Inovatívne formy vzdelávania v transformujúcom sa univerzitnom vzdelávaní

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SLOVAK CIVIL PROCEDURAL LAW

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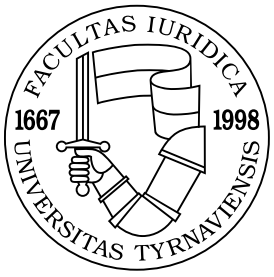
SLOVAK CIVIL PROCEDURAL LAW
Texts, Cases and Materials



Slovak Civil Procedural Law

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Content

Introduction

Slovak Civil Procedural Law is a textbook for beginners in the area of law of civil procedure. Its aim is to help foreign law students to find basic knowledge of civil procedure in the Slovak republic. This publication is also an exercisebook for these students. It should help them to apprehend general relations between Slovak law and European law on the one hand and between Slovak law and international law on the other hand.

The publication is divided into three parts. First part is named "Texts" and comprises the selected issues of Slovak civil procedure and Slovak law of civil procedure (Slovak civil procedural law). Second part contain selected case-law of the European Court of Human Rights and the Court of Justice of the European Union that are crucial for Slovak law of civil procedure. Third part named "Materials" involves important parts of Slovak, European and international law that should be helpful for study of Slovak law of civil procedure.

Author

1. Texts

1.1. System of dispute resolution

Although disputes always arise in any society, the legal regulation of the system of their solutions was virtually reduced to a single method - resolution of disputes through the courts - until recently. Legal regulation did not seek further effective options. However, many cultures around the world consider art to agree as highest virtue and judicial resolution of disputes was the most extreme case how to end the dispute. Many people prefer their dispute unresolved or accepting unauthorized requirements of the other side, just to avoid having to refer the shameful way to court. These civilizations (especially America and Asia) were first sources of knowledge on new ways of resolving disputes.

Alternative dispute resolution, in addition to the providing of the more civilized forms of dispute resolution, is a more efficient way to resolve the dispute. Many alternative procedures do not only bring cheaper and quicker alternative to judicial proceedings, but also allow all parties to leave the dispute with head held high. At the same time they do not affect the relations between them as strongly as the court case which often makes the parties „enemies for life and death".

Although the development of alternative dispute resolution processes started flourish in Europe more than a decade ago, its use is still not so high, as in the countries of America. There were alternative methods of dispute resolution „getting off" of various primitive societies, especially Indian tribes,[1] who often use different methods of mediation as the only way of resolving disputes.[2]

Unlike the U.S., where the encroachment of alternative methods of dispute resolution is gaining such a size that transforms the entire system of justice, in Slovakia alternative dispute resolution is so far only in „infancy" - in the first stage of experience, it is something new to which absolute most laymen and lawyers have no experience with and on which they retain mistrust.

[1] DRGONEC, J.: Právne kultúry Ázie a Afriky. Bratislava: Veda, 1991; HUNGR, P. – KALVODOVÁ, V.: Afroasijské právní kultury. Vyd. 1. Brno: Masarykova univerzita, 2002.

[2] POSPÍŠIL, L. J.: Etnologie práva: Teze ke studiu práva z mezikulturní perspektivy. Praha: SET OUT, 1997, s. 24n.

1.1.1 The theory of conflict resolution

The various conflict situations and subsequent conflicts arise in the envirnomnent of interpersonal relationships. These are mostly socially undesirable phenomena, and therefore should be properly and timely resolved. Conflicts are therefore examined, described and analyzed in point of view of a number of disciplines, for example through sociological, psychological and historical approaches, particularly in aspect of the environment in which the new form of socially significant results of science, literature, art and technology are created.[3]There is often used an etiological approach or a combination of these approaches. The objective of description and analysis of conflict tends to explore ways of conflict prevention, annihilation or solution. An english term „Integrated conflict management system"[4] is used for the complete organized approach to the prevention, moderation and resolution of conflicts. The system of conflict resolution can be divided chronologically into two stages:

a) the stage before the emergence of the conflict and
b) the stage after the conflict.

1.1.1.1 Stage before the emergence of conflict

The issue of the stage before the emergence of the conflict is to resolve conflict before it came. It actually involve different methods of conflict prevention and burnishing of conflict situations, which has not yet resulted in conflict. It may be usually distinguished by individuals or cases for which they are designed into:

a) individual prevention, which is aimed at a particular person or a particular social relationship, for example by precise definition of the terms and conditions to avoid disputes over interpretation of the contract, or by creating appropriate conditions of employment in order to avoid unnecessarily frustrating working envirnomnent and
b) general preventiom, which aims to more than one person or several social relationships; it is realized either by the non-legal methods eg. by widespread enlightenment or by legal means, e.g. by legislation of social relationships in social rules.[5]

1.1.1.2 Stage after a conflict

The actual conflict begins after the conflict situation or simultaneously with it. For a conflict situation is considered to be any situation or any state which is capable of

[3] See also: ŠVIDROŇ, J.: Tvorba a právo. Bratislava: VEDA, 1991

[4] LYNCH, J. F.: Beyond ADR: A Systems Approach to Conflict Management. Negotiation Journal, 2001, no. 3, p. 208.

[5] Slovak key work on prevention in civil law is: LUBY, Š.: Prevencia a zodpovednosť v občianskom práve I – II. Bratislava: SAV, 1958. See also LUBY, Š.: Zásada prevencie v Občianskom zákonníku. Právny obzor. 1952, 35, s. 39 – 53.

generating conflict. A conflict situation arises when eg. one party breaches any provision of the contract, or a negative work environment is created.[6] A conflict situation can be created intentionally, unintentionally (e.g. unforeseen occurrence of possible interpersonal situation in the law or vague clause in the contract) or randomly (e.g. cases caused by force majeure). The actual conflict arises only if the other party - one that will feel concerned by a given situation – is aware of this situation. A conflict situation therefore need not result into a conflict necessarily. The conflict situation does not result into a conflict in cases when the party has not become aware of a conflict situation or if the conflict situation is removed before the concerned party would became aware of it. In the literature there is a division of conflict resolution frequently occurring on the basis of the above mentioned aspects. This divide it into:[7]

a) spontaneous conflict resolution and
b) deliberate conflict resolution

1.1.1.2.1 Spontaneous conflict resolution

Spontaneous conflict resolution is usually a manifestation of human behavior in the stage after a conflict has arisen. This behavior can be, for example in the form of reconciliation with conflict situations, changing its perception, resignation, revenge and so on. Some events that are independent of human will, for example death of a party to the conflict, can also be included among the types of the spontaneous conflict resolution. There is a controversy, whether spontaneous conflict resolution (or some of its forms) can be considered as a type of conflict resolution. In fact spontaneuous conflict resolution is not a resolution to the conflict itself, but only an adaptation of the resulting conflict situation, the conflict may persist latently.

1.1.1.2.2 Deliberate Conflict Resolution

Deliberate solution of the conflict means the intentional activity of parties to the conflict in the stage after the conflict, which is directed to resolve the conflict. Parties to the conflict may possibly act in partnership with other entities - person or body – that are uninvolved in the conflict. Deliberate conflict resolution is not only the spontaneous activity of one person. Three basic models of deliberate conflict resolution can be theoretically defined by the position of the third body, that is not involved in the conflict. In fact these three models are combined in practice. It is a conflict resolution

a) with no third party involvement,
b) through a third party who has no jurisdiction on the conflict (eg, conciliator, facilitator or mediator) or
c) through a third party who has the power to make a binding decision for the parties to the conflict to (arbiter, arbitrator or judge).

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[6] See also IVANIČKA, K. : Globalistika. Poznávanie a riešenie problémov súčasného sveta. Bratislava: EKONÓM, 2006.

[7] HOLÁ, L.: Mediace. Způsob řešení mezilidských konfliktů. Praha: Grada Publishing, 2003, s. 19.

Resolving of the conflicts without involvement of the third body (i.e. entity that is not participant to the conflict), occurs when the parties to the conflict are trying to find solutions to the conflict themselves. This model covers a wide range of cases: e.g. from informal meeting of the parties to the conflict, which is intended to resolve the existing conflict through negotiation between the parties to an armed conflict to strictly formal procedure for collective bargaining. Such conflict resolution is mostly generally less formal than the other two models of conflict resolution and the regulation by legal norms is rather exceptional.[8]

The second is a model in which third person (e.g. mediator) acts in conflict and helps the parties to find a way to resolve the conflict. This model could be find for example in the collective bargaining with the negotiator. Participation of the thirs party can be manifested in a wide range of activities - from simple brokering of information between the parties to the dispute to influencing the parties to the conflict in order to settlement without clearly defined rules.

Third model is the most formal model of conflict resolution. In this model the third uninvolved party resolve the conflict by its binding decision. Independence and impartiality of the third party should be guaranteed. In this model, it is usually a strictly formal procedure for resolving conflict that is rooted in procedural norms.

1.1.1.3 Dispute vs conflict

Although part of the literature does not make a difference between the terms of „conflict" and „dispute"[9] or uses only one of these words, the another part of the authors differentiates them. From the lexicological point of view, the term dispute (in Slovak „spor") is defined as „meeting of the discordant opinions, disagreement, conflict" or „(word) strife, disagreement, quarrel," and a term conflict (in Slovak „konflikt") as „disagreement, contradiction."[10] Although this difference is less pronounced in Slovak language than in english and the defining of the dispute as a conflict can cause so calles „runaway definition",[11] there may be showed some differences. The term conflict is generally understood as an expression of a wider dispute. Conflict also includes situations such as hostility between the two parties, or the state when a person suffers from excessive noise caused by the other person, but does not make this suffer public. The conflict also involves a situations

a) which did not result in the dispute

b) or which are not capable to reslut in the dispute in essence.

A first difference between these words is that the dispute, unlike the conflict, must occur between two parties at least. Conflict may exist despite the fact that the other

8 E.g. Provision § 8 of the Collective Bargaining Act.

9 E.g. LABÁTH, V.: Mediácia – alternatívne riešenie sporov. Bulletin slovenskej advokácie, 2004, č. 4, s. 25 – 28; LABÁTH, V.: Rodinné konflikty a dynamický prístup v mediácii. In: Zborník z medzinárodnej konferencie Mediácia – cesta k efektívnej justícii. Bratislava, 2004, s. 53 – 57.

10 KAČALA, J. – PISÁRČIKOVÁ, M. a kol.: Krátky slovník slovenského jazyka. Tretie, doplnené a prepracované vydanie. Bratislava: VEDA, 1997, s. 251, 664.

11 In detail: PISÁRČIKOVÁ, M. a kol.: Synonymický slovník slovenčiny. Bratislava: VEDA, 2000, s. 670, 208.

party to the conflict is not aware of the conflict. Therefore spontaneous resolution of conflicts is possible, but spontaneuous dispute resolution is contrary to definition of dispute.

The second difference is that the dispute is a conflict, which may be the subject of judicial or other proceedings that is regulated by law. The dispute can therefore be also considered as a legal category because some processes (procedures) of resolving of the disputes are subject to the legal regulation. We can say that not every conflict can lead to litigation by its nature. E.g. intrapersonal (intrapsychic) conflict, i.e. internal, personal conflict of individual that may be subject to research by other sciences such as psychiatry or psychology, by nature cannot escalate into dispute. Various animosities between or among two or more people cannot be disputes despite the fact that these people are subjects to the conflict, too. Therefore in the Slovak literature some difference is particularly evident in the fact that the word conflict is frequently used in psychological, sociological and other non-legal literature until the legal literature more inclines to use the term dispute.

Terms dispute and conflict are both used in Slovak law language.[12] While Code of Civil Procedure and the Law on Arbitration (Arbitration Act) exclusively use the term dispute, because only dispute (de facto as a kind of conflict) may be subject to litigation respectively arbitration,[13] the Mediation Act uses both terms and distinguishes between them. While the Mediation Act uses the word dispute in various contexts related to legal issues such as the definition of the subject regulation, legal definition of mediation, or a mediation procedure,[14] the word conflict is used exclusively to denote a broader interdisciplinary nature of the educational requirements of a mediator. In legal language, as is customary, we should come out from the law language and use the term dispute (of course depending on the circumstances), which specifically refers to the legal phenomenon, for example as a subject of civil procedural law, and not an expression of the conflict, which by its definition includes social relations, that would not be subject to legal regulation.

Although direct legal definition[15] of the term dispute does not exist in slovak legal system and it is not needed,[16] this term was necessary to shed light on for the purpose of the definition of civil procedure, alternative dispute resolution, arbitration and so on.

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[12] For the difference between legal language and law language see: KNAPP, V. – HOLLÄNDER, P.: Aplikácia logiky v právnom myslení. Bratislava: Vydavateľské oddelenie PF UK, 1992, s. 16n. KUCHAR, R.: Právo a slovenčina v dejinách. Budmerice: Vydavatelstvo Rak, 1998.LUBY, Š.: Právne názvoslovie – naliehavé otázky a úlohy. Právny obzor, 1965, č. 2. LUBY, Š.: Najnovší stav a vývoj názvoslovia vo sfére občianskeho zákonníka a zákonníka medzinárodného obchodu. Právnické štúdie, 1967, s. 392 – 435.

[13] E.g. Provision of § 2 of the Code of Civil Procedure or § 1 par. 1 letter a) of the Act on Arbitration.

[14] Provisions of the § 1 par. 2, § 2 par. 1 and 2, letter. a), § 7, § 13 par. 4 and § 14 par. 1 and 2 Act on Mediation.

[15] In detail: MADAR, Z.: Slovník definic v českém právu. Praha: Nakladatelství ORAC, s.r.o., 2001.

[16] In detail: ŠVIDROŇ, J.: Právo duševného vlastníctva, in: LAZAR, J. a kol.: Občianske právo hmotné. Tretie doplnené a prepracované vydanie. 2. zv. Bratislava: IURA EDITION, 2006, s. 436 – 438.

1.1.2. Alternative dispute resolution and litigation system

Alternative Dispute Resolution (slovak: mimosúdne riešenie sporov, fr. alternative dispute résolution, ger. außergerichtliche Streitbeilegung alebo alternative Streitbeilegung, it. soluzione alternativa delle dispute, risoluzione alternativa delle controversie stragiudiziale alebo risoluzione stragiudiziale delle controversie) is a term that is generally used in the legal literature to describe a method of dispute resolution, which is different from the resolution of disputes through the courts. It is a legal term, linked to the phrase judicial dispute resolution, which semantically is the opposite of it. Law language, as opposed to legal language, it uses rather exceptionally.

The Slovak and Czech literature often uses literal translation of the English language – alternatívne riešenie sporov (Alternative Dispute Resolution - ADR), which some authors use as a synonym for alternative dispute resolution, but in Slovakia and the Czech or other foreign literature is not consensus on what the term means. In the English legal literature, however, we can find the phrase literally translated from Sovak mimosúdne riešenie sporov - extrajudicial dispute resolution - for the name of a form of alternative dispute resolution, in which the decision bases obstacle res judicata for litigation or arbitration. Under this concept we therefore can not subsume pretrial dispute resolution, such as mediation, conciliation proceedings etc. which can be examined later in the trial.[17] But foreign authors are not united even in the meanig of this expression.

1.1.2.1 The dispute resolution system

Court dispute resolution is a system that has a certain internal structure, internal relations and their ties. This system is also a subsystem of other systems, including those that are related to social relationships. The system of alternative dispute resolution is particularly subsystem of dispute settlement system, which in addition to complementary alternative dispute resolution includes dispute resolution in court. Some authors therefore suggest unsystematicness of allocation of the alternative dispute resolution system from the dispute settlement system in jurisprudence. They propose to analyze dispute resolution complexly.[18] The system of alternative dispute resolution is therefore the subsystem of the dispute resolution system.

In conflict resolution there are used different ways of their resolving, that are also used to resolve disputes, and that are base for dispute resolution. The term dispute, which is considered as the subject of alternative dispute resolution, may be defined (as was already mentioned) as a conflict between two or more parties, which may be the subject of litigation. Since disputes are a subset of social relations, which we call conflicts, so the dispute resolution, and within it the alternative dispute resolution is one way of resolving conflicts. From the interdisciplinary view the system of alternative

[17] BARTOCH, M.: Conception of Alternative Dispute Resolution in Russian Federation. St.Petersburg: St.Petersburg State University Law Faculty, 2001, p. 3, in: http://www.uni-kiel.de/eastlaw/ws0102/Semarbeiten/Bartoch.doc.

[18] E.g. KARSCHAU, M.: Alternative Dispute Resolutions outside Arbitration. Kiel: Christian Albrechts University of Kiel Faculty of Law, 2002, p. 2.

dispute resolution as a part of the dispute resolution system is the subsystem of (integrated) system of conflict management or conflict management (Integrated System of the Management of Conflicts).[19]

1.1.2.2 Definition of alternative dispute resolution

Despite the fact that the concept of alternative dispute resolution is very often used in various legal systems Slovak legal system has no legal definition of alternative dispute resolution there. Legal definition is very rare in other countries too. However legal definition can be found eg. at the level of federal legislation in the U.S., which has defined process alternative dispute resolution in the Act of alternative dispute resolution of 1998[20] as „...an alternative dispute resolution process includes any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration... „

The expert literature contain a number of definitions of alternative dispute resolution that are from different perspectives in different widths. The diversity of all definitions is so wide that the penetration of the definitional elements are disjoint. Several authors of the Czech legal literature has attempted for such definition.

Smolik as many other Czech authors uses the name of alternative dispute resolution (alternativní řešení sporu), and defines it in the framework of private law:

„In some areas of private law relations state allows the parties of certain legal relation to delegate a legal dispute to another body of a private law character instead of the court. Such a way of resolving of a dispute is an another option - alternative – to the legal proceedings for the parties. Therefore, these methods of dispute resolution are called alternative methods of dispute resolution."[21]

According to this definition, a defining feature of the definition of alternative dispute resolution is alternativity of of dispute resolution to legal proceedings. According to this definition, alternative dispute resolution methods may be as arbitration as well as mediation, conciliation or re-negotiation (the renegotiations). However Rozehnalová used for defining alternative dispute resolution different approach when (in the area of international law) divides „institutes used to resolve disputes" into three groups:

a) alternative dispute resolution methods,

b) international arbitration, international commercial arbitration and

c) proceedings before the general (national) courts. „

It further states that the term alternative dispute resolution is defined as an alter-

[19] LYNCH, J. F.: Beyond ADR: A Systems Approach to Conflict Management. Negotiation Journal, 2001, no. 3, p. 208.

[20] Chapter 44 – Alternative dispute resolution, Section 651 of title 28, United States Code.

[21] WINTEROVÁ, A. a kol.: Civilní právo procesní. Vysokoškolská učebnice. 3. aktualizované a doplněné vydání. Praha: Linde Praha, a.s., 2004, s. 629 : „V určitej oblasti súkromnoprávnych vzťahov však štát umožňuje, aby právny spor účastníci určitého právneho vzťahu zverili namiesto súdu inému orgánu súkromnoprávnej povahy. Taký spôsob riešenia právneho sporu potom pre zúčastnené strany predstavuje ďalšiu možnosť – alternatívu – voči súdnemu konaniu. Preto sú tieto spôsoby riešenia sporov nazývané alternatívnymi metódami riešenia sporov."

native to such dispute resolutions forms, in which the states grant its guarantees by their public authorities (i.e. to litigation and arbitration)." As defined under the alternative dispute resolution thherefore can not be attributed arbitration.

Summation of the foregoing, it seems most appropriate definition of alternative dispute resolution, according to which this term is understood under the dispute settlement system, which constitute an alternative to dispute resolution through the courts.

1.1.2.3 Classification of alternative dispute resolution

In the world there are many forms of alternative dispute resolution, most of which are not legislated. While there are rightly administered over 20 kinds of legal forms in the USA, in the Russian Federation are legally regulated only three ways. There is no single specific statutory regulation that forms alternative dispute resolution in the Slovak legal order (national). The control is adjusted by several laws. We find here a number of different legal forms of alternative dispute resolution such as. arbitration of civil disputes, mediation and arbitration and mediation of collective labour disputes. Some legal concepts effectively allow the use of other forms of alternative dispute resolution, such as court settlement, mediation (conciliation) or settlent contract.

Various forms of alternative dispute resolution, and thus the amicable settlement of disputes themselves can be classified according to several criteria. For the first of these criteria is decisive whether disputes can prevent a later court proceedings in the case or not. According to this criteria the forms of alternative dispute resolution can be divided into:

a) pretrial amicable settlement of disputes that may prevent a later court proceedings,

b) amicable settlement of disputes in the strict sense (sometimes called extrajudicial), whose decision can not be the subject of a later trial proceedings.

In terms of whether the parties have a duty or only option to resolve the dispute through some form of out-of-court dispute settlement, forms of alernatice dipute resolution are divided into:

a) obligatory (mandatory) amicable settlement of disputes such as are in Germany, the Hellenic Republic, where litigants are required to use the amicable settlement of the dispute before trial, or such as are in England and Wales, where the non-mediation may result in denial of costs and

b) optional (sometimes contract) amicable settlement of disputes.

According to the method of operation (procedure) of the third party, non-judicial forms of dispute resolution are divided into

a) support (facilitative processes), where the third party only controls the process of dispute resolution; the third party is essentially irrelevant and does not advise on substantive issues, only directs litigants in resolving their dispute by binding or non-binding recommendations concerning the procedure for the parties in resolving the dispute,

b) consulting (advisory processes), where the third non-party helps participants

to resolve the dispute by intervening directly in controversial issues, and to investigate the facts, placing advice and recommendations relating to the problematic issues by suggesting of different versions of possible agreement, estimated success of the court proceedings etc.,

c) decision-making (determinative processes). Third party finds material facts that are in dispute and issues an awerd (decision) with varying degrees of severity on their basis.

According to the effect of outcome of dispute reolution (decisions, agreements, etc..), alternative dispute resolution may be divided into:

a) those whose outcome is directly enforceable, for example. arbitration award, agreement in a notary deed with an enforcement clause, which is a result of mediation

b) those, where the outcome is indirectly enforceable, i.e. outcome - agreement becomes enforceable title to a petition (application) to the general court, for example settlement agreement and

c) those that are unenforceable (e.g. so-called decisions in fact-finding).

Typical classification of alternative dispute resolution for civil law countries is according the area of law of dispute, i.e.:

a) private law alternative dispute resolution (such as arbitration, mediation) and the

b) public law alternative disputes resolution (mediation of disputes in collective bargaining, mediation in criminal law, etc.).

Sometimes it is also used sorting of alternative disputes resolution into:

a) international law ADR (as private as public, for example settlement of international disputes, arbitration in international trade (international commercial arbitration), etc..) and

b) national law ADR (eg mediation and negotiation of collective disputes, mediation of private law disputes or arbitration under Arbitration Act).

In the literature, however, most commonly used alternative dispute resolution classification is based on the character a third party that is not a party to the dispute (similary as the models of deliberate conflict resolution). There are the following three models (types) of alternative dispute resolution:

a) negotiation model respectively bargaining in the broader sense - a solution without involving a third, neutral entity (e.g. bargaining, negotiation, renegotiation),

b) mediation model respectively mediation in the broad sense (not just according to Mediation Act) – it is represented by various forms of dispute resolution through third party - generally he can be called a mediator - who haven't got a jurisdiction over dispute (e.g. conciliation, mediation, mediating within criminal law, mediation of disputes under collective disputes etc.) and

c) the arbitration model, respectively arbitration in general - it is a form of alternative dispute resolution undertaken by third party (referred to by various names such as the referee, arbitrator, arbiter, arbitration court, court of arbitration),

which has the power to make a decision in the dispute and the decision is legally binding for the parties to the dispute.

