

## DIFFERENT APPROACHES OF THE IMPLEMENTATION OF BRUSSELS CONVENTION IN ALBANIA

**Andja Levanaku**  
**PhD candidate**  
European University of Tirana  
**ALBANIA**

### ABSTRACT

Brussels Convention and Council Regulations coming out for its execution have not executive power in Albania, because Albania is not a member state of European Union and also the parliament has not ratified the Brussels Convention yet, as a manner to be an internal part of Albanian legislation. Brussels Convention and Albanian laws have some basic differences for matters like derogation of jurisdiction, exclusive jurisdiction. Albanian legislation is more rigid as far as these matters are concerned not adapting with commercial and civil developments of the country. Brussels Convention is estimated as an important instrument for the improvement in quality of Albanian legislation in this field. This regulation applies to member states and has detailed rules assigning jurisdiction for the dispute to be heard and governs the recognition of foreign judgements. Although, this convention is not compulsory for Albania, its recognition is important for a better implementation of these and other European rules when Albania will be a part of European Union. The solution for this incompatibility is given by the Constitution in the article 122/3: The rules coming out from an international organization have superiority, in case of conflict with the laws of the country, if in the ratified agreement for the participation in that organization is foreseen clearly the direct execution of the rules coming out from it. The directives of European Union must be a guide for Albanian legislation. Steps should be undertaken towards the process of harmonization and approximation of the legislation, aiming the creation of a good legislative framework.

**Keywords:** Implementation, Brussels Convention, Council Regulation, domestic law, jurisdiction.

### INTRODUCTION

In this article I'll analyze some important aspects of Brussels Convention, Council Regulation (EC) no 44/2001 of 22 December 2000 "On jurisdiction and the recognition and enforcement of judgments in civil and commercial matters" and their differences with Albanian legislation, aiming the recognition and a better application of international legislation in civil and commercial matters, mentioning deficiencies of Albanian legislation and how it must change to approximate with the European directives to have a contemporary legislative framework aiming at favouring a better circulation of goods and services to anticipate the integration of Albania in European Union.

There are several definitions about what jurisdiction means, some think it's the absolute competence of the courts of a country separated from the competences of other organs of a country or foreign ones, that exercise their activity for certain matters.<sup>1</sup> Others define it like "the concretizations of laws", stressing the moment in which the law from static and passive,

---

<sup>1</sup> Prof. Dr Faik Breskoveci, E drejta Procedurale Civile, Prishtinë 2004, fq 51

become concrete and efficient.<sup>2</sup> European Union legal acts on jurisdiction, recognition and enforcement of judgments in civil and commercial matters are: Brussels Convention no 41968A0927 (01) of 27 September 1968 “On jurisdiction and enforcement of judgments in civil and commercial matters”, Lugano Convention no 4198A0592 of 16 September 1998 “On jurisdiction and enforcement of judgments in civil and commercial matters”, Council Regulation (EC) no 44/2001 of 22 December 2000 “On jurisdiction and the recognition and enforcement of judgments in civil and commercial matters”. This three European Union legal acts lays down rules governing the jurisdiction of courts in civil and commercial matters. Council Regulation is estimated as an important instrument for the improvement in quality of Albanian legislation in this field. This regulation applies to member states and has detailed rules assigning jurisdiction for the dispute to be heard and governs the recognition of foreign judgements and has almost completely superseded the Brussels Convention of September 1968 and the Lugano Convention of September 1998, the scope of application is determining the jurisdiction of member states of European Union, recognition and enforcement of judgments in civil and commercial matters.

## **METHODOLOGY**

The article is based on the methods of analysis and comparison of international and national acts, directives, concretely Brussels Convention, Council Regulation (EC) no 44/2001 of 22 December 2000 “On jurisdiction and the recognition and enforcement of judgments in civil and commercial matters”, Albanian legislation, as far as defining the jurisdiction in commercial and civil matters, comparing the concept of jurisdiction in European Union legal acts and in Albanian laws, the implementation of the decisions in commercial and civil matters, the suspension of trials. The article refers to books and articles analyzing the Civil Procedures Code of Republic of Albania, different official documents and laws.

