Jurisdiction x applicable law. Domicile. Habitual Residence

European Private International Law
The aims of the presentation

• Difference between jurisdiction and applicable law
• To provide an overview of domicile as connecting factor under Brussels I Regulation (and other European laws)
General jurisdiction based on domicile

• Art. 2(1) Regulation:
  – Subject to this Regulation, persons *domiciled* in a Member State shall, whatever their nationality, be sued in the courts of that Member State
The rationale for domicile as general jurisdictional rule

- Actor sequitur forum rei → Natural forum
- Predictability and legal certainty
- Jurisdictional rules which depart from this general rule can only be used in the specific cases as expressly provided for in the Regulation Brussels I (Group Josi)
General jurisdiction based on domicile

• Defendant’s domicile is important (*Owusu*)
• Where the plaintiff is domiciled is of no consequence for the application of the Regulation

• Nationality is of no importance – e.g. Russian citizen domiciled in Germany may be sued in Germany in accordance with the Regulation
• Discrimination on the ground of nationality is prohibited
General jurisdiction based on domicile

- Defendant must be domiciled in a MS
- Exceptions:
  - Defendant *may* be sued in a MS other than his domicile in the cases mentioned in Art. 5-7
  - Defendant *must* be sued regardless of his domicile
    - Art. 22 – exclusive jurisdiction
    - Art. 23 – forum choice agreement, prorogation
    - Art. 24 – tacit prorogation
Important

- Art. 2 does not touch upon the national rules of venue
- Art. 2 does not confer jurisdiction upon the court of the place where the defendant is domiciled
- \( \rightarrow \) he may be sued in any court of that MS, which has jurisdiction under the State’s national law

- *Forum non conveniens* is not allowed (*Owusu*)
- International element!
Article 2/2 – assimilation

• Persons without the nationality of the MS in which they are domiciled, shall be treated in accordance with the rules of national jurisdiction applicable to national of that State
Domicile of natural persons (art. 59)

1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.

2. In order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.
Lack of autonomous def. of domicile of natural persons

- Domicile of natural persons is not defined autonomously in the Regulation
- Grounds: Huge differences in the understanding of domicile among MS (esp. GB and Ireland v continental legal systems)
  - In common law the notion of domicile refers to a person‘s roots „within a territory covered by a particular legal systém“
Moment of domicile

- Moment of a domicile – moment of instituting the proceedings is decisive
- Changes in domicile in time - perpetuatio fori, i.e. court retains its jurisdiction
Domicile of natural persons vs. habitual residence

• Art. 59 does not refer to the notion of **habitual residence** (frequently used in conventions on PIL in order to determine personal status)
• Habitual residence = country with which a person has the closest bond, where the centre of his/her social life is situated
• Factual
• Used only in Art. 5/2 in case of maintenance claims
Domicile of companies, other legal persons, associations ...

- Art. 60 reg. – autonomous definition
- Autonomous definition of domicile – to avoid conflicts of jurisdictions
- Domiciled at the place where it has (criterions to ascertain domicile):
  - Statutory seat
  - Central administration
  - Principle place of business
Domicile of companies, other legal persons, associations ...

- Exception to art. 60 – Art. 22/2 regarding exclusive jurisdiction in proceedings concerning certain matters of company law
Company or other legal persons

• Divide natural persons and the other persons

• Encompasses also organisations not having legal personality (e.g.):
  – Smlouva o sdružení (§ 829 Czech Civil Code)
  – Partnership (English law)
  – Società semplice (Italian law)
  – European Company, European Economic Interest Grouping (under specific Regulations)
Criterions for ascertaining domicile

• These three criteria are taken from art. 48 TEC
• There is no hierarchy among these criterions
• Criteria are equal but exhaustive
• They must be used to avoid negative conflicts of jurisdictions
Statutory seat

• Legal person has its statutory seat in MS where is incorporated
• it could be find in a public register (e.g. Obchodní rejstřík)
• Unknown to the legal systems of the UK and Ireland → special provision (art. 60/3/ Regulation)
• Legal concept (it need not to be identical with real seat)
Central Administration

- Management and control center
- So called real seat
- Less easier to ascertain than statutory seat (it will depend on claimant to prove this place as a domicile)
- Factual concept
Principal place of business

• Where the main business activities are located (cf also art. 4(2) Rome Convention)
• Factual concept
• Do not confuse with ‘branch, agency or other establishment’ according to art. 5(5) Regulation, they refer to a certain degree of dependency between the local entity and the parent body
Domicile of trusts

• Art. 60/3 provides for the determination of the domicile of the trust
• National court shall apply its rules on PIL – problems in civil law countries (The Hague Trust Convention)
Domicile in practice 1

• Example 1:
• Company C has its statutory seat in Czech Republic, central administration in Czech Republic and principal place of business, surprisingly, in Czech Republic
• Where could be C sued?
Domicile of legal persons in practice 2

• Example 2:
  Company C has its statutory seat in Netherlands, its central administration is in Germany and principle place of business in Greece
• Where could be C sued?

• Positive conflict of jurisdiction – lis pendens – Art. 27-30
Domicile in practice 3

- Example 3:
- Company C is registered in Delaware, USA and has its central administration in Germany and its principle place of business is France
- Where could be C sued?
Domicile in practice 4

• Example 4:
• Company C has registered seat in Moscow (Russia), and its principal place of business in Greece.
• Where is C domiciled for the purposes of the Regulation?
• Where could be C sued?
Conclusion

• Legal person or similar persons under art. 60 may have more than 1 domicile
• Potentially, legal person could be sued in 1-3 MS (only the rules of domicile taken into account, letting aside special jurisdictions etc.)
Exclusive jurisdiction under art. 22 of Regulation

- Defendant **must** be sued regardless of his domicile
- Rights in inmovable property
- Companies and other legal persons
- Validity of entries in public registers
- Registration or validity of intellectual property rights
- Enforcement of judgments
Exclusive jurisdiction under art. 22(2) Regulation

- Proceedings which have as an object the validity of the constitution, the nullity or the dissolution of companies or other legal persons, associations and so forth, or of the validity of the decisions of their organs, the court of MS, where company and other similar persons has its seat. The court of MS shall apply its PIL to determine the seat.

- The exception to art. 60
Thank you for your attention