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Original scientific paper

UDK 347.65(4-67EU):341.9

347.65:341.9](497.5:497.11)

DOI: <https://doi.org/10.25234/pv/9685>

Paper received on 16 October 2019

Paper accepted on 3 December 2019

SOME REMARKS ON PREVENTION AND RESOLUTION OF POSITIVE JURISDICTION CONFLICTS BETWEEN CROATIAN (MEMBER STATE) AND SERBIAN COURTS IN CROSS-BORDER SUCCESSION CASES – FROM CROATIAN (EU) AND SERBIAN POINT OF VIEW

Summary: The aim of this paper is to examine the possibilities for prevention and resolution of positive conflicts of jurisdiction between the Croatian (EU Member State) and Serbian (third State) courts in succession cases in which the assets of estate are located in both Croatia and Serbia. All issues will be discussed from the perspective of both Croatian (EU) and Serbian private international law. As regards Croatian (EU) private international law, the study begins with the presentation of the relevant jurisdiction rules of EU Succession Regulation (ESR) which provide for the Croatian (Member State) courts to have jurisdiction to rule on the succession as a whole in most cases, irrespective of where the assets of estate are located (the so called principle of unity of succession), and continues with the profound analysis of the rule of Art. 12(1) of ESR, which enables the Croatian (Member State) courts to prevent positive jurisdiction conflicts with Serbian courts by deciding not to rule on the assets located in Serbia. In addition, some remarks will be made on *lis pendens* rule of Art. 60 of Croatian PIL Act, which aims to prevent the pending of two parallel proceedings involving the same cause of action and between the same parties before the Croatian and Serbian or any other third State court (i.e. to resolve the positive conflicts of jurisdiction between Croatian and third State courts). When it comes to Serbian private international law, the study assesses the jurisdiction rules of the Serbian PIL Act (Art. 71–73), which follows the principle of scission of succession, in order to determine the relevant positive jurisdiction conflicts which need to be resolved by Serbian courts and analyzes the *lis pendens* rule of Art. 80 of Serbian PIL Act, which represents the main tool for

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resolving such conflicts. Finally, in the absence of relevant case law on positive jurisdiction conflicts caused by the divergent rules of ESR and the Serbian PIL Act, two hypothetical cases involving such conflicts, created for the purposes of this paper, will be discussed from both Croatian and Serbian point of view.

Key words: *EU Succession Regulation, positive conflicts of jurisdiction with third State (Serbian) courts, Art. 12 of EU Succession Regulation, lis pendens rule of Art. 60 of Croatian PIL Act, jurisdiction of Serbian courts in succession matters, lis pendens rule of Art. 80 of Serbian PIL Act*

1. INTRODUCTION

The jurisdiction of Croatian and other Member State courts in cross-border succession cases is to be determined in accordance with Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (so called EU Succession Regulation, henceforth: abbr. ESR).¹ The rule on general jurisdiction (Art. 4 of ESR), which is based on the last habitual residence of the deceased in a Member State, as well as the most of other jurisdiction rules contained in ESR, follows the so called principle of the unity of succession² ('on jurisdiction level'),³ which means that these rules enable the Member State courts to establish jurisdiction to rule on the succession as a whole, irrespective of where the assets of the estate are located.⁴ It also means that they aim to cover cross-border succession cases more closely connected to third States, particularly those in which the assets of the estate are located in third States, which may result in positive conflicts of jurisdictions between the Member State and third State courts (i.e. the pending of two parallel proceedings in these States) and possibly in court decisions which may be ineffective in a third State where the assets are located.⁵ For that reason, the European legislator has introduced the rule on

1 Official Journal of the European Union, L 201, 27. 7. 2012, p. 107. All Member States, except United Kingdom, Ireland and Denmark, are bound by Succession Regulation (see Recitals 82 and 83).

2 The same principle is followed in conflict-of-laws rules of ESR (arts 21 and 22) which determine one single national law as the law applicable to the succession as a whole, irrespective of where the assets of estate are located. See more Solomon, D., *Die allgemeine Kollisionsnorm (Art. 21, 22 EuErbVO)*, in: Dutta, A.; Herrler, S. (Hrsg.), *Die Europäische Erbrechtsverordnung*, C. H. Beck, München, 2014, pp. 20–45.

3 About the principle of unity of succession and the scission of succession on 'the jurisdiction level' see Dutta, A., *Artikel 4*, in: MüKoBGB, *EuErbVO*, Band 10, 6. Aufl., C. H. Beck, München, 2014, para. 10; Eichel F., *Artikel 4 EuErbVO*, in: Herberger, Martinek, Rübmann, Weth (Hrsg.), *JurisPK-BGB*, Band 6, 7. Aufl., 2014, para. 7; Đorđević, S., *O problemima nekoordiniranog raspravljanja zaostavštine jednog lica u različitim pravnim porecima*, in: S. Bejatović (ed.), *Pravni sistem Srbije i standardi Evropske unije i Saveta Evrope*, Pravni fakultet u Kragujevcu, Kragujevac 2010, pp. 377–399.

4 See and compare Dutta, *op. cit.* note 3; Dutta, A., *Artikel 10*, in: MüKoBGB, *EuErbVO*, Band 10, 6. Aufl., C. H. Beck, München, 2014, para. 10–12; Köhler, A., *Teil 1 EuErbVO*, in: Gierl, W.; Köhler, A.; Kroiß, L.; Wilsch, H. (eds), *Internationales Erbrecht, EuErbVO/IntErbRVG*, Baden-Baden 2015, pp. 71 etc., 73, 81; Panopoulos, G., *Limitation of Proceedings under Article 12 Succession Regulation (2012) – An Impossible Codification of the Improbable*, *Elte Law Journal*, Vol. 2015, No. 2 (<https://eltelawjournal.hu/wp-content/uploads/2016/10/2015-2-07-Georgios-Panopoulos.pdf>), pp. 99–100.

5 See Lein, E., *Die Erbrechtsverordnung aus Sicht der Drittstaaten*, in: Dutta, A.; Herrler, S. (Hrsg.), *Die Europäische Erbrechtsverordnung*, C. H. Beck, München, 2014, pp. 215–218.

limitation of proceedings contained in Art. 12 of ESR, which enables the Member State court seized to avoid such problems by deciding not to rule on assets located in a third State if its decision in respect of these assets will be ineffective in that third State. Another very important 'tool' for resolving the positive conflicts of jurisdictions is the plea of *lis alibi pendens* in relation to the proceedings instituted before third State courts which, however, falls outside the scope of ESR and is governed by national civil procedure laws or national private international laws of Member States. In Croatia such *lis pendens* rule is contained in Art. 60 of Croatian Private International Law Act⁶ (henceforth: abbr. CPILA).

Serbia, as 'a third State'⁷ (Non-EU Member State), has its own jurisdiction rules in cross-border succession cases, which are contained in Art. 71–73 of the Act on Resolution of Conflict of Laws with Regulations of Other Countries⁸ (so called Serbian PIL Act; henceforth: abbr. SPILA) and based on the criteria of the nationality of the deceased and the distinction between immovable and movable assets. Following the principle of scission of succession in most cases,⁹ these rules provide for the exclusive jurisdiction of Serbian courts to rule on succession of immovable assets located in Serbia, while they usually exclude the jurisdiction of Serbian courts for immovable assets located abroad. The clear determination of immovable assets under the exclusive jurisdiction and those outside the jurisdiction of Serbian courts implies that Serbian courts rarely discuss the problems of positive conflicts of jurisdictions in respect of immovable assets of estate. With regard to movable assets of the estate, Serbian courts have elective jurisdiction in most cases and the main 'tool' for resolving positive conflicts of jurisdictions in such cases is the *lis pendens* rule of Art. 80 of SPILA.

Before ESR started to apply in Croatia, there were a number of cross-border succession cases involving immovable and movable assets of the deceased located in both Croatia and Serbia.¹⁰ At that time the Act on Resolution of Conflict of Laws with Regulations of Other Countries¹¹ (which is in this paper marked as 'Serbian PIL Act' or abbr. SPILA) was in force in both States, which means that the jurisdiction of Croatian and Serbian courts in succession matters was regulated by the same set of rules. Such an advantage made it possible to avoid the positive conflicts of jurisdiction in advance, especially in terms of immovable assets, where the jurisdiction between the courts of these States was clearly delimited by the (same) rules

6 Official Gazette of the Republic of Croatia, No. 101/2017.

7 The term of 'third States' contained in ESR embraces not only Non-EU Member States, but also EU Member States which are not bound by ESR (such as United Kingdom, Ireland and Denmark). See Lein, *op. cit.* note 5, 200–202; Dutta, A., *Vorbemerkung zu Artikel 1*, in: *MüKoBGB, EuErbVO*, Band 10, 6. Aufl., C. H. Beck, München, 2014, para. 14–16; Köhler, *op. cit.* note 4, pp. 68, 72; Radoja Knol, K., *Odstupanja od načela jedinstva nasljeđivanja u Uredbi EU-a o nasljeđivanju*, *Pravni vjesnik*, Vol. 35, No 2 (2019), 50–51.

8 Official Gazette of SFRY, No. 43/82 and 72/82, Official Gazette of the Federal Republic of Yugoslavia (FRY), No. 46/96 and Official Gazette of the Republic of Serbia, No. 46/2006 – other laws.

9 See more Đorđević, S., *Prilagodavanje u međunarodnom privatnom pravu*, doktorska disertacija, Pravni fakultet Univerziteta u Beogradu, Beograd, 2010, pp. 283 etc.; Đorđević, *op. cit.* note 3, pp. 377 etc.

