

Rules of jurisdiction in the new Hungarian private international law

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ABSTRACT

On 1 January 2018, a new act entered into force in Hungary. This act is the new code of private international law in Hungary. The basic purpose of this article is to present the jurisdictional rules of the new law. In the description I discuss how the new act differs from the rules of the old code. In addition, I focus on international and European trends in private international law. I also examine the extent to which the new Hungarian code complies with these trends, as well as discussing the peculiarities of the Hungarian regulation. The new Code uses the concept of jurisdiction as a rule for the ‘international distribution’ of cases and in the sense of public international law. Therefore, I also address in this article the definition of jurisdiction and other conceptual issues, the doctrines of immunity and the description of the jurisdictional system of the Code. I present the relationship between international, European and Hungarian rules which are relevant in private international law. In addition, I provide an overview of the novel system of jurisdictional rules in the Code.

KEYWORDS

jurisdiction, foreign element, private international law, state immunity

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1. INTRODUCTION

1.1. Birth of the new Code

On 1 January 2018, Act XXVIII of 2017 on Private International Law (also referred to as the Code of Private International law or 'CPIL') entered into force in Hungary. The creation of the new CPIL has endeavoured to meet a long-standing demand to revise the rules and certain procedural provisions on the conflicts of law, jurisdiction and the recognition and enforcement of foreign decisions, relating to cross-border legal relations. Looking back on the 20th century, we can see the development in which private international law became a separate branch of law and its rules were codified. Initially, the rules were fragmented and scattered across different laws – for example civil law, commercial law, and civil procedural law – and the greater role was played by international commercial conventions and multilateral and bilateral conventions on mutual legal assistance. These rules were complemented by judicial practice. The first separate source of law on private international law was the Legislative Decree No. 13 of 1979 (old Code). This old Code – which was only a patchwork quilt arrangement – has undergone significant amendments. Hungary joined the European Union on 1 May 2004, and the EU accession brought about substantial changes; however, earlier, the (first) Lugano Convention of 16 September 1988 had introduced changes into the old Code. The amendments as a whole have fundamentally modernised the rules concerned and made them European, and in many respects they have been brought closer to the jurisdictional, recognition and enforcement regime of the 'Brussels I Regulation'¹ in the EU's relations since accession.

Although since the adoption of old Code, a number of significant changes have taken place – partly conceptual changes, partly due to the large number of EU legal sources – in the meantime, its judicial practice, and the practice of Hungarian judges in unregulated issues, or the uncertainties in Hungarian legal practice, as well as different jurisprudence justified the creation of a completely new Code.

The new CPIL consists of the following chapters: I. General Rules, II. Personal Law, III. Law of Intellectual Property, IV. Property Law, V. Law of Obligations, VI. Law of Succession, VII. Family Law, VIII. Labour Law, IX. Rules of Jurisdiction, X. Rules of Procedures, and XI. Recognition and Enforcement of Foreign Judgments.

1.2. Methodological questions

This article gives an overview of the new Hungarian jurisdictional rules. In the article, I would like to present these rules in a thematic order. In addition to the taxonomic presentation, some concepts and definitions will be clarified and some important conceptual distinctions and demarcations will be established, mainly through the case law. I would like to present the layering or stratification of rules on jurisdiction using a historical and comparative law method. The aim of the historical method is to present the novel aspects which differ from the previous regulation. The purpose of applying the comparative method is to draw inductive inferences and to create rules for choosing the correct rule of jurisdiction.

¹Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.



2. BASIC RULES AND DEFINITIONS

In matters of jurisdiction, the CPIL brought a number of regulatory innovations in line with current tendencies in international and European law. In legal disputes arising from private law relationships that include an international element, the practical question always arises as to which is the *lex fori* whose procedural rules must be applied? The answer to this question can be given by deciding on the relevant jurisdiction in the dispute. However, it is necessary to determine some additional preliminary questions: on the one hand, the boundaries of private legal relations must be examined and, on the other, the concept of the ‘international element’ has to be interpreted.

2.1. The demarcation between private and public law

One of the demarcation issues is related to relationships under private law. The notion of ‘private law’ is not specifically defined in the CPIL, nor is it more generally defined legally, distinct from classical civil law legal relationships. In the broadest sense, any legal relationship can be considered to be of a private law nature when it cannot be attributed to any expression of a state’s public authority. In the context of the CPIL, then, it may be useful to provide a more accurate definition of ‘private law’ by looking at the case-law of the Court of Justice of the European Union (CJEU) related to civil and commercial matters² in the private international law context. The demarcation questions are clearly illustrated by a case in which the concept of ‘civil matters’ could be applied to an action whereby a public body sought to recover sums paid over by it – by way of social assistance – to a divorced spouse and the child (i.e. by a derivative right). However, that was not the case where the claim for recovery was based on a statutory provision that had conferred a direct legal right on the public authority (‘prerogative’) vis-à-vis third parties.³

In another case, a consumer protection association filed an action seeking a ruling that the respondent trader was engaging in anti-competitive practices, the aim of the action being to prohibit the trader from continuing to use unfair terms in its contracts with consumers. According to the interpretation of the European Court of Justice, this was a civil matter, given the fact that the consumer protection association was a non-profit making (private) body. Although the claim – the ground for which was based on a guarantee undertaken by a private entrepreneur for the recovery of customs charges paid by an importer – had been initiated against the customs authorities as a public body governed by public law,⁴ the disputed issues were evidently of a

²Case C-29/76, LTU Lufttransportunternehmen GmbH & Co. KG v. Eurocontrol, ECLI:EU:C:1976:137; Case C-814/79, Netherlands State v. Reinhold Rüffer, ECLI:EU:C:1980:291; Case C-271/00, Gemeente Steenbergen v. Luc Baten, ECLI:EU:C:2002:656; Case C-292/05, Eirini Lechouritou and Others v. Dimosio tis Omospondiakis Dimokratias tis Germanias, ECLI:EU:C:2007:102; Case C-645/11, Land Berlin v. Ellen Mirjam Sapir and Others, ECLI:EU:C:2013:228; Case C-302/13 flyLAL-Lithuanian Airlines AS v. Starptautiskā lidosta Rīga VAS and Air Baltic Corporation AS, ECLI:EU:C:2014:2319; Case C-226/13, Stefan Fahrenbrock and Others v. Hellenische Republik, ECLI:EU:C:2015:383.

