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INTERNATIONAL JURISDICTION – DILEMMAS OF A SPECIFIC PROCEDURAL ISSUE

ABSTRACT: International jurisdiction, as a special type of jurisdiction exercised by national courts or other bodies to resolve private law disputes with a foreign element, is activated whenever a relevant foreign element exists in the dispute. This foreign element may either define the civil or commercial law relationship or link the dispute to a state, or several states, other than the state of the court. Issues related to international jurisdiction fall under the domain of international civil procedural law, and the applicable procedural rules are outlined in the Law on the Resolution of Conflicts of Laws with the Regulations of Other Countries, the Law on Civil Procedure, and relevant international agreements, depending on the nature of the disputed legal issue. The legal provisions in these two laws, functioning as general (lex generalis) and special (lex specialis) laws, differ primarily in how the principle of perpetuation of jurisdiction is applied. This situation leaves practice and doctrine to provide applicable solutions. This paper will present and analyze doctrinal viewpoints and judicial practice concerning the establishment of international jurisdiction, with the aim of evaluating the proposed solution in the draft of the new Law on Private International Law. The objective of the paper is to further clarify the specific procedural situation in which courts, having established their international jurisdiction, may encounter facts that have changed during the course of the proceedings.

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1. Introduction

The term jurisdiction (or competence) in modern legal practice refferes to a fundamental institute of procedural rules, as well as a special element of the court proceedings where rights and obligations are decided upon, either from the sphere of public law or private law relations. Jurisdiction, as an umbrella term, means the authority provided by law as well as the obligation of the competent authority to resolve the legal issue brought before it. In the context of private law relations, the issue of the jurisdiction of the court that merits the disputed legal issue is one of the prerequisites of a a fair trial. The dynamics of civil procedural law is set so that the determination of jurisdiction is one of the first procedural actions, which can significantly affect the outcome of the dispute itself. Since the pool of civil law disputes that can be resolved before national courts includes disputes that are purely internal in nature, as well as disputes whose essential legal elements are related to another state or states, in addition to substantive and local jurisdiction, the court may be in a situation to determine its international jurisdiction.

In the context of disputed legal relations with a foreign element, the procedural rules to be applied are contained in the Law on the Resolution of Conflicts of Laws with Regulations of Other Countries (LRCL), the Law on Civil Procedure (LCP) and concretely relevant international agreements according to the nature of the disputed legal issue. Issues of international jurisdiction fall within the domain of international civil procedural law, as a special legal field that includes international private law and civil procedural law. In this sense, the Law on Civil Procedure, which sets the postulates of jurisdiction in civil proceedings and foresees international jurisdiction as a special form of jurisdiction, and the Law on Resolution of Conflicts of Laws, which regulates international jurisdiction in more detail, are important. If we stay on the field of regulation of international jurisdiction by the rules of the two mentioned Laws, which is the general context of this paper, we will notice that the provided legal solutions of these two regulations, which stand in interrelation as general (*lex generali*) and special (*lex specialis*) laws, differ precisely in the matter of the operation of the principle of perpetuation of jurisdiction. Such a situation leaves practice and doctrine to provide applicable answers. The paper will present and analyze doctrinal points of view and judicial practice regarding the establishment of international jurisdiction, with

the aim of evaluating the proposed solution in the proposal of the new Law on private international law. The aim of the paper is to further clarify the specific procedural situation in which courts that have established their international jurisdiction may find themselves on facts that have changed during the court proceedings.

2. The principle of perpetuation of jurisdiction – perpetuatio fori

Court jurisdiction, as a legal theoretical concept, is regulated by law, and refers to a precisely defined range of tasks performed by a judicial body. It is regulated by law as an authority and an obligation, in the sense that the courts are obliged to act in disputed legal matters if they fall under their jurisdiction, and that they must not refuse to act if failure to act means a denial of justice for the party. In the context of civil proceedings, jurisdiction is divided into substantive, local and functional, as well as international as a special type of jurisdiction for civil disputes with a foreign element. In the procedural context, jurisdiction is a necessary procedural assumption for the initiation, management and substantive termination of a dispute (Miuca, 2011, p. 283).

