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The relationship between the Baltic private international law treaties and the European rules on jurisdiction and the recognition and enforcement of foreign judgments

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The purpose of the article is to analyse the relationship between the European rules on international jurisdiction and the recognition and enforcement of foreign on one hand and the private international law treaties concluded between the Baltic States and the third states on the other. These treaties, often called the 'mutual assistance treaties', do not contain any clear rules on their scope of application. Thus, in order to ascertain the relationship between the two types of instruments the article also seeks to determine the scope of the rules contained in the private international law treaties, which deal with the questions of international jurisdiction and the recognition and enforcement of foreign judgments. The author has chosen the private international law treaties concluded by the Republic of Estonia as examples to illustrate the problem.

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1. Introduction

After the collapse of the Soviet Union, the Republic of Estonia concluded several private international law treaties with the other Eastern-European states. A trilateral treaty was concluded between Estonia, Latvia and Lithuania[1] and three bilateral treaties were concluded with Poland[2], Russia[3] and Ukraine[4] Similar treaties were also concluded by the Republic of Latvia with various states of the Former Soviet Union.[5] These private international law treaties or the 'mutual legal assistance treaties' as they have been called in Latvian legal literature[6] contain almost analogous provisions and lay down, among other things, the conditions for the international jurisdiction of the courts of the Contracting Parties in civil matters and for the recognition and enforcement of civil judgments of the courts of the other Contracting Parties.

When the private international law treaties were concluded, the Republic of Estonia, similarly to the Republic of Latvia, was not a Member State of the European Union. By now, the questions of international jurisdiction of courts and mutual recognition and enforcement of judgments have been extensively regulated by the European legislator. For example, the rules, most often applied by the Estonian courts when determining international jurisdiction in civil cases or deciding on the recognition and enforcement of foreign judgments, are found in the Brussels I Regulation.[7] In addition, such rules are also contained in the other EU regulations such as the Brussels II bis Regulation,[8] the Maintenance Regulation,[9] the European Enforcement Order Regulation,[10] the European Order for Payment Regulation,[11] the European Small Claims Procedure Regulation[12] and the (not yet applicable) Succession Regulation.[13]

The relationship between the private international law treaties and the European instruments is complicated. At first sight, the EU regulations seem to give preference to the private international law treaties. However, since the rules of the private international law treaties are rather ambiguous as to their scope, it is not entirely clear when the EU rules should be applied instead of the treaties. The purpose of the present article is to explain the relationship between the EU rules and the treaty rules on international jurisdiction and the recognition of judgments by using the treaties concluded by the Republic of Estonia as an example. Although the said treaties regulate various other questions of private international law (such as determining the law applicable to international civil disputes), these questions are intentionally left out of the reach of the present article, as requiring further analysis to which the limits of one article are not suitable for. In order to achieve the main objective of the present article, the following two questions are analyzed in detail: firstly, the priority ranking of different legal instruments and, secondly, the scope of the private international law treaties.

2. The priority ranking of the EU instruments and the Baltic private international law treaties

The private international law treaties do not contain any provisions on the relationship of such treaties with the EU regulations. This is only natural, as the treaties were concluded long before the relevant states joined the European Union. In contrast, the EU instruments often contain provisions on the relationship of such regulations with various international treaties and conventions. While doing so, the EU regulations generally distinguish between the private international law treaties concluded with third states and the treaties concluded between two or more of the Member States of the European Union.

2.1. The EU regulations and the private international law treaties concluded with third states

According to Art 351 of the Consolidated version of the Treaty on the Functioning of the European Union[14] (former Art 307 TEC) the rights and obligations arising from agreements concluded before the date of the accession of the acceding states, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties. Thus, as a general rule, the European private international law regulations, which have been enforced, based on the Treaty provisions,[15] give preference to the international conventions or treaties concluded with third states. For example, the private international law treaty concluded between the Republic of Estonia and the Russian Federation would have preference over the Brussels I Regulation.

It should be noted however, that the Member States are in principle required to re-negotiate the private international law treaties which are in conflict with the rules of the EU private international law regulations. According to Art 351 of the second paragraph of the Consolidated version of the Treaty on the Functioning of the European Union (former Art 307 TEC), to the extent that such agreements are not compatible with the Treaties, the Member States or States concerned shall take all the appropriate steps to eliminate the incompatibilities established. It is not entirely clear how such negotiations should take place and what would be the consequences or penalties for the Member States, which are unsuccessful in renegotiating such treaties. So far, the Republic of Estonia has not initiated any re-negotiations with the third states (the Ukraine and the Russian Federation) to amend the private international law treaties concluded with these states.

