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Measures of Cross-Border 'Protection of Adults' (Guardianship, Curatorship, Incapacitation or Similar, and Register): Development of Polish Law and EU Proposals of 2023

ABSTRACT: *In 2023, the EU Commission announced a proposal for an EU Regulation on the international protection of adults. In terms of EU treaties' terminology, these are areas of judicial cooperation in civil matters. The idea of those intra-EU legal solutions generally presupposes making the Hague Convention of 2000*[1] *applicable in all EU Member States. The objective of this legislative initiative is to issue a supplementary EU regulation concerning domestic jurisdiction and the recognition and enforcement of foreign judgements. It is necessary to discuss and evaluate them in particular from the perspective of the current law of a Member State (e.g. Part Four of the Civil Procedure Code), as well as to indicate the global international agreements (that is, the 1905 and 2000 Hague Conventions and numerous bilateral conventions) and the Act of 2011 on Private International Law. In the current conflict-of-law state of play (e.g. in Poland, without applying the 2000 Convention), Articles 1106[1] and 1107 of the Civil Procedure Code (after the 2009 amendment) are of key importance for determining national jurisdiction (international jurisdiction of courts) in incapacitation cases and guardianship or curatorship. These cases fall within the scope of application of domestic rules on private international law. In particular, Article 13 of Private International Law, covering incapacitation, and Article 60 PIL, regarding guardianship, are crucial*

1 Convention on the International Protection of Adults, concluded on 13 January 2000 [Online]. Available at: https://www.hcch.net/en/instruments/conventions/full-text/?cid=71 (Accessed: 8 December 2023), hereinafter the Hague Convention of 2000. Introductory remarks to the Convention after its adoption and the translation were published by Mostowik and Symołon, 2002, pp. 469 et seq. A general characterisation was provided by Juryk, 2016, pp. 27 et seq. Regarding the development of the convention area in recent years, see Frimston, 2020, pp. 226 et seq.

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for determining the applicable law in guardianship cases.
Additionally, the author identifies issues for further study on the EU proposals of 2023 versus the domestic current state of play, including implications of terminological changes, the broad scope of the 'protection measure', and the issue of linking to the 2006 UN Convention.

■ **KEYWORDS:** *international unification of law, measures of protection of adults, cross-border enforcement, incapacitation, guardianship, curatorship, register of vulnerable measures and persons, Polish private international law, Polish international civil procedure, EU Commission's proposals of 2023, 2000 Hague Convention, older persons*

1. The idea of legislative proposals of EU Commission – Protection of adults (i.a. older persons)

In its recent documents, the EU Commission announced two legislative initiatives on 'adult protection' measures, that is, guardianship and curatorship in the case of incapacitation or limitation of capacity, public registers of such measures and other similar legal institutions, and a uniform certificate of representation in cross-border cases. They include two documents from 31 May 2023: the Proposal for an EU Regulation concerning private international law *sensu largo* (including international civil procedure and mutual assistance)[2] and the Proposal for a Council Decision authorising Member States to be parties to the Convention of 13 January 2000 on the International Protection of Adults.[3]

The idea of those intra-EU legal solutions (*lex specialis* in relation to other current global instruments) generally presupposes making the Hague Convention of 2000[4] applicable in all EU Member States. Thus far, the Hague Convention of 2000 has entered into force in 14 countries, mainly in Europe. The second objective of this legislative initiative is to issue a supplementary EU regulation which,

2 Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults, COM (2023) 280 final, hereinafter - COM 280 of 2023 or Draft EU Regulation.

3 Proposal for a Council Decision authorising Member States to become or remain parties, in the interest of the European Union, to the Convention of 13 January 2000 on the International Protection of Adults, COM (2023) 281 final, hereafter - COM 281 of 2023.

4 Hague Convention of 2000. Introductory remarks to the Convention after its adoption and the translation were published by Mostowik and Symołon, 2002, pp. 469 et seq. A general characterisation was provided by Juryk, 2016, pp. 27 et seq.; Mostowik, 2024, pp. 5–58. Regarding the development of the convention area in recent years, see Frimston, 2020, pp. 226 et seq.

within the material scope of 'adult protection', introduces a regional modification of the Convention (that is, concerning domestic jurisdiction and the recognition and enforcement of foreign judgements) and supplements it (mainly in the area of mutual judicial assistance and interstate cooperation) in those Convention states which are EU Member States. Hence, it is necessary to discuss and evaluate them from the perspective of the current laws of Member States (e.g. Part Four of the Civil Procedure Code),[5] as well as to indicate the global international agreements (that is, the 1905 and 2000 Hague Conventions and numerous bilateral conventions) and the Act of 2011 on Private International Law.[6]

In terms of EU treaties' terminology, these are areas of judicial cooperation in civil matters. Therefore, before discussing individual provisions of national law (mainly private international law and the 'international' part of the Civil Procedure Code) and drafting future EU regulations, which in turn are linked to the Hague Convention of 2000, it is necessary to provide a closer overview of the key issues of jurisdiction in international cases, applicable law, the effectiveness of foreign judgements, and international cooperation of courts in civil matters. The discussion of guardianship and curatorship in the event of incapacitation or limitation of capacity and similar measures aimed at the protection of an adult in legal transactions with foreign countries, which forms a further essential part of this paper, is based on the national and international laws precisely from the perspective of the EU Commission proposals of 2023.

It should also be noted that the scope of cases in question has been subject to developments in the substantive laws (in particular civil and family codes) of individual countries in recent years, as well as outside private law[7] and at the international level.[8] Further de lege ferenda proposals and legislative initiatives should be expected, which will result from new social needs related to the increase in the number of older persons (especially in Poland, which is the consequence of the demographic crisis)[9] and the intensification of their needs and protection in trade, including private substantive law.

5 Act of 17 November 1964 - Code of Civil Procedure, consolidated text, Dz. U. 2021 r., poz. 1805 ze zm.; hereinafter the CCP.

6 Act of 4 February 2011 - Private International Law (Dz.U. 2023 poz. 503), hereinafter: 'PIL'.

7 The legal areas where support for the older seems to be necessary in the first instance are accurately identified by Plaňavová-Latanowicz, 2019, pp. 5 et seq. and Błędowski et al., 2017, pp. 10 et seq. Numerous materials on the amendments to German law that have been introduced and proposed in this area are available on the Betreuungsgerichtstag website [Online]. Available at: https://www.bgt-ev.de/ueber_den_bgt.html (Accessed: 11 August 2025).

8 Regarding the international institutionalisation of measures to protect the rights of the older people – see Mikołajczyk, 2012, pp. 55 et seq.

9 See Urząd Statystyczny w Białymstoku, 2021.

2. Current procedural solutions in member states (example of Polish law)

■ *2.1. Code of Civil Procedure rules on jurisdiction in matters of incapacitation of an adult and guardianship or curatorship*

In some EU states (that is, in Poland, where the 2000 Convention is not in force), national law is applied to the discussed matters. Article 1106[1] CCP (after the 2009 amendment) is of key importance for determining national jurisdiction (international jurisdiction of courts) in incapacitation cases.[10] This article covers the establishment or revocation of (partial or total) the incapacitation of an adult, and the change of total to partial (and partial to total) incapacitation (Article 559 CCP). The decisive moment for determining the basis for jurisdiction in light of Article 1097 § 1 CCP is the moment when the proceedings are initiated. The competence of the Polish courts is determined by the circumstances (that is, Polish citizenship or the foreigner's residence in Poland) relating to the person affected by incapacitation rather than the applicant. The latter may be a foreigner or a resident abroad. National jurisdiction, unlike in custody cases, does not extend to cases of persons temporarily residing in Poland (temporary residence or simple residence). In exceptional situations, the required jurisdiction may be considered (Article 1099[1] CCP), despite the absence of these grounds for jurisdiction, if the case shows a connection with Poland.[11]

Following the 2009 amendment to the CCP, the scope of exclusive jurisdiction in the cases in question has been reduced in domestic law, which means that the effectiveness of foreign judgements referred to in Article 1146 § 1(2) CCP has been extended. Previously, Article 1106 § 1 stipulated exclusive national jurisdiction in cases of incapacitation of Polish citizens. This applied not only to persons residing in the country but also to cases of incapacitation of Polish citizens residing abroad, which could be questionable.[12] Another type of concern was raised under the previous normative status by the new solution causing lack of domestic jurisdiction in cases of incapacitation of foreign nationals residing in Poland, which could not only be contrary to the best interest of them, but alsobut also violate the interests of Polish citizens who have civil law relations with them and, more broadly, the security of transactions.

10 See more Lubiński, 1978, pp. 98 et seq.; Ereciński, 2017, pp. 166 et seq.; Wiśniewski, 2021, p. 132.

11 Ereciński, 2017, p. 168 provides an example of the revocation or modification of incapacitation ruled by a Polish court against a foreigner who currently has neither a place of residence nor habitual stay in Poland.