## **Derogation of jurisdiction**

Analysing some articles of Council Regulation we notice some fundamental differences between this regulation and the Civil Procedures Code of Republic of Albania, as far as the two important matters: the derogation of jurisdiction in civil and commercial matters and suspension of trial when the same case is being judged from more than one court of the member states. The solution given from the Council Regulation in such cases is different from Albanian legislation which doesn't allow the derogation of jurisdiction, resigning from it and passing it to a foreign jurisdiction according to the regulation, it is allowed that the parties through an agreement in the civil and commercial matters choose the jurisdiction of that member state that is more suitable for solving the disagreement which have come out or will come out in the future.

## **Related actions**

Another matter is the suspension of judgement. According to the regulation in case when proceeding involving the same cause of action and between the same parties are brought in the courts of different member states, any court other than the court first seised shall of its own motion stay its proceeding until such time as the jurisdiction of the court first seised is established. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favor of that court.

---

<sup>2</sup> Salvatore Satta, *Diritto processuale civile*, Padova 1992, fq 10.

Albanian legislation doesn't foresee that Albanian court suspend or cease the case when proceedings involving the same cause and between the same parties is brought before the courts of member states, this article is an expression of the sovereignty of the Republic of Albania, but at the same time I think it should be reconsidered in order to be in coherence with the economical changes of recent years, several agreements between Albanians and foreigners, facilities of circulation of goods and services.

Judicial jurisdiction is extended in different fields, civil jurisdiction, penal jurisdiction, commercial jurisdiction etj.<sup>3</sup> The Brussels Convention was one of the first act defining the jurisdiction in civil and commercial matters, that was almost completely superseded by the Council Regulation (EC) no 44/2001 of 22 December 2000 "On jurisdiction and the recognition and enforcement of judgments in civil and commercial matters". This regulation is applied directly in member states and has almost completely superseded the Brussels Convention of September 1968 and the Lugano Convention of September 1998, the scope of application is determining the jurisdiction of member states of European Union, recognition and enforcement of judgments in civil and commercial matters.

The basic principle is that jurisdiction is to be exercised by the European Union country in which the defendant is domiciled, regardless of his or her nationality.<sup>4</sup> Domicile is determined in accordance with the domestic law of the European Union country where the matter is brought before a court. If a party is not domiciled in EU country of the court considering the matter, the court is to apply the law of another EU country to determine whether the party is domiciled in said state. Besides the general regulation, it recognizes exceptions, which are considered to be special jurisdiction.<sup>5</sup>

The fundamental change between the Council Regulation and the the Civil Procedures Code of Republic of Albania is foreseen in the article 23 of Council Regulation, through which the parties are allowed to have an agreement in choosing the appropriate jurisdiction of the member state for their case. While the Civil Procedures Code of Republic of Albania does not allow the derogation of jurisdiction, resigning and passing the Albanian jurisdiction to a foreign jurisdiction, with the agreement of the parties. There is an exception out of it, if Albania has ratified an international agreement, on the condition that the case has to do with an obligation between foreigners, or between a foreigner and an Albanian citizen resident in European Union.

Another change between the Council Regulation and the Albanian legislation is foreseen in the article 38 of the Civil Procedures Code of Republic of Albania which mentions that Albanian courts neither cease nor suspend the judge, when proceedings involving the same cause of action and between the same parties are being judged by foreign courts. This article is an expression of the sovereignty of the Republic of Albania, the judicial organs of which exercise sovereignty within its territory. They are not affected neither officially nor judicially from activity of a foreign country, because these organs realize the same thing like the Albanian courts, thus they exercise jurisdictional functions, that any rate are an expression of sovereignty of the country they belong to.<sup>6</sup> This article is different from article 27 of the

---

<sup>3</sup> Jani Vasili, Procedura Civile e Republikës së Shqipërisë, Tiranë 2005, faqe 25

<sup>4</sup> Council Regulation (EC) no 44/2001 of 22 December 2000 "On jurisdiction and the recognition and enforcement of judgments in civil and commercial matters"

<sup>5</sup> Alban Brati, Procedura Civile e Republikës së Shqipërisë, Tiranë 2008, faqe 73.

