay may intervene and also lays down rules for a subsequent

[183] Chrispas Nyombi, Tom Mortimer and Rhidian Lewis, „Italian torpedoes in the shadow of the Recast Brussels Regulation 2012," *European Competition Law Review* 36, 6 (2015): 265, https://ssrn.com/abstract=2645092; Nyombi and Moses, *supra note* 181: 457.

continuation or dismissal of the proceedings. Article 34 provides for similar discretionary powers for a court of a MS in situations where the action pending before the court of a third state and the action brought before the court of a MS are related actions. This article, similarly as article 33, sets out under which conditions the dicretionary powers may be exercised and lays down rules for a subsequent continuation or dismissal of the proceedings. The New Lugano Convention does not have such provisions, as articles 33 and 34 in the regulation, however such situation does not create a conflict of laws between these two legal acts, because the articles 33 and 34 are designated to solve situations with third states and are not related with CS of the convention. Although, there is no conflict of laws, but the new provisions in the regulation extend its scope, therefore it is recommended to incorporate these new provisions also into the New Lugano Convention.

The research of Lithuanian case law regarding *lis pendens* rule according the convention was extented because of a small number of such cases. The reasearch covers the case law since 2013. There are several cases where the Lithuanian courts interpreted *lis pendens* rule under the convention. Generally, it can be concluded that the courts respected this rule, and if there was an information that proceedings involving the same cause of action and between the same parties were brought in the courts of other CS, the Lithuanian courts stayed their proceedings until such time as the jurisdiction of the court first seised was established. If jurisdiction was established – the courts declined their jurisdiction[184]. However, there was a case when the court of first instance improperly declined its jurisdiction relying on *lis pendens* rule[185]. The appeal court established that there was no *lis pendens* rule, because the court first seised determined that it had no jurisdiction over that case. Thus, the court of first instance could not rely on article 27(2) of the convention[186].

Regarding the national case law of Norwegian courts, there can be concluded that the courts of Norway, the same as the Lithuanian courts, respected *lis pendens* rule determined in the convention[187].

In conclusion, it can be summarized that the purpose of the lis pendens rule is to solve situations when several courts of different CS are competent simultaneously to hear a particular case involving the same cause of action and is between the same parties. Lis pendens rule

[184] Case 2S-1199-273/2014, K. I. C. v K. M., 2014.
[185] Case 2-105-482/2013, A. V. v K. W., 2013.
[186] Case 2S-1066-527/2014, A. V. v K. W., 2014.
[187] Case LB-2018-170951, Alpi Danmark A/S v Kuehne + Nagel AS and AXA Corporate Solution Assurance SA, 2018; Case TOSLO-2018-13503, Alpi Danmark A/S v Kuehne + Nagel AS and AXA Corporate Solution Assurance SA, 2018.

determines that any court other than the court first seised must decline jurisdiction in favour of the court first seised, where that court's jurisdiction is established.

After comparison of lis pendens rule enshrined in the New Lugano Convention with the relevant provisions in the Brussels I bis regulation, it is observed that the application of this rule in the regulation is wider than in the convention. For example, the Brussels I bis regulation provides new rules for regulation of international lis pendens rule. Although, there are some differences between these two legal acts regarding lis pendens rule, but it is concluded that such differences do not create conflict of laws between them. However, in order to ensure the respect of the will between the parties in case of agreement of jurisdiction, to provide remedy for tactical litigation, to create more clarity and go within new challenges, innovations, it is recommended to extend the provisions of lis pendens rule in the New Lugano Convention by relevant provisions of the Brussels I bis regulation.

After analysis of the case law of the national courts of Lithuania and Norway it was observed that courts in both countries respected and applied the lis pendens rule. Although, there exists possibility that courts may sometimes improperly interpret this rule, but there is created in both countries the appeal system, where the court of higher instance can review the decisions of the court of the lower instance and change or cancel that decision if thinks that there is a need to do so.

CONCLUSIONS

1. International jurisdiction – is a court's competence to hear cases with a foreign element. A relationship of dispute in civil cases is recognized as having an international (foreign) element when at least one of the following circumstances exist: one of the parties is a foreign person, the object of the dispute is abroad, the legal fact occurred or was committed in a foreign country because of which emerged, changed or terminated the legal relationship between the parties, a court or arbitration ruling is taken in a foreign state and is requested to be executed in a home state or in a state other than ruling is taken, evidence required in a civil case are in a foreign state or other procedural steps shall be performed in a foreign state.