10 See e.g. Distric Court in Belgrade (Rešenje Okružnog suda u Beogradu), No. Gž. 1782/04, *Izbor sudske prakse* 2/2005, 62; Higher Court in Belgrade (Rešenje Višeg suda u Beogradu), No. Gž. 4750/12 and First Municipal Court in Belgrade (Rešenje Prvog osnovnog suda u Beogradu), No. P 1154/11, *Bilten Višeg suda u Beogradu*, broj, 84, Intermex, Beograd.

11 For Croatia see: Official Gazette of SFRY, No. 43/82 and 72/82; Official Gazette of the Republic of Croatia, No. 53/1991 and 88/2001.

on exclusive jurisdiction¹². However, the current situation is significantly different: the Croatian courts (as Member State courts) apply the jurisdiction rules of ESR to the succession of persons who died on or after 17 August 2015,¹³ while Serbian courts (as third State courts) still apply the same jurisdiction rules on succession. Considering that the jurisdiction rules of ESR and of Serbian PIL Act are based on completely different criteria, they will often conflict in cases where the assets of estate of the deceased who died on or after 17 August 2015 are located in both Croatia and Serbia.

Bearing all of the above in mind, the aim of this paper is to assess the possibilities for the prevention and resolution of positive conflicts of jurisdictions between Croatian (Member State) and Serbian (third State) courts in cross-border succession cases from the point of view of both Croatian (EU) and Serbian private international law. With regard to Croatian (EU) private international law, after the brief presentation of the relevant jurisdiction rules of ESR, the study will focus on the rule of Art. 12(1) of ESR and some remarks will be made to *lis pendens* rule of Art. 60 of CPILA and its relation to Art. 12(1) of ESR. As concerns Serbian private international law, the analysis will concentrate on the assessment of jurisdiction rules of Art. 71–73 of SPILA in order to define the relevant positive conflicts of jurisdictions to be resolved by Serbian courts, as well as on the *lis pendens* rule of Art. 80 of SPILA. Finally, in the absence of relevant case law pertaining to positive conflicts of jurisdiction caused by the ESR and SPILA rules, two simplified hypothetical cases will be discussed and analyzed from both Serbian and Croatian (EU) point of view.

2. JURISDICTION OF CROATIAN COURTS IN CROSS-BORDER SUCCESSION CASES AND PREVENTION/RESOLUTION OF POSITIVE JURISDICTION CONFLICTS WITH SERBIAN (THIRD STATE) COURTS

2.1. JURISDICTION RULES OF ESR

The jurisdiction of Croatian courts¹⁴ in succession matters is governed by the rules of ESR. This section briefly discusses the rules on general jurisdiction (Art. 4), subsidiary jurisdiction

¹² E.g. when the deceased of Serbian nationality had immovable assets located in Croatia as well as in Serbia, the Serbian court had always established, pursuant to art 71(1), exclusive jurisdiction over immovable assets located in Serbia and at the same time declined, pursuant to art 71(2), its jurisdiction over immovable assets located in Croatia because the Croatian court had exclusive jurisdiction to rule on those assets (see e.g. Higher Court in Belgrade, No. Gž 4750/12 and First Municipal Court in Belgrade, No. P br. 1154/11, Bilten Višeg suda u Beogradu, broj, 84, Intermex, Beograd). In the reverse case Croatian courts would have done the same (there are a number of decisions of Croatian courts from which one can see that Croatian courts have ruled only on immovable and movable assets of estate located in Croatia; see e.g. Supreme Court of Republic of Croatia, No. Rev 1614/12-2 from 7 December 2016; Supreme Court of Republic of Croatia, No. Rev 1233/2015-2 from 2 October 2018; Supreme Court of Republic of Croatia, No. Rev 1912/2015-2 from 7 November 2018).

¹³ Art. 83 of ESR.

¹⁴ In accordance with art 3(2) of ESR, the term 'court' also covers the Croatian public notaries which may be empowered by Croatian court to conduct the succession proceedings (see art 176 of Act on Succession, Official Gazette of the Republic of Croatia, No 48/2003, 163/2003, 35/2005, 127/2013, 33/2015, 14/2019. See Poretti, P., *Nadležnost, nadležna tijela i postupci prema Uredbi (EU) br. 650/2012 o nasljeđivanju*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci 1/2016, p. 564.

(Art. 10), necessity jurisdiction (Art. 11), as well as the rules on choice-of-court agreement (Art. 5). It should be stressed that ESR contains no rules on exclusive jurisdiction.

Pursuant to Art. 4 of ESR, Croatian courts have general jurisdiction to rule on the succession as a whole if the deceased's last habitual residence was in Croatia, irrespective of whether the assets of estate are located in Croatia, some other Member State or a third State (e.g. Serbia). This means that the rule on general jurisdiction follows the principle of the unity of succession.¹⁵ However, if the deceased's last habitual residence was in a third State, the Croatian court may also have the jurisdiction to decide on the estate, provided the criteria of the rules on subsidiary jurisdiction of Art. 10 or on necessity jurisdiction of Art. 11 of ESR are fulfilled.

Under the rules on subsidiary jurisdiction of Art. 10 of ESR, the Croatian court can establish jurisdiction in cases where the deceased had last habitual residence in a third State and at least one asset of his/her estate is located in Croatia.¹⁶ In such cases the courts of Croatia (where one or more assets are located) may, pursuant to Art. 10(1), have the jurisdiction to rule on the succession as a whole, (a) if the deceased had the Croatian nationality at the time of death or (b) if his/her previous habitual residence was located in Croatia, provided that, at the time the Croatian court is seised, a period of not more than five years has elapsed since that habitual residence changed. This means, for example, that a Croatian court, pursuant to Art. 10(1) point (a), has the jurisdiction to rule on the succession as a whole (i.e. on all assets of the estate) in cases concerning the deceased of Croatian nationality with last habitual residence in Serbia who left immovable and movable assets in both Croatia and Serbia. It is obvious that the rule of Art. 10(1) follows the principle of unity of succession too, although the cases to which it applies may have strong connections with third States. However, where the requirements of Art. 10(1) are not fulfilled, the provision of Art. 10(2) enables the Croatian court to establish jurisdiction to decide only on the assets located in Croatia. Although this rule allows Croatian courts to retain jurisdiction over the assets on the Croatian territory, it breaks the principle of unity of succession.¹⁷

Pursuant to Art. 11 of ESR, if the last habitual residence of the deceased was in a third State and the jurisdiction of the Croatian or any other Member State court cannot be established under any other jurisdiction rule of ESR, the Croatian court may, on an exceptional basis, have necessity jurisdiction to rule on the succession, provided the case has sufficient connection with Croatia and the proceedings cannot be reasonably brought or conducted or would be impossible in a third State to which the case is closely connected.¹⁸ It is obvious that the necessity

15 Eichel, *op. cit.* note 3, para.7; Dutta, *op. cit.* note 3; Dutta, A., *Vorbemerkung zu Artikel 4*, in: MüKoBGB, EuErbVO, Band 10, 6. Aufl., C. H. Beck, München, 2014, para. 4. The last habitual residence of the deceased also represents the main connecting factor for determining the law applicable to succession as a whole (art 21(1) ESR), which means the ESR strives to ensure the synchronisation of *ius* and *forum* (so called *Gleichlaufsprinzip*) too (see Eichel, *op. cit.* note 3, para. 4–6; Köhler, *op. cit.* note 4, 73; Dutta, *op. cit.* note 3, para. 2–3; Fuchs, A., *The new EU Succession Regulation in a nutshell*, ERA Forum 2015, pp. 119–120; Poretti, *op. cit.* note 14, p. 571; Radoja Knol, *op. cit.* note 7, p. 52).

16 See the commentary of art 10 in detail Panopoulos, G., *Article 10*, in: Pamboukis, H.P. (ed.), *EU Succession Regulation No 650/2012 – A Commentary*, Nomiki Bibliothiki – C.H.Beck – Hart – Nomos, Athens, 2017, pp. 145 etc.; Buonaiuti, F. M., *Article 10*, in: Caravaca Calvo, A.-L.; Davi, A.; Mansel, H.-P. (eds), *The EU Succession Regulation – A Commentary*, Cambridge University Press, Cambridge, 2016, pp. 186 etc.; Dutta, *op. cit.* note 4, para. 1 etc.; Köhler, *op. cit.* note 4, p. 81; Eichel, F., *Artikel 10 EuErbVO*, in: Herberger; Martinek; Rüßmann; Weth (Hrsg.), *JurisPK-BGB*, Band 6, 7. Aufl. 2014, para. 1 etc.

17 See Köhler, *op. cit.* note 4, p. 81.

18 See and compare the commentary of art 11 in detail Panopoulos, G., *Article 11*, in: Pamboukis, H. P. (ed.), *EU Succession Regulation No 650/2012 – A Commentary*, Nomiki Bibliothiki – C. H. Beck – Hart – Nomos, Athens, 2017, pp. 154 etc.; Eichel,

jurisdiction addresses solely the assets of estate which are located in a third State. However, it should be mentioned that it is not likely to expect that the Croatian court can, in accordance with Art. 11, establish jurisdiction to rule on the assets located in Serbia, because at this moment there is nothing to prevent Serbian courts to conduct the succession proceedings in respect of those assets.

Finally, pursuant to Art. 5(1) of ESR, the parties concerned may agree that a court or courts of a Member State are to have exclusive jurisdiction to rule on any succession matter, provided the deceased is a national of that Member State whose law was chosen by him as the law applicable to succession in accordance with Art. 22 of ESR.¹⁹ It is visible that the wording of Art. 5(1) is such that it does not expressly contain reference to the ruling on 'the succession as a whole', but only the ruling on 'any succession matter'.²⁰ In our opinion, this means that the choice-of-court agreement concluded in favour of the court of Croatia (whose law was chosen by the deceased as his/her *lex nationalis* to govern the succession) may cover any issue relating not only to the succession as a whole, but also to one or more assets of estate located in Croatia, other Member States and/or in third States.²¹ Therefore, when the deceased of Croatian nationality, who possessed the assets located in Croatia as well as in Serbia, has chosen the Croatian law as the law applicable to succession, the parties concerned (i.e. heirs and other beneficiaries) can choose the Croatian court to decide on the succession of entire property.

