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APPLICATION OF PROVISIONS OF INTERNATIONAL CONVENTIONS WHICH CONTAIN UNIFORM RULES OF PRIVATE LAW IN RELATIONS THAT ARE OUTSIDE THE SCOPE OF APPLICATION OF THESE CONVENTIONS

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Abstract. This article discusses a situation in which international conventions that include norms of private law are applicable in situations other than those stipulated by norms that define their scope of application (*ex proprio vigore*). This involves various cases in which the domestic, EU or international legislator refers to the provisions of a given international convention (in a different international convention) and also cases in which provisions of an international convention are applied by virtue of the will of the parties to a civil law relationship. The author analyses individual situations searching for an answer to the question about the nature of provisions used and thus – adequate rules for their interpretation or for filling of gaps. In some situations, they retain their international law nature, while in others they become part of the domestic or EU law or a certain standard form contract which profiles the civil law relation.

Keywords: uniform law, reference, designation of substantive law

INTRODUCTION

The essence of international conventions that include uniform norms of private law and the essence of any international agreement imposes an obligation on countries which have ratified them to ensure the effectiveness of unfirming arrangements [Całus 2005, 383]. Courts of individual countries-parties to conventions are obliged to apply them *ex proprio vigore* regardless of the will of the parties to a legal relationship they concern, only if there are premises for applying them that result from internal provisions. The obligation to apply international conventions is independent of whether conflict of law rules contained in the above-mentioned legislative acts say that the law of the state-party to the convention applies. As has been noted in the literature, rules that outline the scope of application of international conventions themselves have the nature of conflict of law rules [Czepelak 2008, 184ff; Clarke 2009, 17].

However, irrespective of the application of international conventions that contain uniform rules *ex proprio vigore*, these conventions are applied in other situations. The basis for the application of provisions contained in the conventions may be the will of the domestic legislator who, in domestic legislative acts, refers to the content of international conventions as the source of regulation of internal relations, the will of the EU legislator or the will of the parties to a private rela-

tionship who, by exercising the principle of autonomy of the will of the parties, subject this relationship to provisions of an international convention, even though it does not apply by virtue of its own provisions. Provisions of international conventions may be also applied by virtue of references contained in other conventions. Application of these conventions to the so-called hypothetical contracts is a particularly interesting case.

Each such case of application of conventional provisions raises specific problems. The aim of this paper is to identify them and to attempt to find possible ways of solving them. The methods employed in this study involve an analysis of the law in force and legal comparison with regard to international conventions that contain uniform rules of private law and refer to other legislative acts of the EU and domestic law. The analysis of legal acts and of judicial decisions of national courts and the European Union are the research methods applied by the author. Views expressed in the literature are also taken into account in order to obtain the broadest possible picture of the discussed issue.

1. REFERENCES TO INTERNATIONAL CONVENTIONS IN DOMESTIC LEGISLATION

Provisions of the Polish Maritime Code[1] and the Aviation Law[2] are examples of references to international conventions that contain uniform rues of civil law as a source of law for regulating also domestic relations. Benefits of such a method of regulation are not solely confined to ensuring that the text of a legislative act is brief or even that instruments regulated in such act are consistent with parallel measures in international transactions. They also involve the possibility of enjoying the achievements of judicial decisions (including international case-law) and law scholarship which accompany the legal force of a given international convention [Wesołowski and Dąbrowski 2017, 547].

An international convention to which domestic legislation refers, although for internal relations, retains its international character. It remains a certain microsystem that is autonomous towards other systems, including the system that incorporates it. This has its consequences in relation to, *inter alia*, interpretation of the rules of conventions [Gebauer 2000, 683–705; Czepelak 2008, 395; Ambrożuk, Dąbrowski, and Wesołowski 2019, 153–55] or to filling of gaps [Dąbrowski 2018a, 89–99]. This means that it is the text expressed in the authentic language or languages of the convention[3] that should be the subject of application and inter-

[1] E.g. Article 41(1), Article 97, Article 181(1), Article 272, Article 279 of the Maritime Code of 18 September 2001, Journal of Laws of 2018, item 2175 as amended.

[2] E.g. Article 208 of the Aviation Law of 3 July 2002, Journal of Laws of 2020, item 1970 as amended.

