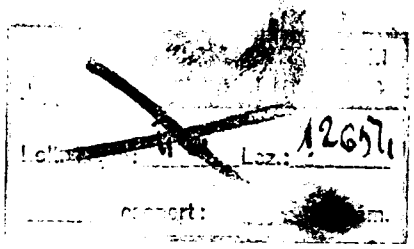

THE CONFERENCE

OF

THE INTERNATIONAL LAW ASSOCIATION

AT BUDAPEST, 1908.

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CONFLICT OF LAWS IN HUNGARY

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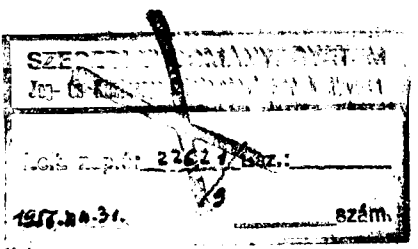

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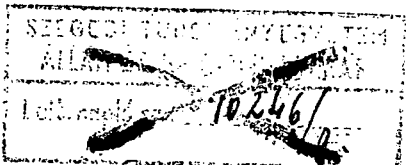


THE CONFERENCE OF THE INTERNATIONAL LAW ASSOCIATION AT BUDAPEST, 1908.

CONFLICT OF LAWS IN HUNGARY

By Dr. ÁRPÁD FERENCZY
Professor of International Law

In the territory of the Hungarian Crown there are existing at the present moment three different law-territories, namely: 1. the territory of the Hungarian Common-law, valid throughout the mother country which is the whole territory except Croatia, Transylvania and the former Military Frontier, 2. Transylvania and the former Military Frontier (the southern parts of Hungary) which is a law-territory of the Austrian Civil Code with modifications introduced in matters of private law since the restoration of the Constitution of Hungary, i. e. since 1867, 3. Croatia, actually

also a law-territory of the Austrian Civil Code with modifications introduced in matters of private law by the Croatian autonomy, granted to Croatia in 1868 by the 30-th Act of that year. From a constitutional point of view Hungary proper, i. e. the mother country (Hungary in the strictest meaning of the word), Transylvania and the former Military Frontier are in principle one sole law-territory, as the existing differences are only accidental, the Hungarian Parliament having the constitutional power to unify these territories in respect of private law at any moment, which unification will in fact take place when the projected Hungarian Civil Code becomes a law by parliamentary Act. Croatia, on the contrary, is a law-territory of a constitutional character, the Diet of Croatia having the constitutional power to create, by abolishing the actual existing Austrian Civil Code, a separate Croatian Civil Code.

Now, it is a very interesting question, what are the leading principles which are to settle the conflict which

may arise between these different Hungarian law-territories. The case is substantially the same as when the private laws of different States come in conflict one with the other, only with the very important difference, that it is impossible to take as a basis of settlement the nationality of the person, as all subjects of the Hungarian Crown living in any part of the State, motherland, Transylvania or Croatia, are citizens of the same political body, viz. of the Hungarian State. The task of settling the conflicts which may arise between the law-territories of Hungary is therefore very similar to the task of settling the conflict of laws between independent States which is the province of the science of private international law; notwithstanding we may not regard this problem as being one of international law, but as a problem *sui generis*, which is not of international, but only of local character, called by Zitelmann in opposition to private international law: *interlocales Privatrecht* (private interlocal law).

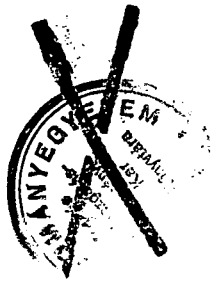
It being clear, that *nationality* cannot serve as a basis for solving the conflict of laws between the various territories of Hungary, the Hungarian private interlocal law must have of course some other basis for solving them. The first idea that suggests would be that, all the persons belonging to one of the named law-territories (being the citizens of the same State), their *domicil* should play the part in settling such conflicts which is played in matters of international law on the European continent by *nationality*. For instance a person born in Croatia who changes his Croatian domicil for Budapest, ought to be judged according to the Hungarian common law and not according to the Austrian Civil Code, which is valid in Croatia. But it is not so. A Hungarian citizen of Croatian origin does not lose his character of Croatian by the simple changing of domicil, he remains a Croatian and will be judged in matters of his *personalstatus* (such as marriage, tutelage, adoption etc. and the law of inheritance) by his native law, notwithstanding he lives throughout his