1.2. Introduction to civil procedure

Civil procedure is defined as a process of the court and the other bodies that has decision authority, parties and other persons or bodies thas is aimed to come through with protection of threatened or disturbed right and legally protected interests of natural persons, legal persons and state.

The area of law that regulates civil procedure is civil procedural law.

There are five categories of civil procedure in Slovak republic:

1. Discovery proceedings
2. Preliminary proceedings
3. Arbitration
4. Enforcement proceedings
5. Bankruptcy proceedings

1.3. Sources of law of civil procedure

Slovak law of civil procedure is based on wide variety of sources of law. Generally these sources may be divided into:

a) sources of formation of law (primary sources, informal sources or tangible sources)

b) formal sources.

1.3.1. Sources of formation of law

Sources of formation of law are all the circumstances that have influence on the creation (formation) of law. These sources are represented e.g. by geographical, social, political, sociological, demographic, economic or historic influences. Sources of formation of law may also be various model laws or foreign law, that is used as a model for formation of Slovak law. Especially Czech law has o great influence on Slovak law of civil procedure due to former common code.

1.3.2. Formal sources of law

Formal sources of law are all the generally mandatory legal norms. All the norms providing civil procedure are formal sources of civil procedure (hereinafter „sources“). Formal sources of civil procedure may be divided from diverse aspects.

Sources of civil procedure are divided from the legal power view point into:

a) Constitution of the Slovak republic and constitutional acts
b) International treaties on human rights and fundamental freedoms, international treaties whose executions does not require an act and international treaties which directly establish rights or obligations of natural persons or legal persons and which were ratified and promulgated in a manner laid down by law
c) Legally binding acts of the European Communities and European Union
d) Acts
e) Legal sources that has lower legal power than acts (regulations, decrees etc.)

1.3.2.1. Constitution of the Slovak republic

Constitution of the Slovak republic provides general framework for the civil procedure. Very important is part seven where is regulated the right to judicial and other legal protection.

1.3.2.2. International treaties

According to article 7 para 5 of the Constitution, International treaties on human rights and fundamental freedoms, international treaties whose executions does not require a law and international treaties which directly establish rights or obligations of natural persons or legal persons and which were ratified and promulgated in a manner laid down by law shall have primacy over the laws.

Slovakia is member state or contractual party of enormous amount of international treaties. These treaties (conventions) can be divided into:

a) multilateral agreements and
b) bilateral agreements.

For the area of civil procedure are important e.g.:

a) Convention on Civil Procedure
b) Convention on the Taking of Evidence Abroad in Civil or Commercial Matters
c) Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
d) United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)
e) European Convention on International Commercial Arbitration

1.3.2.3. Legally binding acts of the European Communities and European Union

According to article 7 para 2 of the Constitution, legally binding acts of the European Communities and European Union shall have primacy over the laws of the Slovak Republic. Undertaking of legally binding acts that require implementation shall be

executed by law or a government ordinance pursuant to Article 120, paragraph 2.

1.3.2.4. Acts

There are many acts regulating civil procedure in Slovakia. These acts may be divided into

a) Code of Civil procedure as the basic act,
b) Acts providing organization of courts, their activity and court system
c) Acts providing certain proceedings
d) Institutional acts
e) Acts relating to civil procedure
f) Other procedural acts

1.3.2.4.1. Code of Civil Procedure

Basic Slovak act providing civil procedure is Act No. 99/1968 Col. Civil Court Code (Code of Civil Procedure) – (Zákon č. 99/1963 Zb., Občiansky súdny poriadok). It provides the procedure for the court and the parties in civil proceedings to ensure equitable protection of rights and legitimate interests of the participants, as well as education on abiding laws, the honor fulfillment of duties to respect the rights of others.

This code has taken into effect from 1st April 1964. It was ammended by these ammendments: Ammendment No. 36/1967 Coll. has has taken into effect from 1st July 1967. Ammendment No. 158/1969 Coll. has taken into effect from 1st January 1970. Ammendment No. 49/1973 Coll. has taken into effect from 1st July 1973. Ammendment No. 20/1975 Coll. has taken into effect from 1st July 1975. Ammendment No. 133/1982 Coll. has taken into effect from 1st April 1983. Ammendment No. 180/1990 Coll. has taken into effect from 1st July 1990. Ammendment No. 328/1991 Coll. has taken into effect from 1st October 1991. Ammendment No. 519/1991 Coll. has taken into effect from 1st January 1992. Ammendment No. 519/1991 Coll. has taken into effect from 1st January 1993. Ammendment No. 263/1992 Coll. has taken into effect from 1st January 1993. Ammendment No. 5/1993 Coll. has taken into effect from 1st January 1993. Ammendment No. 519/1991 Zb. has taken into effect from 1st April 1994. Ammendment No. 46/1994 Coll. has taken into effect from 1st April 1994. Ammendment No. 190/1995 Coll. has taken into effect from 14th November 1995. Ammendment No. 232/1995 Coll. has taken into effect from 1st December 1995. Ammendment No. 233/1995 Coll. has taken into effect from 1st December 1995. Ammendment No. 22/1996 Coll. has taken into effect from 1st February 1996. Ammendment No. 58/1996 Coll. has taken into effect from 1st March 1996. Ammendment No. 211/1997 Coll. has taken into effect from 30th July 1997. Ammendment No. 359/1997 Coll. has taken into effect from 20th December 1997. Ammendment No. 124/1998 Coll. has taken into effect from 1st June 1998. Ammendment No. 144/1998 Coll. has taken into effect from 1st June 1998. Ammendment No. 187/1998 Coll. has taken into effect from 18th June 1998. Ammendment No. 169/1998 Coll. has taken into effect from 1st July 1998. Ammendment No.

225/1998 Coll. has taken into effect from 23. July 1998. Ammendment No. 233/1998 Coll. has taken into effect from 28th July 1998. Ammendment No. 318/1998 Coll. has taken into effect from 23. October 1998. Ammendment No. 331/1998 Coll. has taken into effect from 5. November 1998. Ammendment No. 235/1998 Coll. has taken into effect from 1st January 1999. Ammendment No. 46/1999 Coll. has taken into effect from 19th March 1999. Ammendment No. 66/1999 Coll. has taken into effect from 3rd April 1999. Ammendment No. 166/1999 Coll. has taken into effect from 14th July 1999. Ammendment No. 185/1999 Coll. has taken into effect from 24th July 1999. Ammendment No. 223/1999 Coll. has taken into effect from 4th November 1999. Ammendment No. 303/2001 Coll. has taken into effect from 27th July 2001. Ammendment No. 501/2001 Coll. has taken into effect from 1st January 2002. Ammendment No. 215/2002 Coll. has taken into effect from 1st May 2002. Ammendment No. 232/2002 Coll. has taken into effect from 3. May 2002. Ammendment No. 424/2002 Coll. has taken into effect from 1st November 2002. Ammendment No. 451/2002 Coll. has taken into effect from 1st November 2002. Ammendment No. 620/2002 Coll. has taken into effect from 9th November 2002. Ammendment No. 424/2002 Coll. has taken into effect from 1st January 2003. Ammendment No. 480/2002 Coll. has taken into effect from 1st January 2003. Ammendment No. 424/2002 Coll. has taken into effect from 28th February 2003. Ammendment No. 75/2003 Coll. has taken into effect from 28th February 2003. Ammendment No. 353/2003 Coll. has taken into effect from 1st November 2003. Ammendment No. 424/2002 Coll. has taken into effect from 1st January 2004. Ammendment No. 75/2003 Coll. has taken into effect from 1st January 2004. Ammendment No. 530/2003 Coll. has taken into effect from 1st February 2004. Ammendment No. 589/2003 Coll. has taken into effect from 1st March 2004. Ammendment No. 204/2004 Coll. has taken into effect from 1st May 2004. Ammendment No. 382/2004 Coll. has taken into effect from 1st November 2004. Ammendment No. 420/2004 Coll. has taken into effect from 1st November 2004. Ammendment No. 428/2004 Coll. has taken into effect from 1st October 2004. Ammendment No. 371/2004 Coll. has taken into effect from 1st January 2005. Ammendment No. 613/2004 Coll. has taken into effect from 1st January 2005. Ammendment No. 371/2004 Coll. has taken into effect from 1st April 2005. Ammendment No. 757/2004 Coll. has taken into effect from 1st April 2005. Ammendment No. 36/2005 Coll. has taken into effect from 1st April 2005. Ammendment No. 290/2005 Coll. has taken into effect from 1st July 2005. Ammendment No. 341/2005 Coll. has taken into effect from 1st November 2005. Ammendment No. 84/2007 Coll. has taken into effect from 1st March 2007. Ammendment No. 273/2007 Coll. has taken into effect from 1st July 2007. Ammendment No. 24/2007 Coll. has taken into effect from 1st August 2007. Ammendment No. 335/2007 Coll. has taken into effect from 1st October 2007. Ammendment No. 643/2007 Coll. has taken into effect from 1st January 2008. Ammendment No. 384/2008 Coll. has taken into effect from 15. October 2008. Ammendment No. 484/2008 Coll. has taken into effect from 28th November 2008. Ammendment No. 477/2008 Coll. has taken into effect from 1st December 2008. Ammendment No. 491/2008 Coll. has taken into effect from 15th December 2008. Ammendment No. 477/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 487/2009 Coll. has taken into effect from 1st December 2009. Ammendment No. 495/2009 Coll. has taken into effect from 1st January 2010. Ammendment No. 575/2009 Coll. has taken into effect from 1st March 2010. Ammendment No.

151/2010 Coll. has taken into effect from 1st July 2010. Ammendment No. 183/2011 Coll. has taken into effect from 1st August 2011. Ammendment No. 332/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 348/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 388/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 335/2012 Coll. has taken into effect from 1st January 2013.

1.3.2.4.2. Acts providing organization of courts, their activity and court system

1.3.2.4.2.1. Act on the Seats and Districts of the Courts

Act No. 371/2004 Coll. on the Seats and Districts of the Courts of the Slovak Republic on Amendment of the Act No. 99/1963 Coll. Code of Civil Procedure As Amended is in Slovak: Zákon č. 371/2004 Z.z. o sídlach a obvodoch súdov Slovenskej republiky a o zmene zákona č. 99/1963 Zb. Občiansky súdny poriadok v znení neskorších predpisov. The purpose of this Act is to establish seats and districts of the courts of the Slovak Republic and establish the scope of some courts with specialized agenda.[22]

This act has taken into effect from 1st January 2005. It was ammended by these ammendments: Ammendment No. 428/2004 Coll. has taken into effect from 1st January 2005. Ammendment No. 757/2004 Coll. has taken into effect from 1st January 2005. Ammendment No. 511/2007 Coll. has taken into effect from 1st January 2008. Ammendment No. 517/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 59/2009 Coll. has taken into effect from 1st April 2009. Ammendment No. 291/2009 Coll. has taken into effect from 17th July 2009. Ammendment No. 503/2009 Coll. has taken into effect from 1st January 2010. Ammendment No. 332/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 348/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 388/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 75/2013 Coll. has taken into effect from 1st May 2013.

1.3.2.4.2.2. Act on the Courts

Act No. 757/2004 Coll. on the courts and on amendments to certain acts, in Slovak: Zákon č. 757/2004 Z.z. o súdoch a o zmene a doplnení niektorých zákonov, provides

a) basic principles of judicial activities,
b) a system of courts and judicial competence,
c) the internal organization of the courts,
d) the management and administration of the courts,
e) judicial autonomy and

[22] § 1 of the Act.

f) involvement of the courts on the budget of the courts.[23]

This act has taken into effect from 1st April 2005. It was ammended by these ammendments: Ammendment No. 473/2005 Coll. has taken into effect from 1st January 2006. Ammendment No. 517/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 59/2009 Coll. has taken into effect from 1st April 2009. Ammendment No. 291/2009 Coll. has taken into effect from 17th July 2009. Ammendment No. 318/2009 Coll. has taken into effect from 1st September 2009. Ammendment No. 33/2011 Coll. has taken into effect from 1st May 2011. Ammendment No. 192/2011 Coll. has taken into effect from 1st August 2011. Ammendment No. 33/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 467/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 110/2012 Coll. has taken into effect from 7th March 2012. Ammendment No. 335/2012 Coll. has taken into effect from 1st January 2013.

1.3.2.4.2.3. Act on Judges and Lay Judges

Act No. 385/2000 Z.z. on Judges and Lay Judges and on Ammendment of certain acts, in Slovak: Zákon č. 385/2000 Z.z. o sudcoch a prísediacich a o zmene a doplnení niektorých zákonov, regulates the status of judges, their rights and obligations, appointment and withdrawal of a judge, disciplinary responsibility of judges, salaries of judges and their benefits after the termination of judicial office. This Act regulates also the position of lay judges.[24]

This act has taken into effect from 1st January 2001. It was ammended by these ammendments: Ammendment No. 185/2002 Coll. has taken into effect from 16th April 2002. Ammendment No. 670/2002 Coll. has taken into effect from 1st January 2003. Ammendment No. 426/2003 Coll. has taken into effect from 1st November 2003. Ammendment No. 458/2003 Coll. has taken into effect from 25th November 2003. Ammendment No. 462/2003 Coll. has taken into effect from 1st January 2004. Ammendment No. 505/2003 Coll. has taken into effect from 1st January 2004. Ammendment No. 514/2003 Coll. has taken into effect from 1st July 2004. Ammendment No. 267/2004 Coll. has taken into effect from 19th July 2004. Ammendment No. 403/2004 Coll. has taken into effect from 19th July 2004. Ammendment No. 458/2003 Coll. has taken into effect from 1st September 2004. Ammendment No. 548/2003 Coll. has taken into effect from 1st September 2004. Ammendment No. 267/2004 Coll. has taken into effect from 1st September 2004. Ammendment No. 530/2004 Coll. has taken into effect from 1st November 2004. Ammendment No. 586/2004 Coll. has taken into effect from 1st January 2005. Ammendment No. 609/2004 Coll. has taken into effect from 1st January 2005. Ammendment No. 757/2004 Coll. has taken into effect from 1st April 2005. Ammendment No. 122/2005 Coll. has taken into effect from 15th April 2005. Ammendment No. 622/2005 Coll. has taken into effect from 1st January 2006. Ammendment No. 586/2004 Coll. has taken into effect from 1st January 2007. Ammendment No. 517/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 520/2008 Coll. has taken into effect from 1st January 2009. Ammendment

[23] § 1 par. 1 of the Act.

[24] § 1 of the Act

No. 59/2009 Coll. has taken into effect from 1st April 2009. Ammendment No. 291/2009 Coll. has taken into effect from 17th July 2009. Ammendment No. 500/2010 Coll. has taken into effect from 1st January 2011. Ammendment No. 543/2010 Coll. has taken into effect from 1st January 2011. Ammendment No. 33/2011 Coll. has taken into effect from 1st May 2011. Ammendment No. 100/2011 Coll. has taken into effect from 1st May 2011. Ammendment No. 467/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 503/2011 Coll. has taken into effect from 1st February 2012. Ammendment No. 79/2012 Coll. has taken into effect from 1st March 2012. Ammendment No. 335/2012 Coll. has taken into effect from 1st January 2013. Ammendment No. 392/2012 Coll. has taken into effect from 1st January 2013.

1.3.2.4.2.4. Court Clerks Act

Act No. 549/2003 Coll. on the courts clerks, in Slovak: Zákon č. 549/2003 Z.z. o súdnych úradníkoch, provides the status and activities of court clerks.[25] The court clerks are

a) senior court officials (in Slovak vyšší súdny úradník),

b) court secretaries (in Slovak: súdny tajomník),

c) probation &mediation officers (in Slovak: probačný a mediačný úradník).[26]

This act has taken into effect from 1st January 2004. It was ammended by these ammendments: Ammendment No. 757/2004 Coll. has taken into effect from 1st April 2005. Ammendment No. 517/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 33/2011 Coll. has taken into effect from 1st May 2011.

1.3.2.4.3. Acts providing certain proceedings

1.3.2.4.3.1. Enforcement Act

Basic Slovak act providing enforcement proceedings is Act No. 233/1995 Coll. on court baillifs and enforcement proceedings (Enforcement Act) and on amendments to other Acts – in Slovak„Zákon č. 233/1995 Z.z. o súdnych exekútoroch a exekučnej činnosti (Exekučný poriadok) a o zmene a doplnení ďalších zákonov". This act has taken into effect from 1st December 1995. It was ammended by these ammendments: Ammendment No. 211/1997 Coll. has taken into effect from 30th July 1997. Ammendment No. 353/1997 Coll. has taken into effect from 1st January 1998. Ammendment No. 240/1998 Coll. has taken into effect from 1st July 1998. Ammendment No. 235/1998 Coll. has taken into effect from 1st January 1999. Ammendment No. 280/1999 Coll. has taken into effect from 9th November 1999. Ammendment No. 415/2000 Coll. has taken into effect from 6th December 2000. Ammendment No. 291/2001 Coll. has taken

[25] § 1 par. 1 of the Act.

[26] § 2 par. 2 of the Act.

into effect from 26th July 2001. Ammendment No. 32/2002 Coll. has taken into effect from 1st February 2002. Ammendment No. 356/2003 Coll. has taken into effect from 1st September 2003. Ammendment No. 589/2003 Coll. has taken into effect from 1st March 2004. Ammendment No. 514/2003 Coll. has taken into effect from 1st July 2004. Ammendment No. 613/2004 Coll. has taken into effect from 1st January 2005. Ammendment No. 125/2005 Coll. has taken into effect from 12th April 2005. Ammendment No. 341/2005 Coll. has taken into effect from 1st September 2005. Ammendment No. 585/2006 Coll. has taken into effect from 1st December 2006. Ammendment No. 84/2007 Coll. has taken into effect from 1st March 2007. Ammendment No. 568/2007 Coll. has taken into effect from 1st January 2008. Ammendment No. 384/2008 Coll. has taken into effect from 15th October 2008. Ammendment No. 477/2008 Coll. has taken into effect from 1st December 2008. Ammendment No. 477/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 554/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 84/2009 Coll. has taken into effect from 1st April 2009. Ammendment No. 192/2009 Coll. has taken into effect from 1st June 2009. Ammendment No. 466/2009 Coll. has taken into effect from 15th December 2009. Ammendment No. 144/2010 Coll. has taken into effect from 1st June 2010. Ammendment No. 151/2010 Coll. has taken into effect from 1st July 2010. Ammendment No. 102/2011 Coll. has taken into effect from 1st June 2011. Ammendment No. 348/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 230/2012 Coll. has taken into effect from 9th August 2012. Ammendment No. 335/2012 Coll. has taken into effect from 1st January 2013. Ammendment No. 440/2012 Coll. has taken into effect from 1st January 2013. Ammendment No. 461/2012 Coll. has taken into effect from 1st January 2013.

1.3.2.4.3.2. Arbitration Act

Act No. 244/2002 Coll. on Arbitration, in Slovak: Zákon č. 244/2002 Z.z. o rozhodcovskom konaní, provides

a) resolution of property disputes arising from domestic and international commercial and civil relations, if the place of arbitration in the Slovak Republic ,
b) the recognition and enforcement of domestic and foreign arbitral awards in the Slovak Republic.

Only disputes that the parties before the court may terminate by court settlement can be subjected to arbitration.[27]

The arbitration disputes can not be

a) the establishment, modification or termination of ownership disputes and other rights in rem disputes relating to an immovable property ,
b) personal status disputes,
c) disputes relating to the enforcement of judgments ,
d) disputes incurred during the bankruptcy and restructuring proceedings.[28]

[27] § 1 par. 1 et 2 of the Act.

[28] § 1 par. 3 of the Act.

This act has taken into effect from 1st July 2002. It was ammended by these ammendments: Ammendment No. 521/2005 Coll. Ammendment No. 71/2009 Coll. has taken into effect from 1st July 2009.

1.3.2.4.3.3. Bankruptcy Act

Act No. 7/2005 Coll. on Bankruptcy and Restructuring and on Ammendment of Certain Acts, in Slovak: Zákon č. 7/2005 Z.z. o konkurze a reštrukturalizácii a o zmene a doplnení niektorých zákonov, provides a solution of the bankruptcy of the debtor by liquidation of the debtor's assets and collective satisfaction of creditors or the debtor's creditors satisfaction by gradual manner agreed in the restructuring plan. This Act also provides the imminent bankruptcy of the debtor and debt elimination of natural persons.[29]

This act has taken into effect from 1st January 2006. It was ammended by these ammendments: Ammendment No. 353/2005 Coll. has taken into effect from 1st January 2006. Ammendment No. 520/2005 Coll. has taken into effect from 1st January 2006. Ammendment No. 198/2007 Coll. has taken into effect from 26th April 2007. Ammendment No. 209/2007 Coll. has taken into effect from 1st May 2007. Ammendment No. 270/2008 Coll. has taken into effect from 1st August 2008. Ammendment No. 552/2008 Coll. has taken into effect from 13th December 2008. Ammendment No. 477/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 276/2009 Coll. has taken into effect from 10th July 2009. Ammendment No. 492/2009 Coll. has taken into effect from 1st December 2009. Ammendment No. 224/2010 Coll. has taken into effect from 1st September 2010. Ammendment No. 130/2011 Coll. has taken into effect from 30th June 2011. Ammendment No. 348/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 348/2011 Coll. has taken into effect from 1st January 2013.

1.3.2.4.4. Institutional acts

1.3.2.4.4.1. Prosecution Act

Act No. 153/2001 Coll. on prosecution, in Slovak: Zákon č. 153/2001 Z.z. o prokuratúre, provides the status and scope of the prosecution, the status and scope of the general prosecutor (attorney general), the scope of other prosecutors, organization and management of the prosecution.[30]

This act has taken into effect from 1st May 2001. It was ammended by these ammendments: Ammendment No. 458/2003 Coll. has taken into effect from 25th November 2003. Ammendment No. 458/2003 Coll. has taken into effect from 1st September 2004. Ammendment No. 36/2005 Coll. has taken into effect from 1st September 2004. Ammendment No. 36/2005 Coll. has taken into effect from 1st April 2005. Ammend-

[29] § 1 of the Act.

[30] § 1 par. 1 of the Act.

ment No. 59/2009 Coll. has taken into effect from 1st April 2009. Ammendment No. 291/2009 Coll. has taken into effect from 17th July 2009. Ammendment No. 102/2010 Coll. has taken into effect from 1st April 2010. Ammendment No. 403/2010 Coll. has taken into effect from 1st November 2010. Ammendment No. 192/2011 Coll. has taken into effect from 1st August 2011. Ammendment No. 220/2011 Coll. has taken into effect from 1st October 2011. Ammendment No. 220/2011 Coll. has taken into effect from 1st November 2011. Ammendment No. 220/2011 Coll. has taken into effect from 1st January 2012.

1.3.2.4.4.2. Act on Advocacy

Act No. 586/2003 Coll. on advocacy and to amendment of the Act No. 455/1991 Coll. on Trade Licensing (Trade Licensing Act), as amended, in Slovak: Zákon č. 586/2003 Z.z. o advokácii a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov, regulates issues related to advocats and advocacy. Advocacy helps to exercise the constitutional right of individuals to defend and protect other rights and interests of individuals and legal persons (clients) in accordance with the Constitution of the Slovak Republic, constitutional laws, the acts and other generally binding legal regulations. Legal services in the Slovak Republic are performed only by advocats, as well as other natural persons and legal persons referred to in the provisions of the Act and in the terms and manner provided by this Act.[31]

This act has taken into effect from 1st January 2004. It was ammended by these ammendments: Ammendment No. 8/2005 Coll. has taken into effect from 1st July 2005. Ammendment No. 327/2005 Coll. has taken into effect from 1st January 2006. Ammendment No. 331/2007 Coll. has taken into effect from 1st August 2007. Ammendment No. 297/2008 Coll. has taken into effect from 1st September 2008. Ammendment No. 451/2008 Coll. has taken into effect from 1st December 2008. Ammendment No. 304/2009 Coll. has taken into effect from 1st September 2009. Ammendment No. 136/2010 Coll. has taken into effect from 1st June 2010. Ammendment No. 332/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 335/2012 Coll. has taken into effect from 1st January 2013.