2.2. The EU regulations and the private international law treaties concluded between the Member States

In addition to the private international law treaties concluded with the third states, the Republic of Estonia has also concluded some private international law treaties with the other Member States of the European Union, namely with Poland, Lithuania and Latvia. By today, these treaties have lost much of their practical relevance. This is due to the fact that the European rules override the provisions contained in these treaties as explained by the transitional provisions of the various EU regulations. For example, Brussels I Regulation Art 69 provides that the said regulation supersedes as between Latvia, Lithuania and Estonia the Agreement between the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Legal Assistance and Legal Relationships, signed at Tallinn on 11 November 1992 (the Estonia-Latvia-Lithuania private international law treaty). Similarly, according to Art 59(1) of the Brussels II bis Regulation, the said regulation shall, for the Member States, supersede conventions existing at the time of entry into force of the Brussels II bis Regulation which have been concluded between two or more Member States and relate to matters governed by the Brussels II bis Regulation.

One must, however, keep in mind the fact that the EU rules cannot replace something that falls out of the scope of the EU rules themselves. Although the harmonization of private international law in the EU has been very extensive, there are still some areas of civil law, which are left entirely out of the scope of the European instruments. For example, international jurisdiction in disputes concerning the establishment of parentage (and the recognition and enforcement of judgments in corresponding cases) is not covered by the Brussels I Regulation, by the Brussels II bis Regulation or by any other European regulation. The disputes over parentage would,

thus, still fall in the scope of the private international law treaties concluded between the Member States. This is illustrated by Art 31 (in connection with Arts 28–30) of the Estonia-Latvia-Lithuania private international law treaty, which contains a special rule on establishing parentage. Other matters which are still not covered by the European rules include adoption and legal capacity of natural persons, and the division of matrimonial property (though there is a European instrument on the way on the last topic).[16]

Thus, the applicability of the European instrument instead of the private international law treaty concluded between the Member States depends on the question whether the European instrument itself governs a certain legal relationship. If yes, the private international law treaty concluded between the Member States has to yield in favour of the European regulation. In contrast, the application of the private international law treaty concluded with a third state depends foremost on the scope of such private international law treaty. If the case falls under the scope of the treaty concluded with the third state, the European regulation has to give preference to the international law treaty. Thus, it is necessary to analyse the scope of such treaties concluded with the third states in order to determine the relationship between the treaty rules and the European rules.

3. The scope of the Baltic private international law treaties concluded with the third states

The private international law treaties concluded between the Republic of Estonia and the third states (the Ukraine and the Russian Federation) do not contain any clear rules on their (temporal, material or personal) scope. However, it is possible to make several assumptions as to the scope of such instruments based on the wording and purpose of these treaties and the relevant case-law of the Estonian courts.

3.1. Temporal scope of the private international law treaties

The private international law treaties concluded with third states do not contain any clear rules on their temporal scope or any transitory provision on the legal relationships, which these treaties are intended to cover. For example, the treaties do not explicitly state whether the treaty rules on the recognition and enforcement of judgments can be extended to the judgments made before the treaties entered into force. The only thing that is known definitely is that the bilateral treaty concluded between the Republic of Estonia and the Russian Federation came into force on 19 March 1995 and that the bilateral treaty concluded with Ukraine came into force on 17 May 1996. Despite the lack of clear provisions on the temporal scope of these treaties, some general assumptions can still be made.

3.1.1. Temporal scope of the rules relating to the recognition and enforcement of judgments

Presumably, the treaties should cover the recognition and enforcement of only those judgments, which are awarded after the relevant treaty came into force between the Contracting Parties. For example, Russian civil judgment made after 19 March 1995 should be enforced in Estonia under the Estonian-Russian treaty, as this is the date when the said treaty came into force in regard to Estonia.

It is, however, questionable whether the treaties should also cover recognition and enforcement of judgments made before the entry into force of the relevant treaty. In principle, there is nothing in the treaties directly forbidding the extension

of the treaty rules to the judgments made before the treaties came into force in the Contracting Parties. The earlier case-law of the Estonian Supreme Court seems to support this view by suggesting that the treaty rules on the recognition and enforcement of judgments could be extended to the judgments made before the treaties even came into force.[17] However, such extension could be criticized as it would probably not accord to the expectation of the parties to a particular legal relationship or to the expectations of the Contracting Parties.[18] Since there are no explanatory materials on the treaties publicly available, it can, of course, only be assumed what the expectations of the Contracting Parties might have been at the time of the conclusion of the treaties.

