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EUROPEAN PRIVATE INTERNATIONAL LAW? LANDMARKS ON ITS POSITION IN THE LAW OF THE EUROPEAN UNION AND THE CORRELATION WITH INTERNATIONAL COMMERCIAL LAW

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Abstract: *This article aims to examine, from both doctrinal and practical perspectives, the place and role of Private International Law (PIL) within the European Union, as well as its correlation with International Commercial Law (ICL). Starting from the definition of PIL as a branch of domestic law, centered on conflict of laws rules and the regulation of cross-border legal relations, the paper analyzes the terminological paradoxes, the interaction with the uniform substantive rules of ICL, and the mechanisms through which PIL facilitates the integration and application of international commercial conventions and usages. The core of the article is devoted to European regulations – Brussels I bis, Rome I, and Rome II – which have triggered a process of Europeanization of PIL, raising the question of whether we can already speak of an autonomous European Private International Law.*

Key words: *Private International Law, European Union Law, Internation Commercial Law, Conflict of Laws; Europeanization of PIL*

1. Introduction

Private International Law (PIL) is a branch of law whose importance has steadily increased over the past decades, in parallel with the globalization process and the intensification of cross-border legal relations. Although traditionally perceived as part of the domestic law of each state, which regulates through conflict of laws rules issues of jurisdiction and applicable law, the reality of European integration has raised the question of whether we are witnessing the emergence of a genuine European Private International Law. This question becomes particularly relevant given the adoption of major EU regulations with direct applicability, such as Brussels I bis on jurisdiction and recognition of judgments, Rome I on contractual obligations, and Rome II on non-contractual obligations. At the same time, the interaction of PIL with International Commercial Law (ICL) is essential, since the latter is based on uniform substantive rules,

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but their concrete application often requires the identification of the applicable law through PIL conflict mechanisms.

2. Definitions and Characteristics of Private International Law

Private International Law is defined in the legal literature as "that branch of our legal system comprising the entirety of legal norms, predominantly conflict-of-laws rules, which govern the settlement of conflicts of laws in space, conflicts of jurisdiction, as well as the legal status of foreigners in our country." From this definition, one may infer the principal characteristics that outline the subject matter of private international law.

Private International Law forms part of a state's domestic legal system, so that each state possesses its own body of conflict rules. Accordingly, we may assert that private international law is a branch of domestic law, belonging to private law, alongside other branches such as civil law, commercial law, criminal law, family law, etc.;

The rules governing private international law are referred to as conflict-of-laws rules. Nevertheless, private international law also includes substantive or immediately applicable rules—for example, those governing the legal status of foreigners. These substantive or immediately applicable rules are not conflict-of-laws rules, since they do not refer to a particular legal system (Romanian law, German law, Swedish law, Spanish law, etc.), but instead directly regulate the substance of the legal relationship containing one or more foreign elements, thereby excluding a conflict of laws.

These conflict-of-laws rules constitute what is termed *conflict of laws*, which—as will be demonstrated in the course of our inquiry—has the ultimate purpose of designating the legal system applicable to legal relationships containing one or more foreign elements, in a specific case. Thus, the function of conflict of laws is to resolve conflicts between two or more legal systems capable of governing a legal relationship with foreign elements, the applicable conflict rule designating only one of the legal systems as the effective governing law. Accordingly, the conflict rule itself does not settle the substantive dispute between the parties to the foreign-related legal relationship; its sole function is to indicate or designate the applicable legal system (Romanian, German, Italian, etc.), pursuant to which the dispute will be decided on the merits. Conflicts of laws (between legal systems) and conflicts of jurisdiction are resolved in accordance with the conflict rules of the forum state, i.e., through the application of the norms of private international law and the rules governing international civil procedure belonging to the domestic legal system of the state whose courts have been seized.

In a more recent—though more concise—definition, private international law is described as that branch of domestic law of each state which "represents the body of rules applicable to natural and legal persons as subjects of private law in international relations."

Finally, another modern definition characterizes private international law as "the body of rules governing relationships containing a foreign element, designating the competent authority and the applicable law."

