***Discussion „Family matters, jurisdiction, applicable law, recognition and enforcement of judgments, as well civil aspects of cross-border child abduction„ – application in practice of regulations No 2201/2003, No 1259/2010 and relevant international conventions***

***4th case***

Dr.iur. Kucina Irēna

**Facts:**

* Latvian citizen was married to a Turkish national.
* Five years legal residence of spouses was in Germany. However, after a relationship breakdown wife stayed to live in Germany, but the husband came back to Turkey and after 2 months the wife brought action in Latvian court on the basis of Latvian national legislation (Article 27 of Civil Procedure law - in accordance with the location of defendant immovable property), but not on basis on Brussels IIbis regulation cross-border jurisdiction rules.
* The wife took the view that Article 6 of the Regulation is provided for the jurisdiction of an exceptional nature, namely that against a spouse who is habitually resident in a Member State or who are nationals of a Member State of affiliation an action shall be brought in accordance with regulation for cross-border cases. The grounds of jurisdiction are only applicable if the defendant is domiciled in a Member State if he is national. However, it is not applicable in this case because the defendant is a Turkish citizen and living in Turkey. As a result there is not fulfilled none of jurisdiction exceptional conditions.

* The agreement on the law applicable to divorce has not been concluded.

**Question for discussion:**

**Jurisdiction:**

* **Do Latvian court has jurisdiction to hear a divorce case?**
* **If the court has doubts about its jurisdiction to hear the divorce case after the application is received, - court action?**
* **If a decision regarding the acceptance of application have been made, but the court finds that the person is habitually resident in a foreign country and is in accordance with the Brussels IIbis provisions of the regulation does not have jurisdiction this case, - court action?**

**Applicable law:**

* **Which country law is the applicable in a divorce case?**
* **Who has an obligation to refer to foreign law application?**
* **Is it the court or the parties who ascertain the content of foreign law?**
* **Is the court involved only when the parties are unable to ascertain content of the foreign law or whether the court has doubts about its contents?**
* **Is there determined only a foreign law or also court rulings, case law, scientific literature on the applicable foreign law?**