The basic principle, incorporated in the Civil Procedure Law (CPL), is that the court *ex officio* determines its jurisdiction immediately upon receipt of the lawsuit, based on the facts stated in the lawsuit and those known to it, as well as that, after determining the jurisdiction, the court must watch over it throughout the proceedings. If the court finds that there is no basis for jurisdiction or accepts the objection of incompetence filed by the party, and that in the concrete case there will be no denial of justice, court declares itself incompetent. At any time during the proceedings, the court can assess its jurisdiction, but it is limited by the legal provision that the facts in relation to which it assesses are those that existed at the time the lawsuit was submitted to the court (that is, when the defendant still does not know that the proceedings have been initiated), and according to the rules valid at the time of decision. This principle also extends to international jurisdiction. Therefore, it is possible, and necessary, for the court to examine its jurisdiction at several stages during the proceedings, since the grounds provided by law on which the jurisdiction is based are subject to change, temporally and spatially. In this sense, it is necessary, legally, to decide in relation to which factual situation the court has to assess its jurisdiction, i.e. to somehow freeze in time the facts on which jurisdiction depends. Also, it is necessary to determine in relation to

which rules the existence of jurisdiction will be assessed during the duration of the proceedings (Prica, 2021, p. 182).

The Law on Civil Procedure (LCP) regulates the establishment or retention of jurisdiction for the so-called "internal" disputes, i.e. disputes without a foreign element. According to the rules of the LCP, if the court has established substantive and local jurisdiction based on the facts that existed at the time the lawsuit was filed, it remains competent until the end of the proceedings, regardless of any change in the circumstances on which jurisdiction was originally based. It is referred to as *perpetuatio fori* and means the freezing of the factual situation in order to prevent the fraudulent behavior of the parties, as well as to contribute to procedural economy and a fair trial in terms of time. The limits of the application of the principle of *perpetuatio fori* are the absolute lack of jurisdiction of the court (if the facts change in the direction of the jurisdiction of a higher court or a court of other substantive jurisdiction).

Retention of jurisdiction is a generally accepted procedural principle in civil procedural law, which enables that the change of the facts on which the jurisdiction is based at the time of filing the lawsuit cannot affect the jurisdiction during the proceedings (except in circumstances specified by law), i.e. does not lead to a loss of jurisdiction or a change of competent court. The main purpose of this principle is to prevent the abuse of procedural powers by the participants in the proceedings, by fraudulently changing the facts on which jurisdiction is based, which are temporally and spatially variable. In this way, it is possible for the court to have jurisdiction at the moment of making a meritorious decision, regardless of possible changes during the proceedings. At the same time, this principle does not affect the possibility of the court to engage in the assessment of jurisdiction during the proceedings, because the court must exercise and asses if necessery its jurisdiction over the course of the entire proceedings. What happens when there is a change in the facts on which international jurisdiction is based during the proceedings? Can the principle of perpetuation of jurisdiction be applied in disputes with a foreign element?

3. International jurisdiction

International jurisdiction represents a special type of jurisdiction of national courts, or other authorities, to discuss private law disputes with a foreign element. It is always activated when there is a relevant foreign element in the dispute that determines the civil or commercial legal relationship or the dispute relates to a foreign state, or several foreign states, which is not the

state of the court. Although labeled as "international", this is a type of internal jurisdiction of the courts, where the label of internationality, as in the case of the term "private international law", is used to denote the special feature of the legal relations on which it is established.

This type of jurisdiction is provided for by procedural rules (therefore in the segment of regulations that regulate civil proceedings) and conflict of laws rules of private international law. In this sense, the corpus of norms that are designated as international civil procedural law is contained in the LRCL and the LCP. The basic source of norms on international jurisdiction is the LRCL, which derogates from the norms of the LCP. The only norm of the LCP that is not derogated by the LRCL is the general rule on jurisdiction, which stipulates that the court is competent to discuss disputes with a foreign element when this is expressly provided for by law or an international treaty. If international jurisdiction can not be determined by law or international agreement for a certain type of dispute with a foreign element, the rules on local jurisdiction of the LCP are applied. Proceedings with a foreign element are always conducted according to the procedural rules of the country of the court, which are contained in the general procedural laws, as well as special laws containing the norms of international procedural law, and depending on the circumstances of the specific case, according to the application of the principle of *lex specialis derogat legi generali*.