Extending the treaty rules to the judgments awarded before the treaties came into force is, at least from Estonian point of view, not necessary. This is so because Estonian legislator has chosen to recognise foreign judgments unilaterally without requiring the foreign state to recognise Estonian judgments in return. This principle is embodied in unilateral national provisions found in the Code of Civil Procedure which would always step in if the judgment would fall outside the scope of the international treaty.[19]

Extending the treaty rules to the judgments awarded before the relevant treaty came into force could be criticized as there is no specific public policy clause as a defence against recognising foreign judgments in the treaties,[20] although such defence exists in Estonian national law.[21] There is only a general clause in the treaties allowing the state to refuse providing legal assistance for the other Contracting Party if such legal assistance could danger the sovereignty or security of the Contracting Party or contradicts the general principles of legislation of the Contracting Party.[22] The question whether such general provisions could operate as a public policy defence for the recognition and enforcement of judgments is not entirely clear.[23] If the foreign judgments cannot be refused recognition based on the public policy defense or based on the fact that the recognition violates general principles of law of the recognizing state, it should be preferred that the treaty rules would not be extended to the judgments made before the entry into force of the relevant treaty. It could be argued that the Contracting Parties could not possibly have wanted to exclude the application of the public policy defense for to the judgments, which were made in cases where the jurisdiction was assumed or where the applicable law was determined under the rules over which the Contracting Parties had no control - that is - under the rules applicable before the treaties came into force.

A similar argument could be made since the treaties contain explicit provisions allowing the courts to refuse to recognize and enforce foreign judgment if certain jurisdictional principles valid in the forum state were breached by the court of the other Contracting Party.[24] Regardless of the exact form of private international convention regulating recognition or enforcement,[25] the purpose of the inclusion of jurisdictional rules in the convention is always the same. Namely, before legitimizing a judgment given by a foreign judge, the forum's judge wants to be sure that the foreign judge did not violate exclusive competence of the forum's judge under the forum's own private international law. If the treaty rules would be extended to the judgments made before the entry into force of the relevant treaty, such expectation might lose its practical meaning if the jurisdictional rules valid in the forum state before the treaty came into force were breached. The wording of the treaties is unfortunately not entirely clear, which jurisdictional rules can be taken into account as a ground for refusal. In the Estonian language version of the treaty texts it seems that the jurisdictional rules have to be in force at the time of the recognition and enforcement and not before.[26]

3.1.2. Temporal scope of the rules on jurisdiction

The courts and other relevant authorities have to take the jurisdictional provisions of the treaties into account when assuming jurisdiction under the treaties. Since the treaties, which the Republic of Estonia has concluded with the third states (the Ukraine and the Russian Federation) entered into force (respectively) on 1996 and 1995 it is highly unlikely that the temporal scope of these provisions could pose any problems in practice. Such problems could have arisen when the claims were made in 1996 and 1995; however, there is no case-law publicly available in Estonian databases confirming that the courts ever gave any thought as to the temporal scope of the jurisdictional provisions of the treaties. Thus, this matter does not need to be dealt with further.

3.2. Material scope of the private international law treaties

As already mentioned, the private international law treaties concluded with third states do not contain any clear rules on their material scope. However, from the wording of the titles[27] and the preambles to the treaties one may conclude that the treaties are applicable in all civil cases. Although sometimes the treaties mention 'family matters'[28] and 'labour matters'[29] as separate from 'civil matters', this should not mean as if the 'family matters' or 'labour matters' would be excluded from the scope of other private law treaties which do not explicitly mention such matters alongside 'civil matters'.

What is considered to be a 'civil' matter in the meaning of the treaty provisions would in practice probably be decided according to the domestic law of the court hearing the matter. In order to decide whether an international dispute can be considered to be a 'civil' matter, Estonian courts proceed from the classical division between private and public matters. This means that a dispute cannot be considered as 'civil' if it arose from a public relationship, since according to the Estonian Code of Administrative Procedure such disputes should be solved in the administrative courts.[30] In order to clear this matter, the Estonian Supreme Court has awarded several decisions on the division between the administrative and civil cases. For example, Estonian Supreme Court has explained the distinction between the private delicts and the cases involving state liability .[31]

Although courts are probably tempted to proceed from their own domestic notions of 'civil matters' the courts should probably interpret this term autonomously and independently from national law. Since the private international law treaties have more than one Contracting Party, the characterisation of concepts found in the treaties according to the *lex fori* could lead to conflicting interpretations, which should be avoided.[32] However, this problem has yet to arise in the Estonian case-law.