2.2. THE RULE ON LIMITATION OF PROCEEDINGS AS A TOOL FOR PREVENTING POSITIVE CONFLICTS OF JURISDICTIONS WITH SERBIAN (THIRD STATE) COURTS

It is obvious that, pursuant to almost all the above presented jurisdiction rules of ESR,²² the Croatian court may have the jurisdiction to decide on the succession as a whole in the cases in which the immovable and movable assets of the estate are located in Serbia as a third State. In such cases the positive conflicts of jurisdiction between Croatian and Serbian courts are almost inevitable, because the jurisdiction of Serbian courts is based on different criteria. Consequently, this may result in a court decision which cannot be recognized and enforced in Serbia predominantly due to the fact that Serbian courts have exclusive jurisdiction over immovable assets located in Serbia (which represents a ground for non-recognition of foreign

F., *Artikel 11 EuErbVO*, in: Herberger; Martinek; Rüßmann; Weth (Hrsg.), *JurisPK-BGB*, Band 6, 7. Aufl. 2014, para. 1 etc.; Dutta, A., *Artikel 11*, in: *MüKoBGB*, *EuErbVO*, Band 10, 6. Aufl., C. H. Beck, München, 2014, para. 1 etc.; Buonaiuti, F.M., *Article 11*, in: Caravaca Calvo, A-L.; Davi, A.; Mansel, H-P. (eds), *The EU Succession Regulation – A Commentary*, Cambridge University Press, Cambridge, 2016, pp. 199 etc.; Köhler, *op. cit.* note 4, pp. 81–83.

19 If such agreement has been concluded, the court seised pursuant to art 4 or to art 10 of ESR shall decline its jurisdiction (see art 6 lit. b) and leave to the prorogated Member State court to rule on succession (art 7 lit. b). See the commentary of art 5 in detail Köhler, *op. cit.* note 4, pp. 77 etc.; Dutta, A., *Artikel 5*, in: *MüKoBGB*, *EuErbVO*, Band 10, 6. Aufl., C. H. Beck, München, 2014, para. 1 etc.; Eichel, F., *Artikel 5 EuErbVO*, in: Herberger; Martinek; Rüßmann; Weth (Hrsg.), *JurisPK-BGB*, Band 6, 7. Aufl. 2014, para. 1 etc.; Poretti, *op. cit.* note 14, p. 568.

20 See also an explanation in Recital 28 of Succession Regulation.

21 Therefore, Art. 5 of ESR empowers the parties concerned to break the principle of unity of succession on 'jurisdiction level' (see Dutta, *op. cit.* note 19, para. 15; it seems that opposite view is supported by Köhler, *op. cit.* note 4, p. 76).

22 The exception is the rule of art 10(2) of ESR.

court decisions in Serbia).^{23,24} In order to prevent these problems with third State courts, the European legislator created the rule of Art. 12 of ESR which, under certain conditions, empowers the Member State courts to limit their proceedings by deciding not to rule on the assets located in a third State. Art. 12 reads as follows:

“1. *Where the estate of the deceased comprises assets located in a third State, the court seised to rule on the succession may, at the request of one of the parties, decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognized and, where applicable, declared enforceable in that third State.*

2. *Paragraph 1 shall not affect the right of the parties to limit the scope of the proceedings under the law of the Member State of the court seised.”*

According to the wording of Art. 12(1) of ESR, the Croatian court seised may limit its proceedings in cases in which one or more assets of estate are located in Serbia as a third State, if the following conditions are cumulatively fulfilled:²⁵ (a) the Croatian court must have jurisdiction to rule on estate comprised of assets located in Serbia; (b) the assets of the estate must be located in Serbia; (c) it must be determined (with sufficient certainty)²⁶ that there is an expectation that the decision of the Croatian court seised in respect of the assets located in Serbia will not be recognized in Serbia; and (d) the limitation of proceedings pending before the Croatian court (i.e. the exclusion of assets located in a third State from the scope of such proceedings) must be requested by one of the parties. It should be stressed that the rule of Art. 12(1) does not limit the jurisdiction of Croatian (Member State) court (which has already been established in accordance with relevant rules of ESR), but rather limits the subject matter of the proceedings by excluding some assets located in a third State (i.e. Serbia) from its ruling.²⁷ Each of the cited conditions for application of Art. 12(1) will be briefly discussed below.²⁸

2.2.1. JURISDICTION OF A CROATIAN COURT IN RESPECT OF ASSETS LOCATED IN SERBIA AS A THIRD STATE

Art. 12(1) may be applied only by the Croatian court which has established its jurisdiction to rule on the estate which comprises assets located in Serbia. Therefore, the application of Art. 12(1) is always possible in the cases where the Croatian court is seised to rule on the assets located in Serbia pursuant to the rule on general jurisdiction of Art. 4 or to the rule on

23 See art 89 of SPILA.

24 On exclusive jurisdiction of a third State court over immovable assets located in that third State as a ground for denial of recognition of the decision issued by a Member State court see and compare E. Lein, *op. cit.* note 5, 206, pp. 215–218; Panopoulos, *op. cit.* note 4, pp. 102–103; Buonaiuti, F. M., *Article 12*, in: Caravaca Calvo, A.-L.; Davi, A.; Mansel, H.-P. (eds), *The EU Succession Regulation – A Commentary*, Cambridge University Press, Cambridge, 2016, pp. 210–211; Dutta, A., *Artikel 12*, in: MüKoBGB, , *EuErbVO*, Band 10, 6. Aufl., C. H. Beck, München, 2014, para. 7; Eichel, F., *Artikel 12 EuErbVO*, in: Herberger; Martinek; Rüßmann; Weth (Hrsg.), *JurisPK-BGB*, Band 6, 7. Aufl. 2014, para. 1.

25 See and compare Dutta, *op. cit.* note 24, para. 2–7; Panopoulos, *op. cit.* note 4, pp. 102–105; Buonaiuti, *op. cit.* note 24, pp. 212–219; Radoja Knol, *op. cit.* note 7, pp. 51, 58–60.

26 So Buonaiuti, *op. cit.* note 24, p. 216.

27 So clearly Panopolous, *op. cit.* note 4, pp. 105–106. See also Radoja Knol, *op. cit.* note 7, 59.

28 The provision of art 12(2) will not be the subject matter of the present analysis.

subsidiary jurisdiction of Art. 10(1) of ESR²⁹ (both of which establish the jurisdiction for the succession as a whole). Logically, it cannot be applied in the cases in which the Croatian court has jurisdiction, under Art. 10(2) of ESR, to rule only on the assets located in Croatia. However, it is disputable whether Art. 12(1) may be applied in the cases where the jurisdiction of the Croatian court is based on the rule on necessity jurisdiction of Art. 11 or on the choice-of-court agreement of Art. 5 of ESR.

As has already been pointed out above, pursuant to Art. 11 of ESR, the necessity jurisdiction can be established only in respect of assets located in a third State. Hence, there are no obstacles to invoke the application of Art. 12(1) in cases in which the Croatian court has established necessity jurisdiction to rule on the assets located in Serbia, if all other conditions for such invocation have been fulfilled.³⁰ However, there is an opinion that Art. 12(1) cannot be invoked in case of the necessity jurisdiction, because the rule of Art. 11 allows a Member State court to define the extent of its jurisdiction, which implies that the court must also examine whether its decision on an asset located in a third State will be recognized in that third State.³¹ If there is an expectation that it will not be recognized, the necessity jurisdiction of a Member State court cannot cover an asset located in a third State. Therefore, according to this opinion, the key condition for application of Art. 12(1) (i.e. the expectation of non-recognition of the decision in a third State) should be taken into consideration within Art. 11 and not *ex post* through Art. 12(1).³² In our opinion, however, this is contrary to the wording of Art. 12(1) as well as of Art. 11 of ESR. Furthermore, as Croatian courts can hardly be expected to establish the necessity jurisdiction over assets located in Serbia, the discussion above has little significance for this paper.

As concerns the application of Art. 12(1) in cases in which the jurisdiction of the Croatian court has been established through the choice-of-court agreement concluded in accordance with Art. 5, there are also divergent opinions in the literature. The majority of authors agree (usually without any further explanation) that the parties to the choice-of-court agreement are entitled to invoke Art. 12(1).³³ However, another view claims that there is no room for the application of Art. 12(1), because the parties had the opportunity to exclude the assets located in a third State from their choice-of-court agreement and their failure to do so should be regarded as a tacit waiver of their right to submit request for the application of Art. 12(1).³⁴ We support the majority view because the invocation of Art. 12(1) in such cases prevents positive conflicts of jurisdiction between the Croatian (Member State) and third State courts, which is not only in the public interest, but also in the interest of the parties. Therefore, if one of the parties to the choice-of-court agreement learns at the time of the initiation of the proceedings or at the time of entering an appearance that the decision of the prorogated Croatian court

29 All authors support this view (see Panopoulos, *op. cit.* note 4, p. 101; Dutta, *op. cit.* note 24, para. 3; Buonaiuti, *op. cit.* note 24, pp. 210 etc., 218–219; Köhler, *op. cit.* note 4, p. 84; Eichel, *op. cit.* note 24, para. 1–2).