12 See the decision of the Supreme Court of 6 November 1978, IV CZ 127/78, OSNCP 1979, no. 7–8, item 155.

In contrast, for the grounds of national competence (international jurisdiction of the courts) in cases related to custody and other guardianship orders in matters related to adults, Article 1107 CCP is of key importance.[13] It refers to the appointing of a guardian or curator (Articles 590 et seq. and 599 et seq. CCP) under conditions specified in substantive law, including guardianship for a partially incapacitated person (Article 16 § 2 of the Civil Code (CC)),guardianship for a totally incapacitated person (Article 13 § 2 CC), and curatorship for a disabled person. A curator is appointed if the person needs assistance to manage all matters or matters of a particular type or matter (Article 183 of the Family and Guardianship Code),[14] and curatorship is intended to protect the rights of a person who, due to absence, cannot manage his or her affairs and has no attorney (or who cannot perform his or her activities or performs them improperly; Article 184 of the FGC). This also relates to a number of other material situations of adult guardianship, which is not a homogeneous institution in Polish law and is provided for by a number of provisions in the CC, FGC, and CCP, as well as by statutes. For example, according to Article 44 of the Act on the Protection of Mental Health of 19 August 1994, a curator may be appointed for a person admitted to a psychiatric hospital, or for a mentally ill or mentally handicapped person in a social welfare home, if the person needs assistance to manage all of his or her affairs or affairs of a certain type at that time.[15]

However, some guardianship situations fall within the scope of other jurisdictional and procedural norms covering specific categories of civil cases. The second sentence of Article 1107 § 1 CCP states that guardianship to deal with a particular case, on the principle of *lex specialis derogat legi generali* and as in the construction of derived jurisdiction, is subject to the jurisdictional norms authoritative for those cases.[16] The curatorship (curator) for the purpose of dealing with a case is referred to in Article 183 of the FGC ('individual case' versus 'the scope of the curator's duties and powers shall be determined by the court') and Article 44(1) of the Act on the Protection of Mental Health ('cases of a specific type'). Simultaneously, these provisions refer to the possibility of appointing a curator to handle all cases under the conditions specified therein, which means considering the general, non-derivative jurisdictional norm of Article 1107 CCP. Alternatively, the appointment of a curator of the estate falls within the norms of EU Regulation No. 650/2012. A separate issue is the appointment of a guardian ad litem by the adjudicating court (e.g. a curator for a party without legal capacity who has no

13 See more Ereciński, 2017, pp. 222 et seq. See more Piasecki, 2013, p. 122; Wójcik, 2020; Wiśniewski, 2021, p. 156.

14 Act of 25 February 1964 - Private International Law (Dz.U. 2023, poz. 2809), hereinafter: 'FGC'.

15 Dz. U. z 2022 r., poz. 2123.

16 A similar non-independent solution is provided for in Article 62 of the PIL, under which the guardianship for the settlement of a particular case is governed by the law of the jurisdiction to which the case is subordinated.

legal representative under Article 69 CCP). According to Article 143 CCP, a curator may be appointed to serve a pleading on a party under circumstances giving rise to the need to defend his or her rights, whose place of stay is unknown, until the party or his or her representative or attorney appears, as well as a curator for a person whole place of residence is unknown under such circumstances.

The jurisdiction provided in Article 1107 CCP is based not only on the Polish citizenship or the place of residence in Poland of the ward or the person under curatorship. It is much broader than the jurisdiction concerning incapacitation. It distinguishes between subsets of guardianship and curatorship cases (e.g. limited in terms of subject matter to real estate or in situational terms to urgent need for protection) and contains a more elaborate regulation, also considering the basis of jurisdiction in the form of residence of the concerned person (simple residence). It has to be considered in the context of various factual situations in which the guardianship court's activity is required, as well as the flexibility of its action. According to Article 570 CCP, the guardianship court may initiate proceedings ex officio. Pursuant to Article 569 § 2 CCP, all necessary orders may be issued ex officio in cases of urgency. Furthermore, considering Article 577 CCP, the guardianship court may modify its order, even a final order, if the welfare of the person concerned so requires.

The location (*situs*) of the property, that is factual circumstances indirectly related to the adult, determines the national jurisdiction over the matters relating to that property. In fact, this separate norm is relevant (as it goes beyond the fundamental jurisdictional norm in Article 1107 § 1 CCP) when a foreigner does not have his or her domicile or habitual residence in Poland, but his or her assets are located in the country, regarding which there is a need to issue an order in the interest of this foreigner. There is no limitation of this competence to real estate. In fact, this jurisdictional rule is also relevant for participants of civil law transactions in the territory and for its improvement. The doctrine emphasises the need for a court to issue such an order when the foreigner's home state or the state in which he or she has residence or habitual place of stay neglects guardianship or the law of that state does not provide adequate guardianship (e.g. the competent authorities of that state, such as the consular office, the courts, remain passive and do not make such decisions despite notification of the need for guardianship or curatorship).[17] Moreover, a similar approach to international cooperation is evident in the context of the Hague Conventions of 1905 and 2000.

Under the current provisions (that is, after the amendment of the CCP in 2009), additional jurisdiction (in relation to cases of Polish citizens, foreigners residing in Poland, and property located here) is provided broadly under Article 1107 § 3 CCP in urgent cases. The first jurisdictional prerequisite of 'sufficient connection of the case with the Polish legal order' is a general formula to be clarified

17 See Ereciński, 2017, p. 226 nb 70.

in the case law. As an example, an order revoking guardianship or curatorship is indicated in a situation where the Polish court had previously established guardianship or curatorship over a foreigner who subsequently changed his or her place of residence or habitual residence by moving abroad, as well as the appointment of a guardianship for a disabled person who is a foreigner who does not have his or her place of residence or habitual stay in Poland, if there is a need for assistance to manage the affairs of such a person in Poland (Article 183 § 1 of the FGC and Article 600 of the CCP).[18] The second premise is a non-permanent stay (residence) in Poland.

Similar to the regulation concerning incapacitation, the national jurisdiction extends to a Polish citizen who resides abroad. In the doctrine, according to such a solution, even before the CCP, it has been noted that sometimes the exercise of guardianship authority by Polish courts in cases of Polish citizens living abroad is unrealistic and may also be inexpedient.[19] In some situations, guardianship proceedings should be an expression of quick and effective action, such as in emergency cases. However, it will not be possible to ensure such prompt and effective action if the person for whom the guardianship or curatorship is to be established resides abroad. At the same time, it is legitimately noted that the Polish court may consider that a court of another state is more competent to hear the case, but refuse to hear the case (along the lines of the Anglo-Saxon doctrine of forum non conveniens).[20] At the same time, in countries where the Hague Convention of 2000 is in force, a similar issue does not arise, as the Convention contains provisions for both countries to regulate a possibility of referral, adoption, and other forms of inter-state cooperation.

Regarding the guardianship of an absent person (e.g. Article 184 § 1 of the FGC, also in the situation of an application by a state administration body under Article 34 § 1 of the Code of Administrative Procedure), it has to be assumed that the grounds for jurisdiction (Polish citizenship or the place of residence or habitual stay of a foreigner) have to be established for the period when these circumstances concerning the adult were last known.

■ *2.2. Code of Civil Procedure rules on the effectiveness of foreign judgements*

In the current system of domestic law, a decision of a foreign court is subject to recognition in Poland by operation of law (ex lege), unless stated otherwise based on an enumerative catalogue of negative premises (grounds for refusal). If a judgement is enforceable, this may take place (that is, it constitutes an enforceable title) after the declaration of enforceability, simplified in the 2009 amendment[21]

18 See Ereciński, 2017, p. 226 nb 75.
19 Lipiński, 1949, p. 72.
20 Wiśniewski, 2021, p. 158.
21 Act of 5 December 2008 amending the Act - Code of Civil Procedure and certain other acts, Dz.U. z 2008 r. Nr 234, poz. 1571; hereinafter - amendment to the CCP of 2009.

(Article 1150 CCP). In the course of these proceedings, similar circumstances to those that hinder recognition may have an inhibiting effect (Article 1146 CCP). The key circumstances justifying the refusal of recognition or declaration of enforceability are covered by the exclusive jurisdiction of Polish courts (Article 1106[1] § 2 CCP); the lack of proper service of the letter initiating the proceedings; the lack of the possibility to defend oneself; the previous pending of the same case before a domestic court; the contradiction with an earlier final judgement of a Polish court or another recognised foreign judgement in the case; and the public order clause (that is, the contradiction of recognition with the fundamental principles of the Polish legal order).

After the amendment of the CCP in 2009, the enhanced practical significance in Poland of the fact that a foreign judgement has been issued in a case is due to several circumstances in the current version of the CCP. First, it results from the introduction of the principle of automatic recognition, streamlining the enforcement of foreign judgements and reducing the grounds that may block these principles, as discussed below. It is also worth noting that in the previous normative status, the area of exclusive jurisdiction of Polish courts was broader, which constituted a barrier to the effectiveness of a foreign judgement, that is, *res judicata*. For example, according to Article 1107 § 1, such a character is ascribed to matters of guardianship and curatorship of a Polish citizen. However, a Polish court could waive the establishment of guardianship or curatorship over a Polish citizen residing or owning assets abroad if he or she had sufficient custody there. In addition, the lack of reciprocity in the country of origin of the judgement was also an important obstacle to the effectiveness of the foreign judgement. Pursuant to Article 1146 § 1 CCP, a judgement was subject to recognition on condition of reciprocity.[22] Currently, the recognition and enforcement of foreign judgements in Poland is not dependent on whether Polish judgements in civil matters are effective in the foreign state in question. In addition, the effectiveness of the foreign judgement was also impeded by the foreign court's failure to apply Polish (or identical) law as the applicable law in adjudication in situations where Polish law was applicable according to the conflict of laws rules in force in Poland (review of the conflict of laws in foreign judgements). Due to this solution, there was a partial harmony (limited to situations governed by Polish law) between rulings issued in similar cases by a Polish court and foreign rulings that were effective in Poland. In accordance with Article 1146 § 1(6) CCP, a judgement was subject to recognition if, in a case in which Polish law should have been applied, that law was applied when it was made (unless the foreign law applied in the case does not differ materially from Polish law). The legislature's focus on the substantive legal result, rather than the formal properties of Polish law, was evident in the

22 This condition - in the light of Article 1150 §2 of the CCP - also referred to the declaration of enforceability of a foreign judgement.

equivalence rule adopted. According to this rule, this condition is also fulfilled in the case of the application of a foreign law, but one that is not materially different from Polish law.[23]

Additionally, the number of cross-border cases substantively adjudicated by Polish courts was increased under the previous legal status, as the Polish court did not depend on the fact that the case was pending before a foreign court (that is, it did not consider the foreign pending of the case). Pursuant to Article 1098 CCP prior to its amendment in 2009, Polish courts were awarded the jurisdiction provided for in that code, even if proceedings were pending before a court of a foreign state in the same case between the same parties. Currently, according to Article 1098 § 1 and 2 CCP, if a case for the same claim between the same parties is pending before a foreign court earlier than before a Polish court, the Polish court shall suspend the proceedings. Subsequently, due to the recognition of the foreign judgement in Poland, the court discontinues such proceedings. Therefore, pending of the case before the foreign court inhibits the substantive adjudication of the case.[24]

In the amended Code regulation, there is no requirement of reciprocity between Poland and the country of issuance of the judgement.[25] Moreover, the Code narrows the scope of exclusive jurisdiction, and thus this condition blocking the effectiveness of a foreign judgement will occur less frequently (Article 1146 § 1(2) CCP). The 2009 amendment to the CCP, by simplifying the mechanisms of recognition and enforcement and reducing the catalogue of grounds for refusal and the scope of exclusive jurisdiction, led to a wide 'opening of the door' to the effects of foreign judgements, including those concerning adult personal and guardianship matters.[26] The normative situation in other EU member states may be different, that is, foreign judgements, including those from EU member states, may be subject to closer scrutiny or their recognition may be additionally determined (e.g. by the premise of reciprocity or the convergence of conflict-of-law rules applied abroad).[27] Hence, they will have a different assessment of the proposed 2023 solutions aimed at introducing efficient mutual recognition and enforcement of judgements within the EU.