International jurisdiction is an abstract jurisdiction, in the sense that it implies the authority of all courts in one country to resolve a specific dispute, and which court will actually act is further determined by the rules on local and substantive jurisdiction. In this sense, international jurisdiction, like substantive jurisdiction, is defined by the subject matter of the dispute (because it implies the jurisdiction of national courts for a special type of dispute, and is more closely determined by criteria that are similar to the bases of local jurisdiction, with the exception of citizenship). The order of actions in the case of a dispute with a foreign element implies to first determine whether there is a basis for establishing international jurisdiction. If the answer is affirmative, the stage of determining the applicable law is reached, because the internationally competent court applies its own conflict of law rules[1]. In addition, the internationally competent court applies its procedural

[1] This consequence of established international jurisdiction is the basis of forum shopping, where the parties can choose an internationally competent court (whose jurisdiction is stipulated by law) in order to influence the outcome of the dispute through the choice of governing law through the conflict of law norms of the state of the internationally competent court.

rules. Based on international jurisdiction norms, conflict of laws norms and legal qualifications of domestic law, the court first decides whether it has jurisdiction, and then which law is competent to resolve the given dispute.

Norms on the determination of international jurisdiction are imperative norms[2], which means that in every dispute that has a relevant connection with another state or other states, it must first be established whether there is a basis for international jurisdiction. This is done by referring to the norms that resolve the conflict of jurisdiction and further determines whether there is a basis for general or special international jurisdiction (Đundić, 2022, p. 1047). If there is no basis for establishing general or special international jurisdiction, based on regulations or an international treaty, the court will be able to resolve the dispute with a foreign element if it can establish international jurisdiction by referring to the relevant provisions of civil procedural law – norms on local jurisdiction, which are applied as subsidiary[3]. If international jurisdiction cannot be established, the court to which the lawsuit was filed, or another act that initiates the proceedings, has an *ex officio* obligation to declare itself without jurisdiction, cancel all previous actions in the proceedings and dismiss the lawsuit, unless the jurisdiction depends on the consent of the defendant, and the defendant has given his consent. Then the procedure continues based on the prorogation of international jurisdiction. Again, the conditions for the prorogation of international jurisdiction are contained in the regulations on the resolution of conflicts of jurisdiction. The court takes care of its international jurisdiction *ex officio* during the entire proceedings, even though the facts on the basis of which it is established, and eventually perpetuates are established at the moment of delivery of the lawsuit to the defendant (that is, when the defendant becomes aware of the initiated proceedings), according to the applicable rules of the LRCL. This does not exclude the possibility of suspending the proceedings if the basis of international jurisdiction disappears due to the acquisition of immunity by the defendant, because the court has an obligation to take care of its jurisdiction throughout the proceedings, *ex officio*.

[2] Norms on jurisdiction are norms adopted in the public interest, so that the judiciary functions properly. Jurisdiction itself is a procedural prerequisite for initiating, conducting and ending a dispute (Stojšić Dabetić, 2018, pp. 46-47).

[3] The rules on local jurisdiction in disputes with foreign elements are always applied when international jurisdiction is not overridden by internal regulations, when it is not regulated by international sources, or when the existing regulations are not precise enough to be applicable in practice.

4. Perpetuation of international jurisdiction– perpetuatio iurisdictionis

With the passing of the LRCL, back in 1983, conditions were created for the normative regulation of international jurisdiction by a special law, according to the legal authority of the general procedural law. However, the legislator at the time failed to legally regulate every segment of the issue of determining and establishing international jurisdiction, which additionally creates problematic situations in practice, since even today the legal text, with certain changes that did not concern this issue, is in force and is being applied in litigation proceedings with a foreign element. There are two basic questions that should be regulated by law when it comes to international jurisdiction of the court: to which point in time are the facts on the basis of which the (non) existence of international jurisdiction is determined, and how do changes in those facts affect the international jurisdiction.