³Case C-271/00, Gemeente Steenbergen v. Luc Baten, ECLI:EU:C:2002:656, para 30.

⁴In the meantime, it is fair to say that public law does not only evolve on the national level. It has also become a category of European Law, for which the title ‘European Public Law’ has become popular. See more: Schwarze (2010) 3–31.; Birkinshaw (2014).



private law nature and thus belonged to the category of ‘civil matters’.⁵ In demarcating the conceptual framework, such rules on the subject-matter of the proceedings can be of assistance, especially where the boundaries of the state’s immunity⁶ become more porous in those cases when the state does not actively seek to pursue its exercise of public authority.

2.2. Interpretation of a foreign element

This question is important because the correct definition of a ‘foreign element’ is the starting point for any further analysis. According to the previous interpretation of the notion of a ‘foreign element’ in the Hungarian court practice, the essence of an established fact in the case of private international law is that the foreign element (person, object, right) in the given legal relationship creates the theoretical possibility for the application of the laws of two or more states.⁷ This previous interpretation⁸ – according to which, if the private international law case with a foreign element had no connection to Hungary whatsoever, the jurisdiction of the Hungarian court could not be established – can no longer be maintained with respect to the objective scope of the new CPIL. With reference to the legislator’s explanations (in the CPIL) relating to the prescriptions of the CPIL as regards its scope, the statutory elements of the established facts of a legal relationship in private international law now presuppose the presence of some type of an international element.⁹ Such an international element,¹⁰ for example, could be a situation in which the subject of a particular legal relationship¹¹ is a foreign national, has a foreign habitual residence, if any legal act occurs abroad, or where the property is located abroad, etc.

Compared to the previous rules, while the CPIL now provides greater room for the parties’ autonomy, one cannot ignore the fact that the rules implemented through the incorporation of international conventions and EU law now prescribe a universal obligation of application in several situations. In the area of civil judicial co-operation realized through EU law, the central, nationality-based approach of the previous Hungarian rules is now dominated by the notions of habitual residence¹² and/or domicile.¹³ This is in line with the freedom of movement of persons, services, capital and establishment within the Union, with the freedom of EU citizens to move and settle freely within the EU, as well as the free movement of goods in certain respects. As a

⁵Case C-167/00, *Verein für Konsumenteninformation v. Karl Heinz Henkel*, ECLI:EU:C:2002:555, para 30.

⁶The immunities in this context means a category related to the subject-at-law status (of the state) in the first place, collective of the cases on the lack of impeachment. Immunity is a situation in which a particular subject-at-law cannot be impeached, all the same, based on the facts, the condition for that would indeed be sufficient for that.

⁷BDT 2007. 1544.

⁸BH 2004. 376. and EBH 2004. 1047.

⁹See, in a parallel sense: [Briggs et al. \(2012\)](#).

¹⁰See, in a parallel sense: [van Calster \(2016\)](#) 12–20.

¹¹[Bradley \(2019\)](#) 38–39.

¹²The habitual residence of a person means the place where that person actually lives, having regard to all circumstances of the case on hand; for the purposes of the definition thereof the intention of the person affected must also be taken into account.

¹³Under Hungarian law, domicile (place of residence) means a place where a person resides permanently or with the intention of settling.



result of these new rules – sometimes in instances in which the CPIL already applies – the proceedings of the Hungarian forum can occur in a wider spectrum (even in situations without the citizenship link) that may broaden the conceptual framework of the international element. Moreover, the new CPIL seems to refute the previous approach taken by a Hungarian arbitration court that had ruled in favour of the jurisdiction of the Hungarian forum over Hungarian legal subjects.¹⁴

2.3. Definition of jurisdiction

It is necessary to define the notion of jurisdiction in terms of the forum that has the right to hear the case, especially because jurisdiction can be interpreted in various ways.¹⁵ This issue was one of the problematic points of the codification because the concept of jurisdiction has several meanings. In a public international law approach, jurisdiction is rooted in sovereignty and this has come to be usually associated with the doctrine of immunity.¹⁶ In this context, jurisdiction is intended to determine whether one state in particular has the capacity to have its court (authority), on the international level, to decide a case even though – taking into account all the circumstances – it is evident that the established facts indicate connections (connecting factors) to several states.¹⁷ If this concept is also extended to other international legal subjects,¹⁸ jurisdiction can further settle the issue of the responsibility (or competence) of international courts or international organizations, based on, or recognized by, international law.¹⁹ Analysing the notion of ‘jurisdiction’ from a private international law perspective, it can be used as a regulative order for determining the distribution of disputes between domestic courts and tribunals of certain states, which order is governed by international conventions, common practice and the private international law of the given state. From these explanations, it is possible to deduce the multiple, stratified elements of the definition of jurisdiction which together give rise to aspects of constitutional, (civil) procedural, public and private international law.

Questions on jurisdiction in modern legal systems have become extremely interesting.²⁰ More especially, the conceptual framework of jurisdiction was largely shaped the 19th century.²¹ Prior to this,²² it was often defined by the category of litigation, i.e. jurisdiction and competence, which are now, almost without exception, only used by procedural law as principles for the allocation of cases between courts and authorities.²³

¹⁴VB1998. 3. I.

¹⁵Basedow et al. (2017) 1032–1050.; Capps et al. (2003) 1–313.

¹⁶For more, see Fox and Webb (2013) 1–704.

¹⁷For the historical background, see Lauterpacht (1951) 220; Badr (2013) 7–20.

¹⁸O’Keefe (2011) 999–1045.

¹⁹Douglas (2012) 281–348.

²⁰Graziano (2015) 585–606.

²¹Szászy (1963) 317.