23 See Jodłowski, 1985, pp. 135–140.

24 Pursuant to Article 1098[1] of the CCP, the court may also suspend the proceedings if the outcome of the case depends on the outcome of foreign proceedings in a related civil case.

25 See Weitz, 2005, pp. 176 et seq.

26 See Ereciński, 2017, p. 222; Wójcik, 2020.

27 See Jodłowski, 1985, pp. 119–129.

3. Member States' current rules on law applicable (example of Polish law)

■ *3.1. Act on Private International Law rules on the incapacitation, guardianship, and custody or similar measures*

In the current conflict-of-law state of play (e.g. in Poland, without applying the 2000 Convention), these discussed cases fall within the scope of application of domestic rules on private international law. Article 13 PIL, covering incapacitation,[28] and Article 60 PIL, regarding guardianship, are crucial for determining the applicable law in guardianship cases.[29] In my opinion both of the articles, applying autonomous interpretation, cover other similar measured of protection of adult (eg. limitation of capacity or assistance).

The initial draft PIL of 2011 provided the distinction between child and adult care was apparent. The plan was to abandon the solutions contained in the PIL Act of 1965, relying on a liaison of citizenship in child matters, as in adult custody matters. However, it seems that the intention was not to abandon the jurisdiction of home law altogether, in particular with regard to adult custody. The draft[30] includes a separate provision on incapacitation, which early on in the doctrine was included in the capacity statute, as discussed further below. What was not included was a provision for the establishment of guardianship, which was relevant not only to the child's case but also to the adult's.[31] The guardianship provision (as well as the absence of such provision) was also relevant to adult cases. The absence of such a provision created more difficulties for adults than for children, to whom provisions for possible appropriate application (e.g. 'the use of other measures for the protection of the child') applied. In the final version of the Act, this deficiency was supplemented precisely by Article 60 PIL cited above.

Currently, incapacitation is referred to in Article 13 PIL. Paragraph 1 provides for a citizenship link, which continues the solutions of previous acts of law.[32]

28 See more Pilich, 2017, pp. 295 et seq. and Pazdan, 2018, pp. 190 et seq.

29 See more Rycko, 2017, pp. 921 et seq.; Pazdan, 2018, pp. 525 et seq.

30 See Government draft Act - Private International Law, Sejm print no. 1277 (6th term of office) [Online]. Available at: https://www.orka.sejm.gov.pl (Accessed: 11 August 2025).

31 See Mączyński, 2007, p. 95; Ibidem, Mączyński, 2009, p. 20.

32 However, Pazdan, 1967, p. 88, advocated under the 1965 Act in favour of classifying incapacitation under the guardianship statute rather than the capacity statute ('By its very nature, incapacitation is an undertaking of a guardianship nature, its prerequisites should therefore be governed by the law applicable to guardianship (if nothing else is expressly stated in the law), furthermore that the meaning of incapacitation goes well beyond capacity. (...) On the other hand, according to the law applicable to capacity, we will determine the effect of the incapacitation on capacity, most often in connection with a specific legal act that has already been performed or is to be performed by the incapacitated person'.).

However, paragraph 2 refers to the Polish court applying its own law. This second solution (jurisdictional *lex fori*), in fact implying an indirect role of the rules of jurisdiction for determining the applicable law (not only based on nationality), will in practice eliminate the use of the solution described as the first one.[33]

A. Mączyński emphasises, among others, that since Polish courts in an incapacitation case should always rule on the basis of Polish law, Article 13(1) has no practical significance.[34] While criticising the draft act, the author did not intend to to withdraw from the content contained inparagraph 1, which would mean that the Polish court would apply its own law (*lex fori*). The author intended rather to remove the entire provision on incapacitation (and a similar one on declaration of death and recognition as dead), as the general provision on capacity, providing for the nationality of the person concerned, would apply to these cases.[35] M. Pilich emphasises that 'the unilateral conflict rule of paragraph 2 prevails according to the regulation as a whole'.[36] Although A. Kozioł and K. Sznajder-Peroń present the claim that there is no practical significance for paragraph 1 of Article 13 PIL 'seems justified only prima facie',[37] they provide, for the needs of another position, an example of the application by a foreign court rather than by the Polish court concerned by the observation. Despite the fact that the situation of the foreign court's application of Polish conflict of laws (e.g., for the possible consideration of the reference), somehow 'escapes' from the problem of the application of the national law and the perspective of the Polish court, and moreover, given the current trends in private conflict of laws aimed at disregarding the renvoi, will occur rarely. The authors state that 'this provision then prevents a reflexive reference, counteracting the exclusion of the jurisdiction of Polish law in a case concerning a Polish citizen examined by a foreign court', and refer to the view of M. Pazdan, expressed, following the voices from the time of the discussions on the 1926 and 1965 PIL, with regard to the similarly structured Article 14 PIL, about the acknowledgement of death and confirmation of death and duplicates a similar solution for this scope of cases provided for in Article 11 PIL of 1965.[38] The assertion of the meaning of Article 13(1) PIL of 2011 in the context of paragraph

33 Pazdan, 1967, pp. 97–102, presents in detail the qualification problems arising when several conflict of laws rules are in force for particular elements of the life situation, that is the statute of capacity (lex patriae), and the statute of defects in declarations of will (lex causae). Such an example in the current normative status, due to a separate provision in the 2011 Act, could also be the incapacitation statute due to the fact that the norm related to the conflict of laws does not exclusively use the link of nationality, but usually provides for the jurisdiction of its own law (lex fori).

34 See Mączyński, 2013, pp. 729, 736.

35 Such a demand results from the opinion expressed during the legislative work – see Pazdan, 2011, pp. 93–94; Mączyński, 2013, p. 736, accuses that paragraph 2 of the solution is 'asymmetrical' and excessively favouring Polish law.

36 Pilich, 2017, p. 295.

37 Pazdan, 2018, Nb 12.

38 Pazdan, 2017, p. 129.

2 is not convincing (also with regard to the similarly structured Article 14 PIL) for theoretical and practical reasons. The issue of the examination of foreign conflict-of-law rules (e.g. Polish) by a foreign court, which decides on the basis of the jurisdiction and conflict-of-law rules in force in the country concerned, is an issue that the national legislator cannot, in fact, assume and thus even indirectly 'regulate'. If a foreign court adjudicates in the case (that is, has jurisdiction, e.g. on the basis of foreign nationality or residence of an adult in the relevant country), it will apply its own conflict-of-law rules. Even if the condition were fulfilled that in the general part they presuppose, first, an examination of foreign (here: Polish) conflict-of-law rules in order to verify the referral and, second, that they provide for the effect of a renvoi (that is, somehow, a return to the jurisdiction of the law of the court), this objective of 'preventing a *renvoi*' seems questionable. This could be the case if the foreign conflict-of-law rules expressed a reflexive reference in the general part and used, for example, a nationality link in the specific part, which, given the Polish nationality of an adult, would lead to Polish rules which in turn would use a residence link, precisely *in concreto* located in that country. However, this is not the case, as Polish conflict-of-law rules do not provide for a residence connecting factor in the scope concerned. In contrast, in the opposite factual situation, where the foreign conflict rules by way of a residence connecting factor lead to Poland and the adult is a citizen of a foreign state, it is paragraph 1 of Article 13 PIL in conjunction with the foreign solutions of the general part that will 'lead to' the back-referral rather than prevent it. Furthermore, in the absence of paragraph 1 of Article 13 PIL of 2011, a reflexive reference would not exist either, since paragraph 2 of Article 13 PIL of 2011 refers to the adjudication by a Polish court and unilateral application of Polish law, and does not express an abstract connecting factor that could theoretically be located in that foreign state, nor does it provide for the multilateral formula of jurisdiction legis fori permissible under international law.

Not all of the above reported directions of interpretation of Articles 13 and 60 PIL are convincing; therefore, a proposed way of understanding will be presented below (point 2).