2. The relation between international and domestic (internal) jurisdictions might be the following – both of these concepts determine the competence of courts to hear particular cases. The difference is that the rules of international jurisdiction determine which country's courts are competent to hear a particular case, meanwhile, the rules of domestic (internal) jurisdiction – the competence of courts to settle a dispute within the country concerned. The main criteria, dividing these two concepts – the presence of a foreign element in a case. If this element is present in a case, then it will be international jurisdiction, otherwise – domestic (internal) jurisdiction.

3. There are a number of legal acts, regulating international jurisdiction in civil cases which can be divided into: national legal acts (for example, in Lithuania – CPK), bilateral and multilateral conventions and treaties (for example, CMR convention, UNIDROIT convention and etc.), Hague conventions (for example, 2005 Convention on choice of court agreements, Hague convention for the protection of children and etc.) and EU legislation (for example, Brussels I bis regulation, Brussels II bis regulation, Rome IV regulation and etc.).

4. In the case of conflict of laws, international jurisdiction, usually, shall be determined according the rules of the multilateral convention or treaty (rarely – by the bilateral contract), or in the case when the jurisdiction shall be determined between EU MS – by the rules of EU legal act. The exclusions of this general rule is the following – when EU legislation does not apply and there is no international legal act regulating this question or when such legal act exists, but it determines that particular matter shall be determined by the national law.

5. The need of adoption of the New Lugano Convention appeared when the Brussels Convention was replaced by the Brussels I regulation because after appearance of regulation the gap

with the Lugano Convention was created as some of new rules in regulation were changed or updated. Therefore, the Lugano Convention was replaced by the New Lugano Convention which extended the rules of Brussels I regulation (currently, replaced by the Brussels I bis regulation) to EFTA MS, namely Iceland, Norway and Switzerland.

6. The rules of international jurisdiction enshrined in the New Lugano Convention are grouped into the following types: general, special, protective, exclusive and contractual jurisdiction. The general jurisdiction in the convention relies on the domicile of the defendant. The special jurisdiction is based, for example, on the place of performance of the obligation in the contract, the domicile of the maintenance creditor or the place of the court which, has jurisdiction to entertain proceedings concerning the status of a person or concerning parental responsibility, the place where the harmful event occurred or may occur in matters relating to tort, *delict* or *quasi-delict* and etc. The protective jurisdiction applies in matters relating to insurance, over consumer contracts and over individual contracts of employment and is based on the principle that a weaker party has several alternatives where to sue other party, meanwhile, the stronger party can sue in the courts of a domicile of the defendant. The exclusive jurisdiction relies on the place where the property is situated, the seat of the company, legal person or association, the place where the register is kept, the place where the deposit or registration has been applied for, has taken place or is deemed to have taken place and the place where the judgement has been or is to be enforced. The contractual jurisdiction is based on the respect of the parties' autonomy (except the particular cases determined in the convention, for example, exclusive jurisdiction rules).

7. Irrespective of some disclosed, during the research, differences between the provisions of the New Lugano Convention with relevant provisions of the Brussels I bis regulation, it is concluded that such differences are not significant in order to distort a proper parallel acting of these legal acts. Therefore, the first defended statement, which was raised in the beginning, is denied.

8. After research of national case law of Lithuania and Norway, the second defended statement, which was raised in the beginning, is approved. It is observed that there is achieved a high level of efficient hearing of civil cases between Lithuania and Norway regarding regulation of international jurisdiction in the New Lugano Convention. Although, Norway is a non EU MS, however, its national courts follow the ECJ's decisions. Therefore, there is no need to change the existing provisions of protocol 2 of the New Lugano Convention.

RECOMMENDATIONS

1. Although, it is concluded that there is ensured a parallel acting of the provisions of the New Lugano Convention and Brussels I bis regulation, however, it is recommended to amend the convention considering the new provisions or amendments of the regulation in order to close any possible misunderstanding or misinterpretation between relevant provisions of these legal acts, also, in order to extend the scope of the convention as it is extended in the regulation or to provide more clarity. The recommended amendments of the particular articles of the convention are provided in the Annex.