²²Some examples of this from the history of the Hungarian law of litigation: in the matter of rejecting a state’s competence, Magyary noted that it may not exist, due to the existence of another state’s competence. [Magyary (1902) 39]. Vági used the expression ‘jurisdikció (jurisdiction)’, by which he intended to mean a category of a higher competence, the unit of which is not a court, but an entire state [Vági (1922) 126].

²³Bariatti (2011) 247–480.



According to the most widely-held views, the notion of ‘jurisdiction’ in the case of international disputes currently refers to the distribution of cases between the national courts (authorities) of the states concerned, before reverting to a consideration of any rule (legal capacity, competence) regarding the distribution of cases within a state. Jurisdiction thus feeds off the sovereignty²⁴ of the state;²⁵ it embodies the right of the state, generated from its sovereignty,²⁶ to be able to act in a legal dispute with a foreign element by means of its own judiciary or public administration.²⁷

It is important to clarify that although Hungarian legal terminology uses the term ‘jurisdiction’ uniformly, there are basically two distinct types of jurisdiction in the CPIL jurisdiction rules: jurisdiction under public international law and jurisdiction under private international law.²⁸ Separate regulation of these two levels of jurisdiction has been implemented. From an international perspective, most of the codes of private international law do not have such rules. Provisions on jurisdiction under public law are not included at all, for example in the Belgian, Bulgarian, Croatian and Swiss Codes of Private International Law. The Czech Code of Private International Law addresses this issue, but it does so only in a single section,²⁹ which is basically content to refer to international law for the existence of immunity and prescribe the use of diplomatic channels for the service of documents.

The CPIL contains a separate chapter³⁰ on the rules relating to immunity based on international law, in particular the issues of procedural exemptions and exemptions from enforcement. The regulations take into account, on the one hand, the rules of jurisdiction and immunity of the European Convention on State Immunity,³¹ signed in Basel on 16 May 1972, and on the other hand, the rules of the United Nations Convention on Jurisdictional Immunities of States and Their Property,³² signed in New York on 2 December 2004. The rules of the CPIL are supplemented, mainly in procedural terms, by the provisions of Legislative Decree No 7 of 1973 on the procedure to be followed in the case of diplomatic or other immunities.

The other jurisdictional rules of the CPIL govern the classic rules of jurisdiction in private international law. In the following, we will mainly deal with these questions.

2.4. Definition of ‘court’

The CPIL defines the term ‘court’. This term should be interpreted in this way only when applying the CPIL. By definition, the term ‘court’ also covers not only Hungarian courts, but all other authorities having jurisdiction in matters governed by the CPIL. For example, the CPIL

²⁴Petersmann (2006).

²⁵See, Gioia (2006) 1095–1123.

²⁶Kokott (2011).

²⁷Mádl and Vékás (2016) 101.

²⁸The existence of the former is a prerequisite for establishing the latter.

²⁹§ 7.

³⁰In my opinion, it would have been a preferable solution to regulate matters of jurisdiction under public international law in a separate law.

³¹Sinclair (1973) 254–83; Allott (1974) 8–11.

³²Stewart (2005) 194–211.



must be applied by the notary in matters of international succession, the guardianship authority in custody cases, the registry authority in paternity cases, and the land registry in property registration cases. It should also be noted that arbitration courts are not covered by the law.

2.5. Definition of 'habitual residence' and 'domicile'

The CPIL applies the concept of habitual residence as a connecting factor (criteria) for jurisdiction. The assessment of habitual residence is always a matter of fact, which depends on the physical presence of the person, that is, on the site. Staying in the place in question should be continuous, but is not uninterrupted. Administrative considerations are irrelevant to determining habitual residence (e.g. where the address was officially reported, or the address which appears on the official address card). The personal and professional integration of the person with the place in question must be taken into account. The place of regular income, or permanent employment, the ownership of real estate, citizenship, language skills, and family, professional, and economic interests, as well as health care, can all be significant. When determining the habitual residence, all aspects should be considered together. This may be of particular importance where a person has close links with several states. In such cases, the relevant circumstances are more relevant. The length of time spent in each state may have a different significance, for example, when it comes to a child custody lawsuit or a retiree inheritance case. Staying in that state creates habitual residence if the person voluntarily stays there or the intention is to stay permanently.

The concept of domicile also appears in Hungarian regulations. It is used primarily by the CPIL in the area of property jurisdiction rules, in accordance with the Brussels Ia Regulation. The CPIL does not intend to use a different system of concepts for matters not covered by the Brussels Ia Regulation, and therefore the concept of domicile should be maintained. Article 62 (1) of the Brussels Ia Regulation provides for the application of the internal law of the Member States in order to determine whether a party is domiciled in the Member State whose courts are apprised of a matter. This is why it is also necessary to use the notions 'domicile' and 'place of habitual residence' in the CPIL.

The domicile is a more stable connection than the usual place of residence. The domicile refers to the place where a person actually lives, either permanently or for the purpose of permanent establishment. In most cases, the place of legal residence is the same as that of the address. The actual stay at the domicile may be interrupted, but if the person intends to remain at the permanent centre of his or her life regardless of the move, his or her domicile shall remain.³³

3. THE LAYERING OR STRATIFICATION OF RULES ON JURISDICTION

In order to find the right rule to determine jurisdiction, it is important to note that jurisdictional rules, including those of private international law, are laid down in EU law, in international

³³For example, if a person living in Hungary moves to Germany to work for 3 years but does not cease living or dispose of his property in Hungary or terminate his connection with his Hungarian environment, he will continue to reside in Hungary but will have his habitual residence in Germany.



conventions and in the domestic laws of a state – such as the Hungarian CPIL.³⁴ Such a layering or stratification of rules provides legal practitioners with quite a challenge. The large number of sources of law can be problematic, and in addition, a further difficulty can occur when the same legal terms are used in different ways in different regulations. The choice of whether to adopt a user-friendly or a legislator-friendly regulatory technique was a genuinely important question in Hungarian codification. In the first case the rules are concentrated in one place, and it is easier to choose the correct rule from multi-layered rules. The disadvantage of this solution is that it is always necessary to amend the legislation, because when any new EU or international rule is created, the Hungarian legislator must follow the amendment. On the other hand, if the list of legal sources is exhaustive, even in the law, the regulation is extremely long and detailed. It was feared that the essence of such regulation would be lost, so the legal solution has been that the law contains only references to EU law and international treaties.