[3] This often escapes the attention of persons solving particular problems, including experienced judges of the Supreme Court. An example here may be the judgment of Supreme Court of 22 November 2007, ref. no. III CSK 150/07, OSNC–ZD 2008, no. 2, item 53 with the commentary by K. Wesołowski, LEX/el.2010.

pretation. At the same time such interpretation should be in line with rules of interpretation of provisions of international conventions, in particular with directives for interpretation resulting from the Vienna Convention on the Law of Treaties.[4]

Various problems of references to international conventions can be noted in domestic law. Sometimes the law invokes a convention that addresses a specific problem without a clear identification but with a reservation that it is a convention binding on the country whose law refers to such convention (e.g. Article 208 of the Aviation Law). Such a tactic has the advantage of automatic incorporation to the domestic law of all amendments and supplementations of the convention binding on the date of entry into force of a referring provision. This also apples to an entirely new international convention that addresses a given matter in the case where a country making a reference becomes party to it. The second way consists in a reference to a specific international convention with a reservation that the reference includes further amendments or supplementation of this convention promulgated in an appropriate manner, but that they will become legally binding after entry into force of the referring provision, (e.g. Article 41(1), Article 97 Article 272 or Article 279 of the Maritime Code). Such an incorporation technique allows automatic inclusion to a domestic law of subsequent protocols and conventions that amend and supplement the convention specified in the referring provision. However, when a new convention that addresses the same subject-matter is ratified, incorporation of this convention requires that the referring provision be amended. The third way involves indicating a specific convention without a reference to subsequent amendments and supplementations which may be effected after entry into force of the referring provision (Article 181(1) of the Maritime Code). This tactic requires that the referring rule be amended where the convention is amended. Failure to implement such an amendment may result in duality of the state of law – the convention in the amended or supplemented form will be applied to international relations that fall within the scope of its application, whereas in internal relations – the convention in the form it was referred to in the referring rule will apply.

2. IMPLEMENTATION OF PROVISIONS OF CONVENTIONS IN THE EU LAW

Inclusion of these provisions in the EU law creates a specific situation in the application of provisions of conventions. Such regulations pertaining to carriage of persons which are a basis of the EU system of passenger protection are exam-

[4] Vienna Convention on the Law of Treaties of 23 May 1969 (United Nations, Treaty Series, vol. 1155, p. 331) [hereinafter: VCLT]. For rules of interpretation of international conventions that contain uniform rules of civil law see [Wesołowski and Ambrożuk 2017, 165–76].

ples here. This system results from a number of EU regulations,[5] which, however, do not include a comprehensive regulation of issues relating to a contract of carriage of passengers. They only correct and supplement regulations in the conventions-based law. These regulations were largely incorporated into EU law. Therefore, the measures resulting from international conventions form an integral part of this system.

Various techniques for including provisions of international conventions in the EU law were put to work. Therefore, even though air regulations do refer to the Montreal Convention (MC),[6] they do not actually implement its provisions. However, MC is an element of EU law since the EU acceded to this convention.[7] In turn, pursuant to Article 216(2) TFEU,[8] agreements concluded by the Union are binding upon the institutions of the Union and on its Member States. This means that both the provisions of the Montreal Convention (irrespective of whether a given country is party to it) and the provisions of EU regulations that modify and supplement the regulation contained in the Convention are applicable in "Union" relations. The application of MC as a Union system of passenger protection is not significantly dissimilar to its application in other relations. Nevertheless, the role of the Court of Justice of the European Union in the process of interpretation of such conventions must be emphasized.

In the case of rail transport and inland waterway transport this question looks quite different. Even though the EU acceded to COFIT[9] and to the Athens Con-

[5] The following regulations (broken down by individual branches of transport) are the core of the EU passenger protection system: 1) Regulation (EC) No. 2027/97 of the Council of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage amended by Regulation (EC) No. 889/2002 of the European Parliament and of the Council of 13 May 2002; 2) Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No. 295/91; 3) Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air; 4) Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations; 5) Regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents; 6) Regulation (EU) No. 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No. 2006/2004; 7) Regulation (EU) No. 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No. 2006/2004.

[6] Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) of 28 May 1999, OJ L 194, 18.07.2001, p. 39–49.

[7] Council Decision of 5 April 2001 on the conclusion by the European Community of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention), OJ L 194, 18.07.2001.

[8] Consolidated version of the Treaty on the Functioning of the European Union of 25 March 1957, OJ C 326, 26.10.2012, p. 47–390.

