

ABSTRACT

This dissertation deals with one of the most significant concepts of contemporary private international law – the concept of habitual residence. The concept of habitual residence was introduced into the field of private international law within the context of the unification work of the Hague Conference of Private International Law in the interest of finding a compromise between the traditional connecting factors of domicile, dominant in the sphere of common law, and nationality, that is historically closely bound to continental legal systems. Thanks to the long and systematic unification work of the Hague Conference of Private International Law, the connecting factor of habitual residence has gained a permanent indisputable position in private international law. The concept of habitual residence has also forcefully made its way through into the rapidly developing sphere of European private international law. The European Union has followed in the footsteps of the Hague Conference of Private International Law: habitual residence is today the central, most frequently adopted connecting factor in the unified conflict-of-laws rules, that determine the applicable law, as well as in the rules that determine the jurisdiction of the forum. Building on the recent intense development in this field of European law, this dissertation concentrates on analysis of the relevant legal instruments of European private international law and the understanding of the concept of habitual residence as reflected in these instruments.

Attention is also drawn to the terminological challenges connected with habitual residence in the Czech legal environment, where there is an ambiguity caused by the use of two different but related terms. Behind the English term of habitual residence there are two expressions in the Czech language which are currently being used: either *obvyklý pobyt* or *obvyklé bydliště*. This dissertation deals with the application of the concept of habitual residence in domestic Czech private international law and also points out similar terms in the Czech legal system.

The concept of habitual residence and its constituent elements and its origins are addressed in considerable detail. Habitual residence is perceived as a modern concept that corresponds best with the reality of globalization, mobility and integration. Especially in the European Union, habitual residence is considered to be a criterion more suitable to the process of European integration than the traditional connecting factor of nationality.

The fact that habitual residence is not bound by any legal definition was seen from the very beginning as a positive aspect of this concept. Its evidence-based characteristic and flexibility have always been emphasized. It has never been defined within any of the Hague conventions. The European Union considers the concept of habitual residence as an autonomous concept, the content and interpretation of which are independent of the understanding of the concept in the legal systems of the EU member states. Within European private international law, a legal definition of habitual residence has been introduced for legal persons and natural persons acting in the course of their business activity for the purpose of Rome I and Rome II Regulations that unify the conflict-of-laws rules in the case of contractual and non-contractual obligations. On the other hand, the concept of habitual residence of natural persons that are not acting in the course of their business activity has not been defined in European private international law. However, an interpretation of the concept has been delivered by the Court of Justice of the European Union, which has dealt with it on two occasions - both cases regarding habitual residence of a child. The Court confirmed the perception of habitual residence as an evidence-based concept and stressed the necessity of a certain degree of social integration to establish habitual residence. The Court also confirmed that all factual circumstances of each individual case are essential in the determination of the place of habitual residence.

The dissertation draws attention to problems which arise in legal practice from the current extensive understanding of the concept of habitual residence as a concept that is open, flexible, rather vague and based purely on factual evidence. Given the central position of habitual residence in contemporary private international law, this dissertation argues it is worth considering the necessity of a legal definition of habitual residence of natural persons that do not act in the course of their business activity. Reasons for such consideration include the creation of legal certainty for the parties to legal relations, as well as greater predictability of jurisdiction and applicable law.