During the preparation of the new Hungarian rules on jurisdiction now found in the CPIL, it was necessary to take into account the international and EU sources of law that already provide certain frameworks for this field. The European Union has a number of regulations governing jurisdiction.³⁵

Accordingly, the jurisdictional rules of the CPIL provide a comprehensive set of domestic regulations on private international law but, in many areas, these domestic rules are only applicable as ‘background law’. The reason for this is that section 2 of the CPIL, in describing the scope of the Act, expressly states that the provisions of the CPIL apply to cases that are not covered by any directly applicable EU law that is binding in its entirety, or by any international convention. The essence of this stratified regulation is that if there is either an EU Regulation or

³⁴For the variety of regulation-techniques of the States in Europe, see: [Graziano \(2015\)](#) 585–606.

³⁵The most important relevant sources of law are:

- 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 Ia 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 IIa Regulation) – after 1 August 2022: Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction
- 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
- 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
- Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings
- Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes
- Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.



any international convention already in force that settles the issue on jurisdiction, then the provisions of the CPIL cannot be applied.

3.1. The rules of the European Union

Article 81 to the Treaty on the Functioning of the European Union (“TFEU”) authorizes the Union to adopt legal rules within the field of judicial co-operation in civil matters.³⁶ This has mainly been achieved so far through the passing of EU Regulations. Since the Treaty of Amsterdam entered into force in 1999, a number of legislative acts have been passed in the EU to specify the rules on jurisdiction in the field of civil and commercial matters. In addition, other EU acts offer a variety of alternative instruments³⁷ for the enforcement of rights (claims) beyond the use of the existing procedural law possibilities of a Member State. The application of these, however, can also raise issues of legal interpretation regarding jurisdiction.

The framework of civil judicial co-operation in the European Union is defined exhaustively by the civil and commercial matters.³⁸ In seeking to cast further light to dispel the shadows hanging over the boundaries of civil and commercial matters, the interpretive case-law of the European Court of Justice can be called in to assist, while also, of itself, being able to provide a good indication of possible future interpretative developments. To begin with, the objectives and structures of the EU Regulations, as well as the basic principles deriving from all the legal systems of the EU Member States, can together to serve as the starting point in this exercise.³⁹ In demarcating the contours of the definition of ‘jurisdiction’, the practice of interpreting the present Regulation (EC) No 1215/2012 (‘Brussels Ia’) along with the provisions of its ‘predecessors in title’⁴⁰ – to ensure the consistency and continuity in interpretation – has been followed.⁴¹ From the perspective of private international law, this is important because disputes of a public law nature fall outside the objective scope of the Regulation, not only in the Union

³⁶Kramer (2012); Kramer (2018) 721–40.

³⁷Kramer (2019) 591–607.

³⁸Saenger (2015.) Art. 1, Rn. 3 b; Opinion Bot, in Case C-226/13, Stefan Fahrenbrock and Others v Hellenische Republik, ECLI:EU:C:2014:2424; Judgment of 11 June 2015 in Case C-226/13, Stefan Fahrenbrock and Others v. Hellenische Republik. ECLI:EU:C:2015:383. para 49; Case C-172/91, Volker Sonntag v. Hans Waidmann, Elisabeth Waidmann and Stefan Waidmann., ECLI:EU:C:1993:144, para 22.; Case C-265/02, Frahuil SA v. Assitalia SpA., ECLI:EU:C:2004:77 para 21.

³⁹Case C-29/76, LTU Lufttransportunternehmen GmbH & Co. KG v. Eurocontrol, ECLI:EU:C:1976:137, para 3; Case C-814/79, Netherlands State v. Reinhold Rüffer, ECLI:EU:C:1980:291, para 7.; Case C-172/91, Volker Sonntag v. Hans Waidmann, Elisabeth Waidmann and Stefan Waidmann., ECLI:EU:C:1993:144, para 18; C-271/00, Gemeente Steenberg v. Luc Baten, Case ECLI:EU:C:2002:656, para 28; Case C-266/01, Préservatrice foncière TIARD SA v. Staat der Nederlanden., ECLI:EU:C:2003:282, para 20; Case C-433/01, 2004, Freistaat Bayern v. Jan Blijdenstein., ECLI:EU:C:2004:21, para 24; Case C-292/05, Eirini Lechouritou and Others v. Dimosio tis Omospondiakis Dimokratias tis Germanias, ECLI:EU:C:2007:102, para 29; Case C-420/07, Meletis Apostolides v. David Charles Orams and Linda Elizabeth Orams, ECLI:EU:C:2009:271, para 41.

⁴⁰Regulation (EC) No 44/2001 (Brussels I Regulation), and the basis for that, which was the Brussels Convention.

⁴¹Case C-167/08, Draka NK Cables Ltd, AB Sandvik international, VO Sembodja BV and Parc Healthcare International Limited v. Omnipol Ltd., ECLI:EU:C:2009:263, para 20; Case C-111/08, SCT Industri AB i likvidation v. Alpenblume AB., ECLI:EU:C:2009:419, para 22; Case C-292/08, German Graphics Graphische Maschinen GmbH v. Alice van der Schee, EU:C:2009:544, para 27; Case C-406/09, Realchemie Nederland BV v. Bayer CropScience AG., ECLI:EU:C:2011:668, para 38.



but also in the private law of the Member States.⁴² The basic premise, then, is that the notion of civil and commercial matters⁴³ must not be interpreted in a restrictive manner.⁴⁴ In the classic sense, the concept of civil and commercial matters covers the whole gamut of matters possessing a private-law⁴⁵ nature⁴⁶ that distinguishes them from other legal disputes⁴⁷ of a public-law nature.⁴⁸ Moreover, attention should also be drawn to the fact that even outside the framework of judicial co-operation in civil matters, other sources of EU law can incorporate rules on jurisdiction. For example, Council Regulation (EC) No. 6/2002 (of 12 December 2001) on Community designs could be mentioned in this respect.