[9] Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (United Nations, Treaty Series, vol. 1396, p. 2, 1397, p. 2).

vention in the wording of the 2002 Protocol[10] (with the effect resulting from Article 216(2) TFEU), before it did so, the EU implemented the CIV convention[11] (by Regulation No. 1371/2007 – railway regulation) to a large extent by including an extract from this convention in Annex 1. Regulation No. 392/2009 (inland water regulation), in turn, served the same purpose for the Athens convention. However, this implementation does not cover some of the provisions of the convention (i.a. jurisdiction-related provisions were left out on account that such issues are EU's sole competence).

Such reference in EU regulations to provisions of conventions means that in relations resulting from said regulations these provisions are not applied as provisions of an international convention, but as provisions of Union law. This has specific effects, especially for interpretation. Irrespective of the slightly different rules of interpretation or axiology adopted, languages that are official EU languages but not authentic languages of the texts are becoming more important[12] (for interpretation of provisions of Union law see [Radwański and Zieliński 2007, 476–78]). Naturally, this does not mean that the body of views of legal scholars and commentators and judicial decisions developed in the process of application of these provisions as rules of conventions must be disregarded in the process of interpretation of such provisions. It may be concluded that creation of a new legislative act, even if its content is very similar to the provisions of the applicable international convention, does not allow full enjoyment of the advantages of a referral. EU law as a rule is created in all official languages of the European Union. Nevertheless, this does not solve the problem of inconsistencies between individual language versions of a regulation either. It causes problems pertaining to the order of application of provisions, that is not always solved *expressis verbis.*

As a rule, international agreements executed by the European Union have priority over secondary legislation.[13] This would mean that in the case of international carriage performed in the European Union an international convention

[10] The European Union acceded to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea by Protocol of 2020, on the basis of two Council Decisions of 12 December 2011.

[11] Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) – Appendix A to the Convention concerning International Carriage by Rail (COTIF).

[12] On the contrary [Dąbrowski 2018b, 55], referring to recital 14 of the preamble to Regulation 1371/2007 that contains an intent of building a system of compensation for passengers created by this regulation on the basis of uniform provisions of CIV, postulates that the rule of interpretation of EU legislative acts be rejected in the interpretation of provisions of annex I to Regulation 1371/2007 and that the French language version be given primacy.

[13] Such a position substantiates, first, the requirement of compatibility of an international agreement with primary legislation, because international agreements not compatible with the Treaties cannot enter into force, unless the Treaties are revised (see Article 218(11) TFUE). Second, the fact that such agreements have priority over secondary legislation is an expression of binding the institution of the EU by international agreements executed by it. Cf. stance of the Court of Justice of the European Union expressed in point 52 of the judgment of 3 June 2008 in the *Intertanko* case (C–308/06, OJ C 183, 19.07.2008, p. 2–3).

should be applied first, followed by a regulation in a supplementary role. On the other hand, certain logic would ask to apply the laws in the opposite way in this case.[14] This issue was regulated in such a way for railway law. Provisions of the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail (OTIF) on the Accession of the European Union to the Convention concerning International Carriage by Rail (COTIF) show that if international carriage is performed between European Union states, Regulation 1371/2007 shall apply in the first place and CIV uniform rules may be applied in a supplementary role [Freise 2009, 1237–238]. This rule results from Article 2 of this Agreement and also from recitals 7 and 8 thereof.

3. APPLICATION OF CONVENTION PROVISIONS BY VIRTUE OF THE WILL OF THE PARTIES TO A LEGAL RELATIONSHIP

Yet another situation occurs where the parties decide to include in the content of the legal relationship between them the provisions of an international convention that is not applicable in this case *ex proprio vigore*. This may pertain to inclusion of provisions of a convention that is not yet in force or provisions of a convention that has already come to operation and addresses a given kind of legal relations but does not apply in a specific case because requirements pertaining to e.g. place of residence (seat) of the parties (or one of them) or to a carriage relationship or other conditions for applying the convention *ipso iure* are not met. This way of application of provisions of international conventions often occurs in the case of contracts of carriage, especially carriage by sea and carriage by road, on the basis of the so-called paramount clause. In the case of sea transport it is dictated by the narrow scope of application of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading of 25 August 1924,[15] amended by the Protocol of 23 February 1968[16] and the Protocol of 21 December 1979 (referred to in practice as the Hague Rules or, after the 1968 amendments mentioned above, the Hague-Visby Rules) and by the marginal application (due to the small number of ratifications, especially among the so-called biggest flag states) of the United Nations Convention on the Carriage of Goods by Sea of 31 March 1978[17] (the so-called Hamburg Rules). In the case of carriage by road, it concerns mainly carriage performed in the territory of one country, thus without an international angle. In given carriage within national boarders (especially in the case of cabotage, that is transport by a carrier without a registered seat or branch in the country in the territory of which the carriage is per-