<sup>6</sup> Dr. Flutura Kola Tafaj, Asim Vokshi LL.M, Procedura Civile e Republikës së Shqipërisë, Tiranë 2011, faqe 221.

Council Regulation that forsee the suspension of trial when the case involves the same parties and the same cause of action.

### **Protective measures, the same approach between Council Regulation and Albanian legislation**

If a question arises for discussion that which state has the jurisdiction to take provisional, including protective measures if the courts of another member state have jurisdiction as to the substance of the matter?

The Supreme Court of Albania has decided that if there will be a juridical jurisdiction of a foreign court for the case, this jurisdiction will be only for solving the conflict in its substance, that parties might have as a consequence of not fulfilling obligations undertaken and not for provisional, including protective measures, like insurance claim, because parties may sue whenever the defendant has his assets.<sup>7</sup> Although, the Civil Procedures Code of Republic of Albania forsee in the article 42: "*The accusation is set in the court of the country where the one suing resides or stays, and when they are not known, in the court of the country where he temporarily lives*".

### **CONCLUSIONS**

The Council Regulation (EC) no 44/2001 of 22 December 2000 "On jurisdiction and the recognition and enforcement of judgments in civil and commercial matters", is estimated as an important instrument for the process of harmonization and approximation of the legislation in the field of determining the jurisdiction, the recognition and enforcement of judgments in civil and commercial matters, considering the perspective of integration of Albania in European Union.

Despite the fact that Albania has not become a member state with full rights, the European acts are a guide in the legislative practice. Measures should be taken for the process of unification of legislation, aiming at having a good legislative framework to proceed with the integration in European Union. I recommend as far as the matter of derogation of jurisdiction is concerne, possibilities should be given to Albanian citizens to define the jurisdiction by means of agreement, in civil and commercial matters.

Although, this convention is not compulsory for Albania, its recognition is important for a better implementation of these and other rules when Albania will be a part of European Union. Although, the solution for this incompatibility is given by the Constitution in the article 122/3: The rules coming out from an international organization have superiority, in case of conflict with the laws of the country, if in the ratified agreement for the participation in that organization is forseen clearly the direct execution of the rules coming out from it.

### **REFERENCES**

- Brati, A, (2008) *Procedura Civile e Republikës së Shqipërisë*, Tiranë  
Breskoveci, F. (2004) *E drejta Proceduarale Civile*, Prishtinw  
Satta, S, (1992) *Diritto processuale civile*, Padova  
Vasili, J, (2005) *Procedura Civile e Republikës së Shqipërisë*, Tiranë

---

<sup>7</sup> Unificated decision of The Supreme Court of Albania nr 22,dt 19.01.2011

Kola Tafaj, F., Vokshi, A. (2011) *Procedura Civile e Repulikës së Shqipërisë*, Tiranw  
Council Regulation (EC) no 44/2001 of 22 December 2000 “On jurisdiction and the  
recognition and enforcement of judgments in civil and commercial matters”  
Civil Procedure Code of the Republic of Albania, approved by law no.8116, dated  
29.3.1996 and changed by law no.8431, dated 14.12.1998;no.8491, dated 27.5.1999;  
no.8535, dated 18.10.1999;no. 8812, dated 17.5.2001; no.9953, dated 14.7.2008,no.10  
052, dated 29.12.2008 October 2012.  
The Unificated decision of The Supreme Court of Albania. nr 22,dated 19.01.2011.