3.3. Personal scope of the private international law treaties

The application of the treaty rules on the recognition and enforcement of judgments depends foremost on the question whether a certain judgment has been awarded by a court of another Contracting Party and not whether the parties involved are the nationals or residents of the Contracting Parties. In contrast, the nationality or residence of the parties may be important in order to determine the application of the jurisdictional rules of the treaties i.e. the personal scope of the private international law treaties.

While the private international law treaties contain rules on the entry into force and on the nature of the matters covered, there is nothing in the treaties explaining

the personal scope of the treaties. The treaties contain only general declaratory provisions, which have to be taken as basis in order to determine the personal scope of such treaties. These provisions are worded almost analogously,[33] so the declaratory provision from the Estonian-Russian treaty (Art 1) will be used in order to illustrate this problem.

Art 1 of the Estonian-Russian treaty states the following:

Article 1 - Legal Protection

1. *The nationals of one State Party have the same legal protection for their personal and material rights in the territory of the other State Party as the nationals of the other State Party. This applies accordingly to the legal persons established under the legislation of each of the State Parties.*
2. *The nationals of one State Party have a right to turn freely and without any obstacles to the courts, public prosecutor's office and notarial offices (hereinafter – judicial authorities) and to the other authorities who deal with civil-, family- and criminal matters, they can appear in front of such authorities, request proceedings, submit claims and make other procedural acts on the same conditions as the nationals of the other State Party.*

This is the only provision in the Estonian-Russian treaty which vaguely resembles a rule on the personal scope of this private international law treaty. The following general conclusions can be made as to the personal scope of the Estonian-Russian treaty, based on the wording of the two subsections of Art 1 and the relationship of the treaty with the other private international instruments applicable in the Estonian courts.

(a) Art 1(2) of the Estonian-Russian private international law treaty

Art 1(2) of the Estonian-Russian treaty seems to suggest that the provisions on jurisdiction contained in this treaty should be consulted by the Estonian courts only in the cases where the nationals of a relevant Contracting Party (i.e. the Russian Federation) are involved in the Estonian proceedings. Unfortunately, the Estonian case-law seems to have ignored this problem altogether as the courts have often not paid any attention to the nationality of the parties when applying the treaty.[34]

Since Art 1(2) of the Estonian-Russian treaty does not refer to the residence of the parties, it is not important whether the relevant Russian national actually resides in Russia - he can also live in Estonia or even in a third state in order for the Estonian-Russian treaty to be applicable.[35] Similarly, if a Russian resident is involved in Estonian proceedings, the Estonian-Russian treaty provisions would not be applicable if such person does not have Russian nationality. In that case the other rules on jurisdiction would be applicable in the Estonian courts. For example, if the Russian resident (holding Estonian nationality) would sue the defendant domiciled in Estonia and having Estonian nationality, then the jurisdiction would be determined by the Brussels I Regulation.

Based of the wording of Art 1(2) of the Estonian-Russian Treaty one can conclude that the jurisdictional provisions of the said treaty should always come into application when the Russian national is involved in Estonian courts as claimant. This is so because Art 1(2) explicitly states that Russian nationals have to be able to turn freely to Estonian judicial authorities. A case is more complicated if the Russian national is involved in Estonian proceedings as defendant. Nothing in Art 1(2) of the Estonian-Russian treaty seems to suggest that the treaty provisions

on jurisdiction should be applicable if the Russian national is involved in the proceedings as defendant. This problem is complicated further by Art 1(1) of the Estonian-Russian treaty.

(b) Art 1(1) of the Estonian-Russian private international law treaty

Based on the wording of Art 1(1) of the Estonian-Russian treaty, one may conclude that the treaty provisions on jurisdiction and applicable law can and should be applied only in so far as they guarantee 'the same legal protection' for the personal and material rights of the Russian national in Estonian territory as they do for the Estonian own nationals. Unfortunately, the meaning of the 'same legal protection' has been left completely open by the Estonian-Russian treaty. Provided that the principle of securing the Russian nationals the same legal protection can come into play when solving jurisdictional but also applicable law problems, the courts are faced with a wide range of questions that the treaty leaves open.