Article 81 of the LRCL expressly regulates only the moment relevant to the assessment of the existence of international jurisdiction of domestic courts. The international jurisdiction of the court of the Republic of Serbia, according to the LRCL, is evaluated in relation to the facts that exist at the time when the litigation begins. We see that the text or wording for which the legislator decided significantly differently from the wording that survives in all amendments to the LCP, and ties the assessment of the international jurisdiction of the domestic court to the facts that exist at the moment the claim is delivered to the defendant, because that moment is considered the beginning of the course of litigation. As a reminder, in civil proceedings without a foreign element, jurisdiction is assessed based on the facts that exist at the time the lawsuit is submitted to the court. The LRCL, as a *lex specialis*, further does not state the legal treatment of the change of facts in relation to international jurisdiction, i.e. the possibility of applying the principle of perpetuation of jurisdiction to international jurisdiction (Dika, Knežević & Stojanović, 1991, p. 261).

The LCP, in Article 16, paragraph 3, stipulates that the court will be declared *ex officio* to be incompetent, cancel the actions taken in the procedure and dismiss the lawsuit, if during the procedure it is established that the court of the Republic of Serbia is not competent to resolve the dispute, unless the jurisdiction of the domestic court does not depend on the consent of the defendant, and the defendant gave his consent in this particular case. This legal solution, incorporated into the legal text since the adoption of the LRCL, influenced the doctrinal positions at the time, which

declared in favor of the position that there is no application of the principle of perpetuation of jurisdiction in relation to international jurisdiction (Triva, 1983, p. 208; Poznić, 1983, p. 736; Dika, 1987, p. 23). Considering that the LCP is only partially derogated by the LRCL, the rule of the LCP has to be applied to segments of international jurisdiction that are not regulated by the LRCL (Poznić, 1983, 719). Dika, on the other hand, is not inclined to such an exclusive attitude, and marks as problematic the alignment of international with substantive jurisdiction, regarding the possibility of applying the principle of perpetuation, emphasizing that international jurisdiction is closer to local jurisdiction.

As for the moment for evaluating the international jurisdiction of domestic courts, the doctrine then took the view that it was a redactional error that had to be corrected by later practice. Although such a situation has not happened so far. In favor of the argument that it was an error by the legislator, the doctrine also highlighted the fact that in other provisions of the LRCL, international jurisdiction is tied to the facts that exist at the time of filing the lawsuit (Art. 59, Art. 61), so the LRCL itself is not uniform in its provisions regarding the moment to which the assessment of international jurisdiction is linked. Although we could interpret articles 59 and 61 of the LRCL as the intention of the legislator to deviate from the general rule in special cases, the justified aspiration that the legal regulation of international jurisdiction should still show a certain degree of complementarity would support the argument of "unintentional carelessness" of the legislator at the time.

As far as the practice is concerned, the postponement of the moment of establishment of international jurisdiction or binding it to the moment of delivery of the lawsuit to the defendant, certainly leaves a greater opportunity for the parties to manipulate the facts, although not unlimited since most disputes with a foreign element are initiated in the forum of the defendant. If there are conditions to deviate from the forum of general jurisdiction, the possibilities for abuse increase, although one should not a priori assume fraudulent intent in the actions of the parties, which results in a change in the facts on which international jurisdiction is based.

Bosnić, as well as Vuković, state that the application of the principle of perpetuation in the case of international jurisdiction is indisputable, as well as that the legislator's intention regarding the moment for assessing the international jurisdiction of domestic courts should not be considered a mistake, but a conscious and deliberate choice of the legislator, applying the *lex specialis* methodology, that is that Art. 81 LRCL derogated from the provisions of the LCP (Dika, Knežević & Stojanović, 1991, p. 261). A similar

