



## **Training course "Provisions and practical application of the Rome III Regulation"**

**Riga – 29-30 November 2012**

**Workshop**

**Martiny/Medin**

**Proposed solutions**

### **Case 1: "Abandoning the Celtic Tiger"**

#### **I. Jurisdiction of Latvian Courts**

##### 1. Divorce

- a) Applicability of Brussels *Ibis* Regulation (Art. 1 para. 1 lit. a)
- b) Jurisdiction according to Brussels *Ibis* Regulation?
- c) Preliminary question of the existence of a marriage: Valid marriage  
Preliminary question should basically be treated as if it was a principal question (independent solution of the preliminary question)  
Anita: Art. 11, 13 German Introductory Law from the German point of view.  
Maris: Art. 11 Latv. Civil Code: Irish law
- d) Ground for jurisdiction (Art. 3 para. 1, 6th indent Brussels *Ibis* Regulation):  
Latvian habitual residence and nationality given.

2. Result: Jurisdiction exists.

#### **II. Determination of the applicable law**

##### 1. Divorce

- a) Applicability of Rome III Regulation (Art. 1 para. 1)
- b) Preliminary question of the existence of a marriage (Art. 1 para. 2 lit. b Rome III Regulation): Valid marriage
- c) Express agreement on the choice of applicable law pursuant to Art 5 Rome III Regulation
- d) Law of the State of nationality of one of the spouses (Art 5 para. 1 lit. c Rome III Regulation). German nationality is also the "effective" one.
- e) Form in writing is sufficient (Art. 7 para. 1 Rome III Regulation).

2. Result: German divorce law applies.

### **Case 1: Variation 1 of the case**

#### **I. Jurisdiction**

Nothing changes.

#### **II. Determination of the applicable law**

##### 1. Divorce

- a) Applicability of Rome III Regulation (Art. 1 para. 1)
- b) Applicable law
  - aa) No choice of law by the parties (+)
  - bb) Applicable law without choice (Art. 8 Rome III Regulation) (+)  
Art. 8 lit. d Rome III Regulation: law of the forum. The other alternatives of the provision do not apply.

2. Result: Latvian law applies.

### **Case 1: Variation 2 of the case**

The same conflict-of-laws rules apply for a legal separation. So far, nothing changes.

### **Case 2: "The charm of the North"**

#### **I. Jurisdiction of Latvian Courts**

1. Divorce (+)
  - a) Applicability of Brussels *Ibis* Regulation (Art. 1 para. 1 lit. a)
  - b) Jurisdiction according to Brussels *Ibis* Regulation (Art. 3 para. 1, 1<sup>st</sup> or 2<sup>nd</sup> indent Brussels *Ibis*)
2. Matrimonial property (+)
  - a) No EU Regulation
  - b) Application of Latvian law  
For matrimonial property claims in connection with divorce proceedings a Latvian divorce court also has jurisdiction for matrimonial property issues.
3. Maintenance obligation (+)
  - a) Application of the Maintenance Regulation (Art. 1 para. 1)
  - b) Jurisdiction according to Maintenance Regulation (Art. 3 lit. a or b and c Maintenance Regulation)

#### **II. Determination of the applicable law**

1. Divorce
  - a) Applicability of Rome III Regulation (Art. 1 para. 1 Rome III)
  - b) Applicable law: Latvian law (Art. 8 lit. a or b Rome III Regulation)
2. Matrimonial property
  - a) No EU Regulation
  - b) Application of Latvian PIL
    - aa) Applicable law
    - bb) Latvian law  
Art. 13 Latv. Civil Code
3. Maintenance obligation
  - a) Application of the Maintenance Regulation (Art. 1 para. 1 Maintenance Regulation)
  - b) Application of the Hague Protocol 2007 (Art. 15 Maintenance Regulation)
    - aa) Applicable law for maintenance claim of ex-spouse (Art. 1 para. 1 Hague Protocol)
    - bb) Applicable law (Art. 3, 5 Hague Protocol)

### **Case 3: "The Latvian/Dutch couple" (Dissolution/divorce)**

#### **I. Jurisdiction of Latvian Courts**

1. Divorce
  - a) Applicability of Brussels *Ibis* Regulation (-/+)  
No jurisdiction for same-sex marriages under Brussels *Ibis* according to dominant view.
  - b) Jurisdiction under Latvian Law (+/?)

2. Result: Jurisdiction exists.

## **II. Determination of the applicable law**

1. Applicability of Rome III Regulation (Art. 1 Rome III)
  2. Divorce (Art. 1 Rome III) (+)
  3. Differences in national law (Art. 13) (+)
- Marriage not regarded as valid under Latvian law.  
No divorce in Latvia.