For example, if an Estonian national in the similar situation could sue the defendant in Estonia under Estonian domestic rules or under European instrument, but a Russian national could not sue the defendant in Estonia because the Estonian-Russian treaty gives jurisdiction only to the Russian courts, then a question may arise, whether the jurisdictional rules of the treaty should be applied at all. Of course this problem might be overlooked by simply stating that the possibility to sue in Russia ensures adequate legal protection for the Russian nationals. While due consideration should be given to the mutual trust between the judicial authorities of Estonia and Russia, the Russian national involved in the proceedings might not be so prone to accept this justification if he has not lived in Russia for several decades or if the evidence relating to the dispute is located in Estonia. An example of this kind of situation is the following:

Estonian national (defendant) who is domiciled in Finland goes to holiday to Russia where he causes damage to the claimant living in Russia and having Estonian-Russian double nationality.[36] *The damage occurs in Estonia.*[37] Based on Art 40(3) of the Estonian-Russian treaty the claimant could sue the defendant only in the place where the harmful act giving rise to damage occurred (Russia) and not in Estonia since the defendant does not live in Estonia but in Finland. Under Art 5(3) of the Brussels I Regulation, the hypothetical claimant, having only Estonian nationality, could sue the defendant in Estonia since, according to the Court of Justice of the European Union, the 'place where the harmful event occurs' within the meaning of Art 5(3) of the Brussels I Regulation would include both, the place where the damage occurred and the place where the event giving rise to the damage occurred.[38]

The case is even more problematic if the Russian national could be sued in Estonia under the Estonian-Russian treaty, but the hypothetical defendant having Estonian nationality could not be sued in Estonia at all. Fortunately this problem can rarely arise in practice, since all the other private international law instruments currently in force in Estonia recognize similar personal connecting factors as the ones used in the Estonian-Russian treaty.[39] Namely, these instruments usually refer to the defendant's domicile, residence or habitual residence as a general connecting factor.[40] Since this practice accords with the general connecting factor ('residence' of the defendant) used in the treaties, different treatment of Estonian and Russian nationals could occur only in very exceptional circumstances.[41] However, an example of this kind of situation can still be given:

Estonian national who has a domicile in Russia wants to sue Russian national who has a domicile in Estonia. Parties have previously concluded a jurisdictional clause in favour of the Finnish courts. Under Art 21(1) of the Estonian-Russian treaty the claimant could sue the defendant in Estonia, regardless of the jurisdiction clause. Under Art 23 of the Brussels I Regulation (which would come into application if the Estonian-Russian treaty would not apply),[42] the competent court would be the Finnish and not the Estonian court.

4. Conclusions

The harmonization of private international law rules on the European level poses special challenges for the new Member States like Estonia and Latvia which have, before joining the European Union in 2004, concluded various private international law treaties with the other members of the former Soviet Union. The conditions for the application of these treaties are not entirely clear and the obligation of the new Member States to bring these treaties in line with the existing European instruments is a difficult one, especially since there are no guidelines given by the European Union on the extent to which such treaties should be renegotiated. It would not be advisable to annul such treaties in their entirety as these treaties contain several provisions on international cooperation in civil and criminal matters that do not have any matching provisions in the European instruments. Thus, the approach to the renegotiates should be a cautious one and proceed from the careful consideration of the scope of such treaties and the relationship between the treaties and the current European legislation. Unfortunately, as explained in this article, the exact scope of these treaties and the relationship of the treaties to the European instruments, are questions, which have been left unanswered by the existing case-law and international instruments.

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15. For example, the newest European private international law instrument - the Brussels I Regulation (recast) starts by referring to Art 67(4) and Art 81(2) points a, c and e of the Treaty on the Functioning of the European Union. See: Regulation (EU) No 1205/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). OJ L 351, 20/12/2012, pp. 1–32.
16. Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. COM(2011) 126 final, 2011/0059 (CNS).
17. See: Estonian Supreme Court decision of 10 Novemebr 2000 No. 3-2-1-125-00, para 3. On the criticism of the said decision, see: *H. Vallikivi.* Välislepingud Eesti õigussüsteemis: 1992.a. põhiseaduse alusel jõustatud välislepingute siseriiklik kehtivus ja kohaldatavus. Tallinn: Õiguskirjastus 2001, pp. 88–89 (In Estonian).
18. According to Art 28 of the Vienna Convention on the Law of Treaties to which Estonia is a State Party, unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act, which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party. See: Rahvusvaheliste lepingute õiguse Viini konventsioon. RT II 2007, 15.
19. See § 620 of the Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*). 20.04.2005. RT I 2005, 26, 197.
20. See, for example: Art 56 of the Estonian-Russian treaty.
21. Estonian Code of Civil Procedure § 620(1)1.
22. See, for example: Art 18 of the Estonian-Russian treaty.
23. See further: *Torga, M.* Scope of application of private international law treaties concluded between the Republic of Estonia and its Eastern European neighbours. Kiel Journal of East European Law, 1–2, pp. 4, 5–6.
24. See for example Art 56(3) of the Estonian-Russian Treaty.
25. Private international law conventions regulating recognition and enforcement of foreign judgments can be concluded either in the form of a single-, double- or mixed conventions. While single conventions are confined to recognition and enforcement issues only, double- and mixed conventions also include rules on permitted, prohibited or 'grey list' jurisdictional grounds.