It is worth noting at this point that in the provisions of the Hague Convention of 2000, unlike in the PIL, a single, broader concept of 'protection measure' is used. Simultaneously, a distinction was made, similar as according to Article 60 PIL and the 1996 Hague Convention, of the sub-scope of the 'execution' of the protection measure (e.g. action of a guardian). Considering the substantive right of the court, as well as the scope of application of the 1996 Hague Convention, it should be assumed that it applies to cases of individuals who have reached the age of 18.[39] At the same time, paragraphs 3 and 4 distinguish the 'execution' of

39 See Rycko, 2017, pp. 921 et seq.

protective measures in a broad sense.[40] This is relevant to the specific conflict resolution, as well as from an intertemporal perspective.[41]

Continuing the discussion of the complex structure of Article 60 PIL and the sub-areas of matters covered by it, it should be noted that the 'enforcement of guardianship measures' is regulated differently in terms of conflict of laws, as it is governed by the law of the state of the territory where a person affected by the measures has his/her habitual place of residence (paragraph 3). Since it is a universal norm, it theoretically leads to every law worldwide. Situations related to the enforcement of measures in Poland which are subject to Polish law according to this solution are important in practice for national judicial authorities. Exclusively such unilaterally specified jurisdiction of the law for enforcement is provided for by paragraph 4 in fine of Article 60 PIL in situations where the Polish court adjudicates, if necessary, on the property of a foreigner living abroad located in Poland and in any case where the case shows sufficient connection with the Polish legal order or where there is an urgent need to grant protection to a foreigner residing in Poland (Article 1107 § 2 and 3 CCP). Such a solution is not consistent with the cases of Polish citizens or residents of Poland, which are more closely linked to the territory of Poland, and in which the enforcement of guardianship orders is covered by the 'multidirectional' conflict rule resulting from Article 60(3) PIL.

Notwithstanding the foregoing, Article 62 PIL states that the curatorship to deal with a particular case (ad casum) is governed by the law of the state to which the case is subject (lex causae). Such a solution, actually implying an accession link between a curatorship and the law applicable to the particular act on the occasion of which the curatorship is established, is similar to the conflict-of-law solutions concerning specific additional capacity requirements (Article 11(3) PIL) and the form of a legal act (Article 25 PIL). It is certainly convenient from the perspective of civil law transactions (also of third parties involved). Practical difficulties may arise in distinguishing the application of Article 62 PIL in cases of ad hoc curatorship from cases of permanent curatorship, as both types of curatorship may have the same substantive legal basis (e.g. stating the circumstances justifying both the establishment of a curator ad casum and a curator for a number of similar cases) and be similarly regulated in procedural provisions.

■ *3.2. Proposed interpretation of provisions discussed in the doctrine*

The abovementioned interpretation of the meaning of paragraph 1 of Article 13 PIL, where paragraph 2 is in force, may not be convincing due to practical and theoretical reasons (as in matters of recognition and declaration of death, a similar explanation of the meaning of Article 11 of the 1965 PIL and its successor,

40 See more Pazdan, 2018, pp. 527 et seq.

41 It is assumed that the 2011 PIL regulation on the enforcement of protective measures applies, after the entry into force of the new act of law, also to protective measures established earlier. See Kłoda, 2014, p. 803.

Article 14 PIL). A separate issue is which of these paragraphs the legislator should 'stop at'. The solution of the court applying its own law (which may or may not be its native law) is closer to the solution of the Hague Convention of 2000 under discussion, as discussed further below.[42]

In contrast, Article 60 PIL, which refers to 'guardianship or curatorship or other protective measures', is not a 'novelty' in national legislation similar to Article 13 PIL. It is an expanded version of the previous PIL provisions of 1926 and 1965, except that its application, in view of the priority of the 1996 Hague Convention on Children, is limited to adult cases.

This article regulates several conflict-of-law rules, as it provides for different ways of indicating the applicable law for sub-sets of cases, including the inclusion of a linking factor. Prima facie, the linking factor of the nationality of an adult, that is, circumstances also provided for as a determinant of the law applicable to capacity (Article 11 PIL) and incapacitation (Article 13 PIL), is crucial. However, according to Article 60(2) PIL, in the event of adjudication by a Polish court, which is the essential point of reference for the application of the conflict-of-law rules of the country concerned, 'Polish law shall be applied to a foreigner who has his/her place of residence or habitual stay in the Republic of Poland'. Moreover, according to Article 60(4) PIL, 'in the cases referred to in Article 1107 § 2 and 3 CCP, Polish law shall apply'.

This elaborate and stylistically unwieldy wording means, as according to the shorter Article 13 PIL referred to, that if [...] a Polish court decides, Polish law shall apply. In fact, according to Article 60 PIL, the lex fori is therefore applicable to guardianship or curatorship or other protective measures, as it follows from the rules of procedure (Article 1107 § 1 CCP) that a Polish court will, as a general rule, adjudicate on the case of an adult who is a Polish citizen (to whom Polish law is designated as native under Article 60(1) PIL), or who has just a residence or habitual stay in Poland, as referred to in Article 60(2) PIL. In contrast, the other situations of adjudication by a Polish court, which are provided for in Article 1107 § 2 and 3 CCP and which exhaust the cases of Polish jurisdiction, are referred to in Article 60(4) PIL, which also indicates Polish law as applicable (*lex fori*). It appears that this unnecessarily elaborate structure of Article 60 PIL resulted from the fact that the provision was framed in a manner referring to the current wording of Article 1107 CCP. It would be far clearer and more consistent with the other

42 At the same time, there is no need to start the provision by saying that they apply where a Polish court is ruling, as the conflict of laws rules of the PIL generally apply in such cases.

provisions of the PIL if paragraphs 2 and 4 were taken together and in wording similar to Articles 13(2) and 14(2) PIL.[43]

Against the expansive interpretation of Article 60 PIL, additional problems arise when a Polish court anchors its jurisdiction in the provisions of the bilateral agreements referred to above instead of Article 1107 CCP. A literal reading of Article 60(4) PIL, which refers to Article 1107 CCP, could lead to the conclusion that Polish law is not applicable in the event of their application and the occurrence of a jurisdictional situation other than that described in paragraph 2. However, such a proposal does not seem substantively justified, as it would lead to an unjustified differentiation of the situation of adults and impede the functioning of the courts and other authorities. Through paragraph 4, it seems that the legislator, with the supplementation of the draft act of law, aimed at a complete 'closing' of the application of Polish law, which it did – unfortunately, from the perspective of the validity of bilateral agreements – to the situations additionally described in Article 1107 CCP after the 2009 amendment. In fact, the solutions of the CCP were, despite the fact that this was not stated, also kept in mind when drafting paragraph 2.

4. The issue of characterization and scope of applications of national and international instruments

Considering the Hague Convention of 2000 and the 2023 EU Draft Regulation, including the issues of guardianship, curatorship, and other adult protection measures, several provisions on the applicable law are of key importance in current Polish law. This includes, above all, Articles 13 PIL and Articles 60 and 62 PIL, the latter actually providing for several conflict-of-law rules (the basic guardianship and curatorship statute and special measures for the execution of guardianship measures and curatorship ad casum). The capacity statute designated by Article 10 PIL is also closely linked to their outcome, as discussed below. This detailed character of the conflict-of-law rules results in the need to delimit the scopes of application, and thus the applicable law, of both provisions. It is of practical importance in those cases where these norms provide for different conflict-of-law solutions, including linking factors, for example, according to Articles 11 and

43 Rycko, 2017, pp. 921 et seq., item 9, notes that the juxtaposition of Article 60(1) and (2) of the PIL and Article 1107 § 1 of the CCP implies that a Polish court has jurisdiction to establish a guardianship or curatorship for a foreigner only in situations subject to the specific conflict of laws rule which provides for the application of Polish law. He emphasises that in the case of a foreigner residing in Poland, the basis for determining the applicable law is Article 60(2) of the PIL. In contrast, with regard to other foreigners, Article 60(1) of the PIL applies prima facie, although according to the provisions of Article 1107 of the CCP, it will never be applied due to the lack of domestic jurisdiction of Polish courts. Therefore, he raises doubts regarding the advisability of the wording of paragraphs 1 and 2 of the PIL instead of a unilateral conflict-of-law rule under which Polish law would apply.

13 PIL and Articles 60 and 62 PIL. If the legislator had limited itself to the adult citizenship link, the problem would be purely theoretical.

For example, the doctrine qualifies differently the necessity (obligation) to appoint a legal guardian in the event of a limitation of legal capacity. Against the backdrop of some statements, it is included in the incapacitation statute, while in others, in the guardianship statute.[44] Such a difference in approach is most evident with regard to the creation of a guardianship or similar guardianship by operation of law (e.g. as a consequence of a limitation of capacity in a specific life situation). In the doctrine, this effect is not categorised under the incapacitation statute but under the guardianship statute, which, however, raises doubts. For example, A. Kozioł and P. Twardoch present the view that Article 60 PIL extends to the creation of a guardianship or application of another protective measure *ex lege*.[45] In favour of this view, they argue that the opposite solution would imply that there is a gap with regard to the aforementioned issue and, moreover, that it is also supported by historical interpretation, since these matters were covered by the hypothesis of the 'predecessor', that is, Article 23 PIL of 1965. However, this argumentation is not convincing, since the opposite position would not imply a gap, and historical interpretation leads to a different conclusion, since the 2011 PIL, in relation to the 1965 Act, has just added Article 11 concerning autonomously qualified incapacitation.

An additional issue is the distinction between the application of conflict-of-law rules (and thus the application of substantively applicable law, including foreign law) and the effects of the principle of *lex fori processualis*, that is, the law considered by courts and authorities as their own procedural law. By doing so, the doctrine, for example, distinguishes between the substantive power to apply for incapacitation, which is governed by the statute (substantive law) designated by the authoritative conflict-of-law rule, and the issue of mandatory participants, which is procedural in nature and as such governed by the court's procedural law (lex fori).[46] This distinction is also noticeable in curatorship under substantive law and procedural curatorship, examples of which were provided earlier. The approach of the doctrine to the appointment of an interim guardian in the course of guardianship proceedings under Articles 548–551 CCP is different. It can be argued that this institution is subject to the principle of lex fori processualis because of the relationship of this measure to the judicial proceedings, the correct outcome of which this measure is intended to secure.[47] It is emphasised in

44 See Mączyński, 2008, pp. 736–737.

45 e.g. Pazdan, 2018, pp. 525 et seq.