The EU legal framework is in any case essential to the treatment of disputes dealing with established facts of private international law. Such EU legal rules enjoy priority of application over domestic law, and thus also over private international law. Beyond these EU sources of law, there are EU Regulations and some particular norms of such Regulations in place that enjoy universal application and effectiveness. This means that these norms additionally govern jurisdiction in respect of matters outside the Union itself. Accordingly, the domestic laws of the EU Member States cannot regulate these issues: there is therefore no rule in the CPIL regulating these legal fields. As a result, in instances of any legal fields that might (at first glance) appear to be 'unregulated', careful attention should thus be paid to the process of selecting the appropriate jurisdictional rule to be applied.

In terms of the extent of the coverage, EU rules apply different solutions. However, this leads to another difficulty in their operation. Generally speaking, as far as questions of jurisdiction are concerned, EU rules will apply primarily when an established fact of private international law arises between the relations of EU Member States. However, under the circumstances in which EU law does not apply and the international element arises in relations between Hungary and a non-EU Member State, it is primarily an international convention or a rule of Hungarian private international law that will help determine the relevant jurisdiction in such a case.

Moreover, regarding rules on jurisdiction, a situation may arise where the relevant EU rule regulates a particular field of law but does not do so completely. In this situation, based on the remaining competence of the Member States to deal with the issues not covered by EU law, a Member State will be permitted the possibility of applying its own (domestic) rules on private international law. In addition to the above difficulties, there are other issues that impinge upon the compulsory application of EU law. Among these difficulties we can mention the handling of opt-outs and opt-ins, as well as the challenges caused by enhanced co-operation in the area of judicial co-operation in civil matters. The United Kingdom⁴⁹ and Ireland annexed an additional

⁴²Broude and Shany (2008) 17.

⁴³A commercial case in this sense is considered among civil matters. See: Czernich, Kodek and Mayr (2015) Artikel 1, Rn. 15.; Geimer and Schütze (2010) Art. 1, Rn. 24.

⁴⁴This interpretation method is confirmed by preamble paragraph (10) to the Brussels Ia Regulation, as per which: the scope of this regulation should cover all the main civil and commercial matters apart from certain well-defined matters.

⁴⁵Case C-167/00, Verein für Konsumenteninformation v. Karl Heinz Henkel. ECLI:EU:C:2002:555, para 30.

⁴⁶Case C-265/02, Frahuil SA v. Assitalia SpA., ECLI:EU:C:2004:77 para 21.

⁴⁷Case C-271/00, Gemeente Steenberg v. Luc Baten, ECLI:EU:C:2002:656, para 27.

⁴⁸Such fields of law are tax-, customs- or public administration cases, and impeachment cases related to performed actions or failures in the course of the state's exercising its public authority entitlement (*acta iure imperii*).

⁴⁹For the future perspective see: Crawford and Carruthers (2018) 183–202. For more details on Brexit issues, see: Birkinshaw and Biond (2016).



protocol to the Amsterdam and Lisbon Treaties,⁵⁰ in which they excluded themselves from the scope of future measures to be taken in the area of freedom, security and justice.⁵¹ Nowadays, this provision is relevant only for Ireland, because the United Kingdom withdrew from the European Union. The provisions of protocol allow for Ireland to be excluded, in general, from participation in such matters while allowing it, on a case-by-case basis and, where appropriate, the opportunity to opt-in to a particular measure. The additional protocol annexed by Denmark⁵² also allows for a general opt-out but it is also necessary to clarify whether or not the relevant EU rule is governed by a parallel agreement. Lastly, it is necessary to draw attention to the similar issue of enhanced cooperation, especially since a number of EU Member States have already passed certain acts – within the framework of enhanced co-operation law-making procedures – under the aegis of judicial co-operation in civil matters.

3.2. International conventions

The provision of the CPIL regarding its scope⁵³ also clarifies the fact unambiguously for those provisions which govern jurisdiction in bilateral and multilateral international conventions, and enjoy priority over the CPIL itself. Yet the treatment of this problem is not simple, since further questions occur as to how to resolve the issue of priority of application in the relations between the international conventions and EU law. More precisely, if the European Union itself concludes an international convention that is of universal application,⁵⁴ then the legal consequence of this will be that that treaty will enjoy priority even over EU secondary legislation (typically Regulations) which would otherwise be applicable in this particular field. Certain international conventions⁵⁵ also govern the applicable law with a universal effect (other than states which are parties to the same treaty); again, with respect to these issues, the CPIL also does not provide any rules on these issues.

If the international convention or all its provisions are not universally applicable, two important rules determine the choice of jurisdiction. If there is no EU law in place for the given legal field, then bilateral treaties enjoy priority of application from among the group of international conventions and, after them, multilateral treaties. If, however, EU law is also present in

⁵⁰(21.) Protocol on the situation of United Kingdom and Ireland regarding the area of freedom, security and law.

⁵¹Ireland has so far participated in the passing of the majority of Union norms relating to the civil judicial cooperation, or has subsequently conjoined. Yet Denmark has so far rejected cooperation in this field. In recent times, however, Denmark has entered into parallel agreements with respect to specific sources of law, for the enhancement of the applicability of those legal sources in Denmark, so the previously demonstrated rigid rejective discipline seems to have been transformed.

⁵²(22.) Protocol on the situation of Denmark.

⁵³CPIL § 2.

⁵⁴Such a universal international agreement is, for instance, the Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children. (The Hague, 19 Oct 1996 Convention for the protection of children. Entry into force: 1 January 2002, hereinafter as: The Hague Convention for the protection of children) promulgated by Act CXL of 2005.