1.3.2.4.4.3. Notarial Code

Act No. 323/1992 Coll. on notaries and notarial activities (Notarial Code), in Slovak: Zákon č. 323/1992 Zb. o notároch a notárskej činnosti (Notársky poriadok), provides

a) status and activities of notaries,

b) government of notaries.[32]

A notary (in Slovak: notár) is a state-designated person to perform notarial activities and other activities under this Act.

This act has taken into effect from 1st January 1993. It was ammended by these am-

[31] § 1 par. 1 et 3 of the Act.

[32] § 1 et 2 of the Act.

mendments: Ammendment No. 232/1995 Coll. has taken into effect from 1st December 1995. Ammendment No. 397/2000 Coll. has taken into effect from 1st December 2000. Ammendment No. 561/2001 Coll. has taken into effect from 1st January 2002. Ammendment No. 526/2002 Coll. has taken into effect from 1st January 2003. Ammendment No. 527/2002 Coll. has taken into effect from 1st January 2003. Ammendment No. 357/2003 Coll. has taken into effect from 1st September 2003. Ammendment No. 514/2003 Coll. has taken into effect from 1st July 2004. Ammendment No. 420/2004 Coll. has taken into effect from 1st September 2004. Ammendment No. 562/2004 Coll. has taken into effect from 1st November 2004. Ammendment No. 357/2003 Coll. has taken into effect from 1st January 2005. Ammendment No. 757/2004 Coll. has taken into effect from 1st April 2005. Ammendment No. 126/2005 Coll. has taken into effect from 12th April 2005. Ammendment No. 521/2005 Coll. has taken into effect from 1st January 2006. Ammendment No. 477/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 304/2009 Coll. has taken into effect from 1st September 2009. Ammendment No. 141/2010 Coll. has taken into effect from 1st July 2010.

1.3.2.4.4.4. Act on Experts, Interpreters and Translators

Act No. 382/2004 Coll. on experts, interpreters and translators and on amending of certain laws, in Slovak: Zákon č. 382/2004 Z.z. o znalcoch, tlmočníkoch a prekladateľoch a o zmene a doplnení niektorých zákonov, regulates the conditions for court experts, interpretation and translation activities, rights and obligations of experts, interpreters and translators, as well as the operating conditions of expert institutions, and the scope of the Ministry of Justice of the Slovak Republic in their work.[33]

This act has taken into effect from 1st September 2004. It was ammended by these ammendments: Ammendment No. 93/2006 Coll. Ammendment No. 522/2007 Coll. Ammendment No. 520/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 136/2010 Coll. has taken into effect from 1st June 2010.

1.3.2.4.5. Acts relating to civil procedure

1.3.2.4.5.1. Family Act

Act No. 36/2005 Coll. on the family and on amendments to certain Acts, in Slovak: Zákon č. 36/2005 Z.z. o rodine a o zmene a doplnení niektorých zákonov, regulates various issues related to family law, such as marriage, the relationship between parents, children and other relatives, substitute care, guardianship and custody, alimony, establishment of parentage and adoption.

This act has taken into effect from 1st April 2005. It was ammended by these ammendments: Ammendment No. 297/2005 Coll. has taken into effect from 2nd July 2005. Ammendment No. 615/2006 Coll. has taken into effect from 30th November

[33] § 1 of the Act.

2006. Ammendment No. 201/2008 Coll. has taken into effect from 1st July 2008. Ammendment No. 217/2010 Coll. has taken into effect from 1st July 2010. Ammendment No. 290/2011 Coll. has taken into effect from 8th September 2011.

1.3.2.4.5.2. Copyright Act

Act No. 618/2003 Coll. on copyright and rights related to copyright (the Copyright Act) in Slovak: Zákon č. 618/2003 Z.z. o autorskom práve a právach súvisiacich s autorským právom (autorský zákon), regulates relations arising in connection with the creation and use of literary and other artistic works and scientific works, artistic performances, the production and use of sound recordings, audiovisual recording, broadcasting and the use of radio and television broadcasting and connection with the construction and use of databases in order to protect the rights and legitimate interests of authors, performers, phonogram, the producer of an audiovisual recording, radio broadcaster and television broadcaster (the „broadcaster") and contractor databases. The Act also governs the collective management of rights under this Act.[34]

This act has taken into effect from 1st January 2004. It was ammended by these ammendments: Ammendment No. 84/2007 Coll. Ammendment No. 220/2007 Coll. Ammendment No. 453/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 349/2012 Coll. has taken into effect from 1st December 2012.

1.3.2.4.5.3.Labour Code

Act No. 311/2001 Coll., Labour Code, in Slovak: Zákon č. 311/2001 Z.z., Zákonník práce., regulates individual employment relationship in relation to the performance of individual dependent work for legal persons or natural persons and collective labor relations.[35]

This act has taken into effect from 1st April 2002. It was ammended by these ammendments: Ammendment No. 165/2002 Coll. has taken into effect from 1st April 2002. Ammendment No. 408/2002 Coll. has taken into effect from 25th July 2002. Ammendment No. 413/2002 Coll. has taken into effect from 1st July 2003. Ammendment No. 210/2003 Coll. has taken into effect from 1st July 2003. Ammendment No. 461/2003 Coll. has taken into effect from 1st July 2003. Ammendment No. 348/2007 Coll. has taken into effect from 1st July 2003. Ammendment No. 413/2002 Coll. has taken into effect from 1st January 2004. Ammendment No. 210/2003 Coll. has taken into effect from 1st January 2004. Ammendment No. 461/2003 Coll. has taken into effect from 1st January 2004. Ammendment No. 5/2004 Coll. has taken into effect from 1st February 2004. Ammendment No. 210/2003 Coll. has taken into effect from 1st May 2004. Ammendment No. 365/2004 Coll. has taken into effect from 1st July 2004. Ammendment No. 82/2005 Coll. has taken into effect from 1st April 2005. Ammendment No. 131/2005 Coll. has taken into effect from 1st July 2005. Ammendment No. 244/2005 Coll. has taken into effect from 1st July 2005. Ammendment No. 570/2005 Coll. has taken into

[34] § 1 of the Act.

[35] § 1 par. 1 of the Act.

effect from 1st January 2006. Ammendment No. 231/2006 Coll. has taken into effect from 1st June 2006. Ammendment No. 124/2006 Coll. has taken into effect from 1st July 2006. Ammendment No. 348/2007 Coll. has taken into effect from 1st September 2007. Ammendment No. 200/2008 Coll. has taken into effect from 12th June 2008. Ammendment No. 460/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 49/2009 Coll. has taken into effect from 1st March 2009. Ammendment No. 184/2009 Coll. has taken into effect from 1st September 2009. Ammendment No. 574/2009 Coll. has taken into effect from 1st March 2010. Ammendment No. 543/2010 Coll. has taken into effect from 1st January 2011. Ammendment No. 48/2011 Coll. has taken into effect from 1st April 2011. Ammendment No. 48/2011 Coll. has taken into effect from 6th June 2011. Ammendment No. 257/2011 Coll. has taken into effect from 1st September 2011. Ammendment No. 406/2011 Coll. has taken into effect from 1st December 2011. Ammendment No. 257/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 512/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 251/2012 Coll. has taken into effect from 1st September 2012. Ammendment No. 252/2012 Coll. has taken into effect from 1st January 2013. Ammendment No. 345/2012 Coll. has taken into effect from 1st January 2013. Ammendment No. 361/2012 Coll. has taken into effect from 1st January 2013.

1.3.2.4.5.4.Commercial Code

Act No. 513/1991 Coll., Commercial Code, in Slovak: Zákon č. 513/1991 Zb., Obchodný zákonník, regulates the status of entrepreneurs, business arrangements, as well as some other legal relations related to business.[36]

This code has taken into effect from 1st January 1992. It was ammended by these ammendments: Ammendment No. 600/1992 Coll. has taken into effect from 28th December 1992. Ammendment No. 264/1992 Coll. has taken into effect from 1st January 1993. Ammendment No. 27/1993 Coll. has taken into effect from 2nd February 1993. Ammendment No. 27/1993 Coll. has taken into effect from 8th February 1993. Ammendment No. 278/1993 Coll. has taken into effect from 1st January 1994. Ammendment No. 249/1994 Coll. has taken into effect from 1st October 1994. Ammendment No. 106/1995 Coll. has taken into effect from 2nd June 1995. Ammendment No. 171/1995 Coll. has taken into effect from 15th August 1995. Ammendment No. 58/1996 Coll. has taken into effect from 1st March 1996. Ammendment No. 317/1996 Coll. has taken into effect from 15th November 1996. Ammendment No. 373/1996 Coll. has taken into effect from 28th December 1996. Ammendment No. 11/1998 Coll. has taken into effect from 1st February 1998. Ammendment No. 127/1999 Coll. has taken into effect from 1st July 1999. Ammendment No. 263/1999 Coll. has taken into effect from 1st January 2000. Ammendment No. 238/2000 Coll. has taken into effect from 1st August 2000. Ammendment No. 147/2001 Coll. has taken into effect from 1st May 2001. Ammendment No. 500/2001 Coll. has taken into effect from 5th December 2001. Ammendment No. 500/2001 Coll. has taken into effect from 1st January 2002. Ammendment No. 530/2003 Coll. has taken into effect from 1st January 2002. Ammendment No. 426/2002 Coll. has taken into effect from 1st September 2002. Ammendment No.

[36] §1 par. 1 of the Code.

510/2002 Coll. has taken into effect from 1st January 2003. Ammendment No. 526/2002 Coll. has taken into effect from 1st January 2003. Ammendment No. 530/2003 Coll. has taken into effect from 1st February 2004. Ammendment No. 500/2001 Coll. has taken into effect from 1st May 2004. Ammendment No. 432/2004 Coll. has taken into effect from 1st October 2004. Ammendment No. 315/2005 Coll. has taken into effect from 1st August 2005. Ammendment No. 19/2007 Coll. has taken into effect from 1st February 2007. Ammendment No. 84/2007 Coll. has taken into effect from 1st March 2007. Ammendment No. 657/2007 Coll. has taken into effect from 1st January 2008. Ammendment No. 659/2007 Coll. has taken into effect from 1st January 2008. Ammendment No. 429/2008 Coll. has taken into effect from 8th November 2008. Ammendment No. 659/2007 Coll. has taken into effect from 1st January 2009. Ammendment No. 477/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 454/2008 Coll. has taken into effect from 15th January 2009. Ammendment No. 276/2009 Coll. has taken into effect from 10th July 2009. Ammendment No. 487/2009 Coll. has taken into effect from 1st December 2009. Ammendment No. 492/2009 Coll. has taken into effect from 1st December 2009. Ammendment No. 546/2010 Coll. has taken into effect from 1st January 2011. Ammendment No. 193/2011 Coll. has taken into effect from 30th June 2011. Ammendment No. 197/2012 Coll. has taken into effect from 1st August 2012. Ammendment No. 246/2012 Coll. has taken into effect from 1st October 2012. Ammendment No. 440/2012 Coll. has taken into effect from 1st January 2013. Ammendment No. 9/2013 Coll. has taken into effect from 1st February 2013.

1.3.2.4.5.5. Civil Code

Act No. 40/1964 Coll., Civil Code, in Slovak: Zákon č. 40/1964 Zb., Občiansky zákonník, regulates property relations of natural and legal persons, property relations between these persons and the state, as well as the relations arising from the right to the protection of peersons, unless these other civil relations are not provided by other acts. The Civil Code also regulates the legal relations arising out of intellectual property rights, if these relations are not governed by other laws.[37]

This act has taken into effect from 1st April 1964. It was ammended by these ammendments: Ammendment No. 58/1969 Coll. has taken into effect from 1st July 1969. Ammendment No. 131/1982 Coll. has taken into effect from 1st January 1983. Ammendment No. 131/1982 Coll. has taken into effect from 1st April 1983. Ammendment No. 509/1991 Coll. has taken into effect from 1st April 1983. Ammendment No. 94/1988 Coll. has taken into effect from 1st July 1988. Ammendment No. 188/1988 Coll. has taken into effect from 1st January 1989. Ammendment No. 87/1990 Coll. has taken into effect from 29th March 1990. Ammendment No. 105/1990 Coll. has taken into effect from 1st May 1990. Ammendment No. 116/1990 Coll. has taken into effect from 1st May 1990. Ammendment No. 509/1991 Coll. has taken into effect from 1st May 1990. Ammendment No. 87/1991 Coll. has taken into effect from 1st April 1991. Ammendment No. 509/1991 Coll. has taken into effect from 1st January 1992. Ammendment No. 264/1992 Coll. has taken into effect from 1st January 1993. Ammendment No. 278/1993 Coll. has taken into effect from 1st January 1994. Ammendment No. 249/1994 Coll. has

[37] § 1 para 2. & 3 of the Code.

taken into effect from 1st October 1994. Ammendment No. 153/1997 Coll. has taken into effect from 20th June 1997. Ammendment No. 211/1997 Coll. has taken into effect from 30th July 1997. Ammendment No. 252/1999 Coll. has taken into effect from 11th October 1999. Ammendment No. 218/2000 Coll. has taken into effect from 1st August 2000. Ammendment No. 261/2001 Coll. has taken into effect from 1st September 2001. Ammendment No. 281/2001 Coll. has taken into effect from 1st October 2001. Ammendment No. 23/2002 Coll. has taken into effect from 7th February 2002. Ammendment No. 34/2002 Coll. has taken into effect from 1st March 2002. Ammendment No. 95/2002 Coll. has taken into effect from 1st March 2002. Ammendment No. 215/2002 Coll. has taken into effect from 1st May 2002. Ammendment No. 184/2002 Coll. has taken into effect from 1st June 2002. Ammendment No. 526/2002 Coll. has taken into effect from 1st January 2003. Ammendment No. 504/2003 Coll. has taken into effect from 1st January 2004. Ammendment No. 515/2003 Coll. has taken into effect from 1st January 2004. Ammendment No. 150/2004 Coll. has taken into effect from 1st April 2004. Ammendment No. 526/2002 Coll. has taken into effect from 1st May 2004. Ammendment No. 150/2004 Coll. has taken into effect from 1st May 2004. Ammendment No. 404/2004 Coll. has taken into effect from 1st August 2004. Ammendment No. 635/2004 Coll. has taken into effect from 1st January 2005. Ammendment No. 171/2005 Coll. has taken into effect from 1st May 2005. Ammendment No. 266/2005 Coll. has taken into effect from 30th June 2005. Ammendment No. 336/2005 Coll. has taken into effect from 1st August 2005. Ammendment No. 118/2006 Coll. has taken into effect from 1st April 2006. Ammendment No. 188/2006 Coll. has taken into effect from 13th April 2006. Ammendment No. 84/2007 Coll. has taken into effect from 1st March 2007. Ammendment No. 209/2007 Coll. has taken into effect from 1st May 2007. Ammendment No. 335/2007 Coll. has taken into effect from 1st October 2007. Ammendment No. 568/2007 Coll. has taken into effect from 1st January 2008. Ammendment No. 379/2008 Coll. has taken into effect from 1st November 2008. Ammendment No. 214/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 477/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 186/2009 Coll. has taken into effect from 1st January 2010. Ammendment No. 575/2009 Coll. has taken into effect from 1st March 2010. Ammendment No. 129/2010 Coll. has taken into effect from 1st June 2010. Ammendment No. 546/2010 Coll. has taken into effect from 1st January 2011. Ammendment No. 130/2011 Coll. has taken into effect from 30th June 2011. Ammendment No. 161/2011 Coll. has taken into effect from 1st July 2011. Ammendment No. 69/2012 Coll. has taken into effect from 1st March 2012. Ammendment No. 180/2013 Coll. has taken into effect from 1st October 2013.

1.3.2.4.6. Other procedural acts

1.3.2.4.6.1. Mediation Act

Act No. 420/2004 Coll. o mediation and on amendments to certain acts, in Slovak: Zákon č. 420/2004 Z.z. o mediácii a o doplnení niektorých zákonov, governs the mediation , basic principles, organization and effects of mediation. This Act shall apply only

to disputes arising from civil relations, family relationships, commercial contractual relations, and labor relations. This Act shall also apply to cross-border disputes arising from similar legal relationship other than rights and obligations in which the parties have not disposal under the law applicable to the legal relationship under special regulations.[38]

This act has taken into effect from 1st September 2004. It was ammended by these ammendments: Ammendment No. 136/2010 Coll. has taken into effect from 1st June 2010. Ammendment No. 141/2010 Coll. has taken into effect from 1st July 2010. Ammendment No. 332/2011 Coll. has taken into effect from 1st January 2012.

1.3.2.4.6.2. Act on International Private Law and International Procedural Law

Act No. 97/1963 Coll. on International Private Law and International Procedural Law is in Slovak: Zákon č. 97/1963 Zb. o medzinárodnom práve súkromnom a procesnom. The purpose of this Act is to establish which law is applicable to civil, commercial, labor and other relationships with an international element, to regulate the legal status of foreigners and to establish a procedure of Slovak judicial authorities in regulating these relationships and deciding on them and thereby facilitate international cooperation.The provisions of this Act shall be used, if not otherwise provided by an international treaty by which the Slovak Republic is bound or by the Act issued for the enforcement of an international agreement.[39]

This act has taken into effect from 1st April 1964. It was ammended by these ammendments: Ammendment No. 158/1969 Coll. Ammendment No. 234/1992 Coll. Ammendment No. 264/1992 Coll. Ammendment No. 48/1996 Coll. Ammendment No. 510/2002 Coll. Ammendment No. 589/2003 Coll. Ammendment No. 382/2004 Coll. Ammendment No. 36/2005 Coll. Ammendment No. 336/2005 Coll. Ammendment No. 273/2007 Coll. Ammendment No. 384/2008 Coll. has taken into effect from 15th October 2008. Ammendment No. 388/2011 Coll. has taken into effect from 1st January 2012.

1.3.2.4.6.3. Court Fees Act

Act No. 71/1992 Coll. on Court Fees and Fees for Criminal Records, in Slovak: Zákon č. 71/1992 Zb. o súdnych poplatkoch a poplatku za výpis z registra trestov, provides court fees that should be imposed for individual acts or court proceedings. The amount of the fee is stated by the Tariff of court fees and fees for criminal record annexed to this Act.[40]

This act has taken into effect from 17th March 1992. It was ammended by these ammendments: Ammendment No. 89/1993 Coll. has taken into effect from 29th April 1993. Ammendment No. 150/1993 Coll. has taken into effect from 16th July 1993. Ammendment No. 85/1994 Coll. has taken into effect from 15th April 1994. Ammendment

[38] § 1 par 1 et 2 of the Act.

[39] § 1 et 2 of the Act.

[40] § 1 par. 1 of the Act.

No. 232/1995 Coll. has taken into effect from 1st December 1995. Ammendment No. 12/1998 Coll. has taken into effect from 1st February 1998. Ammendment No. 457/2000 Coll. has taken into effect from 1st January 2001. Ammendment No. 162/2001 Coll. has taken into effect from 1st June 2001. Ammendment No. 418/2002 Coll. has taken into effect from 1st September 2002. Ammendment No. 531/2003 Coll. has taken into effect from 1st January 2004. Ammendment No. 215/2004 Coll. has taken into effect from 1st May 2004. Ammendment No. 382/2004 Coll. has taken into effect from 1st September 2004. Ammendment No. 420/2004 Coll. has taken into effect from 1st September 2004. Ammendment No. 432/2004 Coll. has taken into effect from 1st October 2004. Ammendment No. 341/2005 Coll. has taken into effect from 1st September 2005. Ammendment No. 621/2005 Coll. has taken into effect from 1st January 2006. Ammendment No. 273/2007 Coll. has taken into effect from 1st July 2007. Ammendment No. 24/2007 Coll. has taken into effect from 1st August 2007. Ammendment No. 330/2007 Coll. has taken into effect from 1st January 2008. Ammendment No. 511/2007 Coll. has taken into effect from 1st January 2008. Ammendment No. 264/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 465/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 71/2009 Coll. has taken into effect from 5th March 2009. Ammendment No. 503/2009 Coll. has taken into effect from 1st January 2010. Ammendment No. 136/2010 Coll. has taken into effect from 1st June 2010. Ammendment No. 136/2010 Coll. has taken into effect from 1st January 2012. Ammendment No. 381/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 286/2012 Coll. has taken into effect from 1st October 2012. Ammendment No. 297/2012 Coll. has taken into effect from 4th October 2012. Ammendment No. 381/2011 Coll. has taken into effect from 1st January 2013. Ammendment No. 286/2012 Coll. has taken into effect from 1st January 2013.

1.3.2.4.6.4. Free Legal Aid Act

Act No. 327/2005 Coll. on legal aid to persons in material need and on Amendment of the Act No. 586/2003 Z. z. on Advocacy and on the Amendment of the Act No. 455/1991 Coll. on Trade Licensing (Trade Licensing Act), As Amended by the Act No. 8/2005 Coll. is in Slovak: Zákon č. 327/2005 Z.z. o poskytovaní právnej pomoci osobám v materiálnej núdzi a o zmene a doplnení Zákona č. 586/2003 Z. z. o advokácii a o zmene a doplnení Zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský Zákon) v znení neskorších predpisov v znení Zákona č. 8/2005 Z. z.

The purpose of this Act is to establish a system of legal aid and ensure its supply in accordance with this Act to individuals whom legal services are not open because of their material need.[41]

This act has taken into effect from 1st January 2006. It was ammended by these ammendments: Ammendment No. 451/2008 Coll. has taken into effect from 1st December 2008. Ammendment No. 477/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 495/2009 Coll. has taken into effect from 1st January 2010. Ammendment No. 332/2011 Coll. has taken into effect from 1st January 2012. Ammendment No. 335/2012 Coll. has taken into effect from 1st January 2013.

[41] § 1 of the Act.

1.3.2.5. Legal sources that has lower legal power than acts

1. Decree of the Ministry of Justice of the Slovak Republic No. 655/2004 Coll. on the remuneration and costs of advocates for legal services is in Slovak: Vyhláška Ministerstva spravodlivosti Slovenskej republiky č. 655/2004 Z.z. o odmenách a náhradách advokátov za poskytovanie právnych služieb.

   This decree has taken into effect from 1st January 2005. It was ammended by these ammendments: Ammendment No. 279/2005 Coll. Ammendment No. 649/2005 Coll. Ammendment No. 256/2006 Coll. Ammendment No. 557/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 209/2009 Coll. has taken into effect from 1st June 2009. Ammendment No. 232/2010 Coll. has taken into effect from 1st June 2010. Ammendment No. 184/2013 Coll. has taken into effect from July 2013.

2. Decree of the Ministry of Justice of the Slovak Republic No. 31/1993 Coll. on the remuneration and costs of notaries is in Slovak: Vyhláška Ministerstva spravodlivosti Slovenskej republiky č. 31/1993 Z.z. o odmenách a náhradách notárov

   This decree has taken into effect from 4th February 1993. It was ammended by these ammendments: Ammendment No. 209/1994 Coll. Ammendment No. 423/2002 Coll. Ammendment No. 607/2002 Coll. Ammendment No. 748/2004 Coll. Ammendment No. 320/2007 Coll. has taken into effect from 1st August 2007. Ammendment No. 604/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 601/2009 Coll. has taken into effect from 1st January 2010.