30 See Buonaiuti, *op. cit.* note 24, pp. 218–219; Eichel, *op. cit.* note 24, para. 1–2; Köhler, *op. cit.* note 4, p. 84.

31 So Panopoulos, *op. cit.* note 4, p. 101; see also Dutta, *op. cit.* note 24, para. 3, who does not mention the necessity jurisdiction of art 11 with regard to the application of art 12(1).

32 Panopoulos, *op. cit.* note 4, p. 101.

33 See Dutta, *op. cit.* note 24, para. 3; see also Eichel, *op. cit.* note 24, para. 1–2 and Köhler, *op. cit.* note 4, p. 84.

34 So clearly Panopoulos, *op. cit.* note 4, p. 101.

in respect of the assets located in Serbia will not be recognized in Serbia, they can request the limitation of proceedings pursuant to Art. 12(1).

2.2.2. LOCALISATION OF ASSETS IN SERBIA AS A THIRD STATE

The second condition for limitation of proceedings in accordance with Art. 12(1) is that the assets of estate are located in Serbia as a third State. In order to ensure the unique localisation of each asset of the estate, the question of whether an asset is located in a third State or in a Member State must be answered autonomously by Croatian and other Member State courts.³⁵ Considering that Art. 10 of ESR requires for establishing the subsidiary jurisdiction of the Member State court that some assets of the estate are located in that Member State, the criteria of Art. 10 have to be used to determine which assets are located in a third State too.³⁶ However, according to another view supported by few authors, whether an asset is located in a third State should be determined by the law of that third State.³⁷ It would mean that the Croatian court has to apply the Serbian law in order to determine which assets of estate are located on Serbian territory. In our opinion this view cannot be accepted because it allows for divergent interpretations, according to which one asset can, for example, be simultaneously located in a third State and in a Member State.³⁸

2.2.3. EXPECTATION THAT THE DECISION WILL NOT BE RECOGNIZED IN SERBIA AS A THIRD STATE

The requirement that the decision of the Croatian court in respect of the assets located in Serbia as a third State will not be recognized and enforced in Serbia represents the key condition for application of Art. 12(1). This condition is, however, defined very broadly and, consequently, opens the following question: which grounds for non-recognition provided by the law of Serbia (or of any other respective third State where the assets are located) have to be taken into account?³⁹

The exclusive jurisdiction of a third State court to rule on succession of immovable assets located in its territory usually represents a ground for non-recognition of foreign judgements in respect of these assets in that third State, and all authors agree that it must be taken into account within Art. 12(1).⁴⁰ Therefore, if the Croatian court is seised to rule on immovable assets located in Serbia (pursuant to Art. 4, 5 or 10(1) of ESR), the fact that Serbian courts have exclusive jurisdiction to rule on these assets must be taken into account, because the exclusive

35 Eichel, *op. cit.* note 24, para. 2 and Eichel, *op. cit.* note 16, para. 11; Panopoulos, *op. cit.* note 4, p. 102; Dutta, *op. cit.* note 24, para. 4.

36 *Ibid.*

37 So Buonaiuti, *op. cit.* note 24, pp. 212–213 (who refers to Bonomi, A., *Article 12*, in: Bonomi, A., Wautelet, P. (eds), *Le Droit européen des successions. Commentaire du règlement n° 650/2012 du 4 juillet 2012*, Bruylant, Bruxelles, 2013, p. 233).

38 See also Panopoulos, *op. cit.* note 4, p. 102.

39 See the discussion: Buonaiuti, *op. cit.* note 24, pp. 214–218; Panopoulos, *op. cit.* note 4, pp. 102–104; Dutta, *op. cit.* note 24, para. 6–7.

40 See Buonaiuti, *op. cit.* note 24, pp. 214–215; Panopoulos, *op. cit.* note 4, pp. 102–103; Dutta, *op. cit.* note 24, para. 6; Eichel, *op. cit.* note 24, para. 1.

jurisdiction of Serbian courts represents a ground for non-recognition of foreign judgements in Serbia.⁴¹

However, the opinions are divided over the influence of other grounds for non-recognition on application of Art. 12(1). According to the view which prevails in the literature, any ground for non-recognition of foreign judgments provided by the law of a third State where an asset is located, such as principal refusal to recognize any foreign judgement, absence of reciprocity, *res iudicata*, *lis pendens*, violation of defendant's rights or contrariety to public policy (in addition to exclusive jurisdiction), must be taken into account while determining whether the decision of the Member State court seised in respect of that asset may be recognized and enforced in that third State.⁴² This means that the Croatian court seised to rule on the assets located in Serbia must examine all grounds for non-recognition of foreign judicial decisions provided by the rules of SPILA.⁴³ This view relies on the wording of Art. 12(1), which apparently gives to the Member State court seised absolute discretion to examine the probability of non-recognition of its decision in a third State by taking into account all recognition requirements provided by the law of that third State.⁴⁴ According to another view, the refusal of a third State to recognize any foreign judgement and the absence of reciprocity cannot be taken into account for the invocation of Art. 12(1) because of their political nature, while the grounds such as *res iudicata* in respect of judicial decisions originating from a third State and *lis pendens* in relation to the proceedings initiated in a third State cannot be taken into consideration since these issues are not covered by the scope of ESR.⁴⁵ As concerns the violation of public policy of a third State, this view finds its examination unreasonable.⁴⁶

We support the prevailing opinion, not only because taking into account any ground for non-recognition provided by the law of a third State derives from the wording of Art. 12(1), but also because it is in line with the aim of Art. 12(1) – not to render the decision which will not be recognized in a third State where the assets are located.⁴⁷

2.2.4. REQUEST OF ONE OF THE PARTIES

Finally, the application of Art. 12(1) depends on the request of one of the parties. Such request must refer to the assets located in Serbia as a third State and must be submitted to the Croatian court at the time of entering an appearance to the proceedings, but prior to any defence as to the substance.⁴⁸ However, considering the problems which may arise from the failure to submit such request, we support the opinion expressed in the literature that Art. 12(1) should be revised in a way to enable the Member State courts to decide on the limitation

⁴¹ Art. 89 of Serbian PIL Act.

⁴² So Buonaiuti, *op. cit.* note 24, pp. 214–215; Dutta, *op. cit.* note 24, para. 6–7; Eichel, *op. cit.* note 24, para. 1; Köhler, *op. cit.* note 4, p. 84.

⁴³ The grounds for non-recognition of foreign court decisions in Serbia are governed by Art. 87–96 of SPILA.

⁴⁴ See and compare Buonaiuti, *op. cit.* note 24, pp. 214–218; Eichel, *op. cit.* note 24, para. 6; Dutta, *op. cit.* note 24, para. 8.

⁴⁵ So Panopoulos, *op. cit.* note 4, p. 103; Radoja Knol, *op. cit.* note 7, 60.

⁴⁶ Panopoulos, *op. cit.* note 4, pp. 103–104.

⁴⁷ See also Buonaiuti, *op. cit.* note 24, pp. 210–211, 216.

⁴⁸ Panopoluos, *op. cit.* note 4, pp. 102, 105.

of proceedings on their own motion at least in respect of immovable assets located in a third State which fall under the exclusive jurisdiction of the courts of that third State.⁴⁹

2.3. THE *LIS PENDENS* RULE OF ART. 60 CPILA AND ITS RELATION TO ART. 12(1) OF ESR

Art. 60 of CPILA⁵⁰ contains the rule on *lis pendens* whose aim is to prevent two parallel proceedings involving the same cause of action and between the same parties before the Croatian court and the court of a foreign State which is not an EU Member State (i.e. to resolve the positive conflict of jurisdiction between Croatian and third State courts).⁵¹

Pursuant to Art. 60(1) of CPILA, where two parallel proceedings involving the same cause of action and between the same parties⁵² were initiated before the Croatian court and the court of a third State, the Croatian court shall on its own motion (*ex officio*)⁵³ suspend its proceeding if the proceedings before the third State court were initiated first.⁵⁴ Such suspension lasts until the court of a third State renders the decision eligible for recognition and enforcement in Croatia, in which case the Croatian court shall, pursuant to Art. 60(2) of CPILA, decline its jurisdiction as soon as such decision is delivered to it. However, where it may be expected that the court of a third State will render the decision ineligible for recognition and enforcement in Croatia or that it will not render the decision within a reasonable period of time, the Croatian court shall decide to continue the suspended proceedings.⁵⁵ The same applies where the proceedings before a foreign court are concluded without meritorious decision.⁵⁶ In order to determine the probability of non-recognition of a foreign decision in Croatia, the Croatian court must examine all grounds for non-recognition of foreign judgments regulated by Art. 66–71 of CPILA, although it may be very difficult to foresee the existence of some of them with sufficient certainty (e.g. contrariety to public policy) in the early stages of the proceedings.

49 *Ibid.*, pp. 104–105.

50 Art 60 of CPILA: "(1) Where the proceedings involving the same cause of action and between the same parties were first initiated before a court of a State which is not EU Member State, the court of the Republic of Croatia shall stay the proceedings until the court of that foreign State renders the decision, unless it cannot be expected that the court of that foreign State will render the decision which is eligible for recognition and enforcement in the Republic of Croatia within a reasonable period of time.

(2) If the decision of the court of a foreign State which is eligible for recognition is submitted to the court of the Republic of Croatia while the suspension of the proceedings still lasts in accordance with paragraph 1 of this article, the court of the Republic of Croatia shall decline its jurisdiction." (Note: author's translation.)