⁵⁵For example, The Hague Convention for the protection of children.



the given field, then the ability to apply the international convention in a particular situation is typically specified as such in a separate article or clause of the relevant EU law. Further, if the relevant EU law replaces any international convention then, clearly, the application of the previous rule from the earlier treaty is no longer possible.⁵⁶ In exceptional situations, however, the application of the international convention alongside the relevant EU law is not excluded when the territorial scope of the treaty is broader than that of the EU law.⁵⁷ EU law can also make it possible to apply international conventions that govern jurisdiction in some specific legal fields where the EU Member State is also a party to the treaty. In this case, any other provisions concerning the relationship between the relevant EU law and the treaty may also be included among the provisions of the former.⁵⁸

3.3. The cases of ‘concurrent rules’ regarding the CPIL and other sources of law

There are certain areas to which both an EU law and the CPIL include provisions. In the area of jurisdiction, such a case arises regarding the jurisdictional rules governing property cases. However, this situation does not in fact actually amount to a true concurrent regulation. The apparent contradiction can be solved by analysing the rule, from which one must draw the conclusion that the provisions of the CPIL compete with those of the EU law. They can only be applied when the scope of the rule does not cover the legal relationship in question because of the material, personal, territorial or temporal scope of the particular EU law. There is also a situation in which the EU law itself authorises or requires that the application of a rule on jurisdiction be governed by domestic law.⁵⁹

4. THE NEW PROVISIONS ON JURISDICTIONAL RULES IN THE CPIL

Jurisdictional rules are traditionally grouped according to causes. The set of already existing categories for jurisdictional rules were as follows: general, specific, special (forum rules concerning insurance contracts and consumer contracts, as well as contracts of employment) and those rules that are exclusive and mutually agreed⁶⁰ (i.e. stipulated or chosen). All of these categories can be identified in the CPIL. In the process of compiling each jurisdictional rule, the new CPIL system did not copy the same criteria for determining each group from the previous law but rather, as an innovation for these rules, it has assigned every individually-named

⁵⁶This is declared by Article 68 to the Brussels Ia regulation, as: the regulation shall, as between the Member States, supersede the 1968 Brussels Convention.

⁵⁷Such a rule is declared by the second statement of Article 68 to the Brussels Ia Regulation, as: except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 355 of the TFEU. The application of the Regulation on the territories outside the effectiveness of this source of law, can be executed on the basis of a similar principle. (This is not possible concerning the Brussels Ia Regulation, as with respect to that, even Denmark concluded a parallel agreement, through which the rules of the Regulation can prevail even against the Danish opt-out).

⁵⁸Such rules are included, for instance, in Articles 71–73 of the Brussels Ia Regulation.

⁵⁹Typically, the necessary rules of enforcement of Member State.

⁶⁰Prorogatio fori.



jurisdictional rule to a different group of cases⁶¹. There are several reasons for this particular deviation within the CPIL. One of the most cogent reasons for the new system is that, in aiming to develop a uniform legal practice for legal practitioners, the domestic legislator had the firm intention to accommodate itself as much as possible to the EU legal environment,⁶² which latter system has largely defined the scope of the new CPIL. Since in the majority of cases in civil and commercial matters, EU law identifies the jurisdictional causes in a way that excludes (pre-empts⁶³) its Member States' laws, it would have been inappropriate to provide seemingly incomplete rules along traditional grounds of jurisdiction. Another argument was to be able to better highlight the differences originating from, on the one hand, the diverse sets of regulative styles of the provisions determining jurisdictional rules under EU laws with, on the other hand, the regulatory approach in the CPIL to different case groups that can be seen in relation to the jurisdictional rules of Hungarian private international law.

Given that it is the main rule in the cases of civil and commercial matters⁶⁴ covered by the objective scope of the Brussels Ia Regulation,⁶⁵ jurisdiction based on the defendant's domicile is generally applied where the defendant is domiciled in an EU Member State.⁶⁶ The Regulation lays down exceptions to this main rule that enable the application of the Regulation regardless of the defendant's domicile. The categories of such exceptions are: exclusive jurisdiction; jurisdiction based on a mutual agreement; and the proceedings started by the consumer against the seller or manufacturer (consumer contracts), and by the employee against the employer (employment contracts). As a result of these two foregoing matters, the regulatory potential of the CPIL has, therefore, been limited to the areas where the defendant is domiciled outside the European Union and there are no considerations necessary in respect of applying the listed exceptions.

⁶¹The groups of cases are: Property law; Family law matters, status or capacity of persons. See, some examples in this field. In property law cases the Hungarian courts shall have jurisdiction in all actions relating to property (CPIL Section 92). Here we find, for example, rules on prorogation of jurisdiction (Choice of court agreement, CPIL Section 99). There are other connecting factors: e. g. *lex loci rei sitae*, *lex loci damni*, *lex loci delicti*. Hungarian courts shall have jurisdiction in insolvency proceedings if the debtor is a legal person whose registered office provided for in the instrument of constitution is located in Hungary, or has a place of business (branch or other establishment) in Hungary where it carries out a non-transitory economic activity. If a Hungarian court has jurisdiction in insolvency proceedings, it shall also have jurisdiction for actions deriving directly from insolvency proceedings and closely linked with them (CPIL Section 100). In the field of family law there are several special connecting factors. In the cases provided for in Article 7 of Council Regulation 2201/2003/EC Hungarian courts shall have jurisdiction in matrimonial matters if either one of the spouses is a Hungarian citizen, and, for example, Hungarian courts shall have jurisdiction for establishing the existence or non-existence of marriage if either of the parties is a Hungarian citizen or if the defendant's habitual residence is in Hungary (CPIL Section 101).

⁶²Fallon et al. (2011); Basedow (2011) 671; Pocar (2001) 601–24.

⁶³On the basis of samples taken from American constitutional law, a 'pre-emption' is, for instance, the occupation of a legal field, i.e. the ultimate utilization of its entire regulative capacity by a law-maker. By using a civil law analogy: 'pre-emption' can be considered a law-forming supreme power, since there is either no more space for any further law-making, or any further law-making (by a Member State) shall only and at most be of a subsidiary or executive nature. On the core principle, see: Cross (1992) 454.