3. Decree of the Ministry of Justice of the Slovak Republic No. 288/1995 Coll. on the remuneration and costs of court baillifs is in Slovak: Vyhláška Ministerstva spravodlivosti Slovenskej republiky č. 288/1995 Z.z. o odmenách a náhradách súdnych exekútorov

   This decree has taken into effect from 16th December 1995. It was ammended by these ammendments: Ammendment No. 405/2006 Coll. Ammendment No. 141/2008 Coll. has taken into effect from 1st May 2008. Ammendment No. 569/2008 Coll. has taken into effect from 1st January 2009.

4. Regulation of the Government of the Slovak Republic No. 268/2006 Coll. on the extent of payroll deductions for the enforcement is in Slovak: Nariadenie Vlády Slovenskej republiky č. 268/2006 Z.z. o rozsahu zrážok zo mzdy pri výkone rozhodnutia

   This regulation has taken into effect from 1st July 2006. It was ammended by these ammendment: Ammendment No. 469/2008 Coll. has taken into effect from 1st January 2009.

5. Decree of the Ministry of Justice of the Slovak Republic No. 543/2005 Coll. on the Administration and Office Order for the district courts, regional courts, special court and military courts is in Slovak: Vyhláška Ministerstva spravodlivosti Slovenskej republiky č. 543/2005 Z.z. o Spravovacom a kancelárskom poriadku pre okresné súdy, krajské súdy, Špeciálny súd a vojenské súdy.

This decree provides in order to promote a fair trial conducted in a reasonable time and to unify the procedure of the courts in dealing with court cases and court management agenda

a) the basic rules and principles of the internal organization of the court and of individual organizational units of the court, including work organization, task court personnel in the performance of the judiciary and the administration of the court
b) the pay of the necessary expenses to persons involved in the proceedings,
c) some of the procedures of the courts in dealing with cases in civil proceedings and criminal proceedings, including the exercise of some judgment in these proceedings,
d) procedure of the notary while making acts in hereditary proceedings,
e) the performance of administrative and clerical work at the court in the exercise of the judiciary and court management.[42]

This decree has taken into effect from 1st January 2006. It was ammended by these ammendments: Ammendment No. 417/2006 Coll. has taken into effect from 1st July 2006. Ammendment No. 417/2006 Coll. has taken into effect from 1st January 2007. Ammendment No. 120/2007 Coll. has taken into effect from 1st April 2007. Ammendment No. 389/2008 Coll. has taken into effect from 15th October 2008. Ammendment No. 11/2009 Coll. has taken into effect from 1st February 2009. Ammendment No. 95/2009 Coll. has taken into effect from 1st April 2009. Ammendment No. 450/2009 Coll. has taken into effect from 1st January 2010. Ammendment No. 148/2011 Coll. has taken into effect from 1st June 2011. Ammendment No. 148/2011 Coll. has taken into effect from 1st September 2011. Ammendment No. 94/2012 Coll. has taken into effect from 1st April 2012. Ammendment No. 327/2012 Coll. has taken into effect from 23th October 2012. Ammendment No. 327/2012 Coll. has taken into effect from 1st January 2013. Ammendment No. 105/2013 Coll. has taken into effect from 1st May 2013. Ammendment No. 105/2013 Coll. has taken into effect from 1st June 2013.

6. Decree of the Ministry of Justice of the Slovak Republic No. 491/2004 Coll. on remuneration, costs and compensation for loss of time for experts, interpreters and translators is in Slovak: Vyhláška Ministerstva spravodlivosti Slovenskej republiky č. 491/2004 Z.z. o odmenách, náhradách výdavkov a náhradách za stratu času pre znalcov, tlmočníkov a prekladateľov.

   This decree has taken into effect from 1st September 2004. It was ammended by these ammendments: Ammendment No. 400/2006 Coll.Ammendment No. 565/2008 Coll. has taken into effect from 1st January 2009. Ammendment No. 34/2009 Coll. has taken into effect from 13th febrára 2009. Ammendment No. 524/2009 Coll. has taken into effect from 1st January 2010.

7. Rule No. 291/2006 Z.z. Proceedings Order of the Supreme Court of the Slovak Republic (in Slovak: Predpis č. 291/2006 Z.z. Rokovací poriadok Najvyššieho súdu Slovenskej republiky). This rule has taken into effect from 25th May 2006.

[42] § 1 of the Decree.

2. Cases

2.1. Important selected case law of the Court of Justice of the European Union (previously European Communities)

2.1.1. Handelskwekerij G. J. Bier BV v Mines de potasse d'Alsace SA.

Judgment of the Court of 30 November 1976 in Case 21/76 - Handelskwekerij G. J. Bier BV v Mines de potasse d'Alsace SA.

Where the place of the happening of the event which may give rise to liability in tort, delict or quasi-delict and the place where that event results in damage are not identical, the expression ‚place where the harmful event occurred', in Article 5 (3) of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters, must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it. The result is that the defendant may be sued, at the option of the plaintiff, either in the courts for the place where the damage occurred or in the courts for the place of the event which gives rise to and is at the origin of that damage.

2.1.2. Sanders v van der Putte

Judgment of the Court of 14 December 1977 in Case 73/77 - Theodorus Engelbertus Sanders v Ronald van der Putte.

The assignment, in the interests of the proper administration of justice, of exclusive jurisdiction to the courts of one Contracting State in accordance with Article 16 of the Convention results in depriving the parties of the choice of the forum which would otherwise be theirs and, in certain cases, results in their being brought before a court which is not that of the domicile of any of them. Having regard to that consideration the provisions of Article 16 must not be given a wider interpretation than is required by their objective. Therefore, the concept of ‚matters relating to ... tenancies of immovable property' within the context of Article 16 of the

Convention must not be interpreted as including an agreement to rent under a usufructuary lease a retail business (verpachting van een winkelbedrijf) carried on in immovable property rented from a third person by the lessor. The fact that there is a dispute as to the existence of such an agreement does notaffect the reply given as

regards theapplicability of Article 16 of theConvention.

2.1.3. Bertrand v Paul Ott KG

Judgment of the Court of 21 June 1978 in Case 150/77 - Bertrand v Paul Ott KG.

The concept of sale of goods on instalment credit terms within the meaning of Article 13 of the Brussels Convention of 27 September 1968 cannot be understood as extending to the sale of a machine which one company agrees to make to another on the basis of a price payable at intervals by bills of exchange.

2.1.4. Denilauler v S.N.C. Couchet Freres

Judgment of the European Court of Justice of 21 May 1980 in Case 125/79 - Bernard Denilauler v S.N.C. Couchet Freres

Judicial decisions authorizing provisional or protective measures, which are delivered without the party against which they are directed having been summoned to appear and which are intended to be enforced without prior service do not come within the system of recognition and enforcement provided for by title iii of the convention of 27 september 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.

2.1.5. Klomps v Michel

Judgment of the Court of 16 June 1981 in Case 166/80 - Peter Klomps v Karl Michel.

Article 27, point 2, of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as follows:

1. The words „the document which instituted the proceedings" cover any document, such as the order for payment [Zahlungsbefehl] in German law, service of which enables the plaintiff, under the law of the State of the court in which the judgment was given to obtain, in default of appropriate action taken by the defendant, a decision capable of being recognized and enforced under the provisions of the Convention.
2. A decision such as the enforcement order [Vollstreckungsbefehl] in German law, which is issued after service of the order for payment has been effected and which is enforceable under the Convention, is not covered by the words „the document which instituted the proceedings".
3. In order to determine whether the defendant has been enabled to arrange for his defence as required by Article 27, point 2, the court in which enforcement is sought must take account only of the time, such as that allowed under German law for submitting an objection [Widerspruch] to the order for payment, available to the defendant for the purposes of preventing the issue of a judgment in default which is enforceable under the Convention.

4. Article 27, point 2, remains applicable where the defendant has lodged an objection against the decision given in default and a court of the State in which the judgment was given has held the objection to be inadmissible on the ground that the time for lodging an objection has expired.
5. Even if a court of the State in which the judgment was given has held, in separate adversary proceedings, that service was duly effected Article 27, point 2, still requires the court in which enforcement is sought to examine whether service was effected in sufficient time to enable the defendant to arrange for his defence.
6. The court in which enforcement is sought may as a general rule confine itself to examining whether the period, reckoned from the date on which service was duly effected, allowed the defendant sufficient time for his defence. It must, however, consider whether, in a particular case, there are exceptional circumstances such as the fact that, although service was duly effected, it was inadequate for the purposes of causing that time to begin to run.
7. Article 52 of the Convention and the fact that the court of the State in which enforcement is sought concluded that under the law of that State the defendant was habitually resident within its territory at the date of service of the document which instituted the proceedings do not affect the replies given above.

2.1.6. Ivenel v Schwab

Judgment of the Court of 26 May 1982 in Case 133/81 - Roger Ivenel v Helmut Schwab.

The obligation to be taken into account for the purposes of the application of Article 5 (1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters in the case of claims based on different obligations arising under contract of employment as a representative binding a worker to an undertaking is the obligation which characterizes the contract.

2.1.7. Athanasios Kalfelis v Bankhaus Schröder, Münchmeyer, Hengst and Co. and others.

Judgment of the Court (Fifth Chamber) of 27 September 1988 in Case 189/87 - Athanasios Kalfelis v Bankhaus Schröder, Münchmeyer, Hengst and Co. and others.

1. For Article 6 (1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters to apply, a connection must exist between the various actions brought by the same plaintiff against different defendants . That connection, whose nature must be determined independently, must be of such a kind that it is expedient to determine the actions together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings.
2. The expression „matters relating to tort, delict or quasi-delict" contained in Ar-

ticle 5 (3) of the Convention must be regarded as an independent concept covering all actions which seek to establish the liability of a defendant and which are not related to a „contract" within the meaning of Article 5 (1).

A court which has jurisdiction under Article 5 (3) over an action in so far as it is based on tort or delict does not have jurisdiction over that action in so far as it is not so based.

2.1.8. Effer SpA v Hans-Joachim Kantner

Judgment of the Court (First Chamber) of 4 March 1982 in Case 38/81 - Effer SpA v Hans-Joachim Kantner.

In the cases provided for in article 5 (1) of the Convention of 27 September 1968, the national court's jurisdiction to determine questions relating to a contract includes the power to consider the existence of the constituent parts of the contract itself, since that is indispensable in order to enable the national court in which proceedings are brought to examine whether it has jurisdiction under the Convention. Therefore the plaintiff may invoke the jurisdiction of the courts of the place of performance in accordance with Article 5 (1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments inCivil and Commercial Matters even when the existence of the contract on which the claim is based is in dispute between the parties.

2.1.9. Gubish Maschinenfabrik 8 December 1987

Judgment of the Court (Sixth Chamber) of 8 December 1987 in Case 144/86 - Gubisch Maschinenfabrik KG v Giulio Palumbo.

The terms used in article 21 of the Convention of 27 September 1968 in order to determine whether a situation of lis pendens arises must be regarded as independent.

Lis pendens within the meaning of that article arises where a party brings an action before a court in a contracting state for the rescission or discharge of an international sales contract whilst an action by the other party to enforce the same contract is pneding before a court in another contracting state.

2.1.10. Reichert and others v Dresdner Bank

Judgment of the Court (Fifth Chamber) of 10 January 1990 in C-115/88 - Mario P. A. Reichert and others v Dresdner Bank.

The concept of „proceedings which have as their object rights in rem in immovable property" mentioned in Article 16(1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters must be given an independent interpretation . It encompasses only those actions concerning rights in rem in immovable property which both come within the scope of the Brussels Convention and are actions which seek to determine the extent, content, ownership or possession of immovable property or the existence of other rights in rem therein and to provide the holders of those rights with the protection of the powers which

attach to their interest.

It does not apply to an action whereby a creditor seeks to have a disposition of a right in rem in immovable property rendered ineffective as against him on the ground that it was made in fraud of his rights by his debtor .

2.1.11. Marc Rich & Co. AG v Società Italiana Impianti PA

Judgment of the Court of 25 July 1991 in Case C-190/89 - Marc Rich & Co. AG v Società Italiana Impianti PA.

By excluding arbitration from the scope of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, by virtue of Article 1(4) thereof, on the ground that it was already covered by international conventions, the Contracting Parties intended to exclude arbitration in its entirety, including proceedings brought before national courts.

Consequently, the abovementioned provision must be interpreted as meaning that the exclusion provided for therein extends to litigation pending before a national court concerning the appointment of an arbitrator, even if the existence or validity of an arbitration agreement is a preliminary issue in that litigation.

2.1.12. Mulox IBC Ltd v Hendrick Geels

Judgment of the Court of 13 July 1993 in Case C-125/92 - Mulox IBC Ltd v Hendrick Geels.

1. The terms used in the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted autonomously. Only such an interpretation is capable of ensuring uniform application of the Convention, the objectives of which include unification of the rules on jurisdiction of the Contracting States, so as to avoid as far as possible the multiplication of the bases of jurisdiction in relation to one and the same legal relationship and to reinforce the legal protection available to persons established in the Community by, at the same time, allowing the plaintiff easily to identify the court before which he may bring an action and the defendant reasonably to foresee the court before which he may be sued.
2. In view of the specific nature of contracts of employment, the place of performance of the obligation in question, for the purposes of applying Article 5(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, must, in the case of such contracts, be determined by reference not to the applicable national law in accordance with the conflict rules of the court seised but, rather, to uniform criteria laid down by the Court of Justice on the basis of the scheme and the objectives of the Convention. The place of performance is the place where the employee actually carries out the work covered by the contract with his employer.

Where the employee performs his work in more than one Contracting State, the place of performance of the contractual obligation, within the meaning of that pro-

vision, must be defined as the place where or from which the employee discharges principally his obligations towards his employer.

2.1.13. Custom Made Commercial Ltd v Stawa Metallbau GmbH

Judgment of the Court of 29 June 1994 in Case C-288/92 - Custom Made Commercial Ltd v Stawa Metallbau GmbH.

The place of performance of the obligation in question was chosen as the criterion of jurisdiction in Article 5(1) of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters because, being precise and clear, it fits into the general aim of the Convention, which is to establish rules guaranteeing certainty as to the allocation of jurisdiction among the various national courts before which proceedings in matters relating to a contract may be brought. That criterion makes it possible for a defendant to be sued in the courts for the place of performance of the obligation in question, even where the court thus designated is not that which has the closest connection with the dispute.

The court before which the matter is brought must determine in accordance with its own rules of conflicts of laws, including, if appropriate, a uniform law, what is the law applicable to the legal relationship in question and define, in accordance with that law, the place of performance of the contractual obligation in question. Article 5(1) of the Convention, as amended by the Convention on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, must be interpreted as meaning that, in the case of a demand for payment made by a supplier to his customer under a contract of manufacture and supply, the place of performance of the obligation to pay the price is to be determined pursuant to the substantive law governing the obligation in dispute under the conflicts rules of the court seised, even where those rules refer to the application to the contract of provisions such as those of the Uniform Law on the International Sale of Goods, annexed to the Hague Convention of 1 July 1964.

2.1.14. „Tatry" v „Maciej Rataj"

Judgment of the Court of 6 December 1994 in Case C-406/92 - The owners of the cargo lately laden on board the ship „Tatry" v the owners of the ship „Maciej Rataj".

1. On a proper construction, Article 57 of the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, means that, where a Contracting State is also a contracting party to another convention on a specific matter containing rules on jurisdiction, that specialized convention precludes the application of the provisions of the Brussels Convention only in cases governed by the specialized convention and not in those to which it does not apply. Where a specialized convention contains certain rules of jurisdiction but no provision as to lis pendens or related actions, Articles 21 and 22 of the

Brussels Convention accordingly apply.

2. On a proper construction of Article 21 of the Convention, where it requires, as a condition of the obligation of the second court seised to decline jurisdiction, that the parties to the two actions be identical, that cannot depend on the procedural position of each of them in the two actions. Where some but not all of the parties to the second action are the same as the parties to the action commenced earlier in another Contracting State, that article requires the second court seised to decline jurisdiction only to the extent to which the parties to the proceedings before it are also parties to the action previously commenced; it does not prevent the proceedings from continuing between the other parties.
3. For the purposes of Article 21 of the Convention, the „cause of action" comprises the facts and the rule of law relied on as the basis of the action and the „object of the action" means the end the action has in view. An action seeking to have the defendant held liable for causing loss and ordered to pay damages has the same cause of action and the same object within the meaning of that article as earlier proceedings brought by that defendant seeking a declaration that he is not liable for that loss. A subsequent action does not cease to have the same cause of action and the same object and to be between the same parties as a previous action where the latter, brought by the owner of a ship before a court of a Contracting State, is an action in personam for a declaration that that owner is not liable for alleged damage to cargo transported by his ship, whereas the subsequent action has been brought by the owner of the cargo before a court of another Contracting State by way of an action in rem concerning an arrested ship, and has subsequently continued both in rem and in personam, or solely in personam, according to the distinctions drawn by the national law of that other Contracting State.
4. The concept of „related actions" defined in the third paragraph of Article 22 of the Convention, which must be given an independent interpretation, must be interpreted broadly and, without its being necessary to consider the concept of irreconcilable judgments in Article 27(3) of the Convention, must cover all cases where there is a risk of conflicting decisions, even if the judgments can be separately enforced and their legal consequences are not mutually exclusive. It is accordingly sufficient, in order to establish the necessary relationship between, on the one hand, an action brought in a Contracting State by one group of cargo owners against a shipowner seeking damages for harm caused to part of the cargo carried in bulk under separate but identical contracts, and, on the other, an action in damages brought in another Contracting State against the same shipowner by the owners of another part of the cargo shipped under the same conditions and under contracts which are separate from but identical to those between the first group and the shipowner, that separate trial and judgment would involve the risk of conflicting decisions, without necessarily involving the risk of giving rise to mutually exclusive legal consequences.

2.1.15. Solo Kleinmotoren GmbH v Boch

Judgment of the Court (Sixth Chamber) of 2 June 1994 in Case C-414/92 - Solo Kleinmotoren GmbH v Emilio Boch.

1. The definition of a „judgment" given in Article 25 of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters refers, for the purposes of the application of the various provisions of the Convention in which the term is used, solely to judicial decisions actually given by a court or tribunal of a Contracting State deciding on its own authority on the issues between the parties. That is not the case as far as a settlement is concerned, even if it was reached in a court of a Contracting State and brings legal proceedings to an end, because settlements in court are essentially contractual in that their terms depend first and foremost on the parties' intention.
2. Article 27 of the Convention must be interpreted strictly, inasmuch as it constitutes an obstacle to the achievement of one of its fundamental objectives, which is to facilitate, to the greatest extent possible, the free movement of judgments by providing for a simple and rapid enforcement procedure. Hence Article 27(3) of the Convention is to be interpreted as meaning that an enforceable settlement reached before a court of the State in which recognition is sought in order to settle legal proceedings which are in progress does not constitute a „judgment" within the meaning of that provision, „given in a dispute between the same parties in the State in which recognition is sought" which, under the Convention, may preclude recognition and enforcement of a judgment given in another Contracting State.

2.1.16. Fiona Shevill and Others v Presse Alliance SA

Judgment of the Court of 7 March 1995 in Case C-68/93 - Fiona Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd v Presse Alliance SA.

1. On a proper construction of the expression „place where the harmful event occurred" in Article 5(3) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and by the Convention of 25 October 1982 on the accession of the Hellenic Republic, the victim of a libel by a newspaper article distributed in several Contracting States may bring an action for damages against the publisher either before the courts of the Contracting State of the place where the publisher of the defamatory publication is established, which have jurisdiction to award damages for all the harm caused by the defamation, or before the courts of each Contracting State in which the publication was distributed and where the victim claims to have suffered injury to his reputation, which have jurisdiction to rule solely in respect of the harm caused in the State of the court seised.

2. The criteria for assessing whether the event in question is harmful and the evidence required of the existence and extent of the harm alleged by the plaintiff in an action in tort, delict or quasi-delict are not governed by the Convention but are determined in accordance with the substantive law designated by the national conflict of laws rules of the court seised on the basis of the Convention, provided that the effectiveness of the Convention is not thereby impaired. The fact that under the national law applicable to the main proceedings damage is presumed in libel actions, so that the plaintiff does not have to adduce evidence of the existence and extent of that damage, does not therefore preclude the application of Article 5(3) of the Convention.

2.1.17. Van den Boogaard v Laumen

Judgment of the Court (Fifth Chamber) of 27 February 1997 in Case C-220/95 - Antonius van den Boogaard v Paula Laumen.

If the reasoning of a decision rendered in divorce proceedings shows that the provision which it awards is designed to enable one spouse to provide for himself or herself or if the needs and resources of each of the spouses are taken into consideration in the determination of its amount, the decision will be concerned with maintenance and will therefore fall within the scope of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and by the Convention of 25 October 1982 on the Accession of the Hellenic Republic. On the other hand, where the provision awarded is solely concerned with dividing property between the spouses, the decision will be concerned with rights in property arising out of a matrimonial relationship and will not therefore be enforceable under the Brussels Convention. A decision which does both these things may, in accordance with Article 42 of the Brussels Convention, be enforced in part if it clearly shows the aims to which the different parts of the judicial provision correspond.

It follows that a decision rendered in divorce proceedings ordering payment of a lump sum and transfer of ownership in certain property by one party to his or her former spouse must be regarded as relating to maintenance and therefore as falling within the scope of the Convention if its purpose is to ensure the former spouse's maintenance. The fact that in its decision the court of origin disregarded a marriage contract is of no account in this regard.

2.1.18. Benincasa v Dentalkit Srl

Judgment of the Court (Sixth Chamber) of 3 July 1997 in Case C-269/95 - Francesco Benincasa v Dentalkit Srl.

1. In the context of the specific regime established by Article 13 et seq. of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, only contracts concluded for the

purpose of satisfying an individual's own needs in terms of private consumption come under the provisions designed to protect the consumer as the party deemed to be the weaker party economically. On the other hand, the specific protection sought to be afforded by those provisions is unwarranted in the case of contracts for the purpose of trade or professional activity, even if that activity is only planned for the future, since the fact that an activity is in the nature of a future activity does not divest it in any way of its trade or professional character. It follows that the regime in question applies solely to contracts concluded outside and independently of any trade or professional activity or purpose, whether present or future, so that a plaintiff who has concluded a contract with a view to pursuing a trade or profession, not at the present time, but in the future may not be regarded as a consumer within the meaning of the first paragraph of Article 13 and the first paragraph of Article 14 of the Convention.

2. Article 17 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments and civil and commercial matters sets out to designate, clearly and precisely, a court in a Contracting State which is to have exclusive jurisdiction in accordance with the consensus formed between the parties, which is to be expressed in accordance with the strict requirements as to form laid down therein. The legal certainty which that provision seeks to secure could easily be jeopardized if one party to the contract could frustrate that rule simply by claiming that the whole of the contract which contained the clause was void on grounds derived from the applicable substantive law. It follows that the court of a Contracting State which is designated in a jurisdiction clause validly concluded under the first paragraph of Article 17 also has exclusive jurisdiction where the action seeks in particular a declaration that the contract containing that clause is void. Furthermore, it is for the national court to determine which disputes fall within the scope of the clause conferring jurisdiction invoked before it and, consequently, to determine whether that clause also covers any dispute relating to the validity of the contract containing it.

2.1.19. Mietz v Intership Yachting Sneek BV

Judgment of the Court of 27 April 1999 in Case C-99/96 - Hans-Hermann Mietz v Intership Yachting Sneek BV.