2. In order to improve a level of the efficient hearing of civil cases on the regulation of international jurisdiction in the New Lugano Convention between Lithuania and other CS, it is recommended to create a database containing all information related with any amendments of the convention, also, all case law related with interpretation of this legal act ruled by national courts of CS. Also, it is recommended in this database publish annual reports on national case law on the most important or complex issues in the interpretation of provisions of the convention.

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ABSTRACT

Contents of a research. To achieve the uniform and efficient application and treatment of international jurisdiction rules enshrined in the New Lugano Convention. In order to disclose these rules and evaluate whether it is ensured the efficient hearing of civil cases between Lithuania and Norway, a state member of the EFTA, investigate legal acts which are in force nowadays and research ECJ case law and national case law of Lithuania and Norway.

Aim of a research. Identify the international jurisdiction rules enshrined in the New Lugano Convention and investigate whether it is ensured the efficient hearing of civil cases between Lithuania and Norway, a state member of the EFTA.

Results of a research. The aim and objectives, determined at the beginning of a research, achieved: defined the concept of international jurisdiction and assessed its relation with national jurisdiction; disclosed the legal acts regulating international jurisdiction in civil cases and determined their applicability order; identified the need of adoption of the New Lugano Convention and evaluated its place between other legal acts regulating international jurisdiction in civil cases; disclosed international jurisdiction rules enshrined in the New Lugano Convention and evaluated whether there is ensured parallel acting of the provisions of this legal act and of the Brussels I bis regulation; and assessed whether the hearing of civil cases between Lithuania and Norway, a state member of the EFTA, is efficiently ensured. After the evaluation of research results, provided possible suggestions for legislation improvement (amendmens of some articles of the New Lugano Convention) and other solution for ensurement of the efficient hearing of civil cases on regulation of international jurisdiction in the New Lugano Convention.

Keywords: international jurisdiction, New Lugano Convention, court’s competence to hear a case with a foreign element, conflicts of jurisdiction, *lis pendens*.

SUMMARY

REGULATION OF INTERNATIONAL JURISDICTION IN NEW LUGANO CONVENTION: IS THE EFFICIENT HEARING OF CIVIL CASES BETWEEN SELECTED JURISDICTIONS ENSURED?

This topic was chosen because the ability to understand and apply the rules of international jurisdiction is very important, because from it depends whether the judgement given in one state will be recognized and enforceable in another country. The aim of a research of this thesis is – to identify the international jurisdiction rules enshrined in the New Lugano Convention and investigate whether it is ensured the efficient hearing of civil cases between Lithuania and Norway, a state member of the EFTA. In order to achieve the aim, at the beginning of a research were determined and fulfilled the following objectives: defined the concept of international jurisdiction and assessed its relation with national jurisdiction; disclosed the legal acts regulating international jurisdiction in civil cases and determined their applicability order; identified the need of adoption of the New Lugano Convention and evaluated its place between other legal acts regulating international jurisdiction in civil cases; disclosed international jurisdiction rules enshrined in the New Lugano Convention and evaluated whether there is ensured parallel acting of the provisions of this legal act and of the Brussels I bis regulation; and assessed whether the hearing of civil cases between Lithuania and Norway, a state member of the EFTA, is efficiently ensured.

The thesis consists of five main chapters which are divided into smaller subchapters. In the first chapter there is defined the concept of international jurisdiction and assessed its relation with national jurisdiction. Also, there is disclosed the main element dividing these two concepts. In the second chapter there are identified various legal acts regulating international jurisdiction in civil matters. There is disclosed procedure and scope of application of these legal acts. The third chapter identifies the grounds of adoption of the New Lugano Convention and its relation with other EU regulations in the field of international jurisdiction in civil cases. In the fourth chapter there are disclosed certain international jurisdiction rules enshrined in the New Lugano Convention. In subchapters of the fourth chapter there are examined certain types of international jurisdiction separately and compared with analogous provisions of the Brussels I bis regulation. The fifth chapter discloses *lis pendens* rule enshrined in the New Lugano Convention and assess whether this rule determined in the convention does not contradict with the relevant rule in the Brussels I bis regulation. During the research there is analysed various case law held either by the ECJ and by the national courts of Lithuania and Norway.