51 See Sikirić, H., *Zakon o međunarodnom privatnom pravu*, in: Tradicionalno XXXIII. savjetovanje – Aktualnosti hrvatskog zakonodavstva i pravne prakse, Godišnjak 25., Organizator (2018), 125; Župan, M., *Novi Zakon o međunarodnom privatnom pravu*, Hrvatska pravna revija, ožujak/travanj 2018, 9; Hoško, T., *Novo uređenje međunarodnog privatnog prava u Republici Hrvatskoj – Zakon o međunarodnom privatnom pravu*, Zakonitost, 1/2019, 29.

52 The identity of cause of action and of the parties is to be determined in accordance with *lex fori* (i.e. Croatian civil procedure law).

53 Although it is not expressly stated that the Croatian court should suspend its proceedings on its own motion, it should be assumed that it must do so (see Sikirić, *op. cit.* note 51, p. 125).

54 The momentum of the initiation of these proceeding is to be determined by the law of that third State.

55 See Sikirić, *op. cit.* note 51, p. 125.

56 *Ibid.*

It should be stressed that the exclusive jurisdiction of Croatian courts also represents a general ground for non-recognition of foreign judgments⁵⁷ which, however, does not apply to the foreign judicial decisions in succession matters because the Croatian court, pursuant to the rules of ESR, can only have elective jurisdiction in such matters. This means that the Croatian court will suspend its proceedings in respect of the immovable assets located in Croatia if the proceedings involving the same assets were first initiated before the Serbian court (although a Serbian court will not do the same in the reverse case, when the immovable assets are located in Serbia). Therefore, in the context of Art. 60 of CPILA, the (in)eligibility of Serbian judicial decision in succession matters for recognition and enforcement in Croatia will be examined with regard to all other grounds for non-recognition. With this in mind, it may be expected that the Croatian court will in most cases find that Serbian decision in succession matters, which is expected to be issued, will be eligible for recognition and enforcement in Croatia.

Speaking of the relationship between the *lis pendens* rule of Art. 60 of CPILA and the rule on limitation of proceedings of Art. 12(1) of ESR, it should be noticed that both rules are intended to be applied in cases where the proceedings before the Serbian court in respect of immovable assets located in Serbia were initiated prior to the proceedings before the Croatian court in respect of same assets. It can be assumed that in such cases the Croatian court will apply Art. 60 of CPILA on its own motion and decide to suspend the proceedings in respect of immovable assets located in Serbia. This makes the invocation of Art. 12(1) of ESR slightly redundant. However, its invocation may be rational since the decision to exclude immovable assets located in Serbia from the scope of the proceedings, brought in accordance with Art. 12(1) of ESR, precludes any later decision of the Croatian court to continue the proceedings in respect of these assets, as might happen under the rules of Art. 60 of CPILA (e.g. because of the violation of the defendant's rights in Serbian proceedings in which case the decision of the Serbian court expected to be issued becomes ineligible for recognition in Croatia and, consequently, the Croatian court decides to continue its proceedings). When it comes to the cases where the proceedings before the Croatian court cannot be suspended in accordance with Art. 60 of CPILA, the invocation of Art. 12(1) of ESR becomes crucial, as it is the only tool to prevent positive conflicts of jurisdiction, provided the conditions for its application have been fulfilled.

3. JURISDICTION OF SERBIAN COURTS IN CROSS-BORDER SUCCESSION CASES AND PREVENTION/RESOLUTION OF POSITIVE CONFLICTS OF JURISDICTIONS WITH FOREIGN (PARTICULARLY CROATIAN) COURTS

3.1. JURISDICTION OF SERBIAN COURTS UNDER THE RULES OF SPILA

The international jurisdiction of Serbian courts in succession matters is governed by the rules of Art. 71–73 of SPILA. As has already been mentioned, these rules are based on the cri-

⁵⁷ See Art. 69(1) of CPILA.

teria of the nationality of the deceased and the distinction between immovable and movable assets of estate and they follow the principle of scission of succession (on jurisdiction level) in most cases,⁵⁸ which means that they have almost nothing in common with the jurisdiction rules of the Succession Regulation.

Pursuant to Art. 71(1), 72(1) and 73(1) of SPILA, Serbian courts have exclusive jurisdiction to rule on immovable assets of the estate which are located in Serbia, irrespective of the nationality of the deceased. It should mean, *argumentum a contrario*, that Serbian courts have no jurisdiction over immovable assets located in a foreign State.⁵⁹ This certainly applies to the immovable assets located abroad which belonged to the deceased who had a foreign nationality or was stateless or a refugee.⁶⁰ However, where the deceased was a national of Serbia, the Serbian courts may, pursuant to Art. 71(2) of SPILA, have (elective) jurisdiction to rule on his/her immovable assets located abroad, but only if 'the authority of the State where immovable assets are located has no jurisdiction to rule on these assets pursuant to its own law'. With regard to the application of this rule, one may rise the question of how to interpret the condition that the court or other authority of the foreign State where immovable assets are located 'has no jurisdiction to rule on these assets pursuant to its own law'. Does this mean that elective jurisdiction of a foreign court is a sufficient reason for a Serbian court to decline jurisdiction? Or must the jurisdiction of a foreign court be exclusive for this to happen? The wording of Art. 71(2) of SPILA suggests that Serbian courts can only have jurisdiction to rule on immovable assets located in a foreign State if the courts of that foreign State cannot establish jurisdiction in respect of such assets at all, i.e. under any rule of its own law, which means the elective jurisdiction of a foreign court is quite enough to exclude the jurisdiction of Serbian courts. However, according to a view expressed in Serbian literature, Art. 71(2) of SPILA should not be interpreted so restrictively because such interpretation may lead to unnecessary limitation of the jurisdiction of Serbian courts. For that reason the Serbian court should decline its jurisdiction to rule on immovable assets of the estate located in a foreign State only if courts or other authorities of that foreign State have exclusive jurisdiction to rule on such assets.⁶¹ To certain extent, this view has been confirmed in Serbian judicial practice.⁶²

58 It should be mentioned that the conclusion of a choice-of-court agreement in succession matters in accordance with art 49 of Serbian PIL Act is possible, although it is never used in practice. See Dorđević, S.; Meškić, Z., *The Relations of Bosnia and Herzegovina, Serbia, North Macedonia and Montenegro with EU Member States*, in: Dutta, A.; Wurmnest, W. (eds), *European Private International Law and Member State Treaties with Third States – The Case of the European Succession Regulation*, Intersentia, Cambridge – Antwerp – Chicago, 2019, p. 215; see also Dika, M.; Knežević, G.; Stojanović, S., *Komentar Zakona o međunarodnom privatnom i procesnom pravu*, Nomos, Beograd, 1991, p. 233.

59 Dorđević, Meškić, *op. cit.* note 58, pp. 213–214; Dika; Knežević; Stojanović, *op. cit.* note 58, p. 239; Dorđević, *op. cit.* note 3, pp. 379–380.

60 *Ibid.*

61 Stanivuković, M.; Đundić, P., *Međunarodno privatno pravo, posebni deo*, Centar za izdavačku delatnost, Univerzitet u Novom Sadu, Pravni fakultet, Novi Sad, 2008, pp. 195–196; S. Dorđević, *op. cit.* note 3, pp. 378–379.

62 It could be claimed that the interpretation of art 71(2) proposed in Serbian literature has been in a certain way confirmed in Serbian judicial practice. Namely, in one case, the subject matter of the appeal proceedings before the Belgrade District Court was the question of whether Serbian courts have the jurisdiction to rule on an immovable asset of the deceased of Serbian nationality which is located in Macedonia. While criticizing the decision of the court of the first instance which did not completely determine the facts of the case and wrongly applied art 71(2) Serbian PIL Act, the Belgrade District Court cited that it is necessary to examine whether the Macedonian court, pursuant to its own law, has exclusive jurisdiction to rule on such asset and in case there is the exclusive jurisdiction of Macedonian court, the Serbian court has to decline its jurisdiction in respect of that asset and to conduct the succession proceedings only in respect of the immovable assets located in Serbia (see Decision of District Court in Belgrade, No. Gž. 1782/04, *Izbor sudske prakse* 2/2005, 62). The Belgrade Higher Court held the same position in another (similar) case (Decision of Higher Court in Belgrade, No. Gž 4750/12 and Decision of First Municipal Court in Belgrade, No. P br.

With regard to the movable assets of estate that belonged to the deceased of Serbian nationality, the Serbian courts have, pursuant to Art. 71(3) of SPILA, elective jurisdiction to rule on movable assets located in Serbia and on movable assets located in a foreign State, but in the latter case only if a court or an authority of that foreign State has no jurisdiction pursuant to its own law or declines jurisdiction to rule on those assets.⁶³ The condition that ‘an authority of the foreign State where movable assets are located has no jurisdiction pursuant to its own law’ should be interpreted in the same way as that set out in Art. 71(2) of SPILA – the Serbian court may establish jurisdiction to rule on the movable assets of a Serbian national located in a foreign State if the court of that foreign State does not have exclusive jurisdiction over these assets.⁶⁴

As concerns movable assets that belonged to the deceased who was a foreign national, the Serbian courts have, pursuant to Art. 72(2) of SPILA, elective jurisdiction to rule on such assets located in Serbia, unless the court of the deceased’s home State has no jurisdiction to rule on the movable assets of a Serbian national. This rule implies that Serbian courts have no jurisdiction at all to rule on the movable assets of a foreign national which are located abroad, but they may have jurisdiction to rule on his/her movable assets located in Serbia, if the court of the deceased’s home State in analogous situations declares its jurisdiction to rule on movable assets of a Serbian national.⁶⁵ Finally, in cases in which the deceased was stateless or a refugee, Serbian courts have, pursuant to Art. 73(2) of SPILA, elective jurisdiction to rule on his/her movable assets if these assets are located in Serbia and the deceased was domiciled in Serbia. However, if the stateless deceased or the deceased who was a refugee had domicile in a foreign State, the jurisdiction of Serbian courts is to be determined in accordance with the jurisdiction rules of Art. 72(2) of SPILA which apply to the deceased who was a foreign national (see Art. 73(4) of SPILA).⁶⁶ It means that Serbian courts have no jurisdiction at all to rule on his/her movable assets located abroad, but may have elective jurisdiction to rule on his/her movable assets located in Serbia, if the court of the foreign State of his/her domicile in analogous situations declares jurisdiction to rule on movable assets that belonged to the deceased of Serbian nationality.