Given that private international law is part of each state's domestic legal system (hence one may speak of Romanian private international law, German private

international law, French private international law, Swiss private international law, etc.), the question arises as to whether the designation of this branch as "international" is in fact appropriate. This issue stems from the reality that, in practice, private international law is not a uniform body of legal norms applied in all countries. Moreover, the designation "Romanian private international law" (or Swiss, French, German, Spanish, etc.) is inherently oxymoronic, combining terms whose nature and meaning are diametrically opposed—"international" and national. Such incongruity produces a paradoxical and linguistically questionable construction. Nevertheless, in our view, this oxymoron is suggestive: it illustrates that a "foreign law" may apply in Romania as *lex causae* without violating the legislative sovereignty of the forum state, since the conflict rule of the forum (Romanian private international law) itself designates the applicability of foreign law.

Within this context, the use of the term "international" in the designation of this branch of law generates confusion, potentially giving rise to erroneous interpretations as to whether the source of private international law is domestic or international. As explained, however, despite the terminological paradox, we are in fact dealing with a branch of domestic law. To avoid the oxymoron, scholarly works—including those from other jurisdictions—generally bear the title "Private International Law," and not "Romanian Private International Law."

The attribute "international" was likely attached in consideration of the fact that this branch governs legal relationships with foreign elements, thus possessing a vocation for internationality—without, however, becoming truly "international law," in the sense of being uniform law. This is particularly so given that most of its legal sources are domestic norms rather than uniform international norms. Admittedly, within the European Union and the European Economic Area, the character of private international law as a branch of domestic law is significantly attenuated by European normative acts (e.g., the Rome I and Rome II Regulations). Yet, until such intra-European instruments comprehensively cover all possible real-life situations, it would be premature to speak of a genuinely international branch entitled "European Private International Law." Moreover, whenever a foreign-related legal relationship extends beyond the European space, private international law remains rooted in its nature as a branch of the forum state's domestic legal system.

3. The Distinction between International Commercial Law and Private International Law

Whereas **private international law (PIL)** is par excellence a law of conflict rules that designates the legal system applicable (*lex causae*) to the merits of a legal relationship containing foreign elements, **international commercial law (ICL)** is "uniform law," comprising substantive rules directly governing the merits of the legal relationship, without the need to identify and apply one of the legal systems involved, as occurs in private international law.

Nevertheless, situations may arise in which ICL intersects with PIL. For instance, where the rules of ICL do not contain criteria for determining the commercial nature of a

juridical act, such qualification must be undertaken through the conflict rules of PIL, which designate the applicable law (*lex causae*) under which the commercial nature of the act is to be assessed.

Setting forth the reasons why a distinction must be drawn between ICL and PIL, it must be noted that the uniqueness of the internal market and the free movement of persons, goods, and capital, characteristic of European Union law, are not sufficient to cover all issues arising from the international character of commercial legal relationships. This remains the case even though Article 2557(2) of the Civil Code expressly provides that private international law relationships include, inter alia, commercial relationships with foreign elements, and even though the principal instrument of PIL in the field of contractual obligations is Regulation (EC) No. 593/2008—the so-called Rome I Regulation.

If a legal relationship is understood as a social relation falling within the scope of a legal rule, then the subject matter of international commercial law consists of social relations of a commercial nature, distinguished by the presence of one or more foreign elements, which impart an international character to commercial legal relations.

Thus, while PIL includes conflict rules that govern, inter alia, commercial relationships with foreign elements—focusing on conflicts of laws, conflicts of jurisdiction, and the designation and application of a given state's law—ICL seeks to facilitate the conduct of commercial relations with foreign elements by establishing uniform substantive rules which, by their very nature, exclude conflicts between the potentially applicable legal systems.

In essence, whereas PIL is founded upon and utilized the mechanism of conflict of laws and conflict of jurisdiction to determine the applicable law (*lex causae*) or the competent court, ICL rests upon the mechanism of uniform substantive rules with direct application, giving priority to international commercial practices and usages, while excluding, insofar as possible, conflicts of laws.