1. In the area of consumer contracts, Article 13, first paragraph, point 1, of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be construed as not applying to a contract between two parties having the following characteristics, that is to say, a contract:
   - relating to the manufacture by the first contracting party of goods corresponding to a standard model, to which certain alterations have been made;
   - by which the first contracting party has undertaken to transfer the property in those goods to the second contracting party, who has undertaken, by way

of consideration, to pay the price in several instalments; and

- in which provision is made for the final instalment to be paid before possession of the goods is transferred definitively to the second contracting party.

That provision is intended to protect the purchaser only where the vendor has granted him credit, that is to say, where the vendor has transferred to the purchaser possession of the goods in question before the purchaser has paid the full price. A contract having the characteristics mentioned above is, however, to be classified as a contract for the supply of services or of goods within the meaning of Article 13, first paragraph, point 3, of the Convention.

2. A judgment cannot be the subject of an enforcement order under Title III of the Convention of 27 September 1968 in a case where
   - it was delivered at the end of proceedings which were not, by their very nature, proceedings as to substance, but summary proceedings for the granting of interim measures;
   - the defendant was not domiciled in the Contracting State of the court of origin and it does not appear from the judgment that, for other reasons, that court had jurisdiction under the Convention as to the substance of the matter;
   - it does not contain any statement of reasons designed to establish the jurisdiction of the court of origin as to the substance of the matter
   - and
   - it is limited to ordering the payment of a contractual consideration, without, on the one hand, repayment to the defendant of the sum awarded being guaranteed if the plaintiff is unsuccessful as regards the substance of his claim or, on the other, the measure sought relating only to specific assets of the defendant located or to be located within the confines of the territorial jurisdiction of the court to which application is made.

   In such a case, the court to which application for enforcement is made must conclude that the measure ordered is not a provisional measure within the meaning of Article 24 of the Convention.
3. The fact that the defendant appears before the court dealing with interim measures in the context of fast procedures intended to grant provisional or protective measures in case of urgency and which do not prejudice the examination of the substance cannot, by itself, suffice to confer on that court, by virtue of Article 18 of the Convention of 27 September 1968, unlimited jurisdiction to order any provisional or protective measure which the court might consider appropriate if it had jurisdiction under the Convention as to the substance of the matter.

2.1.20. Eco Swiss China Time Ltd v Benetton International NV.

Judgment of the Court of 1 June 1999 in Case C-126/97 - Eco Swiss China Time Ltd v Benetton International NV.

1. Where domestic rules of procedure require a national court to grant an application for annulment of an arbitration award where such an application is founded on failure to observe national rules of public policy, it must also grant such an application where it is founded on failure to comply with the prohibition laid down in Article 85 of the Treaty (now Article 81 EC). That provision constitutes a fundamental provision which is essential for the accomplishment of the tasks entrusted to the Community and, in particular, for the functioning of the internal market. Also, Community law requires that questions concerning the interpretation of the prohibition laid down in Article 85 should be open to examination by national courts when they are asked to determine the validity of an arbitration award and that it should be possible for those questions to be referred, if necessary, to the Court of Justice for a preliminary ruling
2. A national court to which application is made for annulment of an arbitration award must grant that application if it considers that the awardin question is in fact contrary to Article 81 EC (ex Article 85), where its domestic rules of procedure require it to grant an application for annulment founded on failure to observe national rules of public policy.
3. Community law does not require a national court to refrain from applyingdomestic rules of procedure according to which an interim arbitration award which is in the nature of a final award and in respect of which noapplication for annulment has been made within the prescribed time-limitacquires the force of res judicata and may no longer be called in questionby a subsequent arbitration award, even if this is necessary in order toexamine, in proceedings for annulment of a subsequent arbitration award,whether an agreement which the interim award held to be valid in law is nevertheless void under Article 81 EC (ex Article 85), where the time-limit prescribed does not render excessively difficult or virtually impossible the exercise of rights conferred by Community law.

2.1.21. Krombach v Bamberski

Judgment of the Court of 28 March 2000 in Case C-7/98 - Dieter Krombach v André Bamberski.

1. While the Contracting States in principle remain free, by virtue of the proviso in Article 27, point 1, of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, to determine, according to their own conceptions, what public policy requires, the limits of that concept are a matter for interpretation of the Convention. Consequently, while it is not for the Court to define the content of the public policy of a Contracting State, it is none the less required to review the limits within which the courts of a Contracting State may have recourse to that concept for the purpose of refusing recognition to a judgment emanating from a court in another Contracting State.
2. The court of the State in which enforcement is sought cannot, with respect to a defendant domiciled in that State, take account, for the purposes of the pub-

lic-policy clause in Article 27, point 1, of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, of the fact, without more, that the court of the State of origin based its jurisdiction on the nationality of the victim of an offence.

3. Recourse to the public-policy clause in Article 27, point 1, of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters can beenvisaged only where recognition or enforcement of the judgment delivered in another Contracting State would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it infringes a fundamental principle. In order for the prohibition of any review of the foreign judgment as to its substance to be observed, the infringement would have to constitute a manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought or of a right recognised as being fundamental within that legal order.
4. Recourse to the public-policy clause in Article 27, point 1, of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be regarded as being possible in exceptional cases where the guarantees laid down in the legislation of the State of origin and in the Convention itself have been insufficient to protect the defendant from a manifest breach of his right to defend himself before the court of origin, as recognised by the European Convention on Human Rights. Consequently, Article II of the Protocol annexed to the Convention, which recognizes the right of persons domiciled in one Contracting State, who are being prosecuted in the criminal courts of another Contracting State of which they are not nationals, to have their defence presented even if they do not appear in person only where the offence in question was not intentionally committed, cannot be construed as precluding the court of the State in which enforcement is sought from being entitled, with respect to a defendant domiciled in that State and prosecuted for an intentional offence, to take account, in relation to the publicpolicy clause in Article 27, point 1, of the fact that the court of the State of origin refused to allow the defendant to have his defence presented unless he appeared in person.

2.1.22. Dansommer A/S v Götz

Judgment of the Court (Sixth Chamber) of 27 January 2000 in Case C-8/98 - Dansommer A/S v Andreas Götz.

The rule laid down in Article 16(1)(a) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, conferring exclusive jurisdiction in proceedings having as their

object tenancies of immovable property is applicable to an action for damages for taking poor care of premises and causing damage to accommodation which a private individual had rented for a few weeks' holiday, even where the action is not brought directly by the owner of the property but by a professional tour operator from whom the person in question had rented the accommodation and who has brought legal proceedings after being subrogated to the rights of the owner of the property.

The ancillary clauses relating to insurance in the event of cancellation and to guarantee of repayment of the price paid by the client, which are contained in the general terms and conditions of the contract concluded between that organiser and the tenant, and which do not form the subject of the dispute in the main proceedings, do not affect the nature of the tenancy as a tenancy of immovable property within the meaning of that provision of the Convention.

2.1.23. Régie nationale des usines Renault SA v Maxicar SpA and Orazio Formento

Judgment of the Court (Fifth Chamber) of 11 May 2000 in Case C-38/98 - Régie nationale des usines Renault SA v Maxicar SpA and Orazio Formento.

1. The Corte d'Appello, seised of an appeal against a decision dismissing an application for a declaration of enforceability on the basis of the first paragraph of Article 40 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, must be regarded as sitting in an appellate capacity and thus having power under Article 2(2) of the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention, to request the Court of Justice to give a preliminary ruling on a question of interpretation of the Convention. Although in Italy the two stages of the procedure for a declaration of enforceability provided for under Article 31 et seq. of the Convention take place before the Corte d'Appello, that coincidence, which is the result of the choice made by the Italian Republic, cannot be permitted to obscure the fact that the procedure under the first paragraph of Article 32, concerning the application for a declaration of enforceability, differs from that provided for in the first paragraph of Article 40. In the first case, the Corte d'Appello rules, in accordance with the first paragraph of Article 34, withoutthe party against whom enforcement is sought being able at this stage of the procedure to submit observations. In the second case, by contrast, the party against whom enforcement is sought must be summoned to appear before the Corte d'Appello as required by the second paragraph of Article 40.
2. While the Contracting States remain free in principle, by virtue of the proviso in Article 27, point 1, of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, to determine according to their own conception what public policy requires, the limits of that concept are a matter of interpretation of the Convention. Consequently, while it is not for the Court to define the content of the public policy of a Contracting State, it is none the less required to review the limits within which the courts of a Contracting State may have recourse to that concept for the purpose of

refusing recognition of a judgment emanating from another Contracting State.

3. Recourse to the clause on public policy in Article 27, point 1, of the Convention of 27 September 1968 on Jurisdiction and the Enforcement ofJudgments in Civil and Commercial Matters can be envisaged only where recognition or enforcement of the judgment delivered in another Contracting State would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it infringes a fundamental principle. In order for the prohibition of any review of the foreign judgment as to its substance to be observed, the infringement would have to constitute a manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought or of a right recognised as being fundamental within that legal order.
4. The court of the State in which enforcement is sought cannot, without undermining the aim of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, refuse recognition of a decision emanating from another Contracting State solely on the ground that it considers that national or Community law was misapplied in that decision. On the contrary, it must be considered whether, in such cases, the system of legal remedies in each Contracting State, together with the preliminary ruling procedure provided for in Article 177 of the Treaty (now Article 234 EC), affords a sufficient guarantee to individuals.
5. Article 27, point 1, of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that a judgment of a court or tribunal of a Contracting State recognising the existence of an intellectual property right in body parts for cars, and conferring on the holder of that right protection by enabling him to prevent third parties trading in another Contracting State from manufacturing, selling, transporting, importing or exporting in that Contracting State such body parts, cannot be considered to be contrary to public policy.

2.1.24. Coreck Maritime GmbH v Handelsveem BV and Others

Judgment of the Court (Fifth Chamber) of 9 November 2000 in Case C-387/98 - Coreck Maritime GmbH v Handelsveem BV and Others.

1. The words ‚have agreed' in the first sentence of the first paragraph of Article 17 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters cannot be interpreted as meaning that it is necessary for a jurisdiction clause to be formulated in such a way that the competent court can be determined on its wording alone. It is sufficient that the clause state the objective factors on the basis of which the parties have agreed to choose a court or the courts to which they wish to submit disputes which have arisen or which may arise between them. Those factors, which must be sufficiently precise to enable the court seised to ascertain whether it has jurisdiction, may, where appropriate, be determined by the

particular circumstances of the case.

2. Article 17 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters only applies if, first, at least one of the parties to the original contract is domiciled in a Contracting State and, secondly, the parties agree to submit any disputes to a court or the courts of a Contracting State.

A court situated in a Contracting State must, if it is seised notwithstanding a jurisdiction clause designating a court in a third country, assess the validity of the clause according to the applicable law, including conflict of laws rules, where it sits.

2.1.25. Fonderie Officine Meccaniche Tacconi SpA v Heinrich Wagner Sinto Maschinenfabrik GmbH (HWS)

Judgment of the Court of 17 September 2002 in Case C-334/00 - Fonderie Officine Meccaniche Tacconi SpA v Heinrich Wagner Sinto Maschinenfabrik GmbH (HWS)

In circumstances such as those of the main proceedings, characterised by the absence of obligations freely assumed by one party towards another on the occasion of negotiations with a view to the formation of a contract and by a possible breach of rules of law, in particular the rule which requires the parties to act in good faith in such negotiations, an action founded on the pre-contractual liability of the defendant is a matter relating to tort, delict or quasi-delict within the meaning of Article 5(3) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic.

2.1.26. Préservatrice foncière TIARD SA v Staat der Nederlanden

Judgment of the Court (Fifth Chamber) of 15 May 2003 in Case C-266/01 - Préservatrice foncière TIARD SA v Staat der Nederlanden.

The first paragraph of Article 1 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, must be interpreted as follows:

- ‚civil and commercial matters', within the meaning of the first sentence of that provision, covers a claim by which a contracting State seeks to enforce against a person governed by private law a private-law guarantee contract which was concluded in order to enable a third person to supply a guarantee required and defined by that State, in so far as the legal relationship between the creditor

and the guarantor, under the guarantee contract, does not entail the exercise by the State of powers going beyond those existing under the rules applicable to relations between private individuals;

- ‚customs matters', within the meaning of the second sentence of that provision, does not cover a claim by which a contracting State seeks to enforce a guarantee contract intended to guarantee the payment of a customs debt, where the legal relationship between the State and the guarantor, under that contract, does not entail the exercise by the State of powers going beyond those existing under the rules applicable to relations between private individuals, even if the guarantor may raise pleas in defence which necessitate an investigation into the existence and content of the customs debt.

2.1.27. Gruber v Bay Wa AG

Judgment of the Court (Second Chamber) of 20 January 2005 in Case C-464/01-Johann Gruber v Bay Wa AG

The rules of jurisdiction laid down by the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden must be interpreted in the following way:

- a person who concludes a contract for goods intended for purposes which are in part within and in part outside his trade or profession may not rely on the special rules of jurisdiction laid down in Articles 13 to 15 of the Convention, unless the trade or professional purpose is so limited as to be negligible in the overall context of the supply, the fact that the private element is predominant being irrelevant in that respect;
- it is for the court seised to decide whether the contract at issue was concluded in order to satisfy, to a non-negligible extent, needs of the business of the person concerned or whether, on the contrary, the trade or professional purpose was negligible;
- to that end, that court must take account of all the relevant factual evidence objectively contained in the file. On the other hand, it must not take account of facts or circumstances of which the other party to the contract may have been aware when the contract was concluded, unless the person who claims the capacity of consumer behaved in such a way as to give the other party to the contract the legitimate impression that he was acting for the purposes of his business.

2.1.28. Engler v Janus Versand GmbH

Judgment of the Court (Second Chamber) of 20 January 2005 in Case C-27/02 - Petra Engler v Janus Versand GmbH

The rules of jurisdiction of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden must be interpreted in the following way:

legal proceedings by which a consumer seeks an order, under the law of the Contracting State in which he is domiciled, that a mail order company established in another Contracting State award a prize ostensibly won by him is contractual in nature for the purpose of Article 5(1) of that convention, provided that, first, that company, with the intention of inducing the consumer to enter a contract, addresses to him in person a letter of such a kind as to give the impression that a prize will be awarded to him if he returns the ‚payment notice' attached to the letter and, second, he accepts the conditions laid down by the vendor and does in fact claim payment of the prize announced;

on the other hand, even though the letter also contains a catalogue advertising goods for that company and a request for a ‚trial without obligation', the fact that the award of the prize does not depend on an order for goods and that the consumer has not, in fact, placed such an order has no bearing on that interpretation.

2.1.29. Commission v AMI Semiconductor Belgium BVBA and Others

Judgment of the Court (First Chamber) of 17 March 2005 in Case C-294/02 - Commission of the European Communities v AMI Semiconductor Belgium BVBA and Others.

Since the term 'Court of Justice', as used in the Treaty, does not refer to one Community court or the other but to the Community institution comprising both the Court of Justice and the Court of First Instance, the reference to the 'Court of Justice' in Article 238 EC must be taken to be a reference to that institution, and it is to the latter that a contract must refer in order for it to be possible for jurisdiction to be conferred on either of the Community courts.

Since the Treaty does not lay down any particular wording to be used in an arbitration clause, any wording which indicates that the parties intend to remove any dispute between them from the purview of the national courts and to submit them to the Community courts must be regarded as sufficient to give the latter jurisdiction under Article 238 EC.

2. An action brought by the Commission before the Community courts against undertakings subject to insolvency proceedings in a Member State is inadmissible.

It follows from the principles common to the procedural laws of the Member States, from which it is necessary to deduce the rules to be applied in the absence of Community provisions in the matter, that a creditor is not entitled to pursue his claims before the courts on an individual basis against a person who is the subject of insolvency proceedings but is required to observe the specific rules of the applicable procedure.

Moreover, it is clear from Regulation No 1346/2000 on insolvency proceedings that the Member States are required, on a mutual basis, to respect proceedings commenced in any one of them and that the opening of insolvency proceedings in a Member State is to be recognised in all the other Member States and is to produce the effects attributed thereto by the law of the State in which the proceedings are opened.

Consequently, the Community institutions would enjoy an unjustifiable advantage over the other creditors if they were allowed to pursue their claims in proceedings brought before the Community judicature when any action before national courts was impossible.

3. In accordance with Article 38 of the Rules of Procedure, parties are required to state the subject-matter of the proceedings in their originating application. It follows that, even though Article 42 of the Rules of Procedure allows new pleas in law to be introduced in certain circumstances, a party may not alter the actual subject-matter of the action in the course of the proceedings. New claims put forward for the first time at the hearing could not be allowed without depriving defendants of an opportunity to prepare a response and thereby breaching the rights of the defence.

2.1.30. Leffler v Berlin Chemie AG

Judgment of the Court (Grand Chamber) of 8 November 2005 in Case C-443/03 - Götz Leffler v Berlin Chemie AG

1. On a proper construction of Article 8(1) of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, when the addressee of a document has refused it on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, it is possible for the sender to remedy that by sending the translation requested.
2. On a proper construction of Article 8 of Regulation No 1348/2000, when the addressee of a document has refused it on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, that situation may be remedied by sending the translation of the document in accordance with the procedure laid down by Regulation No 1348/2000 and as soon as possible.

In order to resolve problems connected with the way in which the lack of translation should be remedied that are not envisaged by Regulation No 1348/2000 as interpreted by the Court, it is incumbent on the national court to apply national procedural law while taking care to ensure the full effectiveness of that regulation, in compliance with its objective.

2.1.31. Staubitz-Schreiber

Judgment of the Court (Grand Chamber) of 17 January 2006 in Case C-1/04 - Susanne Staubitz-Schreiber.

Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that the court of the Member State within the territory of which the centre of the debtor's main interests is situated at the time when the debtor lodges the request to open insolvency proceedings retains jurisdiction to open those proceedings if the debtor moves the centre of his main interests to the territory of another Member State after lodging the request but before the proceedings are opened.

2.1.32. Groupement d'intérêt économique (GIE) Réunion européenne and Others v Zurich España, Société pyrénéenne de transit d'automobiles (Soptrans)

Judgment of the Court (First Chamber) of 26 May 2005 in Case C-77/04: Groupement d'intérêt économique (GIE) Réunion européenne and Others v Zurich España, Société pyrénéenne de transit d'automobiles (Soptrans)

1. Third-party proceedings between insurers based on multiple insurance are not subject to the rules of special jurisdiction in matters relating to insurance in Section 3 of Title II of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the accession of the Hellenic Republic, by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

   In affording the insured a wider range of jurisdiction than that available to the insurer and in excluding any possibility of a clause conferring jurisdiction for the benefit of the insurer, the provisions of that section reflect an underlying concern to protect the insured, who in most cases is faced with a predetermined contract, the clauses of which are no longer negotiable, and is the weaker party economically. No special protection is justified since the parties concerned are professionals in the insurance sector, none of whom may be presumed to be in a weaker position than the others.

2. Article 6(2) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the accession of the Hellenic Republic, by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and

the Portuguese Republic and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, is applicable to third-party proceedings between insurers based on multiple insurance, in so far as there is a sufficient connection between the original proceedings and the third-party proceedings to support the conclusion that the choice of forum does not amount to an abuse.

It is for the national court seised of the original claim to verify the existence of such a connection, in the sense that it must satisfy itself that the third-party proceedings do not seek to remove the defendant from the jurisdiction of the court which would be competent in the case.

2.1.33. Eurofood IFCS Ltd

Judgment of the Court (Grand Chamber) Chamber) of 2 May 2006 in Case C-341/04 Eurofood IFCS Ltd — Enrico Bondi v Bank of America N.A., Pearse Farrell, Official Liquidator, Director of Corporate Enforcement, Certificate/Note holders

1. Where a debtor is a subsidiary company whose registered office and that of its parent company are situated in two different Member States, the presumption laid down in the second sentence of Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, whereby the centre of main interests of that subsidiary is situated in the Member State where its registered office is situated, can be rebutted only if factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which location at that registered office is deemed to reflect. That could be so in particular in the case of a company not carrying out any business in the territory of the Member State in which its registered office is situated. By contrast, where a company carries on its business in the territory of the Member State where its registered office is situated, the mere fact that its economic choices are or can be controlled by a parent company in another Member State is not enough to rebut the presumption laid down by that Regulation.
2. On a proper interpretation of the first subparagraph of Article 16(1) of Regulation No 1346/2000, the main insolvency proceedings opened by a court of a Member State must be recognised by the courts of the other Member States, without the latter being able to review the jurisdiction of the court of the opening State.
3. On a proper interpretation of the first subparagraph of Article 16(1) of the Regulation, a decision to open insolvency proceedings for the purposes of that provision is a decision handed down by a court of a Member State to which application for such a decision has been made, based on the debtor's insolvency and seeking the opening of proceedings referred to in Annex A to the Regulation, where that decision involves the divestment of the debtor and the appointment of a liquidator referred to in Annex C to the Regulation. Such divestment implies that the debtor loses the powers of management that he has over his assets.

4. On a proper interpretation of Article 26 of the Regulation, a Member State may refuse to recognise insolvency proceedings opened in another Member State where the decision to open the proceedings was taken in flagrant breach of the fundamental right to be heard, which a person concerned by such proceedings enjoys.

2.1.34. Plumex v Young Sports NV

Judgment of the Court (Third Chamber) of 9 February 2006 in Case C-473/04 - Plumex v Young Sports NV.

Council Regulation No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters must be interpreted as meaning that it does not establish any hierarchy between the method of transmission and service through agencies under Articles 4 to 11 thereof and the method of service by post under Article 14 thereof and that, consequently, it is possible to serve a judicial document by one or other or both of those methods. First, neither the recitals in the preamble to the regulation nor its provisions state that a method of transmission and service, used in accordance with the rules of the regulation, would rank below the method of service through agencies. Secondly, in the light of the spirit and purpose of the regulation, which is intended to ensure that judicial documents are served effectively, while respecting the legitimate interests of the persons on whom they are served, and in view of the fact that all the methods of service provided for by the regulation can ensure, as a rule, that those interests are respected, it must be conceivable to use one or other, or indeed two or more at once of those methods of service which appear the most suitable or appropriate in light of the circumstances of the case.

Consequently, where service is being effected both through agencies and by post, in order to determine vis-à-vis the person on whom service is effected the point from which time starts to run for the purposes of a procedural time-limit linked to effecting service, reference must be made to the date of the first service validly effected. In order not to render meaningless the provisions of the regulation governing those methods of service, all the legal effects which follow when one of those methods is validly effected must be taken into account irrespective of subsequent successful service by another method. Moreover, the regulation is intended to expedite the transmission of judicial documents for service and, therefore, the conduct of judicial proceedings. If, for the purposes of computing a procedural time-limit, the first service of the document in question is taken into consideration, the person on whom that document is served is required to defend judicial proceedings earlier, which can enable the competent court to give a ruling within shorter time-limits.

2.1.35. Gaetano Verdoliva v J.M. Van der Hoeven BV and Others

Judgment of the Court (Second Chamber) of 16 February 2006 in Case C-3/05 - Gaetano Verdoliva v J. M. Van der Hoeven BV, Banco di Sardegna and San Paolo IMI SpA.

Article 36 of the Convention of 27 September 1968 on jurisdiction and the enforce-

ment of judgments in civil and commercial matters, as amended by the Accession Conventions of 1978, 1982 and 1989, is to be interpreted as requiring due service of the decision authorising enforcement in accordance with the procedural rules of the Contracting State in which enforcement is sought, and therefore, in cases of failure of, or defective, service of the decision authorising enforcement, the mere fact that the party against whom enforcement is sought has notice of that decision is not sufficient to cause time to run for the purposes of the time-limit fixed in that article.