It should be mentioned that the general conflict-of-law rule on succession of Art. 30(1) of SPILA provides for the application of the deceased’s last *lex nationalis* to the succession as a whole, which means that it follows the principle of unity of succession (on ‘conflict-of-law level’).⁶⁷ Having in mind that the Serbian court, pursuant to the above presented jurisdiction

1154/11, Bilten Višeg suda u Beogradu, broj, 84, Intermex, Beograd) in which an immovable asset was located in Croatia, whose courts at that time had exclusive jurisdiction to rule on immovable assets of the estate located in Croatia. However, in both these cases the question of whether the Serbian court should decide in the same way if the court of a foreign State has elective jurisdiction to rule on an immovable asset located in its territory was not discussed at all. The missed opportunity to discuss this issue could be, at least until the clear answer is provided, interpreted in a way that the elective jurisdiction of the court of a foreign State in respect of the immovable assets located in its territory does not exclude the jurisdiction of the Serbian court to rule on such asset in accordance with art 71(2) Serbian PIL Act (see Đorđević, *op. cit.* note 3, p. 379 footnote 7).

63 Đorđević; Meškić, *op. cit.* note 58, p. 214.

64 See Stanivuković; Đundić, *op. cit.* note 61, pp. 195–196; Đorđević, *op. cit.* note 3, pp. 378–379.

65 See Đorđević; Meškić, *op. cit.* note 58, p. 214; see also Stanivuković, Đundić, *op. cit.* note 61, pp. 197–198.

66 On these provisions see Dika; Knežević; Stojanović, *op. cit.* note 58, p. 241; Stanivuković; Đundić, *op. cit.* note 61, p. 201.

67 See Varadi, T.; Bordaš, B.; Knežević, G.; Pavić, V., *Međunarodno privatno pravo*, JP “Službeni glasnik”, Beograd, 2012, pp. 337, 339–340; Stanivuković, M.; Živković, M., Serbia, in: Verschraegen, B. (ed.), *International Encyclopedia of Laws*, vol. 2, *Private International Law*, supp. 21, Kluwer Law International 2009, p. 216; Djordjevic, S., *Länderbericht Serbien*, in: Burandt, W.; Rohahn, D. (eds.), *Erbrecht*, 2. Aufl., C.H. Beck, München, 2014, pp. 1622–1623.

rules, rarely has the jurisdiction to rule on the succession as a whole when one or more (especially immovable) assets of the estate are located in a foreign State, it may be noticed that the jurisdiction will be often split between Serbian and foreign courts, which will separately determine *lex successionis* with regard to respective assets of the estate.⁶⁸ It follows that the principle of scission of succession ‘dominates’ Serbian international succession law.⁶⁹

3.2. ASSESSMENT OF JURISDICTION RULES IN THE LIGHT OF PREVENTION OF POSITIVE CONFLICTS OF JURISDICTION

Considering the above presented jurisdiction rules of Art. 71–73 of SPILA, it seems that Serbian courts almost never deal with the problems of positive conflicts of jurisdictions over immovable assets, because there is usually no need, from their point of view, to resolve such problems.

Namely, where the deceased was a foreign national, a stateless person or a refugee, the Serbian court has exclusive jurisdiction to rule on succession of his/her immovable assets located in Serbia and no jurisdiction over his/her immovable assets located abroad. For example, if in a given case the estate of the deceased who was a Croatian national comprises immovable assets located in both Serbia and Croatia, the Serbian court shall declare its exclusive jurisdiction to rule on immovable assets located in Serbia and decline its jurisdiction to rule on immovable assets located in Croatia. In such a case no conflicts of jurisdiction can arise to be resolved. Even if the proceedings in respect of immovable assets located in Serbia were first initiated before the Croatian court (which may be seised to rule on these assets pursuant to Art. 4 or 10(1) of ESR), the Serbian court will disregard this fact and will not apply the *lis pendens* rule of Art. 80 of SPILA, because it has exclusive jurisdiction to rule on succession of immovable assets located in Serbia.⁷⁰ Therefore, there are no ‘relevant’ positive conflicts of jurisdictions which have to be prevented or resolved by Serbian court.

In the case where the deceased was a Serbian national, the Serbian court has exclusive jurisdiction to rule on his/her immovable assets located in Serbia in respect of which no relevant conflicts (from Serbian point of view) arise. But it can also have elective jurisdiction to rule on his/her immovable assets located in a foreign State provided the court or other authority of that foreign State does not have exclusive jurisdiction to rule on such assets pursuant to its own law (as explained above.)⁷¹ For example, in the cases in which the deceased of Serbian nationality left immovable assets located in Croatia, whose courts, pursuant to the rules of ESR, have elective jurisdiction to rule on these assets, the Serbian court can also establish

68 About problems see Dorđević, *op. cit.* note 3, pp. 380–398.

69 See Dorđević; Meškić, *op. cit.* note 58, p. 213–214; Dorđević, *op. cit.* note 3, p. 380. The principle of unity of succession can be certainly carried out if all immovable and movable assets of the estate are located in Serbia, in which case Serbian courts may have jurisdiction to rule on the whole estate and, pursuant to art 30(1) of Serbian PIL Act, apply a single national law to the succession as a whole.

70 Also the recognition of Croatian judgment will be refused in this case because exclusive jurisdiction of Serbian courts represents a ground for non-recognition (art 89 of Serbian PIL Act).

71 See section 3.1.

elective jurisdiction to rule on the same assets.⁷² Therefore, the ‘relevant’ positive conflicts of jurisdictions in respect of immovable assets of a deceased Serbian national located in a foreign State may arise in any case in which the court of that foreign State has elective jurisdiction to rule on such assets.

With regard to movable assets of the estate, the Serbian court has no jurisdiction to rule on movable assets located in a foreign State which belonged to the deceased who was a national of that foreign State or to the deceased who was a stateless person or a refugee domiciled in that foreign State.⁷³ This means that the movable assets located in Croatia that belonged to the deceased of Croatian nationality or to the deceased who was stateless or a refugee domiciled in Croatia does not fall at all under the jurisdiction of Serbian courts. Consequently, in these cases the positive conflicts of jurisdictions between Serbian and foreign (Croatian) courts cannot occur. In all other cases involving the succession of movable assets the Serbian court has elective jurisdiction, so the positive conflicts of jurisdictions with foreign (Croatian) courts may occur.

Finally, it should be mentioned that the application of Art. 71–73 of SPILA depends on the characterization of an asset as immovable or movable property. According to the prevailing opinion, whether an asset is immovable or movable property is to be determined by the law of the State in which an asset is located.⁷⁴ In order to establish this, it must be previously determined where (in which State) an asset is located. We find that the localisation of an asset in respective State has to be determined in accordance with criteria of Serbian law (as a *lex fori*).⁷⁵ Having this in mind, one can imagine the situation in which the Serbian court finds that, according to the criteria of its own law, the concrete asset is located in Serbia and the Croatian court takes the view that the same asset, according to the criteria of Art. 10 of ESR, is located in Croatia, in which case the positive conflict of jurisdiction between these courts in respect of this asset can occur. Since cases of this kind will be extremely rare, no further attention will be given to them in this paper.

3.3. THE *LIS PENDENS* RULE OF ART. 80 OF SPILA

The *lis pendens* rule of Art. 80 of SPILA⁷⁶ differs significantly from that of Art. 60 of CPI-LA,⁷⁷ although both pursue the same aim – to prevent the pending of two parallel proceedings

⁷² See art 71(2) of SPILA.

⁷³ See art 72(2) and 73(4) of SPILA.

⁷⁴ See Dika; Knežević; Stojanović, *op. cit.* note 58, 237; Jakšić, A., *Međunarodno privatno pravo*, DJB Diagonale, Beograd, 2008, p. 167; Stanivuković, M.; Živković, M., *Međunarodno privatno pravo, opšti deo*, JP Službeni glasnik, Beograd, 2008, p. 256.

⁷⁵ With regard to the issue of double accountability of donated asset in heir’s share made by the courts of two different countries see and compare Đorđević, *op. cit.* note 3, 387–390.

⁷⁶ Art 80 of SPILA: “The court of the Federal Republic of Yugoslavia (i.e. of the Republic of Serbia; author’s note) shall stay the proceedings at the request of a party if a dispute is pending before a foreign court in the same legal matter and between the same parties, as follows:

- (1) if the proceedings were first instituted before the foreign court in the respective dispute;
- (2) if the court of the Federal Republic of Yugoslavia does not have exclusive jurisdiction for the dispute;
- (3) if there is reciprocity.”

⁷⁷ See the comparison made by Sikrić, *op. cit.* note 51, 124–125.

before domestic and foreign courts (i.e. to resolve the positive conflicts of jurisdiction between domestic and foreign courts).