ANNEX

Table Comparison of provisions of the New Lugano Convention with Brussels I bis regulation and recommended amendments of certain articles of the convention *(created by author)*

Type of the international jurisdiction	**The article(-s) of the New Lugano Convention**	**The relevant article(-s) of the Brussels I bis regulation**	**Similar provisions (+) or not exactly (-)**	**Commentary**	**Suggested new provision(-s) in the New Lugano Convention**
General jurisdiction	Article 2(1) and 2(2)	Article 4(1) and 4(2)	+		
	Article 3(1) and 3(2)	Article 5(1) and 5(2)	+	The slight difference is between article 3(2) of the convention and article 5(2) of the regulation. In the regulation is determined that the rules of national jurisdiction of which the MS are to notify the Commission shall not be applicable as against persons domiciled in a MS. Meanwhile, in the convention such national rules are already set out in Annex I. Whereas the difference is only that in one legal act the MS shall notify about rules of national jurisdiction and in another legal act such rules are already determined, thus, there is no conflict of law between these two legal acts.	
	Article 4(1) and 4(2)	Article 6(1) and 6(2)	-	These relevant articles of the convention and regulation provide that even when the defendant is domiciled in a third country, jurisdiction is regulated, albeit indirectly, by these legal acts, with a referral to the law of each CS. The difference between article 4(1) and article 6(1) is that regulation has two more exceptions which are absent in the convention: consumers (article 18(1) of the regulation) and employees (article 21(2)).	It is recommended to amend article 4(1) and supplement it with new exceptions which are in article 6(1), and determine it as follows: 1. If the defendant is not domiciled in a State bound by this Convention, the jurisdiction of the courts of each State bound by this Convention shall, subject to the provisions of Article 16(1), Article 19(3) and Articles 22 and 23, be determined by the law of that State.

				Although there is a difference between article 4(1) and article 6(1), however, there is no conflict between convention and regulation because their articles regulate claims when defendant are from third states which are not MS not only to the regulation, but also to the convention. Other difference is between article 4(2) and article 6(2), however, this difference is similar to explained above in relation to articles 3(2) and 5(2). In the regulation MS shall notify the Commission about the rules of jurisdiction, meanwhile, in the convention such rules are already set out in Annex I. Thus, there is no conflict of law between convention and regulation in relation to articles 4(2) and 6(2).	
Special jurisdiction	Article 5(1)(a-c), 5(2)(a-c), 5(3), 5(4), 5(5), 5(6) and 5(7)(a-b)	Article 7(1)(a-c), 7(2), 7(3), 7(4), 7(5), 7(6) and 7(7)(a-b)	-	The differences are the following: the convention has article 5(2) regulating claims in matters relating to maintenance, and the regulation does not have this provision. However, such matters are regulated by the Brussels III regulation and although there are some slight differences between provisions of the convention and Brussels III regulation, however, there are no substantive points of conflict of maintenance rules between these legal acts; other difference is article 7(4) of the Brussels I bis regulation which is absent in the convention and regulates claims arising due to cultural objects. In the convention such claims are regulated by the rule of general jurisdiction. Thus, there is a slight conflict between the convention and regulation regarding this type of a claim.	It is recommended to supplement the convention by article 5(8) and determine it as follows: 8. As regards a civil claim for the recovery, based on ownership, of a cultural object initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised.
	Article 6(1), 6(2), 6(3) and 6(4)	Article 8(1), 8(2), 8(3) and 8(4)	+		

		Article 7	Article 9	+		
Protective jurisdiction	In matters relating to insurance	Article 8	Article 10	+		
		Article 9(1)(a-c) and 9(2)	Article 11(1)(a-c) and 11(2)	+		
		Article 10	Article 12	+		
		Article 11(1), 11(2) and 11(3)	Article 13(1), 13(2) and 13(3)	+		
		Article 12(1) and 12(2)	Article 14(1) and 14(2)	+		
		Article 13(1), 13(2), 13(3), 13(4) and 13(5)	Article 15(1), 15(2), 15(3), 15(4) and 15(5)	+		
		Article 14(1)(a-b), 14(2)(a-b), 14(3), 14(4) and 14(5)	Article 16(1)(a-b), 16(2)(a-b), 16(3), 16(4) and 16(5)	+	There is one insignificant discrepancy - article 14(5) of the convention relies on „all large risks“ without giving further specifications, meanwhile article 16(5) of the regulation extends the simple reference to large risks by adding that these are as defined in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II). That there is no link to this directive in the convention is logical, because it would not have been appropriate to make a precise reference to Community rules in the convention, to which states are not members of the EU are party. However, it is nevertheless recognised as clear that the general reference to „all large risks“ in article 14(5) should be taken to mean the same risks as those referred to in aforementioned	