46 See Pazdan, 2015, p. 614.

47 Rycko, 2017, item 15, sees the conclusion on the applicability of the national rules on the interim guardian, as in the case of the prosecutor's standing in family cases, in the construction of the rules of necessary application. However, there appears to be no need to refer to this institution included in the general part. Similarities could, however, be sought with regard to the participation of the prosecutor in adult proceedings.

the doctrine that curatorship under procedural law did not fall within the scope of Article 23 PIL of 1965 (which should now be referred to Article 60 PIL), since the appointment of a curator in civil proceedings and his/her procedural rights and obligations are governed by the procedural rules of the seat of the court.[48] An argument can also be raised for including this institution in the statute designated by the PIL norms (e.g. the guardianship statute), arguing that the appointment of such a guardian has strictly defined substantive legal effects, serving to protect the incapacitated person in dealings with third parties.[49]

The scope of application of Article 13 PIL includes the prerequisites for the establishment of partial or total incapacitation or any other similar measures linked to each other, resulting in the limitation of legal capacity and the introduction of a subject whose function is to support the adult in functioning in civil law transactions. It may be problematic to specify its effects, since, with a view to a systemic interpretation, it is also necessary to consider the scope of application of the standard on capacity and guardianship or curatorship. It is assumed that the principal effect of guardianship, which is the partial or total limitation of legal capacity, is governed by the incapacitation statute. In contrast, the capacity statute, as discussed below, is subject to the consequences of limited or no capacity. It seems that it is also necessary to consider the statute of the specific legal act, e.g. the statute of contract, to which the statute of wrongful performance (e.g. settlements of an invalid contract) may lead in terms of accession.

As paragraph 1 theoretically leads to every law worldwide, its hypothesis also includes other legal institutions than those provided for in Polish law, which fulfil a similar protective function for the adult and participants in trade (e.g. parties to legal transactions or a non-contractual relationship, e.g. a tort). As paragraph 2 will lead to the application of the constructions of Polish law in the jurisprudence of Polish courts, the scope will include the institutions provided for in the CC and FGC.[50]

Theoretically, the scope of application of Article 60 PIL has to be considered broadly, as this is what the qualification of each conflict provision requires and,

48 See Ludwiczak, 1996, p. 221.

49 See Pilich, 2017, p. 297.

50 Pazdan, 2018, pp. 192 et seq., emphasise that paragraph 1 of Article 13 of the PIL has to be interpreted somewhat differently, that is, it should be considered broadly, due to its nature of demarcating the legal systems of different countries. In contrast, the scope of paragraph 2 should be determined according to legis fori, as this provision expresses a unilateral norm indicating only Polish law. It appears that this observation may relate not so much to the scope of application of the conflict of laws rules provided for in paragraphs 1 and 2, which are the same, but to the other aspect of the scope—that is, the scope of the indication, which refers either to foreign law or to national law. Thus, a different interpretation of the hypothesis does not occur so much before the indication and applicable law are known, but rather there is a different effect on the background of the indicated law—that is, the instruction. Regarding the two levels (stages) of determination of the scope of the conflict rule and qualification—see Mostowik, 2006, pp. 17 et seq.

moreover, the legislator has used the broad formula 'other [than guardianship and curatorship] protective measures'. Polish law and numerous foreign normative systems provide for guardianship for a totally incapacitated person (dependent), curatorship for an adult if the guardian suffers a temporary impediment to the exercise of guardianship, curatorship for a partially incapacitated person, permanent (that is, not just for the purpose of dealing with a particular case) curatorship or another form of assistance or support for a disabled person in civil law transactions, and similar permanent legal institutions for a person staying in a hospital or care facility or an absent person. They may arise by operation of law, by a decision of a court or other authority, and, in some legal systems, also as a result of a legal act (e.g. a power of attorney or a legal act on the condition precedent of a situation requiring protection).[51] An example of the 'establishment of a protective measure', is the authorisation to perform an act on behalf of an adult under curatorship.[52]

At the same time, it must be noted that the instructions of paragraphs 2 and 4 of Article 60 PIL lead to the jurisdiction of Polish law if the case is heard by a Polish court or authority. This jurisprudential perspective is crucial for assessing the application of conflict-of-law rules, which, in principle, are applicable, like procedural rules, precisely in the country of their issuance (possibly participating in the international instrument in question). Hence, the instruction of the aforementioned conflict-of-law rules (scope of designation) will generally lead to the application of the legal institutions provided for in the CC and FGC.

The scope of the guardianship statute (the applicable law designated by the norm of Article 60 PIL) includes issues concerning the prerequisites for their establishment,[53] the manner of appointing a guardian, curator, and assistant, including his/her qualifications and the obligation to take up such a function, as well as the scope of his/her powers and duties, including the scope of representation of the adult (dependent), remuneration, and the supervision of the competent judicial or administrative authorities over their performance.[54] It also covers the modification and termination of the protective measure in a broad sense, including the rationale for changing the person of the guardian or the curator and for abolishing, revoking, or terminating the guardianship or the curatorship, and other similar order (protective measure).

In this regard, there is a diversity of opinions in the doctrine as to whether the cessation of guardianship should not be included in the scope of paragraph 1, which refers only to the establishment of the guardianship, but in the scope

51 For example, the legal solution of an adult granting a mandate of representation in the event that the former is no longer able to manage his/her own affairs (*mandat d'inaptitude*) by virtue of a unilateral legal act or contract concluded with the mandate holder, as referred to in the Explanatory Report, pp. 72 et seq.

52 Pazdan, 2018, pp. 525 et seq.

53 Regarding the qualification of the necessity (a kind of duty) of establishing legal guardianship to the incapacitation statute – see Mączyński, 2008, pp. 736–737.

54 See Walaszek, 1973, p. 264.

of paragraph 3, which refers to the exercise of the guardianship.[55] This problem does not seem to arise, as the establishment in paragraph 1 typically also means a negative decision, that is, the termination of the guardianship, the curatorship, or a similar measure due to the lack of premises (e.g. change of facts) for its continuation. Alternatively, paragraph 3 refers to exercise and not non-exercise, for example, due to termination of the guardianship or the curatorship. However, with regard to the termination of the guardianship or curatorship, a similar question arises in relation to incapacitation to the one signalled with regard to its establishment, that is, whether the effect of revoking the incapacitation or a similar protective measure extending to the termination of the guardianship or the curatorship (e.g. ex lege) is subject to the statute designated by Article 13 PIL or Article 60 PIL. This question should be answered in a manner consistent with the answer to the earlier question concerning the creation of the guardianship or the curatorship in connection with the establishment of the incapacitation or the taking of a similar measure to limit legal capacity.

Among the specific solutions of Polish law that will most often be appropriate, there are also examples of granting permission in more important cases of an individual under guardianship or curatorship (e.g. admission of an adult to a psychiatric hospital) and committing an alcohol-dependent person to undergo treatment in an inpatient or outpatient drug treatment facility.[56]

A separate conflict-of-law rule arises from Article 60(3) PIL with regard to the 'exercise' of a guardianship or curatorship or similar custodial measure. It seems that the legislator was inspired by the wording of the Hague Conventions, including those of 1996 and 2000, where such a statute that is separate from the core statute (parental responsibility and adult protection) is provided for. Hence, for the purpose of distinguishing – sometimes not easy in practice – the situation

55 The position that the issue of termination of custody does not fall within the scope of its establishment or exercise is presented by Rycko, 2017, pp. 921 et seq., item 17.

56 See more Pazdan, 2018, pp. 525 et seq.

of the 'execution' of measures according to PIL, the following detailed comments on the Article of the 2000 Convention are useful.[57]

In contrast, Article 62 PIL provides a special solution for curatorship to deal with a particular case, which represents lex specialis to Article 60 PIL. The guardianship ad actum is not subject to the guardianship statute but is somehow added to the case in which the curator is to act because of the close relationship between the case and the authority that has established such curatorship and the adult concerned.[58] N. Rycko accurately points out that instead of a typical conflict-of-laws rule, the legislator has prescribed the application of a different law, which must be determined on the basis of a separate conflict-of-laws rule, authoritative in the specific case.[59]

The above comments on national law should be compared to the approach provided for in international law, including the 2000 Convention and the 2023 Proposals. At this point, it should be noted that, according to these international instruments, the concept of 'protective measure' is used to describe the hypotheses (scopes) of the jurisdictional and conflict-of-law rules, which comprehensively covers incapacitation (possibly other similar legal solutions limiting legal

57 Pazdan, 2018, pp. 525 et seq. assume that under Article 60(3) of the PIL, a problem referred to as a movable conflict may occur. The authors conclude that linking the jurisdiction of the law for the enforcement of protection measures to each habitual residence of a person affected by the measures may lead to such a movable conflict. They give an example in which an adult changes his or her habitual residence after a protection measure has been established but before the possibility of enforcing the measure has been exhausted, which is supposed to create a risk that the measure cannot be enforced after the change of statute. They subsequently propose a procedure of adaptation and a search in the law of the place of current residence of the adult for the protection measure which comes closest, so that the protection established can be exercised, or alternatively that a new protection measure be established by a Polish court. It seems that this example does not completely correspond to the 2011 PIL, which added, in relation to the 1965 PIL, paragraph 3 (which was assumed in this example), that is, the connecting factor of the place of current execution of the protection measure, and furthermore, a statute which does not use the linking factor of the habitual residence of the adult. Such a solution in the Polish normative status refers, in the light of the 1996 Hague Convention, to cases of children. Regarding adults, the meaning of current habitual residence derives from the 2000 Hague Convention, which, however, is not applicable in Poland.