First, the requirement that the decision authorising enforcement be served has a dual function: on the one hand, it serves to protect the rights of the party against whom enforcement is sought and, on the other, it allows, in terms of evidence, the strict and mandatory time-limit for appealing provided for that provision to be calculated precisely. That double function, combined with the aim of simplification of the formalities to which enforcement of judicial decisions delivered in other Contracting States is subject, explains why the Convention makes transmission of the decision authorising enforcement to the party against whom enforcement is sought subject to procedural requirements that are more stringent than those applicable to transmission of that same decision to the applicant. Secondly, if the sole issue were whether the document authorising enforcement came to the attention of the party against whom enforcement was sought, that could render the requirement of due service meaningless and, moreover, would make the exact calculation of the time-limit provided for in that provision more difficult thus thwarting the uniform application of the provisions of the Convention.

2.1.36. Mostaza Claro v Centro Móvil Milenium SL

Judgment of the Court (First Chamber) of 26 October 2006 in Case C-168/05 - Elisa María Mostaza Claro v Centro Móvil Milenium SL.

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a national court seised of an action for annulment of an arbitration award must determine whether the arbitration agreement is void and annul that award where that agreement contains an unfair term, even though the consumer has not pleaded that invalidity in the course of the arbitration proceedings, but only in that of the action for annulment.

2.1.37. ASML Netherlands BV v Semiconductor Industry Services GmbH (SEMIS)

Judgment of the Court (First Chamber) of 14 December 2006 in Case C-283/05-ASML Netherlands BV v Semiconductor Industry Services GmbH (SEMIS).

Article 34(2) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is to be interpreted as meaning that it is 'possible' for a defendant to bring proceedings to challenge a default judgment against him only if he was in fact acquainted with its contents, because it was served on him in sufficient time to enable him to arrange for his defence before the courts of the State in which the judgment was given.

In order for the defendant to have the opportunity to mount a challenge, he should be able to acquaint himself with grounds of the default judgment in order to challenge them effectively, the mere fact that the person concerned is aware of the existence of that judgment being insufficient in that regard.

However, due service of a default judgment, that is to say, compliance with all the rules applicable to those formalities, does not constitute a necessary condition in order to justify the conclusion that it was possible for the defendant to bring proceedings. In that regard, the broad logic of Regulation No 44/2001 does not require service of a default judgment to be subject to conditions more stringent than those provided for as regards service of the document instituting proceedings. It is service of the document instituting proceedings and the default judgment, as in sufficient time and in such a way as to enable the defendant to arrange for his defence which afford him the opportunity to ensure that his rights are respected before the courts of the State in which the judgment was given. As far as concerns the document instituting proceedings, Article 34(2) of Regulation No 44/2001 removes the necessary condition for due service laid down in Article 27(2) of the Brussels Convention. Therefore, a mere formal irregularity, which does not adversely affect the rights of defence, is not sufficient to prevent the application of the exception to the ground justifying non-recognition and non-enforcement.

2.1.38. "C"

Judgment of the Court (First Chamber) of 27 November 2007 in Case C-435/06 - C

1. Article 1(1) of Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation No 1347/2000, as amended by Regulation No 2116/2004, is to be interpreted to the effect that a single decision ordering a child to be taken into care and placed outside his original home in a foster family is covered by the term 'civil matters' for the purposes of that provision, where that decision was adopted in the context of public law rules relating to child protection.

   The term 'civil matters' within the meaning of that provision, must be interpreted autonomously. Only the uniform application of Regulation No 2201/2003 in the Member States, which requires that the scope of that regulation be defined by Community law and not by national law, is capable of ensuring that the objectives pursued by that regulation, one of which is equal treatment for all children concerned, are attained. According to the fifth recital of Regulation No 2201/2003, that objective can only be safeguarded if all decisions on parental responsibility fall within the scope of that regulation. Parental responsibility is given a broad definition in Article 2(7) of the regulation, inasmuch as it includes all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. It is irrelevant in that respect whether parental responsibility is affected by a protective measure taken by the State or by a decision which is taken on the initiative of the person or persons with rights of

custody.

2. Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation No 1347/2000, as amended by Regulation No 2116/2004, is to be interpreted as meaning that harmonised national legislation on the recognition and enforcement of administrative decisions on the taking into care and placement of persons, adopted in the context of Nordic Cooperation, may not be applied to a decision to take a child into care that falls within the scope of that regulation.

Cooperation between the Nordic States on the recognition and enforcement of administrative decisions on the taking into care and placement of persons does not appear amongst the exceptions listed exhaustively in Regulation No 2201/2003.

Nor is that conclusion invalidated by Joint Declaration No 28 on Nordic Cooperation, annexed to the Treaty concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded. According to that declaration, those States which are members of Nordic Cooperation and members of the Union have undertaken to continue that cooperation in compliance with Community law. Accordingly, that cooperation must respect the principles of the Community legal order. In that regard, a national court which is called upon, within the exercise of its jurisdiction, to apply provisions of Community law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation.

2.1.39. Lopez v Lizazo

Judgment of the Court (Third Chamber) of 29 November 2007 in Case C 68/07 - Kerstin Sundelind Lopez v Miguel Enrique Lopez Lizazo

Articles 6 and 7 of Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility are to be interpreted as meaning that where, in divorce proceedings, a respondent is not habitually resident in a Member State and is not a national of a Member State, the courts of a Member State cannot base their jurisdiction to hear the petition on their national law, if the courts of another Member State have jurisdiction under Article 3 of that regulation.

According to the clear wording of Article 7(1) of Regulation No 2201/2003, it is only where no court of a Member State has jurisdiction pursuant to Articles 3 to 5 of the regulation that jurisdiction is to be governed, in each Member State, by the laws of that State. Moreover, according to Article 17 of Regulation No 2201/2003, where a court of one Member State is seised of a case over which it has no jurisdiction under that regulation and a court of another Member State has jurisdiction pursuant to that regulation, it is to declare of its own motion that it has no jurisdiction.

That interpretation is not affected by Article 6 of Regulation No 2201/2003, since the application of Articles 7(1) and 17 of that regulation depends not upon the position of the respondent, but solely on the question whether the court of a Member State

has jurisdiction pursuant to Articles 3 to 5 of the regulation, the objective of which is to lay down uniform conflict of law rules for divorce in order to ensure a free movement of persons which is as wide as possible. Consequently, Regulation No 2201/2003 applies also to nationals of non-Member States whose links with the territory of a Member State are sufficiently close, in keeping with the grounds of jurisdiction laid down in that regulation, grounds which are based on the rule that there must be a real link between the party concerned and the Member State exercising jurisdiction.

2.1.40.Allianz SpA v West Tankers Inc.

Judgment of the Court (Grand Chamber) of 10 February 2009 in Case C-185/07 - Allianz SpA, formerly Riunione Adriatica di Sicurta SpA, Generali Assicurazioni Generali SpA v West Tankers Inc.

It is incompatible with Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters for a court of a Member State to make an order to restrain a person from commencing or continuing proceedings before the courts of another Member State on the ground that such proceedings would be contrary to an arbitration agreement.

If, because of the subject-matter of the dispute, that is, the nature of the rights to be protected in proceedings, such as a claim for damages, those proceedings come within the scope of Regulation No 44/2001, a preliminary issue concerning the applicability of an arbitration agreement, including in particular its validity, also comes within its scope of application.

It follows that the objection of lack of jurisdiction raised on the basis of the existence of an arbitration agreement, including the question of the validity of that agreement, comes within the scope of Regulation No 44/2001 and that it is therefore exclusively for the court to rule on that objection and on its own jurisdiction, pursuant to Articles 1(2)(d) and 5(3) of that regulation.

Accordingly, the use of an anti-suit injunction to prevent a court of a Member State, which normally has jurisdiction to resolve a dispute under Article 5(3) of Regulation No 44/2001, from ruling, in accordance with Article 1(2)(d) of that regulation, on the very applicability of the regulation to the dispute brought before it necessarily amounts to stripping that court of the power to rule on its own jurisdiction under that regulation.

It follows, first, that an anti-suit injunction is contrary to the general principle that every court seised itself determines, under the rules applicable to it, whether it has jurisdiction to resolve the dispute before it. It should be borne in mind in that regard that Regulation No 44/2001, apart from a few limited exceptions, does not authorise the jurisdiction of a court of a Member State to be reviewed by a court in another Member State.

Secondly, in obstructing the court of another Member State in the exercise of the powers conferred on it by Regulation No 44/2001, namely to decide, on the basis of the rules defining the material scope of that regulation, including Article 1(2)(d) thereof, whether that regulation is applicable, such an anti-suit injunction also runs counter to the trust which the Member States accord to one another's legal systems and judicial institutions and on which the system of jurisdiction under Regulation No 44/2001

is based.

Lastly, if, by means of an anti-suit injunction, the national court were prevented from examining itself the preliminary issue of the validity or the applicability of the arbitration agreement, a party could avoid the proceedings merely by relying on that agreement and the applicant, which considers that the agreement is void, inoperative or incapable of being performed, would thus be barred from access to the court before which it brought proceedings under Article 5(3) of Regulation No 44/2001 and would therefore be deprived of a form of judicial protection to which it is entitled.

This finding is supported by Article II(3) of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on 10 June 1958, according to which it is the court of a Contracting State, when seised of an action in a matter in respect of which the parties have made an arbitration agreement, that will, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

2.1.41. Asturcom Telecomunicaciones SL v Cristina Rodríguez Nogueira

Judgment of the Court (First Chamber) of 6 October 2009 in Case C-40/08 - Asturcom Telecomunicaciones SL v Cristina Rodríguez Nogueira.

Directive 93/13 on unfair terms in consumer contracts must be interpreted as meaning that a national court or tribunal hearing an action for enforcement of an arbitration award which has become final and was made in the absence of the consumer is required, where it has available to it the legal and factual elements necessary for that task, to assess of its own motion whether an arbitration clause in a contract concluded between a seller or supplier and a consumer is unfair, in so far as, under national rules of procedure, it can carry out such an assessment in similar actions of a domestic nature. If that is the case, it is for that court or tribunal to establish all the consequences thereby arising under national law, in order to ensure that the consumer is not bound by that clause.

For the purpose of that assessment, in view of the nature and importance of the public interest underlying the protection which Directive 93/13 confers on consumers, Article 6 of the directive must be regarded as a provision of equal standing to national rules which rank, within the domestic legal system, as rules of public policy.

2.2. List of selected case law of the European Court of Human Rights

List of important judgments and decisions
A. v United Kingdom (2002)
Adsani v United Kingdom (2001)
Airey v Ireland (1979)
Arma v France (2007)
Arnolin and Others and 24 Other v France (2007)
Ashingdane v United Kingdom (1985)
Assanidze v Georgia (2004)

Aubert and Others and 8 Others v France (2007)
Bakan v Turkey (2007)
Barbera, Messegue and Jabardo v Spain (1988)
Belilos v Switzerland (1988)
Belukha v Ukraine (2006)
Bertuzzi v France (2003)
Borgers v Belgium (1991)
Brandstetter v Austria (1991)
Bricmont v Belgium (1989)
Brumarescu v Romania (1999)
Bujnita v Moldova (2007)
Burdov v Russia (2002)
Buzescu v Romania (2005)
Campbell and Fell v united Kingdom (1984)
Ciorap v Moldova (2007)
Clarke v United Kingdom (decision - 2005)
Cordova v Italy (2003)
Daktaras v Lithuania (2000)
Daktaras v Lithuania (decision - 2000)
De Cubber v Belgium (1984)
DeWilde, Ooms and Versyp v Belgium (1971)
Edwards v United Kingdom (1992)
Engel and others v Netherlands (1976)
Esposito v Italy (2007)
Ettl and Others v Austria (1987)
Fadeyeva v Russia (2005)
Farhi v France (2007)
Fogarty v United Kingdom (2001)
Foucher v France (1997)
Garcia Ruiz v Spain (1999)
Golder v united Kingdom (1975)
Granger v United Kingdom (1990)
H. v Belgium (1987)
H. v United Kingdom (decision - 1985)
Hadjianastassiou v Greece (1992)
Hatton and Others v United Kingdom (2003)
Hauschildt v Denmark (1989)
Hiro Balani v Spain (1994)
Hirvisaari v Finland (2001)
Holm v Sweden (1993)
Jankauskas v Lithuania (decision - 2003)
Jasinski v Poland (2005)
Jasiuniene and others v Lithuania (2003)
Jodko v Lithuania (decision - 1999)
Kleyn and Others v Netherlands (2003)
Kreuz v Poland (2001)

Kyprianou v Cyprus (2005)
Kyrtatos v Greece (2003)
Langborger v Sweden (1989)
Lavents v Latvia (2002)
Le Compte, Van Leuven and De Meyere v Belgium (1981)
Lithgow and others v united Kingdom (1986)
Lupas and Others v Romania (2006)
Marpa Zeeland B.V and Metal Welding B.V v Netherlands (2004)
Matyjek v Poland (decision - 2006)
McGinley and Egan v United Kingdom (1998)
McMichael v United Kingdom (1995)
Mehmet and Suna Yepet v Turkey (2007)
Menet v France (2005)
Meznaric v Croatia (2005)
Monnell and Morris v United Kingdom (1987)
MPP Golub v Ukraine (decision - 2005)
Neumeister v Austria (1968)
Okyay and Others v Turkey (2005)
Osman v United Kingdom (1998)
Papon v France (2002)
Paul and Audrey Edwards v United Kingdom (2002)
Perote Pellon v Spain (2002)
Petur Thor Sigurdsson v Iceland (2003)
Philis v Greece (1991)
Piersack v Belgium (1982)
Posokhov v Russia (2003)
Procola v Luxembourg (1995)
Pullar v United Kingdom (1996)
Ringeisen v Austria (1971)
Roche v united Kingdom (2005)
Rowe and Davis v United Kingdom (2000)
Ruiz Torija v Spain (1994)
Ruiz-Mateos v Spain (1993)
Ryabykh v Russia (2003)
Sacilor-Lormines v France (2006)
Salaman v United Kingdom (decision - 2000)
Salov v Ukraine (2005)
Sander v United Kingdom (2000)
Shestakov v Russia (decision - 2002)
Schenk v Switzerland (1988)
Schreiber and Boetsch v France (decision - 2003)
Sialkowska v Poland (2007)
Sramek v Austria (1984)
Stankov v Bulgaria (2007)
Staroszczyk v Poland (2007)
Steel and Morris v United Kingdom (2005)

Stojakovic v Austria (2006)
Stow and Gai v Portugal (decision - 2005)
Stubbings and Others v United Kingdom (1996)
Timofeyev v Russia (2003)
Tinnelly & Sons LTD and others and McElduff and others v united Kingdom (1998)
Tocono and Profesorii Prometeisti v Moldova (2007)
Uzkureliene and Others v Lithuania (2005)
Valasinas v Lithuania (2001)
Van de Hurk v Netherlands (1994)
Warsicka v Poland (2007)
Webb v United Kingdom (decision - 1997)
Weissman and Others v Romania (2006)
Wynen v Belgium (2002)
X. and Y. v Netherlands (1985)
Yvon v France (2003)
Z. and Others v United Kingdom (2001)
Zand v Austria (decision – 1977)
Zlinsat Spol. S.R.O. v Bulgaria (2006)

3. Materials

3.1. Convention on Civil Procedure

Convention on Civil Procedure was concluded on 1 March 1954. It subrogated former Convention of 17th July 1905, on civil procedure. New convention entered into force on 12 April 1957.

The States signatory to the present Convention;

Desiring to make in the Convention of 17th July 1905, on civil procedure, the improvements suggested by experience;

Have resolved to conclude a new Convention to this effect, and have agreed upon the following provisions -

I. COMMUNICATION OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS

Article 1

In civil or commercial matters, the service of documents addressed to persons abroad shall be effected in the Contracting States on request of a consul of the requesting State, made to the authority which shall be designated by the State addressed. The request, specifying the authority originating the document forwarded, the names and capacities of the parties, the address of the addressee, and the nature of the document in question, shall be in the language of the requested authority. This authority shall send to the consul the certificate showing service or indicating the fact which prevented it.

All difficulties which may arise in connection with the consul's request shall be settled through diplomatic channels.

Any Contracting State may declare, in a communication addressed to the other Contracting States, that it intends that requests for service to be effected on its territory, giving the specifications mentioned in the first paragraph, be addressed to it through diplomatic channels.

The foregoing provisions shall not prevent two Contracting States from agreeing to allow direct communication between their respective authorities.

Article 2

Service shall be effected by the authority which is competent according to the laws of the State addressed. That authority, except in the cases mentioned in Article 3, may confine itself to serving the document by delivery to an addressee who accepts it voluntarily.

Article 3

The request shall be accompanied by the document to be served in duplicate.

If the document to be served is written, either in the language of the requested authority, or in the language agreed on between the two States concerned, or if it is accompanied by a translation into one of those languages, the requested authority, should the desire be expressed in the request, shall have the document served by a method prescribed by its internal legislation for effecting similar service, or by a special method, unless it is contrary to that law. If such a desire is not expressed, the requested authority shall first seek to effect delivery in accordance with Article 2.

Unless there is agreement to the contrary, the translation provided for in the preceding paragraph shall be certified as correct by the diplomatic officer or consular agent of the requesting State or by a sworn translator of the State addressed.

Article 4

Where a request for service complies with Articles 1, 2 and 3, the State on the territory of which it has to be effected may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security.

Article 5

Service shall be proved by either a dated and legalised receipt from the addressee or a certificate from the authority of the State addressed, establishing the fact, method and date of the service.

The receipt or the certificate should appear on one of the two copies of the document served, or be annexed thereto.

Article 6

The provisions of the foregoing Articles shall not interfere with -

1. the freedom to send documents, through postal channels, directly to the persons concerned abroad;
2. the freedom of the persons concerned to have service effected directly through the judicial officers or competent officials of the country of destination;
3. the freedom of each State to have service effected directly by its diplomatic or consular agents of documents intended for persons abroad.

In each of these cases, the freedom mentioned shall only exist if allowed by conventions concluded between the States concerned or if, should there be no convention, the State on the territory of which service must be effected does not object. That State may not object when, in the cases mentioned in sub-paragraph 3 of the above paragraph, the document is to be served without any compulsion on a national of the requesting State.

Article 7

The service of judicial documents shall not give rise to reimbursement of taxes or costs of any nature.

However, should there be no agreement to the contrary, the State addressed will have the right to require from the requesting State the reimbursement of the costs occasioned by the employment of a judicial officer or by the use of a particular method of service in

the cases mentioned in Article 3.

II. LETTERS OF REQUEST

Article 8

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, apply, by means of a Letter of Request, to the competent authority of another Contracting State to request it, within its jurisdiction, to obtain evidence, or to perform some other judicial act.

Article 9

Letters of Request shall be transmitted by the consul of the requesting State to the authority which shall be designated by the State of execution. That authority shall send to the consul the document establishing the execution of the Letter of Request or indicating the fact which prevented its execution.

Any difficulties which may arise in connection with the transmission shall be settled through diplomatic channels.

Any Contracting State may declare, by a communication addressed to the other Contracting States, that it intends that Letters of Request to be executed on its territory be transmitted through diplomatic channels.

The foregoing provisions shall not prevent two Contracting States agreeing to allow the direct transmission of Letters of Request between their respective authorities.

Article 10

Unless there is agreement to the contrary, the Letter of Request must be written either in the language of the requested authority, or in the language agreed between the two States concerned, or else it must be accompanied by a translation, done in one of those languages and certified as correct by a diplomatic officer or consular agent of the requesting State of origin or by a sworn translator of the State of execution.

Article 11

The judicial authority, to which the Letter of Request is addressed, shall be obliged to comply with it using the same measures of compulsion as for the execution of orders issued by the authorities of the State of execution or of requests made by parties in internal proceedings. These measures of compulsion shall not necessarily be employed where the appearance of the parties to the case is involved.

The requesting authority shall, if it so requests, be informed of the date and place of execution of the measure sought, so that the party concerned may be able to be present.

The execution of the Letter of Request may be refused only -

1. if the authenticity of the document is not established;
2. if, in the State of execution, the execution of the Letter does not fall within the functions of the judiciary;
3. if the State, on the territory of which the execution is to be effected, considers that its sovereignty or its security would be prejudiced thereby.

Article 12

If the authority to whom a Letter of Request has been transmitted is not competent to execute it, the Letter shall be automatically sent to the authority in the same State which is competent to execute it in accordance with the provisions of its own law.

Article 13

In all cases where the Letter of Request is not executed by the requested authority, the latter shall immediately so inform the requesting authority, indicating, in the case of Article 11, the reasons why execution of the Letter was refused and, in the case of Article 12, the authority to which the Letter has been transmitted.

Article 14

The judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed.

However, it will follow a request of the requesting authority that a special method or procedure be followed, provided that this is not contrary to the law of the State of execution.

Article 15

The provisions of the foregoing Articles shall not exclude the right of each State to have Letters of Request executed directly by its diplomatic officers or consular agents, if that is allowed by conventions concluded between the States concerned or if the State on the territory of which the Letter is to be executed does not object.

Article 16

The execution of Letters of Request shall not give rise to reimbursement of taxes or costs of any nature.

However, unless there is agreement to the contrary, the State of execution shall have the right to require the State of origin to reimburse the fees paid to witnesses or experts, and the costs occasioned by the employment of a judicial officer, rendered necessary because the witnesses did not appear voluntarily, or the costs resulting from any application of the second paragraph of Article 14.

III. SECURITY FOR COSTS

Article 17

No security, bond or deposit of any kind, may be imposed by reason of their foreign nationality, or of lack of domicile or residence in the country, upon nationals of one of the Contracting States, having their domicile in one of these States, who are plaintiffs or parties intervening before the courts of another of those States.

The same rule shall apply to any payment required of plaintiffs or intervening parties as security for court fees.

All conventions under which Contracting States have agreed that their nationals will be exempt from providing security for costs or for payment of court fees regardless of domicile shall continue to apply.

Article 18

Orders for costs and expenses of the proceedings, made in one of the Contracting States against the plaintiff or party intervening exempted from the provision of security, deposit or payment under the first and second paragraphs of Article 17, or under the law of the State where the proceedings have been instituted, shall, upon request made through diplomatic channels, be rendered enforceable without charge by the competent authority, in each of the other Contracting States.

The same rule shall apply to the judicial decisions whereby the amount of the costs of the proceedings is subsequently fixed.

Nothing in the foregoing provisions shall prevent two Contracting States from agreeing that applications for enforcement may also be made directly by the interested party.

Article 19

The order for costs and expenses shall be rendered enforceable without a hearing, but subject to subsequent appeal by the losing party in accordance with the legislation of the country where enforcement is sought.

The authority competent to decide on the request for enforcement shall itself examine -

1. whether, under the law of the country where the judgment was rendered, the copy of the judgment fulfils the conditions required for its authenticity;
2. whether, under the same law, the decision has the force of res judicata;
3. whether that part of the judgment which constitutes the decision is worded in the language of the authority addressed, or in the language agreed between the two States concerned, or whether it is accompanied by a translation, in one of those languages and, unless there is agreement to the contrary, certified as correct by a diplomatic officer or consular agent of the requesting State or by a sworn translator of the State addressed.

To satisfy the conditions laid down in the second paragraph, sub-paragraphs 1 and 2, it shall be sufficient either for there to be a statement by the competent authority of the State of origin establishing that the judgment has the force of res judicata, or for duly legalised documents to be presented showing that the judgment has the force of res judicata. The competence of the authority mentioned above shall, unless there is agreement to the contrary, be certified by the highest official in charge of the administration of justice in the requesting State of origin. The statement and the certificate just mentioned must be worded or translated in accordance with the rule laid down in the second paragraph, sub-paragraph 3.