					directive. This view is supported by protocol 2 of the convention, which seeks to implement uniform interpretation of the convention and the Brussels I bis regulation.	
	Over consumer contracts	Article 15(1)(a-c), 15(2) and 15(3)	Article 17(1)(a-c), 17(2) and 17(3)	+		
		Article 16(1), 16(2) and 16(3)	Article 18(1), 18(2) and 18(3)	-	Article 18(1) of the regulation has a new element which allows the consumer to bring proceedings against the other party, regardless of the domicile of that party, in the courts for the place of the consumer's domicile. Article 16(1) of the convention does not have this element, but there is no conflict between convention and regulation in relation to articles 16(1) and 18(1), because by the article 18(1), the regulation is extended to defendants from third states which are not MS not only to the Brussels I bis regulation, but also to the New Lugano Convention, because if defendant will be from CS bound by the convention, accordingly the provision of this legal act applies.	It is recommended to include a new element of article 18(1) into article 16(1), and article 16(1) determine as follows: 1. A consumer may bring proceedings against the other party to a contract either in the courts of the State bound by this Convention in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.
		Article 17(1), 17(2) and 17(3)	Article 19(1), 19(2) and 19(3)	+		
	Over individual contracts of employment	Article 18(1) and 18(2)	Article 20(1) and 20(2)	-	The difference is that article 20(1) of the regulation provides that jurisdiction rules over individual contracts of employement can be applied not only without prejudice to articles 6 and 7(5), but also, in the case of proceedings brought against an employer, article 8(1) (provisions where an employer is one of a number of defendants). Article 18(1) of the convention does not include element	It is recommended to extend article 18(1) by element regarding proceedings brought against an employer, and article 18(1) determine as follows: 1. In matters relating to individual contracts of employement, jurisdiction shall be determined by this Section, without prejudice to Articles 4 and 5(5) and, in the case of proceedings brought against an employer, Article 6(1).

					regarding proceedings brought against an employer. This difference is not significant to distort proper operation between the convention and regulation, because this provision in the regulation is an additional option to an employee where to sue an employer and also, because in most cases the employee will sue his employer in the place with strongest connection with forum (usually, where he habitually carries out his work in order to circumspect additional costs of travel and etc.).	
		Article 19(1) and 19(2)(a-b)	Article 21(1)(a), 21(1)(b)(i-ii), and 21(2)	-	The subpoint (i) of point (b) of article 21(1) of the regulation includes a new element according to which an employee may sue an employer also in the courts for the place from where the employee habitually carries out his work. The point (a) of article 19(2) of the convention does not have this element. Although, such rule is not determined in article 19(2) does not create a conflict between the convention and regulation, because this rule was already established in practice by the ECJ in relation to the Brussels I regulation, accordingly – it also applies in interpreting the convention. Other difference is that regulation by article 21(2) extends the protective jurisdiction and makes forum available to the employee in proceedings against an employer not domiciled in a MS. Although convention does not have such provisions, however, there is no conflict between these two legal acts because article 21(2) is extended to defendants from third states and does not influence parties to which the convention applies.	It is recommended to amend article 19 by new provisions of article 21, and determine article 19 as follows: An employer domiciled in a State bound by this Convention may be sued: 1. in the courts of the State where he is domiciled; or 2. in another State bound by this Convention: (a) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated. 3. An employer not domiciled in a State bound by this Convention may be sued in a court of a State bound by this Convention in accordance with paragraph 2.
		Article 20(1)	Article 22(1)	+		