⁶⁴Case C-551/15, Pula Parking d.o.o. v. Sven Klaus Tederahn, ECLI:EU:C:2017:193 para 33; Case C-523/14, Aannemingsbedrijf Aertssen NV and Aertssen Terrasements SA v. VSB Machineverhuur BV and Others, ECLI:EU:C:2015:722, para 29 and the case-law cited; Kohler (2019) 120–23.

⁶⁵van Calster (2016) 21–25.

⁶⁶Carducci (2013) 467–92.



The Brussels IIa Regulation in its two regulatory fields of jurisdiction – viz., in matrimonial matters and those of parental responsibility – only permits the application of the law of the Member State if none of the grounds for establishing jurisdiction set out in the Regulation, justify the jurisdiction of an EU Member State. In these fields, therefore, the rules of the Regulation are of a subsidiary⁶⁷ nature.

The rules concerning maintenance⁶⁸ and succession⁶⁹ (inheritance) regulate jurisdiction in a universal manner; thus, the national legislator has not had the possibility of regulating matters within the scope of these two fields. However, there are so many exceptions to the jurisdictional rules on succession that, in view of the temporal scope, the law of a Member State (i.e., the CPIL) may still be applied when determining legal relations in respect of inheritance that are not covered by the Regulation.

In the light of the new rules⁷⁰ related to insolvency⁷¹, jurisdiction can only be determined in insolvency proceedings at the level of the Member State law (CPIL) in cases where the debtor's main assets are not located within the European Union.

A further complication is introduced in that the conclusion of international conventions⁷² is not only available potentially to each Member State but also to the European Union⁷³ as a subject of international law enjoying the legal capacity to enter into such conventions.⁷⁴ In the face of this, the regulatory potential of the CPIL has been considerably narrowed down by international conventions made and entered by the European Union and Hungary⁷⁵ (and other Member States).

⁶⁷While the place of residence of the defendant in the Brussels Ia Regulation forms the generally prevailing jurisdictional rule, the Brussels IIa Regulation sets up various competing jurisdictional rules. The maintenance obligations order, and the succession order regulate jurisdiction with a universal nature, so here the law-maker of the Member State is only enabled to regulate in the remaining fields concerning the interrelatedness of the rules in the matter of maintenance obligations.

⁶⁸Council 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.

⁶⁹Regulation (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

⁷⁰See the Court jurisprudence: Case C-1/04, Susanne Staubitz-Schreiber, ECLI:EU:C:2006:39, para 29.

⁷¹Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings.

⁷²See Opinion 1/03. of the Court (Full Court) of 7 February 2006, ECLI:EU:C:2006:81. Competence of the Community to conclude the new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

⁷³Examples of this type of international agreement, without intending to list them all, are: the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007; the Hague Convention of 30 June 2005 on Choice of Court Agreements; The Hague Convention of 23 November 2007, on the International Recovery of Child Support and Other Forms of Family Maintenance.

⁷⁴Many such agreements have been concluded. Some of them have a duplex nature, the agreement being ratified by both all the Member States and the EC (EU), which, however, due to the legal person(a) of the European Union established by the Treaty of Lisbon, may act as an individual undertaker of obligations on the international stage, so the law establishment of a Member State shall be excluded under the extent of the scope covered by such an international agreement.

⁷⁵Examples are, for instance, The Hague Convention for the protection of children or the bilateral agreements on mutual legal assistance concluded by Hungary.



The peculiarity of the CPIL is that within the system of rules on jurisdiction – providing both a general and a special part of this new law – it firstly set out the definition of general rules and then continues by setting out special rules concerning every single type of legal relationship. The result of this regulatory technique is that every rule that is governed by the general part also applies to the special part. The only difference is that in cases where the legal relationship in question is of a special nature, that nature permits a derogation from the general rules which can then only be properly applied by taking into account the special rules applicable to that relationship.

One of the important objectives of the new legislation was to construct a bridge between the Hungarian and EU rules of private international law and, for this particular reason, the CPIL has, as far as possible, followed the use of the terminology of EU Regulations, in order to make it easier for the European Court of Justice to interpret, directly or indirectly, in a uniform manner the provision of both domestic and EU law in respect of the cross-border legal relationships.⁷⁶

In certain legal fields, however, certain peculiar regulatory features have been retained specifically, due to Hungarian interests. As one example – with the aim of enforcing the public interest vis-à-vis the security over immovable property – exclusive Hungarian jurisdiction has been kept so that only its courts and authorities can exercise jurisdiction with respect to property rights or leases over land located in Hungary.⁷⁷ Hungarian courts shall have exclusive jurisdiction, furthermore, in probate proceedings where the estate is located Hungary and the testator is a Hungarian citizen;⁷⁸ in actions filed for the destruction of official instruments issued in Hungary;⁷⁹ in proceedings concerning the registration of rights, facts and data in a public register in Hungary; in actions concerning enforcement procedures in Hungary.⁸⁰ Exclusive jurisdiction rules take precedence in the event of any conflict with other general or specific grounds of jurisdiction, so that the application of the latter cannot infringe those privileged grounds of jurisdiction.

In addition, as a peculiarly Hungarian feature, the exclusion of rules of jurisdiction⁸¹ may also be noted. Following the traditions of the previous Hungarian rules on private international law, the legislator mirrored its rules on exclusive jurisdiction. Nevertheless, these matters also imply that account should be taken of EU law, for as long as the Brussels Ia Regulation includes provisions on exclusive jurisdictional rules, it cannot include any excluded jurisdictional rules.

⁷⁶Case C-448/98, Criminal proceedings against Jean-Pierre Guimont, ECLI:EU:C:2000:663, para 23; Cases C-357/10 to C-359/10, *Duomo Gpa Srl and Others v. Comune di Baranzate and Comune di Venegono Inferiore*, ECLI:EU:C:2012:283, para 28; Case C-92/14, *Liliana Tudoran and Others v. SC Suport Colect SRL*, ECLI:EU:C:2014:2051, para 39; Case C-328/12, *Ralph Schmid v. Lilly Hertel*, ECLI:EU:C:2014:6, para 25.