point of view is represented by Knežević, emphasizing that there is no basis for different treatment of the application of the principle of perpetuation in relation to internal and international jurisdiction. Regarding the impact of a subsequent change of facts in favor of the existence of the exclusive jurisdiction of a foreign court, the doctrine considers that in this case, assuming that the perpetuation of international jurisdiction is not contested, the established international jurisdiction would have priority over the exclusive jurisdiction of a foreign court. Support for this point of view is found in the argument that the exclusive jurisdiction of a foreign court has no effect on the validity of the prorogation of the domestic forum (Knežević, 1988, p. 243). The exclusive jurisdiction of a foreign court is certainly a fact that primarily the parties should pay attention to, bearing in mind future intentions regarding the recognition and execution of the court decision and the final realization of their rights. In the opposite case, if the conditions for the international jurisdiction of the court are subsequently acquired, which did not exist at the time of delivery of the lawsuit to the defendant, reasons of expediency require that the establishment of the jurisdiction of the domestic court be enabled (Knežević, 1988, p. 243).

5. Perpetuatio fori vs perpetuatio iurisdictionis – dilemmas and solutions

Certainly, the change of facts on the basis of which the court based its international jurisdiction does not have to, and indeed is not, always a consequence of the fraudulent intent of the parties. It is possible that during the proceedings the legal basis of international jurisdiction may change, within the regular legislative procedure, or other circumstances that the parties could not influence, e.g. changes in the borders of a country. And then there is a reason to apply the rule on perpetuation of jurisdiction, for the sake of legal security of the parties.

From the aspect of procedural security, economic efficiency, and legal security in general, and by analogy with civil proceedings, there is no reason to deprive international jurisdiction of the possibility of perpetuation, or that the principle of *perpetuatio fori* does not apply in the context of international jurisdiction as *perpetuatio iurisdictionis*. Especially, bearing in mind that the influence on the facts on which the international jurisdiction is based directly affects the meritorious outcome of the dispute because it leads to the application of different conflict of law rules and, potentially, to a different governing law for a particular dispute, which is especially serious if fraudulent parties are

behind the change motives of the party or parties[4]. Therefore, in the context of disputes with a foreign element, if the jurisdiction of the domestic court was established at the moment of delivery of the lawsuit to the defendant (which is the relevant moment of "freezing" of the factual situation in the LRCL), the subsequent change of the facts on which the international jurisdiction is based will not affect its loss.

Now we come to two problematic situations in practice – one is the different moments of freezing the factual situation for the purposes of *perpetuatio fori* (initiation of proceedings) and *perpetuatio iurisdictionis* (beginning of the course of litigation), and the other is the possibility of prorogation of international jurisdiction and its influence on the establishment of international jurisdiction. We will see that they are interconnected, or that the postponement of the moment of establishment of international jurisdiction, in relation to jurisdiction in disputes without a foreign element, stems from the wide possibilities of prorogation of international jurisdiction.

According to Art. 81 of the LRCL, international jurisdiction is established on the basis of facts that existed and were known to the court at the time the claim was delivered to the defendant. It is a legally determined moment that is relevant to the assessment of the existence of international jurisdiction, because the provisions of the LRCL are primarily changed when deciding on the international jurisdiction of a domestic court. Although the LRCL does not explicitly talk about the establishment of jurisdiction, but only about the moment of its determination, the doctrine agrees that there is no reason to deny international jurisdiction the feature of perpetuation and that not mentioning this feature in the LRCL is an editorial error, which can certainly be remedied by referring to analogy with the principles of general civil procedure. Therefore, in a dispute with a foreign element, the court is

[4] Certainly, the change of facts does not necessarily have to be fraudulent, i.e. the change of facts may be the result of objective circumstances that the parties could not influence, as was the case after the breakup of the FRY and the creation of independent states, which inevitably affects the basis of international jurisdiction of the proceedings that were then in progress. Likewise, the High Court in Belgrade, in regard to the inheritance dispute in which a foreign element appeared after the secession of Montenegro, refused to declare itself without jurisdiction, specifically referring to the establishment of jurisdiction: "At the time of the filing of the lawsuit in 1994, there was no foreign element in this litigation. That element arose in the course of this procedure in 2006, after the secession of Montenegro, so in this particular case, given that the international element appeared during the procedure before the domestic court, while the procedure was already in progress, the domestic court could not be declared incompetent at this stage of the procedure, because the jurisdiction of the domestic court was retained" (Decision of the High Court in Belgrade, Gž 943/2014, dated 05/29/2014 year).