		and 20(2)	and 22(2)			
		Article 21(1) and 21(2)	Article 23(1) and 23(2)	+		
Exclusive jurisdiction		Article 22(1), 22(2), 22(3), 22(4) and 22(5)	Article 24(1), 24(2), 24(3), 24(4) and 24(5)	+	One insignificant difference is in the second part of article 22(4) of the convention and the second part of article 24(4) of the regulation. In the second part of article 22(4) is written that that rule applies „irrespective of whether the issue is raised by way of an action or as defence". Meanwhile, the provision of second part of article 24(4) is silent about it. However, in the first part of this article the term „irrespective of [...]" is present. Thus, it is concluded that this rule applies also to the second part of article 24(4) and this means that exclusive jurisdiction rules in the convention and regulation are similar and there is no conflict between them.	
Contractual jurisdiction		Article 23(1)(a-c), 23(2), 23(3), 23(4) and 23(5)	Article 25(1)(a-c), 25(2), 25(3), 25(4) and 25(5)	-	The first difference between article 23 of the convention and article 25 of the regulation is that article 23(1) requires that at least one of the parties shall be domiciled in a CS, meanwhile article 25(1) provides „regardless of their domicile". This means that the regulation extends the scope of the provision. Secondly, such new provision in the regulation has lead to the deletion of the provision in article 23(3) in the Brussels I regulation (the same as the provision in article 23(3) of the convention). The third difference is the addition in article 25(1) of a sentence intended to clarify which law applies to the question as to whether or not a jurisdiction agreement is null and void. This is a new rule which is absent in the convention. The fourth difference is the addition of a new paragraph 5 in article 25 of the regulation on	It is recommended to amend article 23 of the convention by new provisions of article 25 of the regulation, delete article 23(3), and determine article 23 as follows: 1. If the parties, regardless of their domicile, have agreed that a court or the courts of a State bound by this Convention 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, unless the agreement is null and void as to its substantive validity under the law of that State bound by this Convention. 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

				the severability of a jurisdiction agreement which forms part of a contract. That article 23 of the convention does not have this provision, cannot be treated as conflict between convention and regulation, because by this rule in the regulation was written already established rule applied in practice. Thus, this rule also is recognized applying the convention even if it is not written in this legal act.	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. The court or courts of a State bound by this Convention 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. 4. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 13, 17 or 21, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22. 5. An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid.
	Article 24	Article 26(1) and 26(2)	-	The difference is that article 26 of the regulation has new provision established by paragraph 2. This new rule protects weaker party (when the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant) and provides for an obligation on the part of the court to ensure, before it assumes jurisdiction, that the weaker party is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering appearance. Whereas this rule is not about determining jurisdiction, but about party's right to be informed, therefore, it does not create conflict of jurisdiction rules between	It is recommended to supplement article 24 by paragraph 2 and determine article 24 as follows: 1. Apart from jurisdiction derived from other provisions of this Convention, a court of a State bound by this Convention before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22. 2. In matters referred to in Sections 3, 4 or 5 where the policyholder, the injured party, the consumer or the employee is the defendant, the court shall, before assuming jurisdiction under paragraph 1, ensure that the defendant is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance.

				the regulation and convention, although the convention does not have this rule.	
Mechanism for legal regulation of conflicts of jurisdiction					
Lis pendens - related actions	Article 27(1) and 27(2)	Article 29(1), 29(2) and 29(3)	-	Article 29 of the regulation has a new paragraph (absent in the convention) determining the duty to inform other court about the date of seizure of proceedings. This new provision does not create a conflict with article 27 of the convention, because it does not establish the rule of jurisdiction, but provides a duty to inform other court.	It is recommended to extend article 27 by new rule of article 29, and determine it as follows: 1. Without prejudice to Article 29(2), where proceedings involving the same cause of action and between the same parties are brought in the courts of different States bound by this Convention, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. 2. In cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised in accordance with Article 30. 3. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favourt of that court.
	Article 28(1), 28(2) and 28(3)	Article 30(1), 30(2) and 30(3)	+		
	Article 29	Article 31(1), 31(2), 31(3) and 31(4)	-	Article 31 of the regulation has new paragraphs (2-4) with provisions which are absent in article 29 of the convention. The new provisions in the regulation set out an exception from the general *lis pendens* rule for the situation where a court not designated in an exclusive jurisdiction agreement is seised of an action as the court first seised and the designated court is seised subsequently. The aim of creating these new provisions in the regulation was to enhance the effectiveness of the exclusive choice of court agreements and to avoid abusive litigation tactics.	It is recommended to extend article 29 by new provisions of article 31, and determine it as follows: 1. Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favourt of that court. 2. Without prejudice to Article 24, where a court of a State bound by this Convention on which an agreement as referred to in Article 23 confers exclusive jurisdiction is seised, any court of another State bound by this Convention, shall stay the proceedings until such time as the court seised on the basis of the agreement declares that it has no jurisdiction under the agreement. 3. Where the court designated in the agreement has established jurisdiction in accordance with the