According to Art. 80 of SPILA, where two parallel proceedings involving the same legal matter and between the same parties are pending before the Serbian court and the court of a foreign State, the Serbian court shall stay its proceedings, if the following four conditions are fulfilled. First, it is necessary that the proceedings involving the same legal matter⁷⁸ (i.e. the same cause of action) and between the same parties were first brought before a foreign court.⁷⁹ This condition completely corresponds to that set by Art. 60 of CPILA, which is very important for the successful resolution of positive jurisdiction conflicts between Serbian and Croatian courts. Secondly, the Serbian court must not have exclusive jurisdiction for the respective legal matter, which means that the suspension of the succession proceedings is not possible if immovable assets of estate are located in Serbia, because Serbian courts have exclusive jurisdiction to rule on such assets.⁸⁰ Thirdly, there must be reciprocity between Serbia and the respective foreign State with regard to the consideration of *lis alibi pendens*. It should be assumed that the reciprocity exists if the foreign court would stay (or dismiss) its proceedings when the proceedings involving the same cause of action and between the same parties were first initiated before Serbian court.⁸¹ Such reciprocity has been established between Serbia and Croatia. Finally, the Serbian court examines all previous conditions and decides on suspension of its proceedings only upon the request of one of the parties, which is the fourth condition to apply Art. 80 of SPILA. Such request must be submitted at the time of entering an appearance to the proceedings, but prior to any defence as to the substance.⁸² In case the parties fail to do so, the positive conflict of jurisdiction with a foreign court is unavoidable.

If all the conditions from Art. 80 of SPILA are met, the Serbian court shall decide to suspend its proceedings. The duration of this suspension, as well as the 'destiny' of the suspended proceedings, depends on how the proceedings before the foreign court will be concluded.⁸³ If the foreign court renders the final meritorious decision and this decision is recognized in Serbia, the Serbian court will dismiss the suspended proceedings, because the recognized foreign decision has become *res iudicata*. However, if the proceedings before the foreign court are concluded without a meritorious decision, the Serbian court will continue its proceedings. The

78 Whether the legal matter is the same shall be determined by *lex fori* (see Varadi *et al.*, *op. cit.* note 67, p. 511; Stanivuković; Živković, *op. cit.* note 74, p. 206; Jakšić, *op. cit.* note 74, 185).

79 At which time the proceedings have actually been initiated before the court of a foreign State is to be determined in accordance with the rules of civil procedure law of that foreign State (see Dika; Knežević; Stojanović, *op. cit.* note 58, 257; Varadi *et al.*, *op. cit.* note 67, p. 510; Jakšić, *op. cit.* note 74, 185–186; the view that the *lex fori* should be applied is supported by Stanivuković; Živković, *op. cit.* note 74, 205).

80 The reason for imposing this condition can be found in the fact that exclusive jurisdiction of Serbian courts also represents a ground for non-recognition of foreign judgments (so Varadi *et al.*, *op. cit.* note 66, p. 510).

81 *Ibid.*; Jakšić, *op. cit.* note 74, p. 186. Some authors find that the existence of reciprocity set out in art 80 of SPILA should also be examined in respect of the recognition of judgment which is to be issued in the earlier initiated proceedings before the foreign court (see Varadi *et al.*, *op. cit.* note 67, p. 510). Also, some authors support the view that there is implied condition set out in art 80 of SPILA which imposes to the Serbian courts to determine whether the decision which is to be issued in the earlier initiated proceedings before a foreign court will be recognized in Serbia. It means that all grounds for non-recognition of foreign judgments must be examined (see Dika; Knežević; Stojanović, *op. cit.* note 58, p. 255; Jakšić, *op. cit.* note 74, p. 186).

82 So Varadi *et al.*, *op. cit.* note 67, p. 511.

83 See Varadi *et al.*, *op. cit.* note 67, p. 509; Dika; Knežević; Stojanović, *op. cit.* note 58, pp. 258–259.

same applies where the proceedings before the foreign court have resulted in a meritorious decision whose recognition was refused in Serbia.⁸⁴

With regard to cross-border succession cases connected to Croatia, some limitations of application of Art. 80 of SPILA may be seen in advance. To be precise, the Serbian court shall never stay its proceedings in respect of immovable assets located in Serbia, because such assets fall under the exclusive jurisdiction of Serbian courts. Also, Art. 80 of SPILA cannot ever be applied to the proceedings involving immovable and movable assets located in Croatia which belonged to the deceased who was a Croatian national or to the deceased who was stateless or a refugee domiciled in Croatia, because the jurisdiction of Serbian courts in such cases is *ab initio* excluded. Finally, it should be stressed that where the suspension of the proceedings was possible in accordance with Art. 80 of SPILA because the proceedings involving the same assets were first initiated before the Croatian court, but none of the parties invoked the application of Art. 80 of SPILA, the decision which is rendered by the Serbian court in such proceedings will probably not be recognized and enforced in Croatia.⁸⁵

4. ANALYSIS OF TWO HYPOTHETICAL CASES INVOLVING POSITIVE CONFLICTS OF JURISDICTIONS BETWEEN CROATIAN AND SERBIAN COURTS

Considering that the jurisdiction rules of ESR and those of SPILA will conflict each other in a number of succession cases in which the assets of estate are located in both Croatia and Serbia and that the relevant case law on such cases is still missing, we have created two simplified hypothetical cases of that kind, which will be discussed from both Croatian and Serbian point of view.

4.1. HYPOTHETICAL CASE 1

The facts of the case, which will be first discussed, are as follows: the deceased, a Croatian national who had last habitual residence in Croatia, possessed immovable and movable assets located in both Serbia and Croatia. How will the Croatian and Serbian courts, from their respective points of view, resolve the positive conflicts of jurisdiction in this case?

From Croatian point of view, in this case the Croatian court has, pursuant to the rule on general jurisdiction of Art. 4 of ESR, the elective jurisdiction to rule on the succession as a whole, including the immovable and movable assets located in Serbia. Since Serbian courts have exclusive jurisdiction to rule on immovable assets located in Serbia,⁸⁶ which is a ground for non-re-

84 *Ibid.*

85 See Art. 70 of CPILA.

86 Art 72(1) of SPILA.

cognition of foreign judicial decisions,⁸⁷ the decision of the Croatian court in respect of these assets cannot be recognized and enforced in Serbia. In order to prevent such positive conflict of jurisdiction with Serbian courts and rendering the decision which will certainly be ineffective in Serbia, the Croatian court seised has at its disposal two 'tools' whose application depends on further circumstances of the case. Namely, if the proceedings in respect of immovable assets located in Serbia were first initiated in Serbia, the Croatian court shall on its own motion stay its proceedings in respect of the same assets pursuant to Art. 60 of CPILA. However, if the proceedings were first initiated in Croatia, the Croatian court seised cannot stay its proceedings, but may decide, under the conditions set by Art. 12(1) of ESR, not to rule on immovable assets located in Serbia and, consequently, limit the scope of its proceedings to the rest of the estate. It must be taken into account that such limitation depends on the request of one of the parties and if none of them request the limitation of proceedings in accordance with Art. 12(1) of ESR, the positive conflict of jurisdictions before Serbian and Croatian courts certainly occurs and the decision of the Croatian court in respect of immovable assets located in Serbia will not be recognized in Serbia. With regard to movable assets located in Serbia the positive conflicts of jurisdictions with Serbian courts may be resolved in accordance with *lis pendens* rule of Art. 60 of CPILA, while no positive conflicts of jurisdiction can occur over movable assets located in Croatia, because Serbian courts have no jurisdiction to rule on these assets.

From Serbian point of view, in this case the Serbian court has, pursuant to Art. 72(1) of SPILA, exclusive jurisdiction to rule on immovable assets of the deceased which are located in Serbia, while its jurisdiction in respect of his/her immovable assets located in Croatia is completely excluded (*argumentum a contrario* from Art. 72(1) of SPILA), which means that no relevant positive conflicts of jurisdictions occur. As concerns movable assets of a Croatian national located in Serbia, the Serbian court has, under Art. 72(2) of SPILA, elective jurisdiction only if the Croatian court can in analogous situation declare its jurisdiction to rule on movable assets of the deceased who was a Serbian national. To clarify, the analogous situation to this case is the one in which the deceased of Serbian nationality possessed movable assets located in Croatia. Considering that in such situation the Croatian court could, pursuant to Art. 10(2) of ESR, declare jurisdiction to rule on movable assets located in Croatia, it means that the Serbian court may establish elective jurisdiction to rule on movable assets of the deceased of Croatian nationality located in Serbia. The possible positive conflicts of jurisdiction in respect of these assets may be resolved by *lis pendens* rule of Art. 80 of SPILA, if the proceedings were first initiated before the Croatian court and one of the parties invoked the application of this rule. Finally, the Serbian court can establish no jurisdiction over movable assets of the deceased of Croatian nationality located in Croatia, which means that the positive conflicts of jurisdiction in respect of these assets do not occur (as has already been mentioned above).

4.2. HYPOTHETICAL CASE 2

The second case is based on the following facts: the deceased, a Serbian national who had last habitual residence in Serbia, left immovable and movable assets located in both Serbia

87 See Art. 89 of SPILA.

and Croatia. The question is the same: how will the Croatian and Serbian courts respectively resolve the positive conflicts of jurisdiction in this case?

From Croatian point of view, in this case the jurisdiction of Croatian courts to rule on immovable and movable assets located in Serbia cannot be established under any rule of ESR, which means the positive conflicts of jurisdictions with Serbian courts are avoided in advance. With regard to immovable and movable assets located in Croatia, the Croatian court has elective jurisdiction pursuant to Art. 10(2) of ESR and it will conduct the proceedings only in respect of these assets, provided the proceedings were first initiated in Croatia. However, if the proceedings were first initiated before the Serbian court, which has elective jurisdiction to rule on these assets (which is shown below), the Croatian court stays the proceedings and waits for the decision of the Serbian court (pursuant to Art. 60(1) of CPILA). If the Serbian court renders the decision which is eligible for recognition and enforcement in Croatia and delivered to the Croatian court, the Croatian court shall decline its jurisdiction (pursuant to Art. 60(2) of CPILA) and the conflict will thus be resolved.