[14] M. Koziński seems to suggest such hierarchy with reference to acts of maritime law [Koziński 2010, 31].
[15] Journal of Laws of 1937, No. 33, item 258.
[16] Journal of Laws of 1980, No. 14, item 48.
[17] Poland did not ratify this convention.

formed), the parties often decide to refer to CMR as a convention they are more familiar with than domestic law.

As much as the practice of carriage by sea does not trigger major legal doubts (no imperative regulations *ipso iure* applicable to a given type of international carriage or the broadly applied principle of freedom of contract in domestic legislations, that could be applicable), reference to CMR with regard to domestic carriage may do so. This results from the fact that domestic legislation pertaining to road transport applicable in given carriage is often mandatory. CMR's provisions included by virtue of the will of the parties to the content of a contractual relation may, therefore, be contrary to domestic legislation applicable to a given contract. Such a situation occurs, *inter alia*, in Polish legislation where it is assumed that provisions of the Transport Law of 15 November 1984[18] are imperative, at least with regard to provisions on rules for the carrier's liability, on determining compensation or on redress. This raises a question about the convention's applicability in such a situation.

An answer to such question depends on the realisation of the nature of the reference to an international convention contained in civil law agreements.

Contrary to what is often assumed in practice, it is not a conflict-of-law choice of law, but the so-called designation of substantive law [Pazdan 1995, 105–19]. Provisions of a convention are not then treated as provisions of the law, but as an element that forms the content of a civil law relationship by virtue of the will of the parties (sometimes it concerns the content of the agreement [ibid., 110], though this approach seems to be a certain simplification). Provisions of conventions, then, have the function similar to the function of a standard form contract that does not derive from any of them. As a consequence, their applicability depends not only on the content of legal norms that enforce their own competence[19] or *orde public*, as is the case in the exercise of the autonomy of the will of the parties pertaining to the choice of law, but also on mandatory rules.

The literature shows that applicable provisions should be subject to interpretation according to rules relevant for interpretation of contractual provisions that result from the internal law applicable to a given relationship, not rules for interpretation of provisions of the law [ibid.]. It seems, however, that such a firm stance on the matter is unfounded. It is because one cannot overlook the obvious fact that neither of the parties formed the content of individual provisions of the convention. Even if a convention is applied by virtue of the will of the parties on the basis of a paramount clause, when interpreting a standard form contract, it is difficult to ignore the fact that it comes from an entity (independent of the parties) who certainly tried, when wording individual provisions, to weigh the interest of the parties of the regulated legal relationship. It is also difficult to disregard views

[18] Journal of Laws of 2020, item 8.

[19] For norms that force their competence see Mataczyński 2005.

stemming from judicial decisions and literature that have been formed on the basis of a convention to which the parties referred in their agreement.

An interesting solution can be found in Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM) which forms Annex B to COTIF. These provisions are applicable only when the place of taking over of the goods and the place designated for delivery are situated in two different Member States (in the sense of belonging to OTIF, of which COTIF signatories are members), irrespective of the place of business and the nationality of the parties to the contract of carriage (Article 1(1) CIM). However, pursuant to Article 1(2) CIM, Uniform Rules shall apply also to contracts of international carriage of goods by rail when the following condition is met: only one of the countries (of taking over of the goods or of delivery) is a Member State and the parties to the contract agree that the contract is subject to these Uniform Rules. Such a solution was dictated by the wish to approximate two international systems of the carriage law (COTIF and SMGS, which covers former states of the Eastern Bloc) [Godlewski 2007, 23]. However, at this point we are interested in the nature of the arrangement made between the parties to the contract of carriage. It seems that it escapes the differentiation between conflict of law choice of the law and the designation of substantive law. The latter is a reminder in this respect that it does not apply to national law. On the other hand, however, it needs to be assumed that the applied CIM/COTIF provisions maintain their normative (not contractual) nature. An arrangement, though it does resemble a paramount clause, is in fact a condition for the application of the convention *ex proprio vigore* with all resulting consequences.