					agreement, any court of another State bound by this Convention shall decline jurisdiction in favour of that court. 4. Paragraphs 2 and 3 shall not apply to matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the claimant and the agreement is not valid under a provision contained within those Sections.
	Article 30(1) and 30(2)	Article 32(1)(a-b) and 32(2)	-	Article 32 of the regulation is wider than article 30 of the convention and by its new provisions there is clarified the concept of „authority responsible for service“ and provided the explanation what exactly the court, or authority responsible for service shall note.	It is recommended to supplement article 30 by new provisions of article 32, and determine it as follows: 1. For the purposes of this Section, a court shall be deemed to be seised: a. at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or b. if the document has to be served before being lodged with the court at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court. The authority responsible for service referred to in point (b) shall be the first authority receiving the documents to be served. 2. The court, or the authority responsible for service, referred to in paragraph 1, shall note, respectively, the date of the lodging of the document instituting the proceedings or the equivalent document, or the date of receipt of the documents to be served.
	-	Article 33(1)(a-b), 33(2)(a-c), 33(3) and 33(4)	-	The regulation has two new articles (absent in the convention) determining *lis pendens* rule at international level. Articles 33 and 34 are designated to solve situations with third states and are not related with CS of the convention, thus, there is no conflict of law	It is recommended to extend the scope of the convention, and incorporate new article 31 into this legal act, and determine it as follows: 1. Where jurisdiction is based on Article 2 or on Articles 5, 6 or 7 and proceedings are pending before a court of a third State at the time when a court in a State bound by this Convention is seised of an action involving the

				between convention and regulation.	same cause of action and between the same parties as the proceedings in the court of the third State, the court of the State bound by this Convention may stay the proceedings if: (a) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that State bound by this Convention; and (b) the court of the State bound by this Convention is satisfied that a stay is necessary for the proper administration of justice. 2. The court of the State bound by this Convention may continue the proceedings at any time if: (a) the proceedings in the court of the third State are themselves stayed or discontinued; (b) it appears to the court of the State bound by this Convention that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or (c) the continuation of the proceedings is required for the proper administration of justice. 3. The court of the State bound by this Convention shall dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that State bound by this Convention. 4. The court of the State bound by this Convention shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.
	-	Article 34(1)(a-c), 34(2)(a-d), 34(3) and 34(4)	-		It is recommended to extend the scope of the convention, and incorporate new article 32 into this legal act, and determine it as follows: 1. Where jurisdiction is based on Article 2 or on Articles 5, 6 or 7 and an action is pending before a court of a third State at the time when a court in a State bound by this Convention is seised of an action which is related to the action in the court of the third State, the court of the State bound by this Convention may stay the

					proceedings if: (a) it is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings; (b) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that State bound by this Convention; and (c) the court of the State bound by this Convention is satisfied that a stay is necessary for the proper administration of justice. 2. The court of the State bound by this Convention may continue the proceedings at any time if: (a) it appears to the court of the State bound by this Convention that there is no longer a risk of irreconcilable judgments; (b) the proceedings in the court of the third State are themselves stayed or discontinued; (c) it appears to the court of the State bound by this Convention that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or (d) the continuation of the proceedings is required for the proper administration of justice. 3. The court of the State bound by this Convention may dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that State bound by this Convention. 4. The court of the State bound by this Convention shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.

Form approved on 20 November 2012 by the decision No. 1SN-10
of the Senate of Mykolas Romeris University

HONESTY DECLARATION
17/04/2019
Vilnius

I, Ana Šurpickaja, student of Mykolas Romeris University (hereinafter referred to University), Faculty of Mykolas Romeris Law School, European and International Business Law Programme

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confirm that the Master thesis titled

"Regulation of International Jurisdiction in New Lugano Convention: is the Efficient Hearing of Civil Cases between Selected Jurisdictions Ensured?:

1. Is carried out independently and honestly;
2. Was not presented and defended in another educational institution in Lithuania or abroad;
3. Was written in respect of the academic integrity and after becoming acquainted with methodological guidelines for thesis preparation.

I am informed of the fact that student can be expelled from the University for the breach of the fair competition principle, plagiarism, corresponding to the breach of the academic ethics.

_____ Ana Šurpickaja