whole life in Budapest or other part of Hungary. This is the logical consequence of the constitutional autonomy of Croatia in both legislative and administrative matters (i. e. in home affairs, education, and justice) which establish a strong connection between that land and its population which cannot be affected by simple changing of domicil. A Hungarian citizen who is domiciled in Budapest, but belongs legally to Croatia will be judged therefore undoubtedly by the justice of Budapest in many important matters according to his Croatian law, viz. the Austrian Civil Code and, on the contrary case, another Hungarian citizen who is domiciled in Croatia but belongs legally to the mother country must be judged in the same matters by a Croatian judge according to the rules of the Hungarian common law, notwithstanding his Croatian domicil. A peculiar importance attaches to this matter from questions relating to marriage, because according to the Hungarian law (31-st Act from the year 1894) in the Hungary proper (together with Transylvania and the former Mil.

Frontier) marriage is a civil contract, divorce is granted and decided by the civil Tribunal justices and according to the civil procedure, whilst in Croatia marriage is an ecclesiastical act, the divorce, according to the Austrian Civil Code, is for Catholics not admitted at all, only a separation *a thoro et a mensa* can be obtained by resort to the ecclesiastical courts, according to the rules and procedure of the Canon law.

But what is to be the basis for deciding, whether a person legally belongs to Hungary proper or Croatia? As we saw, the domicil does not decide the solving of this question; therefore some other legal criterium must be set up to fix whether a person legally belongs to the one or to the other territory. This criterium is: the belonging by virtue of law to a community in the territory of this or that country, Hungary or Croatia. Persons may belong to a community for different causes e. g., by birth, by expressed or tacit reception, by a long continued domicil etc. It is very difficult to find a suitable English expression for the conception, legally

belonging to a community, independent of the domicil of the particular person, but notwithstanding we will endeavour to do so by rendering it by the word: legal settlement (illetőség). So then, between Hungary and Croatia as territories of the same State instead of nationality which conception necessarily cannot be used to distinguish between persons belonging to the same State, the basis of connection for the purposes of private interlocal law will be the *legal settlement*, which may be different from the real domicil. The legal settlement can also be changed, of course not by a mere fact like the domicil, but by legal way e. g. by asking for it from the authority of the place or by a domicil of four years in the same place combined with taxation for the benefit of that community. The legal settlement of the parents extends necessarily to the children, wherefore every man must have a legal settlement obtained by the fact of birth ; of course, it is not necessary that this coincides with the place of the birth, for, if the parents are domiciled outside of their



legal settlement and the child is born at their real domicil, the legal settlement of the child will not be the community where it was born, but the community to which its parents legally belonged at the very moment of its birth. So long as a person does not get a new legal settlement (connected of course mostly with a domicil), different from that obtained by his birth, he retains his original legal settlement. So then, if a Hungarian citizen born of parents with a legal settlement in Croatia gets a domicil in Budapest without changing also, by some method, his Croatian legal settlement for that of the Community of Budapest, he will be regarded as a Croatian and judged in matters of his personal status according to the Croatian law, until he gets a legal settlement at Budapest, or in another community in Hungary outside Croatia. It being so, it is quite natural that when a Croatian person wants to get a divorce which would be impossible for him according to the Croatian laws, it will be very easy to obtain his object since he can

get by way of express reception a legal settlement in any community in the territory of the Hungarian common-law. For, the moment he gets in this last territory a new legal settlement, he loses ipso jure his former legal settlement, which he had in one of the communities in Croatia, as nobody is allowed to have at the same time more than one legal settlement, whilst it is not forbidden to anybody at all to have more real domicils at the same time.

As to the relation which from the point of view of private interlocal law exists between the two law-territories of Hungary proper, viz. between the mother country on the one hand and Transylvania with the former Military Frontier on the other, the problem of finding a suitable basis of connection is not so important, as between Hungary proper and Croatia. Although in Transylvania and in the Military Frontier the Austrian Civil Code was left after the reestablishment of the constitution in 1867, in these parts of Hungary since then, by successive Acts, were

those parts of private law which are of the greatest importance from the point of view of conflicts of laws unified, so that the rules concerning personal status are in Hungary proper everywhere the same, e. g. legal capacity, tutelage, marriage etc. The most important differences belong to the province of the law of inheritance; for a basis of connection in this matter there serves the domicil of the person whose personal status is to be decided; only, when a person has two or more domicils, e. g. one in Budapest, another in Kolozsvár, Transylvania, the legal settlement will be taken also into account in arriving at a decision.