procedurally authorized to assess its international jurisdiction at the moment when the litigation begins, i.e. at the moment of delivery of the lawsuit to the defendant, and not at the moment of initiation of the proceedings, i.e. by submitting a lawsuit to the court (Decision of the Commercial Court of Appeal, Pž. 8230/2012 dated 01.30.2013). Later changes in the circumstances and facts on which international jurisdiction is based do not lead to its loss. The only exception is the case of subsequent acquisition of immunity (Court Practice of Commercial Courts – Bulletin No. 4/2016, 92-95).

Litigation in relation to the defendant starts from the moment he becomes familiar with the lawsuit, that is, from the moment the lawsuit is delivered to the defendant, and it is justified to appreciate the existence of international jurisdiction from that moment. According to the LRCL (Art. 50), when the jurisdiction of the domestic court depends on the consent of the defendant, it is considered that the defendant has given his consent by submitting an answer to the lawsuit, that is, an objection to the payment order, or in the case he has not challenged the jurisdiction or started arguing. Certainly, this brings with it certain difficulties, bearing in mind the existence of a foreign element. Most often, the process of delivering the lawsuit to the defendant will require a certain amount of time and the judicial cooperation of two or more countries, as well as special costs.

In disputes where jurisdiction depends on the consent of the defendant (Hoblaj, 2022, p. 70), i.e. in disputes in which prorogation of jurisdiction is possible[5], before declaring itself internationally incompetent, the court must determine that there is no express or tacit agreement on the prorogation of international jurisdiction. Jurisprudence has taken the position that in a situation where there are disputes with a foreign element in which the prorogation of jurisdiction is possible (Vukadinović, 2020, p. 386), it is premature to declare lack of international jurisdiction immediately after receiving the claim (Decision of the Higher Commercial Court, Pž. 3065/2005 dated 03.10.2005 – Judicial practice of commercial courts – Bulletin No. 4/2005). Therefore, in disputes with a foreign element in which the prorogation of jurisdiction is

[5] Prorogation of jurisdiction is one of the ways of establishing the international jurisdiction of a domestic court based on the consent of the parties. The consent of the parties may be contained in a separate written agreement on jurisdiction, a pleading or an oral statement of the defendant before the court. The condition for the validity of the prorogation agreement is the existence of a mixed dispute, in the sense that one party is a domestic person, and the other party is a foreign person, and this is appreciated at the time of delivery of the lawsuit to the defendant (Decision of the Supreme Court of Cassation, Prev 236/2014, dated 04.04.2016).

possible, the court is bound to declare itself internationally incompetent *ex officio* only if the defendant does not respond to the lawsuit at all and does not respond to the court's invitation to attend the preliminary hearing, and by law there is no other grounds for establishing jurisdiction other than the defendant's consent.

The draft of the Law on International Private Law, which was created in 2012 and was withdrawn from further procedure until the adoption of the Civil Code, can be a good guide to the direction in which the domestic jurisprudence and the legislator will move in the matter of regulating the establishment of international jurisdiction. In the text of the Draft Law, the determination and establishment of international jurisdiction are explicitly distinguished, and two separate articles of the Draft are even divided. In relation to the valid LRCL, as the relevant moment for determining the facts and circumstances on which international jurisdiction is based, the moment of initiation of the procedure (submission of the claim to the court or other competent authority) is determined, as in the LCP. When a possible lack of international jurisdiction is established in the course of the proceedings based on the provisions of an international treaty, law or provisions on local jurisdiction, the court will be declared incompetent, unless there are conditions for prorogation of jurisdiction. The hierarchy of rules on the basis of which international jurisdiction is determined ranges from international treaties, through laws, and all the way to regulations on local jurisdiction. The establishment of international jurisdiction is expressly provided for by a special provision that the court or other authority remains competent even if during the procedure the facts on which the jurisdiction was based, determined at the time of the initiation of the procedure, change.