The authority competent to decide on the request for enforcement shall assess, provided the party concerned so requests at the same time, the amount of the cost of attestation, translation and legalisation referred to in sub-paragraph 3 of the second paragraph. Those costs shall be considered to be costs and expenses of the proceedings.

IV. FREE LEGAL AID

Article 20

In civil and commercial matters, nationals of the Contracting States shall be granted

free legal aid in all the other Contracting States, on the same basis as nationals of these States, upon compliance with the legislation of the State where the free legal aid is sought.

In the States where legal aid is provided in administrative matters, the provisions of the preceding paragraph shall also apply to cases brought before the courts or tribunals competent in such matters.

Article 21

In all cases, the certificate or declaration of need must be issued or received by the authorities of the habitual residence of the foreigner, or, if not by them, by the authorities of his current residence. Should the latter authorities not belong to a Contracting State and not receive or issue certificates or declarations of that kind, it will be enough to have a certificate or a declaration issued or received by a diplomatic officer or consular agent of the country to which the foreigner belongs.

If the petitioner does not reside in the country were the request is made, the certificate or declaration of need shall be legalised free of charge by a diplomatic officer or consular agent of the country where the document is to be produced.

Article 22

The authority competent to issue the certificate or receive the declaration of need may obtain information about the financial position of the petitioner from the authorities of the other Contracting States.

The authority responsible for deciding on the application for free legal aid shall retain, within the limits of its powers , the right to verify the certificates, declarations and information given to it and to secure for purposes of further clarification, additional information.

Article 23

When the indigent person concerned is in a country other than that in which the free legal aid is to be sought, his application for legal aid, accompanied by certificates, declarations of need and, where necessary, other supporting documents which would facilitate examination of the application, may be transmitted by the consul of his country to the authority competent to decide on that application, or to the authority designated by the State where the application is to be examined.

The provisions in Article 9, paragraphs 2, 3 and 4, and in Articles 10 and 12 above, concerning Letters of Request, shall apply to the transmission of applications for free legal aid, and their annexes.

Article 24

If the benefit of legal aid has been granted to a national of one of the Contracting States, service of documents relating to his case in another Contracting State, regardless of the method to which it is to be effected, shall not give rise to any reimbursement of costs by the State of origin to the State addressed.

The same shall apply to Letters of Request, with the exception of the fees paid to experts.

V. FREE ISSUE OF EXTRACTS FROM CIVIL STATUS RECORDS

Article 25

Indigent persons who are nationals of one of the Contracting States may obtain on the same terms as nationals of the State concerned extracts from civil status records, without charge. The documents necessary for their marriage shall be legalised without cost by the diplomatic officers or consular agents of the Contracting States.

VI. PHYSICAL DETENTION

Article 26

Physical detention, either as a means of enforcement, or as a merely precautionary measure, shall not, in civil or commercial matters, be employed against foreigners, belonging to one of the Contracting States, in circumstances where it cannot be employed against nationals of the country concerned. A fact, which may be invoked by a national domiciled in such a country, to obtain release from physical detention, may be invoked with the same effect by a national of a Contracting State, even if the fact occurred abroad.

VII. FINAL CLAUSES

Article 27

This Convention shall be open for signature by the States represented at the Seventh Session of the Conference on Private International Law.

It shall be ratified and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

A record shall be made of every deposit of instruments of ratification, and a certified copy of that record shall be sent through diplomatic channels to each of the signatory States.

Article 28

This Convention shall enter into force on the sixtieth day after the deposit of the fourth instrument of ratification as provided in the second paragraph of Article 27.

For each signatory State subsequently ratifying the Convention, it shall enter into force on the sixtieth day after the day of deposit of its instrument of ratification.

Article 29

The present Convention shall replace, in relations between the States which have ratified it, the Convention on Civil Procedure signed at The Hague on 17th July 1905.

Article 30

The present Convention shall apply by law in the metropolitan territories of the Contracting States.

If a Contracting State desires it to be put into force in all or certain of the other territories, for the international relations of which it is responsible, it shall give notice of its intention to that effect in a document which shall be deposited with the Netherlands Ministry of Foreign Affairs. The latter shall send, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention shall enter into force in relations between the States which have not raised an objection in the six months following that communication and the territory or territories for the international relations of which the State in question is responsible, and in respect of which the said notice has been given.

Article 31

Any State not represented at the Seventh Session of the Conference may accede to the present Convention, unless a State or several States which have ratified the Convention object, within a period of six months from the date of the notification by the Netherlands Government of that accession. Accession shall be by the method indicated in the second paragraph of Article 27.

It is understood that the accessions shall not be able to take place until after the entry into force of the present Convention, by virtue of the first paragraph of Article 28.

Article 32

Each Contracting State, on signing or ratifying this Convention or on acceding to it, may reserve the right to limit the application of Article 17 to the nationals of Contracting States having their habitual residence in its territory.

A State availing itself of the right mentioned in the preceding paragraph shall be able to claim application of Article 17 by the other Contracting States only on behalf of its nationals who have their habitual residence within the territory of the Contracting State before the court of which they are plaintiffs or intervening parties.

Article 33

The present Convention shall remain in force for five years from the date indicated in the first paragraph of Article 28 of the Convention.

This period shall start to run as from that date, even for States which shall have ratified it or acceded to it subsequently.

The Convention shall be renewed tacitly every five years, unless denounced. Denunciation must, at least six months before expiry of the period, be notified to the Ministry of Foreign Affairs of the Netherlands, which shall inform all the other Contracting States of it.

The denunciation may be limited to the territories or to certain of the territories indicated in a notification, given in accordance with the second paragraph of Article 30.

The denunciation shall only take effect in respect of the State which has notified it. The Convention shall remain in force for the other Contracting States.

In witness whereof, the undersigned, being duly authorised by their respective Governments, have signed this Convention.

Done at The Hague, on the first day of March, 1954, in a single copy, which shall be deposited in the archives of the Government of the Netherlands and of which a certified

copy shall be sent through diplomatic channels to each of the States represented at the Seventh Session of the Hague Conference on Private International Law.

3.2. Convention on the Taking of Evidence Abroad in Civil or Commercial Matters

Convention on the Taking of Evidence Abroad in Civil or Commercial Matters was concluded 18 March 1970.

Text of the Convention:

Convention on the Taking of Evidence Abroad in Civil or Commercial Matters

The States signatory to the present Convention,

Desiring to facilitate the transmission and execution of Letters of Request and to further the accommodation of the different methods which they use for this purpose,

Desiring to improve mutual judicial co-operation in civil or commercial matters,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions.

CHAPTER I LETTERS OF REQUEST

Article 1

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

The expression „other judicial act" does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.

Article 2

A Contracting State shall designate a Central Authority which will undertake to receive Letters of Request coming from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them. Each State shall organise the Central Authority in accordance with its own law.

Letters shall be sent to the Central Authority of the State of execution without being transmitted through any other authority of that State.

Article 3

A Letter of Request shall specify -

a) the authority requesting its execution and the authority requested to execute it, if known to the requesting authority;
b) the names and addresses of the parties to the proceedings and their representatives, if any;

c) the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto;
d) the evidence to be obtained or other judicial act to be performed.

Where appropriate, the Letter shall specify, inter alia -

e) the names and addresses of the persons to be examined;
f) the questions to be put to the persons to be examined or a statement of the subject-matter about which they are to be examined;
g) the documents or other property, real or personal, to be inspected;
h) any requirement that the evidence is to be given on oath or affirmation, and any special form to be used;
i) any special method or procedure to be followed under Article 9.

A Letter may also mention any information necessary for the application of Article 11.

No legalisation or other like formality may be required.

Article 4

A Letter of Request shall be in the language of the authority requested to execute it or be accompanied by a translation into that language.

Nevertheless, a Contracting State shall accept a Letter in either English or French, or a translation into one of these languages, unless it has made the reservation authorised by Article 33.

A Contracting State which has more than one official language and cannot, for reasons of internal law, accept Letters in one of these languages for the whole of its territory, shall, by declaration, specify the language in which the Letter or translation thereof shall be expressed for execution in the specified parts of its territory. In case of failure to comply with this declaration, without justifiable excuse, the costs of translation into the required language shall be borne by the State of origin.

A Contracting State may, by declaration, specify the language or languages other than those referred to in the preceding paragraphs, in which a Letter may be sent to its Central Authority.

Any translation accompanying a Letter shall be certified as correct, either by a diplomatic officer or consular agent or by a sworn translator or by any other person so authorised in either State.

Article 5

If the Central Authority considers that the request does not comply with the provisions of the present Convention, it shall promptly inform the authority of the State of origin which transmitted the Letter of Request, specifying the objections to the Letter.

Article 6

If the authority to whom a Letter of Request has been transmitted is not competent to execute it, the Letter shall be sent forthwith to the authority in the same State which is competent to execute it in accordance with the provisions of its own law.

Article 7

The requesting authority shall, if it so desires, be informed of the time when, and the

place where, the proceedings will take place, in order that the parties concerned, and their representatives, if any, may be present. This information shall be sent directly to the parties or their representatives when the authority of the State of origin so requests.

Article 8

A Contracting State may declare that members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a Letter of Request. Prior authorisation by the competent authority designated by the declaring State may be required.

Article 9

The judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed.

However, it will follow a request of the requesting authority that a special method or procedure be followed, unless this is incompatible with the internal law of the State of execution or is impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties.

A Letter of Request shall be executed expeditiously.

Article 10

In executing a Letter of Request the requested authority shall apply the appropriate measures of compulsion in the instances and to the same extent as are provided by its internal law for the execution of orders issued by the authorities of its own country or of requests made by parties in internal proceedings.

Article 11

In the execution of a Letter of Request the person concerned may refuse to give evidence in so far as he has a privilege or duty to refuse to give the evidence -

a) under the law of the State of execution; or
b) under the law of the State of origin, and the privilege or duty has been specified in the Letter, or, at the instance of the requested authority, has been otherwise confirmed to that authority by the requesting authority.

A Contracting State may declare that, in addition, it will respect privileges and duties existing under the law of States other than the State of origin and the State of execution, to the extent specified in that declaration.

Article 12

The execution of a Letter of Request may be refused only to the extent that -

a) in the State of execution the execution of the Letter does not fall within the functions of the judiciary; or
b) the State addressed considers that its sovereignty or security would be prejudiced thereby.

Execution may not be refused solely on the ground that under its internal law the State of execution claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not admit a right of action on it.

Article 13

The documents establishing the execution of the Letter of Request shall be sent by the requested authority to the requesting authority by the same channel which was used by the latter.

In every instance where the Letter is not executed in whole or in part, the requesting authority shall be informed immediately through the same channel and advised of the reasons.

Article 14

The execution of the Letter of Request shall not give rise to any reimbursement of taxes or costs of any nature.

Nevertheless, the State of execution has the right to require the State of origin to reimburse the fees paid to experts and interpreters and the costs occasioned by the use of a special procedure requested by the State of origin under Article 9, paragraph 2.

The requested authority whose law obliges the parties themselves to secure evidence, and which is not able itself to execute the Letter, may, after having obtained the consent of the requesting authority, appoint a suitable person to do so. When seeking this consent the requested authority shall indicate the approximate costs which would result from this procedure. If the requesting authority gives its consent it shall reimburse any costs incurred; without such consent the requesting authority shall not be liable for the costs.

CHAPTER II TAKING OF EVIDENCE BY DIPLOMATIC OFFICERS, CONSULAR AGENTS AND COMMISSIONERS

Article 15

In a civil or commercial matter, a diplomatic officer or consular agent of a Contracting State may, in the territory of another Contracting State and within the area where he exercises his functions, take the evidence without compulsion of nationals of a State which he represents in aid of proceedings commenced in the courts of a State which he represents.

A Contracting State may declare that evidence may be taken by a diplomatic officer or consular agent only if permission to that effect is given upon application made by him or on his behalf to the appropriate authority designated by the declaring State.

Article 16

A diplomatic officer or consular agent of a Contracting State may, in the territory of another Contracting State and within the area where he exercises his functions, also take the evidence, without compulsion, of nationals of the State in which he exercises his functions or of a third State, in aid of proceedings commenced in the courts of a State which he represents, if -

a) a competent authority designated by the State in which he exercises his functions has given its permission either generally or in the particular case, and
b) he complies with the conditions which the competent authority has specified in the permission.

A Contracting State may declare that evidence may be taken under this Article without its prior permission.

Article 17

In a civil or commercial matter, a person duly appointed as a commissioner for the purpose may, without compulsion, take evidence in the territory of a Contracting State in aid of proceedings commenced in the courts of another Contracting State if -

a) a competent authority designated by the State where the evidence is to be taken has given its permission either generally or in the particular case; and
b) he complies with the conditions which the competent authority has specified in the permission.

A Contracting State may declare that evidence may be taken under this Article without its prior permission.

Article 18

A Contracting State may declare that a diplomatic officer, consular agent or commissioner authorised to take evidence under Articles 15, 16 or 17, may apply to the competent authority designated by the declaring State for appropriate assistance to obtain the evidence by compulsion. The declaration may contain such conditions as the declaring State may see fit to impose.

If the authority grants the application it shall apply any measures of compulsion which are appropriate and are prescribed by its law for use in internal proceedings.

Article 19

The competent authority, in giving the permission referred to in Articles 15, 16 or 17, or in granting the application referred to in Article 18, may lay down such conditions as it deems fit, inter alia, as to the time and place of the taking of the evidence. Similarly it may require that it be given reasonable advance notice of the time, date and place of the taking of the evidence; in such a case a representative of the authority shall be entitled to be present at the taking of the evidence.

Article 20

In the taking of evidence under any Article of this Chapter persons concerned may be legally represented.

Article 21

Where a diplomatic officer, consular agent or commissioner is authorised under Articles 15, 16 or 17 to take evidence -

a) he may take all kinds of evidence which are not incompatible with the law of the State where the evidence is taken or contrary to any permission granted pursuant to the above Articles, and shall have power within such limits to administer an oath or take an affirmation;
b) a request to a person to appear or to give evidence shall, unless the recipient is a national of the State where the action is pending, be drawn up in the language of the place where the evidence is taken or be accompanied by a translation into such language;

c) the request shall inform the person that he may be legally represented and, in any State that has not filed a declaration under Article 18, shall also inform him that he is not compelled to appear or to give evidence;
d) the evidence may be taken in the manner provided by the law applicable to the court in which the action is pending provided that such manner is not forbidden by the law of the State where the evidence is taken;
e) a person requested to give evidence may invoke the privileges and duties to refuse to give the evidence contained in Article 11.

Article 22

The fact that an attempt to take evidence under the procedure laid down in this Chapter has failed, owing to the refusal of a person to give evidence, shall not prevent an application being subsequently made to take the evidence in accordance with Chapter I.

CHAPTER III GENERAL CLAUSES

Article 23

A Contracting State may at the time of signature, ratification or accession, declare that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries.

Article 24

A Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence. However, Letters of Request may in all cases be sent to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

Article 25

A Contracting State which has more than one legal system may designate the authorities of one of such systems, which shall have exclusive competence to execute Letters of Request pursuant to this Convention.

Article 26

A Contracting State, if required to do so because of constitutional limitations, may request the reimbursement by the State of origin of fees and costs, in connection with the execution of Letters of Request, for the service of process necessary to compel the appearance of a person to give evidence, the costs of attendance of such persons, and the cost of any transcript of the evidence.

Where a State has made a request pursuant to the above paragraph, any other Contracting State may request from that State the reimbursement of similar fees and costs.

Article 27

The provisions of the present Convention shall not prevent a Contracting State from -
a) declaring that Letters of Request may be transmitted to its judicial authorities

through channels other than those provided for in Article 2;

b) permitting, by internal law or practice, any act provided for in this Convention to be performed upon less restrictive conditions;

c) permitting, by internal law or practice, methods of taking evidence other than those provided for in this Convention.

Article 28

The present Convention shall not prevent an agreement between any two or more Contracting States to derogate from -

a) the provisions of Article 2 with respect to methods of transmitting Letters of Request;
b) the provisions of Article 4 with respect to the languages which may be used;
c) the provisions of Article 8 with respect to the presence of judicial personnel at the execution of Letters;
d) the provisions of Article 11 with respect to the privileges and duties of witnesses to refuse to give evidence;
e) the provisions of Article 13 with respect to the methods of returning executed Letters to the requesting authority;
f) the provisions of Article 14 with respect to fees and costs;
g) the provisions of Chapter II.

Article 29

Between Parties to the present Convention who are also Parties to one or both of the Conventions on Civil Procedure signed at The Hague on the 17th of July 1905 and the 1st of March 1954, this Convention shall replace Articles 8-16 of the earlier Conventions.

Article 30

The present Convention shall not affect the application of Article 23 of the Convention of 1905, or of Article 24 of the Convention of 1954.

Article 31

Supplementary Agreements between Parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention unless the Parties have otherwise agreed.

Article 32

Without prejudice to the provisions of Articles 29 and 31, the present Convention shall not derogate from conventions containing provisions on the matters covered by this Convention to which the Contracting States are, or shall become Parties.

Article 33

A State may, at the time of signature, ratification or accession exclude, in whole or in part, the application of the provisions of paragraph 2 of Article 4 and of Chapter II. No other reservation shall be permitted.

Each Contracting State may at any time withdraw a reservation it has made; the res-

ervation shall cease to have effect on the sixtieth day after notification of the withdrawal.

When a State has made a reservation, any other State affected thereby may apply the same rule against the reserving State.

Article 34

A State may at any time withdraw or modify a declaration.

Article 35

A Contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the designation of authorities, pursuant to Articles 2, 8, 24 and 25.

A Contracting State shall likewise inform the Ministry, where appropriate, of the following -

a) the designation of the authorities to whom notice must be given, whose permission may be required, and whose assistance may be invoked in the taking of evidence by diplomatic officers and consular agents, pursuant to Articles 15, 16 and 18 respectively;
b) the designation of the authorities whose permission may be required in the taking of evidence by commissioners pursuant to Article 17 and of those who may grant the assistance provided for in Article 18;
c) declarations pursuant to Articles 4, 8, 11, 15, 16, 17, 18, 23 and 27;
d) any withdrawal or modification of the above designations and declarations;
e) the withdrawal of any reservation.

Article 36

Any difficulties which may arise between Contracting States in connection with the operation of this Convention shall be settled through diplomatic channels.

Article 37

The present Convention shall be open for signature by the States represented at the Eleventh Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 38

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 37.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 39

Any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of this Conference or of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 38.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for a State acceding to it on the sixtieth day after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the sixtieth day after the deposit of the declaration of acceptance.

Article 40

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification indicated in the preceding paragraph.

Article 41

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 38, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 42

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 37, and to the States which have acceded in accordance with Article 39, of the following -

a) the signatures and ratifications referred to in Article 37;
b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 38;
c) the accessions referred to in Article 39 and the dates on which they take effect;
d) the extensions referred to in Article 40 and the dates on which they take effect;
e) the designations, reservations and declarations referred to in Articles 33 and 35;
f) the denunciations referred to in the third paragraph of Article 41.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague, on the 18th day of March, 1970, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Eleventh Session of the Hague Conference on Private International Law.

3.3. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

The Convention was concluded on 15 November 1965. This is its text:

The States signatory to the present Convention,

Desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time,

Desiring to improve the organisation of mutual judicial assistance for that purpose by simplifying and expediting the procedure,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.

This Convention shall not apply where the address of the person to be served with the document is not known.

CHAPTER I - JUDICIAL DOCUMENTS

Article 2

Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6.

Each State shall organise the Central Authority in conformity with its own law.

Article 3

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

Article 4

If the Central Authority considers that the request does not comply with the provisions of the present Convention it shall promptly inform the applicant and specify its objections to the request.

Article 5

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either -

a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or
b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

Article 6

The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention.

The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.

The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities.

The certificate shall be forwarded directly to the applicant.

Article 7

The standard terms in the model annexed to the present Convention shall in all cases be written either in French or in English. They may also be written in the official language, or in one of the official languages, of the State in which the documents originate.

The corresponding blanks shall be completed either in the language of the State addressed or in French or in English.

Article 8

Each Contracting State shall be free to effect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents.

Any State may declare that it is opposed to such service within its territory, unless the document is to be served upon a national of the State in which the documents originate.

Article 9

Each Contracting State shall be free, in addition, to use consular channels to forward documents, for the purpose of service, to those authorities of another Contracting State which are designated by the latter for this purpose.

Each Contracting State may, if exceptional circumstances so require, use diplomatic channels for the same purpose.

Article 10

Provided the State of destination does not object, the present Convention shall not interfere with -

a) the freedom to send judicial documents, by postal channels, directly to persons abroad,
b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

Article 11

The present Convention shall not prevent two or more Contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding Articles and, in particular, direct communication between their respective authorities.

Article 12

The service of judicial documents coming from a Contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the State addressed.

The applicant shall pay or reimburse the costs occasioned by --

a) the employment of a judicial officer or of a person competent under the law of the State of destination,
b) the use of a particular method of service.

Article 13

Where a request for service complies with the terms of the present Convention, the State addressed may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security.

It may not refuse to comply solely on the ground that, under its internal law, it claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not permit the action upon which the application is based.

The Central Authority shall, in case of refusal, promptly inform the applicant and state the reasons for the refusal.

Article 14

Difficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.

Article 15

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that -

a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or
b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled -

a) the document was transmitted by one of the methods provided for in this Convention,
b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,
c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

Article 16

When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled -

a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and
b) the defendant has disclosed a prima facie defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

This Article shall not apply to judgments concerning status or capacity of persons.

CHAPTER II - EXTRAJUDICIAL DOCUMENTS

Article 17

Extrajudicial documents emanating from authorities and judicial officers of a Contracting State may be transmitted for the purpose of service in another Contracting State by the methods and under the provisions of the present Convention.

CHAPTER III - GENERAL CLAUSES

Article 18

Each Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence.

The applicant shall, however, in all cases, have the right to address a request directly to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

Article 19

To the extent that the internal law of a Contracting State permits methods of transmission, other than those provided for in the preceding Articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

Article 20

The present Convention shall not prevent an agreement between any two or more Contracting States to dispense with -

a) the necessity for duplicate copies of transmitted documents as required by the second paragraph of Article 3,
b) the language requirements of the third paragraph of Article 5 and Article 7,
c) the provisions of the fourth paragraph of Article 5,
d) the provisions of the second paragraph of Article 12.

Article 21

Each Contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the following -

a) the designation of authorities, pursuant to Articles 2 and 18,
b) the designation of the authority competent to complete the certificate pursuant to Article 6,
c) the designation of the authority competent to receive documents transmitted by consular channels, pursuant to Article 9.

Each Contracting State shall similarly inform the Ministry, where appropriate, of -

a) opposition to the use of methods of transmission pursuant to Articles 8 and 10,
b) declarations pursuant to the second paragraph of Article 15 and the third paragraph of Article 16,

c) all modifications of the above designations, oppositions and declarations.

Article 22

Where Parties to the present Convention are also Parties to one or both of the Conventions on civil procedure signed at The Hague on 17th July 1905, and on 1st March 1954, this Convention shall replace as between them Articles 1 to 7 of the earlier Conventions.

Article 23

The present Convention shall not affect the application of Article 23 of the Convention on civil procedure signed at The Hague on 17th July 1905, or of Article 24 of the Convention on civil procedure signed at The Hague on 1st March 1954.

These Articles shall, however, apply only if methods of communication, identical to those provided for in these Conventions, are used.

Article 24

Supplementary agreements between Parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention, unless the Parties have otherwise agreed.