58 See Walaszek, 1973, pp. 337, 340.

59 See Rycko, 2017, pp. 921 et seq., item 22. It may be questionable to conclude that this is not equivalent to classifying the curatorship in the scope of the statute governing the issue in question and that the curatorship to deal with a particular matter is subject to its own 'separate statute, but indicated indirectly by the order to apply *legis causae*'. Indeed, there seems to be no need for a theoretical proliferation of statutes. In doing so, the author does not accept the effect that the permissibility of the choice of law applicable to the main case should result in the possibility of choosing the statute of the related curatorship. This approach should be accepted, except that it will result from the fact that curatorship is added, for example, to the law that has already been chosen. In contrast, a partial choice would not be justified, since the provision concerned refers to the addition of curatorship to the law governing the legal action (rather than a secondary disconnection of the scope in question).

capacity) and legal guardianship (or other similar institutions, e.g. curatorship, power of attorney or assistance, as well as court approval). Unlike in national laws (PIL and CCP), there is no separate regulation of these matters, mostly occurring in practice jointly, according to these normative acts. Additionally, different, broader, and cumulative treatment of the scope (hypothesis) of the conflict rule was adopted in the 1905 and 2000 Hague Conventions and the 2023 EU Proposal, which will be presented below.

5. The Hague Convention of 2000 and its potential impact on national law of EU member state

■ *5.1. Genesis and core of the 2000 Hague Convention*

The issue of incapacitation and guardianship, curatorship, and similar legal institutions for adults was one of the first scopes of work of the Hague PIL Conference (at the beginning of 20th century). It resulted in the drafting of the Hague Convention of 17 July 1905 on incapacitation and analogical guardianship orders,[60] which will be explained in the following section. Several decades later, in 1979, between the Thirteenth and Fourteenth Sessions of the HCCH (Hague Conference on Private International Law), a questionnaire circulated to member states addressed the issue. The responses did not identify common practical problems regarding the protection of adults in international transactions. The February 1980 meeting of the special committee did not include this topic in the conference agenda, and no work was undertaken on a potential subsequent convention.[61] The idea of revisiting the personal and property affairs of adults subject to guardianship or similar orders returned in the work of this international organisation in the last decade of the 20th century.

Pursuant to the decision of 29 May 1993, the Seventeenth Session of the HCCH decided to include the revision of the Convention of 5 October 1961 on the Jurisdiction and Applicable Law in Respect of the Protection of Minors on the agenda of the Eighteenth Session and, importantly from the perspective under discussion, the possible extension of the scope of the new Convention to the protection of incapacitated adults. However, this second subject area could not be developed in the next session (as the convention on children's affairs was considered) and was somehow 'passed' to the work of subsequent sessions.[62]

60 Government declaration of 14 September 1929 on accession of the Republic of Poland to the Convention relating to incapacitation and analogous guardianship orders signed at The Hague, 17 July 1905, Dz.U. z 1929 r. Nr 80, poz. 598.

61 See Acts and Documents of the Fourteenth Session (1980), Volume I, Miscellaneous matters, Hague, pp. 114–147.

62 See *Akt końcowy Siedemnastej Sesji*, Part B points 1 and 2.

The HCCH Permanent Office established a special committee, and its meeting was preceded by a working group in 1997, chaired by A.V.M. Struycken, which developed a draft for discussion as part of the work of a special diplomatic committee from 20 September 1999 to 2 October 1999, working under the chairmanship of E. Clive.[63]

The text of the Convention was adopted unanimously by the member states of the HCCH present at the plenary session on 2 October 1999. The authentic languages are English and French. The work benefited from a note on the protection of incapacitated adults prepared by Adair Dyer in September 1996; a study by M. Revillard entitled 'Les majeurs protégés en droit international privé et la pratique notariale'; a report by the Council of Europe's Specialist Group on the Protection of Incapacitated Adults and Other Vulnerable Adults by Eric Clive, at the request of the Council of Europe of 21 January 1997; and a proposal by the Swiss delegation, presented at the close of the Eighteenth Session, which transferred the provisions of the 1996 Hague Convention almost literally to adult cases.[64]

The drafting of the Hague Convention of 2000 drew on the legal solutions of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement, and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, adopted a few years earlier.[65] This international agreement is followed by a wide range of foreign legal transaction issues governed by the Convention, including domestic jurisdiction, applicable law, recognition and enforcement of judgements, and international cooperation.[66] However, the title is captured differently; instead of listing these areas of private international law and civil procedure, as was the case in the 1996 Convention, the title of the 2000 Convention uses the very general phrase 'protection of adults'.[67]

63 Delegate of the United Kingdom. Andreas Bucher, delegate of Switzerland, Gloria F. DeGart, delegate of the United States of America, and Kurt Siehr, delegate of Germany, as well as Antonio Boggiano, delegate of Argentina, and Huang Hua, delegate of the People's Republic of China were elected as vice-chairpersons. Paul Lagarde, the French delegate, was appointed as a rapporteur. A drafting committee chaired by Kurt Siehr, delegate of Germany, a group to examine federal clauses chaired by Alegría Borrás, delegate of Spain, and a group for the preparation of model forms chaired by Marie-Odile Baur, delegate of France, were also appointed.

64 See *Explanatory Report,* pp. 41–42 and Prel. Doc. No 14 for the Eighteenth Session.

65 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, done at The Hague on 19 October 1996, Dz.U. z 2010 r. Nr 172, poz. 1158, OJ L 2008, No. 151, p. 39; hereinafter – 1996 Hague Convention.

66 See Frimston, 2005, p. 8.

67 The Explanatory Report, p. 45, emphasises that the title adopted 'was considered preferable to the much longer title of the Convention on the Protection of Children'. Regarding the genesis of the 2000 Hague Convention, including the link to the work on child protection and the 1996 Convention, and the activities of the 1997 Working Group chaired by Prof. Struycken – see more: Lagarde, 1996, p. 35.

The Hague Convention of 2000 is thus another international agreement drafted under the auspices of the HCCH that deals with foreign transactions in civil matters (that is, private international law and international civil procedure, or, in the EU nomenclature, 'judicial cooperation in civil matters'). A part of the scope of application of the Convention overlaps with that of its predecessor, the Hague Convention concerning incapacitation and analogical guardianship orders of 17 July 1905 (hereinafter, the Hague Convention of 1905),[68] and to the remaining extent, the cases regulated by it are subject to the solutions of the code in Poland (Part IV CCP) and the law (Private International Law),[69] indicated below.

■ *5.2. The issue of ratification of the 2000 Convention by EU Member States (example of Poland)*

Poland signed the Convention on 18 September 2008, but ratification has not yet taken place. The plan to ratify the Hague Convention of 2000 has appeared in some statements over recent years (including on the occasion of the comprehensive consideration of changes to the substantive legal solutions for capacity limitation, incapacitation, and guardianship that would result from the ratification of the 2006 UN Convention), but action to complete this step and bring the Hague Convention of 2000 into force has not taken place.

The current normative status in Poland has been shaped since the 1920s by conventions created under the auspices of the Hague Conference on Private International Law, and in the 21st century, it has also been co-created by the EU 'Brussels' and 'Rome' regulations.[70] The proposed measures, including the accession of member states to the Hague Convention of 2000, represent a further step in the process of replacing national solutions (in full or limited situational scope) with standards derived from international agreements and EU regulations.

Following the adoption of the Hague Convention of 2000 and in the course of accession by more countries, including the EU, in the early 21st century, a suggestion appeared in the EU that member states should join. The 2010 Stockholm Programme[71] states: 'The need for presenting additional proposals regarding vulnerable adults should be assessed in the light of experience gained in the application of the 2000 Hague Convention on the International Protection of Adults by Member States that are or will become parties to that Convention. Member States

68 Government declaration of 14 September 1929 on accession of the Republic of Poland to the Convention relating to incapacitation and analogous guardianship orders signed at The Hague, 17 July 1905, Dz.U. z 1929 r. Nr 80, poz. 598.

69 Act of 4 February 2011 - *Prawo prywatne międzynarodowe*, consolidated text, Dz. U. 2023 r., poz. 503; hereinafter the PIL.

70 Regarding contemporary trends in legal sources, see Czepelak, 2010, pp. 705 et seq.; Mostowik and Niedźwiedź, 2012, pp. 9 et seq.; Muir Watt, 2020, pp. 79 et seq.; von Hein, 2020, pp. 112 et seq.

71 'The Stockholm Programme: The Open and Secure Europe for the Welfare and Protection of Citizens', OJ C 2010, No. 115, p. 1.

are encouraged to join the Convention as soon as possible' (p. 10). Subsequently, in recent years, the academic and public debate has seen the idea of covering the material scope of what has been called, not quite accurately, 'adult protection' with an additional EU regulation, as it turned out, quite elaborated in COM 280 of 2023.[72]

With regard to the EU's external competence to conclude international agreements, which is adopted in this respect after the CJEU's opinion in Case 1/03, it should be noted that, according to the second draft mentioned at the beginning (COM 281 of 2023), the Union somehow 'returns it' to the member states (that is, authorises them to ratify an international agreement). Indeed, the Hague Convention of 2000 did not include, as subsequent agreements do, a clause for participation by a regional economic integration organisation, and the Union was not a member of the HCCH at that time. In contrast, with regard to the combined application of the EU regulation and the international agreement, there is a similarity to the relationship of the Brussels IIb Regulation (and earlier Brussels IIa) and the 1996 Hague Convention and the 1980 Hague Convention, as discussed above. Additionally, in terms of this legislative and competence aspect, there is a similarity to the 1996 Hague Convention. Member states were authorised by the Council Decision of 5 June 2008 to ratify the latter in the interest of the European Community.[73]

The proposed complex structure of the sources of law is an extension of this 'mosaic' with the participation of elements derived from an international agreement. Due to the coverage of the specific material scope (adult 'protection measures') by two normative instruments (the Hague Convention and the EU Regulation), it is intended to be similar to the current complex treatment of legal sources in the area of child custody cases, including international child abduction. In this subject area, the 1980 Hague Convention[74] (providing for a specific procedure for the return of a child to the State of residence prior to an unlawful change

72 For example, the European Parliament document entitled Protection of Vulnerable Adults – European Added Value Assessment. Study, PE 581.388, September 2016, pp. 14–16, and the public consultation from 21.12.2021–29.3.2022 entitled 'ogólnounijna ochrona osób dorosłych szczególnej troski' [Online]. Available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12965-Civil-judicial-cooperation-EU-wide-protection-for-vulnerable-adults/F_en (Accessed: 11 August 2025).