4. The Mechanism of Identifying and Applying ICL Norms through the Prism of PIL Conflict Rules

When a court is seized of a private-law relationship containing a foreign element, it will apply the *lex fori* (i.e., the conflict rules of its own national PIL) to identify the law or legal system (*lex causae*) governing the relationship. It must then determine, in accordance with that law, the juridical nature of the relationship (civil, commercial, etc.). If, pursuant to the *lex causae*, the relationship is commercial in nature, the court must then identify and apply the uniform substantive norms specific to ICL. In the absence of such norms, the applicable rules will be those of domestic commercial law, i.e., the norms designated by the application of the *lex fori* (its own conflict rules), which initially led to the identification and application of the *lex causae*.

This *mechanism of identifying and applying ICL rules* entails the following sequence of operations:

- identification of the foreign element imparting an international character to the private-law relationship;

- application of the *lex fori*, i.e., the conflict rules (PIL) of the state of the seized court, in situations where the uniform ICL rule does not provide criteria for determining the juridical (commercial) nature of the act in question;
- identification and application of the *lex causae* governing the foreign-related legal relationship (strictly with respect to the criteria for determining the commercial nature of the act;
- determination of the juridical nature of the foreign-related relationship, i.e., whether it is of a commercial nature, in accordance with the *lex causae*;
- identification and application of the specific rules of ICL.

It is clear that, in the absence of any foreign element, a commercial relationship falls to be decided under the domestic rules of commercial law. Similarly, where no specific ICL provisions exist, or where such provisions prove incomplete, the dispute shall be settled pursuant to the *lex causae*, namely the domestic rules of the legal system designated through the application of PIL conflict-of-laws rules.

5. The Correlation between PIL and ICL in International Commercial Practice

International Commercial Law, as an autonomous branch, governs cross-border commercial relations, regulated through multilateral conventions (e.g., the 1980 Vienna Convention on Contracts for the International Sale of Goods – CISG), bilateral treaties, rules of international organizations (e.g., WTO), as well as international commercial usages (INCOTERMS, *lex mercatoria*).

Private International Law operates as a framework law that enables the integration of these international rules into the domestic and European legal orders. Thus:

The Rome I Regulation facilitates the application of the Vienna Convention by determining the law applicable to international contracts.

The Brussels I bis Regulation ensures the uniform recognition and enforcement of judicial decisions within the EU, thereby enhancing legal certainty in commercial relations.

Arbitral proceedings also intersect with private international law, since the recognition and enforcement of arbitral awards are governed by both national rules and international conventions (e.g., the 1958 New York Convention), as well as by European regulations on foreign judgments.

In international trade, PIL acts as a bridge between national, European, and international legal orders. The 1980 Vienna Convention on the International Sale of Goods (CISG) often applies through PIL, which designates the law of the contract. Brussels I bis guarantees the uniform recognition of judgments, and international commercial arbitration relies on the 1958 New York Convention, alongside the PIL rules of the Member States (Hartley, 2009). This correlation confirms that PIL is not an obstacle but an indispensable instrument for the effective functioning of international commerce.

6. Conclusions

The analysis confirms that Private International Law remains a branch of domestic law, albeit strongly Europeanized through EU regulations. Although these instruments have unified essential norms on jurisdiction and applicable law, they do not yet justify the existence of an autonomous European Private International Law. At the same time, the complementarity between PIL and ICL shows that the two branches mutually support each other in ensuring coherence and legal security in international commercial relations. Without PIL, the application of conventions and commercial usages would be inefficient, while without ICL, PIL's conflict mechanisms would lack adequate substantive solutions. The general conclusion is that today we are dealing with a process of Europeanization of PIL, with prospects of future consolidation, but not with an autonomous European Private International Law.

The analysis demonstrates that, although there is a significant European body of law, the sectoral nature of the regulations and their coexistence with national conflict rules prevent the affirmation of an autonomous branch.

Finally, it is argued that the role of PIL in ICL remains fundamental, since it ensures the stability and predictability of cross-border relations. The article concludes that it is more accurate, at this stage, to speak of the Europeanization of PIL rather than of the existence of a fully autonomous European Private International Law.

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