



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

Riga – 29-30 November 2012

Workshop

Cases

Martiny/Medin

Case 1: "Abandoning the Celtic Tiger"

In 2005 Anita, a secretary with German and Irish nationality, and Maris, a Latvian manager, married in a Roman Catholic Church in Dublin. Thereafter, the spouses had been living together in their matrimonial home in Dublin. However, in 2010 the overall economic situation in Ireland worsened and also their marriage deteriorated. Maris, who had finally lost his job, left Ireland in February 2012, building up a new existence in Riga. Anita – deeply disappointed by Ireland – went back to Berlin (Germany) where she stayed. In a last attempt to convince Anita to follow him to Riga, in July 2012 Maris even agreed to an agreement under which an eventual divorce should be subject to German law. This agreement was notarised in Berlin during a visit he made. However, in November 2012 Maris, giving up hope in their marriage, applied for divorce in Riga.

Under German law the capacity to marry is determined according to the nationality of the parties (Art. 13 German Introductory Law). It is sufficient that the form in which a marriage is entered respects the law of the place where the marriage is celebrated (Art. 11, 13 German Introductory Law to the Civil Code). Under Irish law a religious ceremony is sufficient for the celebration of marriage.

A German draft bill for the implementation of the Rome III Regulation requires a notarial act for a choice of law by the parties. At present there is no such a requirement.

Questions:

1. Is 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 (*Brussels IIbis*) applicable? Will the Latvian courts be able to exercise jurisdiction?
2. Is Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III) applicable?
3. How will the Latvian court decide?

Variation 1 of the case

There was no choice of law by Anita and Maris.

Question:

Will the result be a different one?

Variation 2 of the case

Assuming that the institution of legal separation exists under the applicable law and that an application for such a legal separation has been made in Latvia.

Question:

How will the Latvian court decide?

Case 2: "The charm of the North"

Since 2009 Karlis, a Latvian national, has been working as a well-paid engineer in Oslo (Norway) where he also has a flat. His Latvian wife Ilze is staying in Riga in their matrimonial home. During the first years of his work abroad Karlis came home whenever he could to see his wife and the other members of his family. However, in 2012 his visits nearly totally stopped. Now, Ilze no longer believes that his continual time away is on account of his demanding job; rather, she believes that the real reason is a relationship with a female colleague in Oslo. Therefore she applies for divorce in Riga. She also demands her share of the common property of the spouses and lodges a claim for maintenance after divorce.

Questions:

1. Is 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 (Brussels IIbis) applicable? Will the Latvian courts be able to exercise jurisdiction
 - a) for the divorce?
 - b) the matrimonial property claim?
 - c) the maintenance claim?
2. Which law is applicable to
 - a) the divorce?
 - b) the matrimonial property claim?
 - c) the maintenance claim?

Case 3: "The Latvian/Dutch couple"

Diana, a Dutch national, and Liga, a Latvian national, enter into a marriage in The Hague (The Netherlands). Two years later, Liga applies for divorce in the Latvian court of Riga. Liga has maintained her habitual residence for one year in Riga, Diana in The Hague. According to Dutch law a marriage between persons of the same sex is valid. Under Dutch family law a divorce of the marriage is possible. Latvian law does not provide for a marriage between persons of the same sex.

Questions:

1. Is 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 (*Brussels IIbis*) applicable? Will the Latvian courts be able to exercise jurisdiction?
2. Is Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (*Rome III*) applicable?
3. How will the Latvian court decide?