From Serbian point of view, in this case the Serbian court has, pursuant to Art. 71(1) of SPILA, exclusive jurisdiction to rule on immovable assets located in Serbia and, pursuant to Art. 71(2) of SPILA, elective jurisdiction to rule on immovable assets located in Croatia (because Croatian courts, pursuant to Art. 10(2) of ESR, also have elective jurisdiction in respect of immovable assets located on the country's territory).⁸⁸ Considering that the Serbian court has elective jurisdiction over movable assets located in both States too (pursuant to Art. 71(3) of SPILA),⁸⁹ it is not hard to conclude that the Serbian court can establish jurisdiction to rule on the succession as a whole in this case. However, it may be prevented from ruling on immovable and movable assets located in Croatia (which fall under elective jurisdiction of Croatian courts pursuant to Art. 10(2) of ESR), if the proceedings in respect of these assets were first initiated before the Croatian court and one of the parties invokes the *lis pendes* rule of Art. 80 of SPILA. In this case the Serbian court stays its proceedings and, consequently, prevents pending of two parallel proceedings (i.e. the positive conflict of jurisdictions between Serbian and Croatian courts). As concerns immovable and movable assets located in Serbia, no positive conflict of jurisdiction can occur because Croatian courts do not have jurisdiction at all over these assets.

Therefore, in the presented case the Serbian court can establish jurisdiction to rule on the succession as a whole and render the decision which could be effective in both States. It means that there is no obstacle for the Serbian court to conduct the succession proceedings in respect of the immovable and movable assets located in Croatia and render the decision which could be later recognized and enforced in Croatia, if it meets the recognition requirements imposed by the rules of CPILA.

88 See section 3.1.

89 See section 3.1.

5. CONCLUDING REMARKS

From the foregoing analysis of the relevant jurisdiction and procedural rules of ESR, CPI-LA and SPILA as well as the assessment of the prevention of positive conflicts of jurisdiction between Croatian and Serbian courts in succession cases in which the assets of estate are located in both Croatia and Serbia, the following conclusions can be made:

1. The Croatian court can establish the jurisdiction to rule on the succession of immovable and movable assets located in Serbia (usually pursuant to Art. 4 or 10(1) of ESR). However, in such cases the Croatian court seized comes into serious conflict with Serbian courts over immovable assets located in Serbia, which fall under the exclusive jurisdiction of Serbian courts. In order to avoid this conflict, the Croatian court can, pursuant to Art. 60 of CPI-LA, decide on its own motion to stay its proceedings in respect of these assets, but only if the proceedings involving the same assets were first initiated before the Serbian court. Also, upon the request of one of the parties the Croatian court may, in accordance with Art. 12 of ESR, decide not to rule on immovable assets located in Serbia, because its decision in respect of these assets cannot be recognized and enforced in Serbia. As concerns movable assets of estate (irrespective of their location), the Croatian court seized to rule on such assets resolves any positive jurisdiction conflict with the Serbian court in accordance with the *lis pendens* rule of Art. 60 of CPI-LA.

2. With regard to the previous conclusions (point 1.), it should be mentioned that the Croatian court cannot prevent the positive conflict of jurisdiction over immovable assets located in Serbia if its proceedings cannot be suspended in accordance with Art. 60 of Croatian PIL Act and if none of the parties invokes the application of Art. 12 of ESR. In such case, the Croatian court will render the decision on immovable assets located in Serbia which cannot be recognized and enforced in Serbia. Bearing this in mind, we hope that Croatian courts, as well as the courts of other Member States bound by ESR, will develop the practice that the rule of Art. 12(1) of ESR is to be applied by the court seized on its own motion, at least in respect of immovable assets located in a third State which fall under the exclusive jurisdiction of the courts of that third State.⁹⁰

3. Pursuant to Art. 71–73 of SPILA, the Serbian court has exclusive jurisdiction to rule on succession of immovable assets located in Serbia, which means that any positive conflict of jurisdiction with the Croatian court in respect of these assets is not to be recognized and considered by the Serbian court. With regard to immovable and movable assets located in Croatia that belonged to the deceased who was a national of Croatia or to the deceased who was stateless or a refugee with domicile in Croatia, the jurisdiction of the Serbian court is *ab initio* excluded, so the positive conflicts of jurisdiction with Croatian courts in respect of these assets cannot arise at all. In all other cases (including the case in which the immovable assets that belonged to the deceased of Serbian nationality are located in Croatia) the Serbian court can establish elective jurisdiction to rule on the succession, which means that any positive conflict of jurisdiction with Croatian court may be resolved by the *lis pendens* rule of Art. 80 of SPILA. However, it should be stressed that the Serbian court does not apply Art. 80 of SPILA on its own motion, but only upon the request of one of the parties, whose failure to invoke

⁹⁰ See and compare with the view taken by Panopolous, *op. cit.* note 4, 105.

this rule if the proceedings were first initiated in Croatia results in the Serbian court decision which will not be recognized in Croatia.

4. Finally, it should be noticed that in the cases in which the immovable assets of estate are located in both Croatia and Serbia only the Serbian courts may have an opportunity to establish the jurisdiction to rule on the succession as whole and render the decision which could later be recognized in Croatia. This is illustrated in the hypothetical case 2, discussed above, where the deceased of Serbian nationality left immovable and movable assets of estate in both States in respect of which the Serbian court has the jurisdiction (pursuant to Art. 71(1) and 71(2) of SPILA). The Croatian court can also establish the jurisdiction to rule on the succession as a whole in this kind of cases if, for example, the deceased had last habitual residence in Croatia (see hypothetical case 1), but its decision in respect of immovable assets located in Serbia cannot be recognized in Serbia and for that reason it should be expected that one of the parties should invoke the rule of Art. 12 of ESR, according to which the Croatian court will decide not to rule on these assets. Having this in mind, one might say that we are presented with a paradoxical situation: the jurisdiction rules of ESR are created to follow the principle of unity of succession, which can be achieved in no way in the cases in which one or more immovable assets of estate are located in Serbia (as a third State), while Serbian courts can establish the jurisdiction to rule on the succession as a whole in some of the cases in which immovable assets of estate are located in Croatia (as a Member State) and render the decision on succession of entire estate which may be effective in both States, although the jurisdiction rules of Art. 71-73 of SPILA follow the principle of scission of succession.

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NEKE NAPOMENE O SPREČAVANJU I REŠAVANJU POZITIVNOG SUKOBNA NADLEŽNOSTI IZMEĐU HRVATSKIH (EU) I SRBIJANSKIH SUDOVA U NASLEDNOPRAVNIM SLUČAJEVIMA SA ELEMENTOM INOSTRANOSTI – S HRVATSKE (EU) I SRBIJANSKE TAČKE GLEDIŠTA

Sažetak

Cilj ovog rada jeste ispitivanje mogućnosti sprečavanja i rešavanja pozitivnog sukoba nadležnosti između hrvatskih i srpskih sudova u naslednopravnim slučajevima sa elementom inostranosti, u kojima se imovina koja pripada zaostavštini ostavioca nalazi u obe države, u Hrvatskoj i Srbiji. Sva pitanja se razmatraju iz ugla hrvatskog (evropskog) i srpskog međunarodnog privatnog prava. Kada je reč o hrvatskom međunarodnom privatnom pravu, najpre se čini kratki osvrt na relevantna pravila o nadležnosti iz EU Uredbe o nasleđivanju na osnovu kojih su hrvatski sudovi nadležni za raspravljavanje celokupne zaostavštine bez obzira gde se nalaze stvari koje pripadaju zaostavštini (tzv. princip jedinstvene zaostavštine), a zatim se detaljno analizira odredba čl. 12.(1) EU Uredbe o nasleđivanju koja omogućava hrvatskim sudovima da spreče pozitivni sukob nadležnosti sa srpskim sudovima (kao sudovima treće države) tako što će odlučiti da ne raspravljaju o stvarima iz zaostavštine koje se nalaze u Srbiji. Takođe, pažnja se posvećuje i čl. 60. Zakona o međunarodnom privatnom pravu Hrvatske koji sadrži pravilo o sprečavanju dvostruke litispencije pred hrvatskim sudom i sudom države koja nije članica EU. Kada je, pak, reč o srpskom međunarodnom privatnom pravu, analiziraju se pravila o nadležnosti srpskih sudova u naslednim stvarima iz čl. 71.–73. Zakona o rešavanju sukoba zakona sa propisima drugih zemalja (ZRSZ), koja slede princip podeljene zaostavštine, kako bi se utvrdilo u kojim situacijama može doći do pozitivnog sukoba nadležnosti sa hrvatskim sudovima, kao i pravilo o sprečavanju dvostruke litispencije iz čl. 80. ZRSZ-a. Na kraju, imajući u vidu da još uvek nema hrvatskih i srpskih sudskih odluka koje razmatraju probleme pozitivnog sukoba nadležnosti nastalog usled primene različitih pravila o nadležnosti iz EU Uredbe o nasleđivanju i ZRSZ-a, za potrebe ovog rada kreirana su dva hipotetička slučaja koja su analizirana kako sa stanovišta hrvatskog tako i sa stanovišta srpskog međunarodnog privatnog prava.

Ključne reči: *EU Uredba o nasleđivanju; pozitivan sukob nadležnosti sa sudovima trećih država (sudovima Srbije); čl. 12 EU Uredbe o nasleđivanju; lis pendens pravilo iz čl. 60. Zakona o međunarodnom privatnom pravu Hrvatske; nadležnost srpskih sudova u naslednim stvarima; lis pendens pravilo iz čl. 80. ZRSZ-a Srbije.*



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