73 See Council Decision of 5 June 2008 authorising certain Member States to ratify or accede to the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, or accession to the Convention in the interest of the European Community, and authorising certain Member States to make a declaration on the application of internal rules of Community law in this area, 2008/431/EC, OJ L 151, 11.6.2008, p. 36.

74 Convention on the Civil Aspects of International Child Abduction, done at The Hague on 25 October 1980 (Dz.U. z 1995 r. Nr 108, poz. 528).

of the place of residence) and another one, the 1996 Hague Convention[75] (containing rules on jurisdiction, applicable law, and the recognition and enforcement of decisions concerning, among others, child contact and parental authority or custody) are of relevance worldwide. These conventions were subsequently partly transposed to EU regulations and their amendments ('Brussels IIa',[76] 'Brussels IIb'[77]). Partially, the Hague Conventions have been modified and supplemented in these regulations for the purposes of regional transactions. This practice of the EU legislature may be questionable from the theoretical perspective of international law and from the perspective of the practice of law application, which it does not facilitate.[78]

6. Preliminary assessment of the impact of the Hague Convention of 2000 and the 2023 EU proposals

The issue of operation of the Hague Convention of 2000, as well as the amendments to it and to domestic laws of Member States, requires more detailed analysis, including a larger number of national legal systems and comparative research. However, the foregoing comments justify the preliminary position of a generally neutral or positive impact of Poland's accession to the Hague Convention of 2000, which Member States are authorised to do in the context of the draft contained in document COM No. 281 of 2023. In contrast, the additionally drafted (in the document COM No. 280 of 2023) issue of the regulation supplementing and modifying the Convention raises positive comments (in particular about the intensification of judicial assistance and international cooperation) and critical ones (e.g. about the proposed modification of the Convention rules of jurisdiction and how the provisions on recognition and enforcement of foreign judgements are drafted).

75 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, done at The Hague on 19 October 1996 (Dz.U. z 2010 r. Nr 172, poz. 1158), hereinafter referred to as the 1996 Hague Convention.

76 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, p. 1, as amended), hereinafter – Regulation 2201/2003 or Brussels IIa.

77 Council Regulation (EC) No 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ L 178, p. 1, as amended), hereinafter – Regulation 2019/1111 or Brussels IIb.

78 Including the problems arising from the need to distinguish between the international application of two regimes arising from such a complex structure of sources of law (the so-called conflict of conventions) concerning the same subject matter, that is, the international agreement and the EU regulation. The demarcation rules contained in Regulation 2201/2003 were not well-developed, giving rise to the need for amendments to the subsequent Brussels IIb Regulation. See: Bobrzyńska, 2021, p. 593.

Generally, the drafts can be perceived as successive steps in the process involving the inter-state unification of law, which has intensified with the increase in the number of cross-border relations and has resulted in complexity and expansion of sources of law.[79]

It seems *prima facie* that the 2023 EU proposals would complicate the structure of legal sources and enlarge the 'amount of text' but would not, in practice, mean a fundamental change in the normative status concerning jurisdiction and conflict of law rules in situations where a Polish court adjudicates an adult case.[80] In contrast, the validity of an international agreement within a group of states would have the positive effects that the interstate unification of jurisdictional and conflict of law rules inherently brings. However, the concept of an additional EU regulation (concerning the Convention) may give rise to various comments, both positive and critical. Certainly, the assumption that it complements and modifies the Convention for the needs of the regional economic integration organisation (including the European Union) deserves a positive assessment. Such a need may be particularly justified in the area of mutual recognition and enforcement of judgements, which has initiated and is the driving mechanism of EU judicial cooperation in civil cases. Among the states of the European Union, whose participants are known to each other and which is based, among other things, on trust in the functioning of the judiciary, it is theoretically possible to regulate more than in the Hague Convention of 2000. Indeed, the Convention, with potential global effect, may involve regulation with states that have significantly different judiciary systems or features of substantive or procedural law, and sometimes even difficult to predict. Additionally, worthy of positive evaluation is, in principle, the aim of the proposal contained in COM 281/2023 to expand the circle of Convention states to include more EU states, which also means Poland's participation in the Hague Convention of 2000. However, there are some doubts about the desire for simultaneous modification by means of the EU regulation.

Its disproportionate volume and number of provisions (despite its complementary nature) raise doubts, which must be seen as a signum temporis of legislation in the third decade of the 21st century. It should be redrafted, as it partly contains solutions that are both desirable for judicial cooperation between Member States and others that are unnecessary or questionable.

The idea of modifying the Hague Convention of 2000 and issuing an additional regulation 'for internal purposes' of the European Union (that is, relations between EU states) seems more justified in the area of mutual recognition and enforcement of judgements, mutual judicial assistance, and interstate cooperation, which has been mentioned above. In the 'club' of EU Member States, which

79 Regarding contemporary trends in legal sources, see Czepelak, 2010, pp. 705 et seq.; Mostowik and Niedźwiedź, 2012, pp. 9 et seq.; Szpunar, 2015, pp. 136 et seq.; Muir Watt, 2020, pp. 79 et seq.; von Hein, 2020, pp. 112 et seq.

80 See more in Mostowik, 2023, pp. 579 et seq.; Mostowik, 2024.

is well-known and based, among other things, on trust in the functioning of the judiciary, it is possible to foresee and thus regulate a little more than in the potential global circle of the Hague Convention of 2000. Certainly, the proposed European Certificate of Representation and national registers of protection measures require careful consideration, including from the perspective of the wide range of cases they are intended to cover and the organisational challenges. The chapters on judicial assistance and interstate cooperation constitute essentially the most valuable part of the draft regulation, as it is essentially in these areas that the 'added value' can be obtained for relations between Member States. One may have the impression concerning them – similar to the impression one gets after reading the provisions on recognition and enforcement – that sometimes the solutions already contained in the Hague Convention of 2000 have been unnecessarily transposed into them. This part of the draft appears to require some editorial refinement and the reduction of provisions (that is, retaining in the Regulation only those that supplement or modify the Hague Convention of 2000).

Due to the options for legislative activities described in the Impact Assessment Report on the 2023 proposals (10108/23ADD), it is reasonable to call for a change in the EU Commission's chosen course of action. It seems more rational to distinguish both planned activities (projects) under Option 4 in temporal terms. It would seem more beneficial, from the perspective of the functioning of the judiciary and the certainty of legal circulation, to first take steps to accede to the Hague Convention of 2000 and gather several years of experience of its operation between Member States. Subsequently, in the long term, it would be recommended to consider the experience of the application of the Convention within the territory of the EU and to take steps to supplement or modify the Convention rules for the needs of intra-EU judicial cooperation in civil matters. Certainly, the experience of the application of the Hague Convention of 2000 may, first, verify the thesis of the need to 'improve' its operation and, second, identify precisely the areas where this would be desirable for the benefit of adults and their guardians and cross-border civil law transactions.[81]

81 Hence, the position of the Polish Council of Ministers, represented by the Minister of Justice, presented in the course of the work of the parliamentary committee in August 2023, that the government has an entirely positive stance on the 'adult protection' proposals, does not seem fully justified. See Sejm [Online]. Available at: https://orka.sejm.gov.pl/zapisy9.nsf/0/DCD0F2599A83F6BAC1258A14003D5C4B/$File/0415309.pdf (Accessed: 11 August 2025).

7. Identification of issues for further studies on EU proposals of 2023 versus the domestic current state of play

■ *7.1. Implications of terminological changes and the broad scope of the 'protection measure'*

The above detailed comments on the development of Polish law must be related to the current international situation, including the abovementioned EU proposals of 2023 (which assume the applicability of the 2000 Convention). It is worth starting with definitions and the observation that the new terminology has a much broader content than the existing institutions of civil and family law in some Member States.

The theoretical concept and substantive content of the 'protection measure' are of key importance for determining the scope of application of the Hague Convention of 2000 and the proposed EU Regulation (consequently, by extension, the scope of any potential changes to the national legal order should they enter into force). This concept, as intended by the Convention drafters, is meant to encompass a range of national legal institutions, sometimes widely diversified. This approach is transferred to the scope of application of the proposed EU Regulation. It should be borne in mind that, in addition to the institutions of full or partial incapacitation as well as guardianship and curatorship (or their functional equivalents), which are closer to civil law, the Convention is also intended to apply to situations at the interface with public law (e.g. placement in an institution, functioning of a representative in an area broader than civil law), and the delimitation of certain situations of application and non-application (e.g. health or safety measures) will need to be clarified in judicial practice.

The broad interpretation of the 'protection measure' is innovative from the national perspective, as incapacitation and guardianship or curatorship are sometimes perceived separately (both substantively and procedurally). However, from a practical perspective and with regard to the welfare of an adult, it can collectively capture the point well. A mere incapacitation or similar judgement (from a domestic perspective associated with a civil court) does not constitute a full settlement of an adult's life issues (needs). The 'reverse' (a related element, necessary in civil law transactions) is somehow the assistance to the adult concerned to 'return' to participate in the transaction and protect him/her (e.g. with the help or through a guardian, curator, or assistant), including the operation of guardianship and curatorship institutions (associated with the family court). In modern private law, there is no 'civil death' of a person, while the restriction or deprivation of legal capacity is not intended to exclude a person (and his or her assets) from civil law transactions involving third parties. For these persons, such exclusion would also have negative consequences, as they would not be able, for

example, to enforce a contract, claim damages, or take care of their own economic affairs, which would *in concreto* conflict with the interests of the incapacitated person's assets.