6. Concluding remarks

Contemporary trends in comparative international private law have shown that after more than forty years of validity of the Law on Resolution of Conflicts of Laws with Regulations of Other Countries as a respected codification, there is a need to innovate the rules. At the same time, the impact of the *acquis communautaire* of the European Union results in the need for harmonization and unification of national rules with international private law within the European Union.

The extent to which the moment of initiation of the procedure, i.e. the moment of submission of the lawsuit or other act that initiates the procedure, is truly adequate for the assessment of international jurisdiction

can be assessed in relation to two factors. If we take into account that in procedures with a foreign element, the initiation of the procedure does not have to coincide with the knowledge of the defendant that the procedure has been initiated, i.e. upon receipt of the lawsuit or other document in the court, the defendant has no real possibility to immediately engage in challenging international jurisdiction if he has an interest in doing so. The process of delivering the claim to the defendant is generally longer in proceedings with a foreign element. This, on the one hand, gives the possibility that certain changes take place in their natural course and as such affect or not international jurisdiction. On the other hand, it narrows the space for possible procedural maneuver of the defendant in relation to international jurisdiction, unless it is a procedure where prorogation is possible. We believe that the defendant's space for a possible objection maneuver is narrowed, but to a significantly lesser extent, even in the event that the procedure is initiated on the basis of general jurisdiction, that is, in the defendant's forum, bearing in mind the possibility of submission as a procedural action. Another point of view on such a legal solution is the need to achieve a certain degree of complementarity in procedural rules related to judicial and non-litigation proceedings, regardless of the presence of a foreign element. In support of this position, the willingness of the legislator to explicitly foresee the establishment of international jurisdiction in the Draft of the new Law on Private International Law also speaks for itself.

It is indisputable that, in order to achieve a fair trial, the space for possible manipulations by the parties in relation to the facts on which jurisdiction is based must be significantly reduced by adequate legal provisions, and we believe that our legislator is moving in that direction. Also, for a significant number of proceedings, especially from contractual relations, the moment of assessment of the existence of international jurisdiction of the domestic court will be postponed, that is, it is linked to the action or statement of the defendant, with the same effect of the principle of perpetuation of jurisdiction.

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MEĐUNARODNA NADLEŽNOST – NEKE DILEME SPECIFIČNE PROCESNE SITUACIJE

APSTRAKT: Međunarodna nadležnost kao posebna vrsta nadležnosti nacionalnih sudova, ili drugih organa, za raspravljanje privatnopravnih sporova sa inostranim elementom se aktivira uvek kada u sporu postoji relevantan inostrani element koji određen građanskopravni ili trgovačkopravni odnos, odnosno spor vezuje za državu, ili više država, koja nije država suda. Pitanja međunarodne nadležnosti spadaju u domen međunarodnog građanskog procesnog prava, te procesna pravila koja se imaju primeniti sadržana su u Zakonu o rešavanju sukoba zakona sa propisima drugih zemalja, Zakonu o parničnom postupku i konkretno relevantnim međunarodnim ugovorima prema karakteru spornog pravnog pitanja. Predviđena zakonska rešenja ova dva propisa, koji stoje u odnosu opšteg (lex generali) i posebnog (lex specialis) zakona, razlikuju se upravo u pitanju delovanja principa perpetuacije nadležnosti. Takva situacija ostavlja praksi i doktrini da daju primenjive odgovore. U radu će biti prikazana i analizirana doktrinarna gledišta i sudska praksa u vezi sa ustaljivanjem međunarodne nadležnosti, sa ciljem da se oceni predloženo rešenje u predlogu novog zakona o međunarodnom privatnom pravu. Cilj rada jeste da dodatno razjasni specifičnu procesnu situaciju u kojoj se mogu naći sudovi koji su ustanovili svoju međunarodnu nadležnost na činjenicama koje su se u toku postupka promenile.

Ključne reči: *međunarodna nadležnost, ustaljivanje nadležnosti, princip perpetuacije, perpetuatio iurisdictionis*.

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