4. APPLICATION OF INTERNATIONAL CONVENTIONS TO HYPOTHETICAL LEGAL RELATIONS

The content of one convention may at times determine the application of another specific international convention. An interesting reference can be found in two carriage conventions, that is in Article 2 of the Convention on the Contract for the International Carriage of Goods by Road (CMR)[20] and in Article 26 of the Rotterdam Rules,[21] which are supposed to regulate transport by sea in the future along with carriage by other means of transport accompanying the sea segment.[22] In both cases there is a reference to unspecified international conventions,[23] appli-

[20] Convention on the Contract for the International Carriage of Goods by Road and Protocol of Signature done at Geneva 19 May 1956 (United Nations, Treaty Series, vol. 399, p. 189) [hereinafter: CMR].

[21] Hereinafter: RR.

[22] United Nations Convention of 11 December 2008 on Contracts for the International Carriage of Goods Wholly or Partly by Sea, A/RES/63/122. This convention is called "Rotterdam Rules." The convention has not yet entered into force due to insufficient number of required ratifications. The convention requires to be ratified by 20 countries before it enters into operation (Article 94(1) RR).

[23] In the case of CMR national regulations may also be considered [Wesołowski 2013, 152–55].

cable in other branches of transport, pertaining to carrier liability for damage resulting from carriage that employs more than one mode of transport.[24] A special solution was applied here which involves establishing rules of carrier liability through reference to a legal system other than the one resulting from the referring convention, one that is relevant for the mode of transport during which the damage occurred. It is about a regime that in not applicable to the entire carriage, but one which would be applicable if separate contracts were executed for individual segments of carriage. Literature treats such cases as reference to a hypothetical contract of carriage [Bombeeck, Hamer, and Verhaegen 1990, 134; Czapski 1990, 173; Hoeks 2010, 167; Sturley, Fujita, and Ziel 2010, 65–66; Ziegler, Schelin, and Zunarelli 2010, 148].

The very structure of reference to a hypothetical contract is similar in both these conventions. Their provisions order to apply a system which would be applicable "if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage" (Article 26 RR) or "if a contract for the carriage of the goods alone had been made by the sender with the carrier by the other means of transport in accordance with the conditions prescribed by law for the carriage of goods by that means of transport" (Article 2(1) CMR). However, there are differences between the measures prescribed in both of these conventions. Let us leave out the fact, irrelevant to this discussion, that Rotterdam Rules refer only to another act of international law, while Article 2(1) CMR may be understood as reference to domestic legislation. What is more compelling, is that the provision of Article 26 RR refers only to those provisions of other international conventions that are applied "automatically," are imperative or semi-imperative in nature (their application cannot be excluded to the detriment of the sender) and only pertain to carrier liability, limitation of his liability and limitation periods. In the case of CMR the question of the nature of the provisions referred to is not unambiguously standardized. It is not quite clear whether provisions referred to by Article 2(1) sentence 2 CMR are peremptory norms (as suggested by the French version of CMR "*dispositions impératives de la loi*") or default rules (as the authentic English text of the convention can be read: *the conditions prescribed by law*) [Czepelak 2008, 420–21; Hoeks 2010, 168; Bombeeck, Hamer, and Verhaegen 1990, 141; Clarke 2014, 49; Basedow 1997, 912; Lojda 2015, 162; Ramberg 1987, 29–30]. Moreover, the dispute concerns whether the reference pertains solely to provisions applied by virtue of the law itself or to provisions applied by virtue of the will of the parties.[25] This issue is crucial from the practical point of view since this provision applies primarily in the case of transporting a car along with the goods by a sea ferry, where the question of is-

[24] With CMR it is about the so-called piggy-back ride, that is a situation where a vehicle loaded with goods is carried by a different means of transport, e.g. a ferry, in a segment of the carriage route.
[25] Controversies that arose around the selected problems lead to the regulation of Article 2 CMR to be named the *English nightmare* in the literature [Theunis 1987, 256].

suing a consignment note, and in effect – application of the Hague-Visby Rules *ex proprio vigore*, may always trigger doubts.