26. See for example, Art 56(3) of the Estonian-Russian Treaty.
27. For some reason some Treaties mention 'family' matters (Estonian-Russian Treaty) and 'labour matters' (Estonian-Polish Treaty) as separate from 'civil' matters.
28. See the title of the Estonian-Russian PIL treaty.
29. See the title of the Estonia-Poland PIL treaty.
30. See: Section 4(1) of the Code of Administrative Procedure (*Halduskohtumenetluse seadustik*). 27.01.2011. RT I, 23.02.2011, 3.
31. See the decisions of the Estonian Supreme Court of 14 April 2011 No 3-2-4-1-11 and of 15 June 2010 No 3-2-4-1-10.
32. On this argument in the context of the said private international law treaties, see further: *M. Torga*. Characterisation in Estonian Private International Law – a Proper Tool for Achieving Justice between the Parties? – Juridica International 2011, No 1, pp. 84–93.
33. See the Arts 1 of the PIL treaties.
34. For example, the Estonian Supreme Court has turned to the Estonian-Russian PIL Treaty when the property of the spouses was located in Russia without giving any regard to the nationality of the parties. See: Estonian Supreme Court decision of 9 December 2009 No 3-2-1-119-09. Similarly, the lower courts have turned to the Estonian-Russian PIL treaty simply because the defendant resided in Russia (no regard to the nationality of the defendant was given), see for example: Tartu County Court decisions of 11 April 2012 No 2-12-10892 and of 30 March 2012 No 2-11-60758.
35. In this situation, the conflicts may often arise with various European instruments. For example, if the Russian defendant has a domicile in Estonia, the question arises whether the jurisdiction should be determined under the Brussels I Regulation. However, this is a topic, which far exceeds the limits of this article.
36. Although under Art 3 of the Estonian Citizenship Act Estonian nationals are required to renounce the nationality of one of the relevant states in the case of double nationality, there is no practical enforcement mechanism for this rule, which means that there are still several people holding two passports. See: Citizenship Act (*Kodakondsuse seadus*). 19.01.1995. RT I 1995, 12, 122.
37. Although generally the place of the act giving rise to the damage and the place where the damage occurs, it is possible that these places are located in different states. This could be the case, for example, if the damage is caused by putting defamatory statements up in the Internet.
38. See: Case 21–76, 30.11.1976 *Handelskwekerij G. J. Bier BV v Mines de potasse d'Alsace SA*. ECR 1976, 01735.
39. See for example: Art 21(1) of the Estonian-Russian PIL treaty, which provides for a general rule that a defendant can be sued in the courts of the State Party where he resides.
40. On personal connecting factors in Estonian private international law, see: *M. Torga*. Elukoht tsiviilseadustiku üldosa seaduse tähenduses: tähendus rahvusvahelises tsiviilkohtumenetluses. – Juridica 2010, 7, pp. 473–480.
41. That can happen in the exceptional case when the dispute falls under the exclusive competence of some other Member State under Art 22 (or under Art 23) of the Brussels I Regulation. The Estonian-Russian treaty does not have any exclusive competence rule for the courts of the third states, which means that in such disputes Russian nationals living in Estonia could be sued in Estonian courts under the Estonian-Russian PIL treaty general jurisdiction clause (Art 21(1)).
42. According to the Art 71(1) of the Brussels I Regulation, the regulation shall not affect any conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments. In the case of the PIL treaties concluded with Poland, Lithuania and Latvia, the Brussels I regulation generally replaces the treaty provisions. However, the relationship between the European instruments and the PIL treaties is not the topic of this article.