⁷⁷Article 24 (1) of the Brussels Ia Regulation (and Article 22 (1) of the Lugano Convention) provides for this in matters falling within the material scope of the Regulation (Convention), but also in matters outside it (e.g. matrimonial property regimes). The public interest to be protected must be ensured by declaring exclusive jurisdiction.

⁷⁸Due to the temporal scope of the Succession Regulation, this jurisdiction governs the succession not settled by this Regulation

⁷⁹It should be noted that the destruction of securities is always covered by the Brussels Ia Regulation, while the destruction of other documents is covered by the Brussels Ia Regulation if the subject matter of the proceedings falls within the material scope of the Regulation.

⁸⁰CPIL § 88.

⁸¹CPIL § 88.



On the basis of the foregoing, then, the exclusive jurisdictional rules of that Regulation consequently also cover in their entirety domestic PIL rules on excluded jurisdiction⁸² in relation to the remaining EU Member States whereas, at the same time, in relation to (non-EU) third countries, the excluded jurisdictional rules may be directly enforced in domestic law (e.g. in Hungary via the CPIL).

This may be a peripheral rule but, with certain exceptions,⁸³ the reason for it is based on the CPIL,⁸⁴ the provisions of which unequivocally state that the jurisdiction of a Hungarian court is always based on admissibility, even if the defendant only disputes the action for formal reasons – other than the lack of jurisdiction⁸⁵ – but not its relevance.

4.1. The consequences of transferring this regulatory logic to the application of the law

As a consequence of the transformation in approach under the new private international law rules, the specificity of the Hungarian rules on general jurisdiction appears to result, in fact, in their prevalence in ‘non-general’ situations, i.e. only in a few cases, so that they most clearly do not prevail as a general basic rule. In property law cases,⁸⁶ the main rule of jurisdiction is based on the defendant’s domicile, the place of its seat or the place of its central operations – provided that any of these is in Hungary – and the rule shall always prevail on the basis of the Brussels Ia Regulation, even if the cross-border elements of the case have no connection with any other EU Member State but rather with a third country. This causes the scope of the rule to be greatly reduced and it may actually only be used in cases covered neither by the effect of the Brussels Ia Regulation nor by any other relevant EU rules (insolvency, maintenance or succession). According to the CPIL, the matters of matrimonial property law belong among the jurisdictional rules of family law, thus the general jurisdictional rules in the field of property law can become relevant in cases connected to compensation for damage under the maxim of *acta iure imperii* or to arbitration proceedings.

5. SUMMARY

The creation of the new Hungarian CPIL endeavoured to meet a long-standing demand to revise the rules and certain procedural provisions on the conflicts of law, on jurisdiction and on the recognition and enforcement of foreign judgments relating to cross-border legal relations. The

⁸²CPIL § 89.

⁸³In terms of certain types of cases (insolvency proceedings, proceedings for establishing parentage, adoption cases, parental custody, visitation rights and guardianship, conservatorship and other protection measures, legal presumption of death or recording of death), with respect to the affected proceeding and/or legal relationships the application of this jurisdictional rule is explicitly excluded.

⁸⁴CPIL § 91.

⁸⁵Such a formal respect can be, for instance, a reference made to the *res iudicata*, or the enforcement of the objection to the failure of a deadline open for the enforcement of right.

⁸⁶Concerning this definition, the directive rule applies if the interpretive provision prescribed in point 18 under 7 § (1) to the code on civil procedural order No. Act CXXX of 2016 (new CPO), as per which a litigation at property law is: litigation, in that the enforced demand is grounded on the property rights of the party, or is expressible in monetary value.



former 1979 Law-Decree on Private International Law (as amended) used to be our code in this field. That was one of the last types of legal source that has by now become redundant and that underwent a number of ‘face-lifts’ in order to adapt to the development of international and EU law over the last few years of its existence. Nevertheless, this almost continuous patchworking on the text of the 1979 norm, on the one hand, nearly led to intrinsic ambiguities and inconsistencies while, on the other, it failed to tackle properly the peculiarities arising from the stratified or multilevel nature of the rules. The greatest achievement of the new CPIL is that it is obviously intended to resolve this situation by trying to define anchors and alignment points in the sea of the relevant corpus of international, European and domestic laws. It is not a simple matter to find one’s way around the multi-layer system of rules. Concerning the rules on jurisdiction, the new Hungarian CPIL follows a novel logic, which is substantially different from the former code. This new perspective clearly reflects the effects of EU law.

When codifying the new CPIL, it is the first decisive point which decides on the regulatory framework. There are two major regulatory techniques in legal practice. Traditionally, private international law is governed solely by the rules of conflict-of-law rules. Alternatively, the conflict-of-law rules appear together with the rules on jurisdiction, recognition and enforcement of foreign judgments in a Code. International practice in this area is very mixed, but the rule of thumb is that the rules of private international law contain only conflict-of-law rules, while the rules on jurisdiction, recognition and enforcement of foreign judgments are incorporated in procedural Codes or other related laws. The CPIL applies a mixed system, similar to the situation prevailing in the Czech Republic, Italy, Belgium, Slovenia, Bulgaria and Croatia, among the EU Member States.⁸⁷ The CPIL fully and uniformly regulates the rules of private international law, containing rules on applicable law, jurisdiction, recognition and enforcement of foreign judgments. The causes of jurisdiction have been formed according to the scope of provisions, and the Hungarian legislator endeavoured to draw inspiration from the regulatory techniques of the latest European CPILs, as well.

During the creation of rules on jurisdiction of the new Hungarian CPIL, several aspects had to be taken into account. Among others, the application of EU regulations on civil judicial cooperation and international conventions can raise issues of legal interpretation regarding jurisdiction.

Attempting to develop the aims of the CPIL will be up to legal practice, to which there is nothing more to wish for than the hope of a good bit of success, and a ‘fair wind’ for the community of legal practitioners over the waters of Hungarian private international law, in order to safely navigate the questions of jurisdiction.

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⁸⁷On the question of legislative techniques, see: [Graziano \(2015\)](#) 585–606.



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