In addition, specific problems may arise in those legal systems where, as in Poland, the two legal institutions are subject to separate adjudication processes, i.e. incapacitation or other limitation of legal capacity and the establishment of guardianship or curatorship are adjudicated separately and, moreover, both legal areas are subject to separate conflict of laws rules, as in the context of the PIL, unlike in the Hague Convention of 2000. First, the concern exists that the limitation of capacity (e.g. by way of incapacitation) will not be followed in practice by the appointment and functioning in the market of a guardian or a curator, which is a separate issue of substantive and procedural law. Second, a need then arises to separate the scope of application of the distinct conflict of laws rules which refer to incapacitation or a similar order and guardianship or curatorship or similar adult support institutions.[82] Obviously, this problem has practical consequences when each conflict-of-law solution provides for a different indication of the applicable law, and thus the substantive law of a different country may apply to each of the aforementioned stages. Such differences occur between Article 13 and Articles 60 and 62 PIL and are not a feature of the Hague Convention of 2000, which provides for a single broader formulation of the 'protection measure'.

The 2023 proposals refer not only to the legal status of a person (e.g. partial incapacitation or similar foreign law institutions) and his/her guardian, curator, or attorney, but also to the consequences for civil law transactions with third parties (including the rights and obligations of the parties to legal transactions). Referring to the adult 'protection measures', they apply to specific solutions in national law and institutions unknown to Polish law, such as the modification of partial or assisted incapacitation. The material scope of the Hague Convention of 2000 and the proposed Regulation is broad and, from the perspective of national terminology, may be 'hidden' in practice under the concept of 'adult protection measure', which is of key importance in the proposed normative status. Referring the foregoing to the national codes, it must be indicated that the material scope of the drafts includes the establishment or revocation of partial or total incapacitation, as well as the change from total to partial and from partial to total incapacitation (Article 559 CCP). A separate reference is made to guardianship and curatorship cases (Articles 590 et seq. and 599 et seq. CC), including curatorship for a partially incapacitated person (Article 16 § 2 CC) and guardianship for a fully incapacitated person (Article 13 § 2 CC), as well as guardianship for a disabled person if that person needs assistance to manage all matters or matters of a certain type or to

82 Regarding various solutions related to the impact of a mental state other than the state giving rise to incapacitation on capacity and the performance of civil acts, see Pazdan, 1967, pp. 90 et seq.

deal with a particular matter (Article 183 of the FGC), and curatorship to protect the rights of a person who, due to absence, cannot manage his/her affairs and does not have an attorney (or who cannot perform his or her acts or performs them improperly; Article 184 of the FGC). It also covers some other material situations of adult curatorship, which is not a homogeneous institution in Polish law and is provided for by several provisions, like the CC, the FGC, the CCP, and statutes. For example, according to Article 44 of the Act on the Protection of Mental Health,[83] a curator may be appointed for a person admitted to a psychiatric hospital or for a mentally ill or mentally handicapped person in a social welfare home, if the person needs assistance to manage all of his/her affairs or affairs of a certain type at that time. By doing so, it must be borne in mind that some of these institutions, as well as similar ones according to foreign rights, may be subject to assessment from the broader perspective of human dignity, proportionality, and limitations of capacity and deprivation of liberty.[84]

■ *7.2. The issue of the linking in 2023 EU Proposals to the 2006 UN Convention*

The operation of the Hague Convention of 2000 is accompanied by a phenomenon wherein instruments involving public international law, including the 2006 UN Convention, are also linked in the debate on its application in civil matters abroad. Such a phenomenon can be observed with regard to the 1996 Hague Convention, the operation of which refers to the 1989 UN Convention; however, the scale of the link between both areas is incomparably more extensive. Simultaneously, one may have the impression that the debate on private international law or international civil procedure sometimes arises from public international law conventions without further examination of the actual links with private international law and international civil procedure rules. Indeed, such links occur only to a narrow extent, where substantive law (including that harmonised in individual states following, for example, accession to the 2006 UN Convention) is relevant for conflict-of-law or procedural solutions, particularly regarding the protection of fundamental principles of public policy of the forum state or the consideration of its substantive law as rules of necessary application (enforcing its jurisdiction).

Additionally, in the context of national law, there are links to 'protection measures' (including legal guardianship concerning children). Both personal scopes are sometimes governed by the same conflict-of-law provision (e.g.

83 Act of 19 August 1994 on the Protection of Mental Health (Dz.U. z 2022 r. poz. 2123).

84 For example, in the judgement of the European Court of Human Rights of 16 October 2012, complaint no. 45026/07, Kędzior v. Poland, HUDOC, the placement of a fully incapacitated person in a social welfare home, which took place in the case, was compared to a deprivation of liberty within the meaning of Article 5(1)(e) of the Convention for the Protection of Human Rights and Fundamental Freedoms, done in Rome on 4 November 1950, subsequently amended by Protocols No. 3, 5, and 8, and supplemented by Protocol No. 2 (Journal of Laws of 1993, No. 61, item 284, as amended and supplemented), hereinafter – ECHR, paragraphs 54–60 of the Explanatory Memorandum.

according to certain bilateral agreements). Such a phenomenon – common formal regulations (including common rules) projecting a common perception in substantive terms (as well as a kind of search for common instructions) – is also visible in the context of substantive law (according to Article 175 of the FGC, the provisions on the guardianship of a minor apply accordingly to the guardianship of a totally incapacitated person) and 'non-international' civil proceedings (application of the same procedural rules arising from Article 590 et seq. CCP). The difference involves the greater importance of determining the applicable law and national jurisdiction and the rights and obligations concerning the dependant, the parents (mother or father of the child), rather than the legal guardian of an adult.

■ *7.3. The 2000 Hague Convention and 2023 EU Proposals versus current law in Member States*

The entry into force of the Hague Convention of 2000 and the 2023 proposal will mean that the national rules on conflict of laws and jurisdiction and the effectiveness of foreign judgements will no longer apply in the adult cases under discussion. Current domestic jurisdiction rules demonstrate a broad approach to the international jurisdiction of Polish courts, as jurisdiction may be determined not only by the nationality of the adult but also by his/her residence, habitual domicile, and sometimes even by his/her mere stay, location of property, or other links. National conflict-of-law rules lead to the application of Polish law for incapacitation as well as guardianship and curatorship when adjudicated by a Polish court (also when jurisdiction is based on grounds other than nationality, e.g. residence or habitual stay). In fact, it is not the exception but the rule to 'break' the universal conflict rule based on the nationality of an adult by a one-way indication of Polish law. The current domestic normative status following the 2009 amendments to the CCP is also characterised by a wide openness to (recognition or enforcement of) foreign judgements (including protection measures within the meaning of the Convention). This means that in such cases the matter will not be considered in substantive terms by the Polish courts, and thus the jurisdictional or conflict-of-law solutions applicable in Poland (including the priority of citizenship or residence as a conflict-of-law connecting factor or basis of jurisdiction) will not be relevant in practice.

Therefore, the impact of the 2023 proposals on current private international law and international civil procedure in Poland is potentially broad. Its holistic presentation requires a comprehensive approach not only from the perspective of the current national regulations (CCP – that is, non-procedural proceedings and international civil proceedings) and private international law and special laws but also the CC (that is, mainly personal law, considering, for example, the impact of the lack or limitation of the capacity of an individual on matters of property, bonds, and succession).

Substantive legal effects (due to the presumptions arising from entries) may be generated in the practice of trading by the proposed registers of protection measures. In practice, the proposed European certificate of representation and the effects of its submission when performing legal acts on behalf of an adult with a third party will also have an impact on the substantive legal relationship.

A preliminary assessment of the specific solutions contained in the Hague Convention of 2000 in the context of the current legal system in Poland leads to the conclusion that, in fact, should Poland participate in it, there would be no fundamental change in the normative status in situations of adjudication in adult matters by a Polish court, that is, in the field of jurisdiction and conflict-of-law rules. Greater differences occur between national and convention rules on the recognition and enforcement of foreign judgements and judicial cooperation (assistance). The confirmation of this preliminary conclusion requires detailed further research into the possible implementation of the Convention in the Polish legal order, but at this point, the following should be noted: key terminological issues and evaluation of the changes in the area of jurisdictional and conflict-of-law connecting factors from the perspective of the practical effect of the application of the Convention conflict-of-law rules and jurisdiction (that is, the competence of Polish courts and the application of Polish law).

Based on the above considerations, it can be noted that domestic law currently demonstrates a broad scope of jurisdiction of Polish courts under the CCP (nationality, residence and habitual residence, stay alone, location of assets, and other links). This, in turn, in view of the principle of application of one's own law, which actually stems from the PIL, implies a wide scope of application (jurisdiction) of Polish law in adult matters. Simultaneously, the far-reaching principle of recognition of the effects of foreign judgements (protection measures) by operation of law derives from national law, which is reinforced in practice by the narrow scope of exclusive jurisdiction according to the CCP after the 2009 amendment.

Domestic jurisdictional and conflict-of-law rules distinguish between partial or full incapacitation and legal guardianship or curatorship (more precisely, several legal institutions under this name), with the grounds of jurisdiction of Polish courts and authorities being broader in relation to the latter category of cases. Separate regulations may apply, in addition to the CCP and the PIL, to measures taken in relation to, for example, mental health and alcohol or drug addiction. In the context of the Convention, both incapacitation and guardianship or curatorship are covered by the more general concept of the 'protection measure', to which uniform rules of jurisdiction and conflict of laws apply, as well as those relating to the recognition of foreign judgements and international cooperation.

The effect of applying Polish law by the court, in fact, 'breaks' the universal conflict-of-law rule based on an adult's nationality (paragraph 1) by unidirectionally designating Polish law for incapacitation as well as guardianship and

curatorship when a Polish court adjudicates, including when the jurisdiction is based on grounds other than nationality (paragraph 2). A preliminary assessment of the specific solutions contained in the Hague Convention of 2000 in the context of the current normative status in Poland leads to the conclusion that, in fact, should Poland participate in it, there would be no fundamental change in the normative status in situations of adjudication in adult matters by a Polish court, that is, in the field of jurisdiction and conflict-of-law rules. Greater differences occur between national and convention rules on the recognition and enforcement of foreign judgements and on judicial cooperation (assistance).

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