However, it does not seem that the discussed discrepancies cause a different assessment of the nature of provisions of the convention referred to, even if a broad nature of a reference under Article 2 CMR were to be assumed. These provisions are applicable by virtue of the will of the international legislator as a reference included in another international convention. This means that even if the court concluded that in a specific case of a hypothetical contract they were to be applicable as a universally applied paramount clause rather than *ex proprio vigore*, one would still need to conclude that it is about the application of a legislative act and not only a standard form that stipulates the content of a legal relation by virtue of the will of the parties. Provisions that employ such a structure include, in fact, certain conflict of law rules. Their specific character lies in the fact that they do not employ traditional connectors that designate applicable national law but refer to other international conventions which are relevant to the branch of transport. What is more, application of Article 2(1) sentence 2 CMR and Article 26 RR requires that suitable conflict of law rules be applied which set out the scope of application of conventions that establish uniform law.[26]

5. APPLICATION OF AN INTERNATIONAL CONVENTION THROUGH CHOICE OF THE LAW OF THE COUNTRY-PARTY TO THE CONVENTION

Some focus must be given to a situation in which an international convention were to be applicable to a given civil law relationship by designating the law of the country-party to the convention as applicable by means of conflict of law rules. This naturally concern cases where the evaluated legal relationship has attributes of "internationality" within the meaning of a given convention but not all requirements of its application *ex proprio vigore* are met. Such a situation is expressly stipulated in Article 1(1)(b) of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.[27] This convention is principally applicable to contracts of the sale of goods executed between parties whose places of business are in different states that are contracting states (Article 1(1)(a) CISG). However, pursuant to Article 1(1)(b), the convention is also applicable "when the rules of private international law lead to the application of the law of a Contracting State." A view on such a possibly of applying an international convention that includes uniform rules is also voiced with reference to other conventions which lack an analogical provision [Basedow 1997, 873].

The provision of Article 1(1)(b) CISG may raise doubts, especially if it is referred to a situation in which a convention were to be applied on its basis by a co-

[26] For a different angle see Czepelak 2008, 91.

[27] United Nations, Treaty Series, vol. 1489, p. 3 [hereinafter: CISG].

urt of a state that is not its party and, as a consequence, which is responsible under international law for the application of its provisions. This is why it is criticised in the literature [Pazdan 2001, 58]. Therefore, the situation regulated by it should be treated as exceptional and not subject to expanding interpretation. This is also why this article should not be applicable in a situation in which the law of the state-party to the convention does not result directly from conflict of law rules but from a conflict of law choice of the law made by the parties to the contract of sales on the basis of these rules.[28] Irrespective of this, a norm expressed in this article should not be generalized or referred to international conventions which do not provide for such a measure.

CONCLUSIONS

Provisions of international conventions that contain uniform rules of private law may be applied also in situations that do not directly result from a conflict of law rule interpreted from its own provisions and specifying its own scope of application. The manner of application of an international convention may then differ from the typical cases of application of international conventions *ex proprio vigore*. These differences are not always noticed in judicial practice. On the other hand, legal scholarship sometimes overemphasises the different nature of convention provisions in such situations, equating them with contractual provisions. This results in an unwarranted demand to interpret such provisions in a manner appropriate to declarations of intent. Therefore, each case of application of provisions of international conventions containing private law rules, in circumstances other than those arising from its own provisions, must be analysed separately, taking into account the context and circumstances from which it arises.

When applied on the basis of references in other systems of law (Union or domestic), provisions of conventions maintain their character and their autonomy towards other systems of the law with all related consequences that concern, *inter alia*, interpretation of or filling of gaps in the law. The same applies to a situation in which a given international convention is applied as a reference contained in another international convention, also if this is done by using the structure of a hypothetical contract.

The situation is different where provisions of international agreements that contain uniform law are implemented to the domestic or Union legislation, even if the implementation is expressed through a mechanical transposition of these rules to a given system (e.g. in the form of extracts from conventions as annexes to acts of Union law). Such provisions become a law of the system into which they are implemented and are therefore subject to rules of application and interpretation relevant to this body of laws. Views formed in the study of law and judicature

[28] A contrary view in: Pazdan 2001, 59.

addressing the same convention may be considered to a limited degree and must take into account a different character of the rules interpreted.

The case is yet different in a situation when the application of provisions of an international convention is determined by the will of the parties expressed as a rule in the so-called paramount clause. Such provisions must not be treated as provisions of the law. This does not mean a complete resignation from using the views of legal scholars and commentators and judicature when interpreting such provisions. However, such a situation must be distinguished from one in which the will of the parties is only one of the conditions of application of a convention by virtue of its own provisions.

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