Article 25

Without prejudice to the provisions of Articles 22 and 24, the present Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the Contracting States are, or shall become, Parties.

Article 26

The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 26.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 28

Any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 27. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date

on which the said Ministry has notified it of such accession.

In the absence of any such objection, the Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

Article 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

Article 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 27, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 26, and to the States which have acceded in accordance with Article 28, of the following -

a) the signatures and ratifications referred to in Article 26;
b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 27;
c) the accessions referred to in Article 28 and the dates on which they take effect;
d) the extensions referred to in Article 29 and the dates on which they take effect;
e) the designations, oppositions and declarations referred to in Article 21;
f) the denunciations referred to in the third paragraph of Article 30.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague, on the 15th day of November, 1965, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Tenth Session of the Hague Conference on Private International Law.

3.4. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards was concluded in New York, of 10 June 1958. It has entered into force from 10th October 1959. This is text of the Convention:

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.
2. The term „arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.
3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
2. The term „agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:
   a) The duly authenticated original award or a duly certified copy thereof;
   b) The original agreement referred to in article II or a duly certified copy thereof.
2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
   a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
   b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
   c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
   d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
   e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
   a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
   b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a

competent authority referred to in article V (1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.
2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.
2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this

Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;
b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;
c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.
3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition and enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

a) Signatures and ratifications in accordance with article VIII;
b) Accessions in accordance with article IX;
c) Declarations and notifications under articles I, X and XI;
d) The date upon which this Convention enters into force in accordance with article XII;
e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

3.5. European Convention on International Commercial Arbitration

Text of the Convention:

Preamble

The undersigned, duly authorized,

Convened under the auspices of the Economic Commission for Europe of the United Nations,

Having noted that on 10th June 1958 at the United Nations Conference on International Commercial Arbitration has been signed in New York a Convention on the Recognition and Enforcement of Foreign Arbitral Awards,

Desirous of promoting the development of European trade by, as far as possible, removing certain difficulties that may impede the organization and operation of international commercial arbitration in relations between physical or legal persons of different European countries,

Have agreed on the following provisions:

Article I - Scope of the Convention

1. This Convention shall apply:
   a) to arbitration agreements concluded for the purpose of settling disputes arising from international trade between physical or legal persons having, when concluding the agreement, their habitual place of residence or their seat in different Contracting States;
   b) to arbitral procedures and awards based on agreements referred to in paragraph 1(a) above.
2. For the purpose of this Convention,
   a) the term „arbitration agreement" shall mean either an arbitral clause in a contract or an arbitration agreement being signed by the parties, or contained in

an exchange of letters, telegrams, or in a communication by teleprinter and, in relations between States whose laws do not require that an arbitration agreement be made in writing, any arbitration agreement concluded in the form authorized by these laws;

b) the term „arbitration" shall mean not only settlement by arbitrators appointed for each case (ad hoc arbitration) but also by permanent arbitral institutions;

c) the term „seat" shall mean the place of the situation of the establishment that has made the arbitration agreement.

Article II - Right of legal persons of public law to resort to arbitration

1. In the cases referred to in Article I, paragraph 1, of this Convention, legal persons considered by the law which is applicable to them as „legal persons of public law" have the right to conclude valid arbitration agreements.
2. On signing, ratifying or acceding to this Convention any State shall be entitled to declare that it limits the above faculty to such conditions as may be stated in its declaration.

Article III - Right of foreign nationals to be designated as arbitrators

In arbitration covered by this Convention, foreign nationals may be designated as arbitrators.

Article IV - Organization of the arbitration

1. The parties to an arbitration agreement shall be free to submit their disputes:
   a) to a permanent arbitral institution; in this case, the arbitration proceedings shall be held in conformity with the rules of the said institution;
   b) to an ad hoc arbitral procedure; in this case, they shall be free inter alia:
      i. to appoint arbitrators or to establish means for their appointment in the event of an actual dispute;
      ii. to determine the place of arbitration; and
      iii. to lay down the procedure to be followed by the arbitrators.
2. Where the parties have agreed to submit any disputes to an ad hoc arbitration, and where within thirty days of the notification of the request for arbitration to the respondent one of the parties fails to appoint his arbitrator, the latter shall, unless otherwise provided, be appointed at the request of the other party by the President of the competent Chamber of Commerce of the country of the defaulting party's habitual place of residence or seat at the time of the introduction of the request for arbitration. This paragraph shall also apply to the replacement of the arbitrator(s) appointed by one of the parties or by the President of the Chamber of Commerce above referred to.
3. Where the parties have agreed to submit any disputes to an ad hoc arbitration by one or more arbitrators and the arbitration agreement contains no indication regarding the organization of the arbitration, as mentioned in paragraph 1 of this article, the necessary steps shall be taken by the arbitrator(s) already appointed, unless the parties are able to agree thereon and without prejudice to the case referred to in paragraph 2 above. Where the parties cannot agree on the appointment of the

sole arbitrator or where the arbitrators appointed cannot agree on the measures to be taken, the claimant shall apply for the necessary action, where the place of arbitration has been agreed upon by the parties, at his option to the President of the Chamber of Commerce of the place of arbitration agreed upon or to the President of the competent Chamber of Commerce of the respondent's habitual place of residence or seat at the time of the introduction of the request for arbitration. Where such a place has not been agreed upon, the claimant shall be entitled at his option to apply for the necessary action either to the President of the competent Chamber of Commerce of the country of the respondent's habitual place of residence or seat at the time of the introduction of the request for arbitration, or to the Special Committee whose composition and procedure are specified in the Annex to this Convention. Where the claimant fails to exercise the rights given to him under this paragraph the respondent or the arbitrator(s) shall be entitled to do so.

4. When seized of a request the President or the Special Committee shall be entitled as need be:
   a) to appoint the sole arbitrator, presiding arbitrator, umpire, or referee;
   b) to replace the arbitrator(s) appointed under any procedure other than that referred to in paragraph 2 above;
   c) to determine the place of arbitration, provided that the arbitrator(s) may fix another place of arbitration;
   d) to establish directly or by reference to the rules and statutes of a permanent arbitral institution the rules of procedure to be followed by the arbitrator(s), provided that the arbitrators have not established these rules themselves in the absence of any agreement thereon between the parties.
5. Where the parties have agreed to submit their disputes to a permanent arbitral institution without determining the institution in question and cannot agree thereon, the claimant may request the determination of such institution in conformity with the procedure referred to in paragraph 3 above.
6. Where the arbitration agreement does not specify the mode of arbitration (arbitration by a permanent arbitral institution or an ad hoc arbitration) to which the parties have agreed to submit their dispute, and where the parties cannot agree thereon, the claimant shall be entitled to have recourse in this case to the procedure referred to in paragraph 3 above to determine the question. The President of the competent Chamber of Commerce or the Special Committee, shall be entitled either to refer the parties to a permanent arbitral institution or to request the parties to appoint their arbitrators within such time-limits as the President of the competent Chamber of Commerce or the Special Committee may have fixed and to agree within such time-limits on the necessary measures for the functioning of the arbitration. In the latter case, the provisions of paragraphs 2, 3 and 4 of this Article shall apply.
7. Where within a period of sixty days from the moment when he was requested to fulfil one of the functions set out in paragraphs 2, 3, 4, 5 and 6 of this Article, the President of the Chamber of Commerce designated by virtue of these paragraphs has not fulfilled one of these functions, the party requesting shall be entitled to ask the Special Committee to do so.

Article V - Plea as to arbitral jurisdiction

1. The party which intends to raise a plea as to the arbitrator's jurisdiction based on the fact that the arbitration agreement was either non-existent or null and void or had lapsed shall do so during the arbitration proceedings, not later than the delivery of its statement of claim or defence relating to the substance of the dispute; those based on the fact that an arbitrator has exceeded his terms of reference shall be raised during the arbitration proceedings as soon as the question on which the arbitrator is alleged to have no jurisdiction is raised during the arbitral procedure. Where the delay in raising the plea is due to a cause which the arbitrator deems justified, the arbitrator shall declare the plea admissible.
2. Pleas to the jurisdiction referred to in paragraph 1 above that have not been raised during the time-limits there referred to, may not be entered either during a subsequent stage of the arbitral proceedings where they are pleas left to the sole discretion of the parties under the law applicable by the arbitrator, or during subsequent court proceedings concerning the substance or the enforcement of the award where such pleas are left to the discretion of the parties under the rule of conflict of the court seized of the substance of the dispute or the enforcement of the award. The arbitrator's decision on the delay in raising the plea, will, however, be subject to judicial control.
3. Subject to any subsequent judicial control provided for under the lex fori, the arbitrator whose jurisdiction is called in question shall be entitled to proceed with the arbitration, to rule on his own jurisdiction and to decide upon the existence or the validity of the arbitration agreement or of the contract of which the agreement forms part.

Article VI - Jurisdiction of courts of law

1. A plea as to the jurisdiction of the court made before the court seized by either party to the arbitration agreement, on the basis of the fact that an arbitration agreement exists shall, under penalty of estoppel, be presented by the respondent before or at the same time as the presentation of his substantial defence, depending upon whether the law of the court seized regards this plea as one of procedure or of substance.
2. In taking a decision concerning the existence or the validity of an arbitration agreement, courts of Contracting States shall examine the validity of such agreement with reference to the capacity of the parties, under the law applicable to them, and with reference to other questions:
   a) under the law to which the parties have subjected their arbitration agreement;
   b) failing any indication thereon, under the law of the country in which the award is to be made;
   c) failing any indication as to the law to which the parties have subjected the agreement, and where at the time when the question is raised in court the country in which the award is to be made cannot be determined, under the competent law by virtue of the rules of conflict of the court seized of the dispute.

The courts may also refuse recognition of the arbitration agreement if under the law of their country the dispute is not capable of settlement by arbitration.

3. Where either party to an arbitration agreement has initiated arbitration proceedings before any resort is had to a court, courts of Contracting States subsequently asked to deal with the same subject-matter between the same parties or with the question whether the arbitration agreement was non-existent or null and void or had lapsed, shall stay their ruling on the arbitrator's jurisdiction until the arbitral award is made, unless they have good and substantial reasons to the contrary.
4. A request for interim measures or measures of conservation addressed to a judicial authority shall not be deemed incompatible with the arbitration agreement, or regarded as a submission of the substance of the case to the court.

Article VII - Applicable law

1. The parties shall be free to determine, by agreement, the law to be applied by the arbitrators to the substance of the dispute. Failing any indication by the parties as to the applicable law, the arbitrators shall apply the proper law under the rule of conflict that the arbitrators deem applicable. In both cases the arbitrators shall take account of the terms of the contract and trade usages.
2. The arbitrators shall act as amiables compositeurs if the parties so decide and if they may do so under the law applicable to the arbitration.

Article VIII - Reasons for the award

The parties shall be presumed to have agreed that reasons shall be given for the award unless they:

a) either expressly declare that reasons shall not be given; or
b) have assented to an arbitral procedure under which it is not customary to give reasons for awards, provided that in this case neither party requests before the end of the hearing, or if there has not been a hearing then before the making of the award, that reasons be given.

Article IX - Setting aside of the arbitral award

1. The setting aside in a Contracting State of an arbitral award covered by this Convention shall only constitute a ground for the refusal of recognition or enforcement in another Contracting State where such setting aside took place in a State in which, or under the law of which, the award has been made and for one of the following reasons:
   a) the parties to the arbitration agreement were under the law applicable to them, under some incapacity or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made, or
   b) the party requesting the setting aside of the award was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
   c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that

part of the award which contains decisions on matters submitted to arbitration need not be set aside;

d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, with the provisions of Article IV of this Convention.

2. In relations between Contracting States that are also parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10th June 1958, paragraph 1 of this Article limits the application of Article V(1)(e) of the New York Convention solely to the cases of setting aside set out under paragraph 1 above.

Article X - Final clauses

1. This Convention is open for signature or accession by countries members of the Economic Commission for Europe and countries admitted to the Commission in a consultative capacity under paragraph 8 of the Commission's terms of reference.
2. Such countries as may participate in certain activities of the Economic Commission for Europe in accordance with paragraph 11 of the Commission's terms of reference may become Contracting Parties to this Convention by acceding thereto after its entry into force.
3. The Convention shall be open for signature until 31 December 1961 inclusive. Thereafter, it shall be open for accession.
4. This Convention shall be ratified.
5. Ratification or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.
6. When signing, ratifying or acceding to this Convention, the Contracting Parties shall communicate to the Secretary-General of the United Nations a list of the Chambers of Commerce or other institutions in their country who will exercise the functions conferred by virtue of Article IV of this Convention on Presidents of the competent Chambers of Commerce.
7. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning arbitration entered into by Contracting States.
8. This Convention shall come into force on the ninetieth day after five of the countries referred to in paragraph 1 above have deposited their instruments of ratification or accession. For any country ratifying or acceding to it later this Convention shall enter into force on the ninetieth day after the said country has deposited its instrument of ratification or accession.
9. Any Contracting Party may denounce this Convention by so notifying the Secretary-General of the United Nations. Denunciation shall take effect twelve months after the date of receipt by the Secretary-General of the notification of denunciation.
10. If, after the entry into force of this Convention, the number of Contracting Parties is reduced, as a result of denunciations, to less than five, the Convention shall cease to be in force from the date on which the last of such denunciations takes effect.
11. The Secretary-General of the United Nations shall notify the countries referred to in paragraph 1, and the countries which have become Contracting Parties under paragraph 2 above, of:

a) declarations made under Article II, paragraph 2;
b) ratifications and accessions under paragraphs 1 and 2 above;
c) communications received in pursuance of paragraph 6 above;
d) the dates of entry into force of this Convention in accordance with paragraph 8 above;
e) denunciations under paragraph 9 above;
f) the termination of this Convention in accordance with paragraph 10 above.

12. After 31 December 1961, the original of this Convention shall be deposited with the Secretary-General of the United Nations, who shall transmit certified true copies to each of the countries mentioned in paragraphs 1 and 2 above.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Geneva, this twenty-first day of April, one thousand nine hundred and sixty-one, in a single copy in the English, French and Russian languages, each text being equally authentic.

Annex - Composition and procedure of the special committee referred to in Article IV of the Convention

1. The Special Committee referred to in Article IV of the Convention shall consist of two regular members and a Chairman. One of the regular members shall be elected by the Chambers of Commerce or other institutions designated, under Article X, paragraph 6, of the Convention, by States in which at the time when the Convention is open to signature National Committees of the International Chamber of Commerce exist, and which at the time of the election are parties to the Convention. The other member shall be elected by the Chambers of Commerce or other institutions designated, under Article X, paragraph 6, of the Convention, by States in which at the time when the Convention is open to signature no National Committees of the International Chamber of Commerce exist and which at the time of the election are parties to the Convention.
2. The persons who are to act as Chairman of the Special Committee pursuant to paragraph 7 of this Annex shall also be elected in like manner by the Chambers of Commerce or other institutions referred to in paragraph 1 of this Annex.
3. The Chambers of Commerce or other institutions referred to in paragraph 1 of this Annex shall elect alternates at the same time and in the same manner as they elect the Chairman and other regular members, in case of the temporary inability of the Chairman or regular members to act. In the event of the permanent inability to act or of the resignation of a Chairman or of a regular member, then the alternate elected to replace him shall become, as the case may be, the Chairman or regular member, and the group of Chambers of Commerce or other institutions which had elected the alternate who has become Chairman or regular member shall elect another alternate.
4. The first elections to the Committee shall be held within ninety days from the date of the deposit of the fifth instrument of ratification or accession. Chambers of Commerce and other institutions designated by Signatory States who are not yet parties to the Convention shall also be entitled to take part in these elections. If however it should not be possible to hold elections within the prescribed period, the

entry into force of paragraphs 3 to 7 of Article IV of the Convention shall be postponed until elections are held as provided for above.

5. Subject to the provisions of paragraph 7 below, the members of the Special Committee shall be elected for a term of four years. New elections shall be held within the first six months of the fourth year following the previous elections. Nevertheless, if a new procedure for the election of the members of the Special Committee has not produced results, the members previously elected shall continue to exercise their functions until the election of new members.
6. The results of the elections of the members of the Special Committee shall be communicated to the Secretary-General of the United Nations who shall notify the States referred to in Article X, paragraph 1, of the Convention and the States which have become Contracting Parties under Article X, paragraph 2. The Secretary-General shall likewise notify the said States of any postponement and of the entry into force of paragraphs 3 to 7 of Article IV of the Convention in pursuance of paragraph 4 of this Annex.
7. The persons elected to the office of Chairman shall exercise their functions in rotation, each during a period of two years. The question which of these two persons shall act as Chairman during the first two-year period after the entry into force of the Convention shall be decided by the drawing of lots. The office of Chairman shall thereafter be vested, for each successive two-year period, in the person elected Chairman by the group of countries other than that by which the Chairman exercising his functions during the immediately preceding two-year period was elected.
8. The reference to the Special Committee of one of the requests referred to in paragraphs 3 to 7 of the aforesaid Article IV shall be addressed to the Executive Secretary of the Economic Commission for Europe. The Executive Secretary shall in the first instance lay the request before the member of the Special Committee elected by the group of countries other than that by which the Chairman holding office at the time of the introduction of the request was elected. The proposal of the member applied to in the first instance shall be communicated by the Executive Secretary to the other member of the Committee and, if that other member agrees to this proposal, it shall be deemed to be the Committee‘s ruling and shall be communicated as such by the Executive Secretary to the person who made the request.
9. If the two members of the Special Committee applied to by the Executive Secretary are unable to agree on a ruling by correspondence, the Executive Secretary of the Economic Commission for Europe shall convene a meeting of the said Committee at Geneva in an attempt to secure a unanimous decision on the request. In the absence of unanimity, the Committee‘s decision shall be given by a majority vote and shall be communicated by the Executive Secretary to the person who made the request.
10. The expenses connected with the Special Committee‘s action shall be advanced by the person requesting such action but shall be considered as costs in the cause.

3.6. Selected Parts of Constitution of the Slovak Republic

Constitution of the Slovak republic:[43]

CHAPTER ONE

Part One

Basic Provisions

Article 7

1. The Slovak Republic may enter into a state union with other states upon its free decision. The decision on entering into a state union with other states, or on withdrawal from this union, shall be made by a constitutional law which must be confirmed by a referendum.
2. The Slovak Republic may, by an international treaty ratified and promulgated in a manner laid down by law, or on the basis of such treaty, transfer the exercise of a part of its rights to the European Communities and European Union. Legally binding acts of the European Communities and European Union shall have primacy over the laws of the Slovak Republic. Undertaking of legally binding acts that require implementation shall be executed by law or a government ordinance pursuant to Article 120, paragraph 2.
3. The Slovak Republic may, with the aim of maintaining peace, security and democratic order, under the terms laid down by an international treaty, join an organization of mutual collective security.
4. In order for any international treaties on human rights and fundamental freedoms, international political treaties, international treaties of military nature, international treaties establishing the membership of the Slovak Republic in international organizations, international economic treaties of general nature, international treaties whose execution requires a law and international treaties which directly constitute rights or obligations of natural persons or legal persons to be valid, an approval of the National Council of the Slovak Republic is required prior to their ratification.
5. International treaties on human rights and fundamental freedoms, international treaties whose executions does not require a law and international treaties which directly establish rights or obligations of natural persons or legal persons and which were ratified and promulgated in a manner laid down by law shall have primacy over the laws.

[43] Text is taken over from www.nrsr.sk/web/Static/en-US/NRSR/Dokumenty/constitution.doc .

CHAPTER TWO

BASIC RIGHTS AND FREEDOMS

Part Seven

The right to judicial and other legal protection

Article 46

1. Everyone may claim his right in a manner laid down by law in an independent and impartial court and, in cases laid down by law, at another body of the Slovak Republic.
2. Anyone who claims to have been deprived of his rights by a decision of a public administration body may turn to the court to have the lawfulness of such decision reexamined, unless laid down otherwise by law. The reexamination of decisions concerning basic rights and freedoms may not, however, be excluded from the court's authority.
3. Everyone is entitled to compensation for damage incurred as a result of an unlawful decision by a court, or another state or public administration body, or as a result of an incorrect official procedure.
4. Conditions and details concerning judicial and other legal protection shall be laid down by law.

Article 47

1. Everyone has the right to refuse to testify if, by doing so, he might bring on the risk of criminal prosecution of himself or a close person.
2. Everyone has the right to legal assistance in court proceedings, or proceedings before other state or public administration bodies from the start of the proceedings, under conditions laid down by law.
3. All participants are equal in proceedings according to paragraph 2.
4. Anyone who declares that he does not have a command of the language in which the proceedings under paragraph 2 are conducted has the right to an interpreter.

Article 48

1. No one must be removed from his assigned judge. The jurisdiction of the court shall be laid down by law.
2. Everyone has the right to have his case tried in public, without undue delay, and in his presence and to deliver his opinion on all pieces of evidence. The public can be excluded only in cases laid down by law.

Article 49

Only the law shall lay down which conduct constitutes a criminal act, and what punishment, or other forms of deprivation of rights, or property, may be imposed for its commitment.

Article 50

1. Only the court decides on guilt and punishment for criminal acts.
2. Everyone against whom a criminal proceeding is conducted is considered innocent until the court establishes his guilt by a legally valid verdict.
3. The accused has the right to be granted the time and opportunity to prepare his defense, and to defend himself either alone or through a defense counsel.
4. The accused has the right to refuse to testify; this right may not be denied in any way.
5. No one may be criminally prosecuted for an act for which he has already been sentenced, or of which he has already been acquitted. This principle does not rule out the application of extraordinary remedies in compliance with the law.
6. Whether any act is criminal is assessed, and punishment is determined, in accordance with the law valid at the time when the act was committed. A more recent law is applied, if it is more favorable for the perpetrator.

3.7. Selected Parts of the Code of Civil Procedure

§ 1

Code of Civil Procedure governs the procedure for the court and the parties in civil proceedings to ensure equitable protection of rights and legitimate interests of the participants, as well as education on abiding laws, the honor fulfillment of duties to respect the rights of others .

§ 2

In civil proceedings, the courts hear and decide disputes and other legal matters, make enforcement of awards that were not voluntarily complied with, and ensure prevention of violations of rights and legitimate interests of natural and legal persons and the rights and of abuse to the detriment of these people.

§ 3

Civil proceedings is one of the guarantees of legality and serves on its consolidation and development. Everyone has the right to seek court protection of law that has been threatened or violated.

§ 5

1. The courts provide instructions on procedural rights and duties for the participants in civil proceedings during fulfilment of their tasks.
2. The courts have not have the duty under paragraph 1 when a party in civil proceedings is represented by a lawyer.

§ 6

In the proceedings the court shall proceed in consultation with all the parties in order to ensure quick and efficient protection of the rights.

The Second Head

COURTS

Competence

§ 7

1. In civil proceedings, the courts hear and decide disputes and other legal matters arising from civil, labor, family, commercial and economic relations, as they are not subjected to hearing and resolving of other bodies in accordance with the law.
2. In civil proceedings, courts review the legality of decisions of public authorities and the legality of the decision, action or other interference by public authority and towards compliance generally binding regulation of self-government in matters of local self-government with the law and to fulfill the tasks of government and with government regulation and generally binding legal regulations of ministries and other central state administration bodies, as they are not heard and decided by other bodies in accordance with the law.
3. Other things are heard and decided by courts in civil proceedings only if so provided by the law.

§ 8

If the court proceedings should be preceded by the proceedings of another body, the courts may act only if the matter was not definitively resolved in such proceedings.

§ 8a

Conflicts of jurisdiction

Supreme Court of the Slovak Republic shall resolve the conflicts of jurisdiction between the courts and administrative bodies.

Competence

§ 9

1. The proceedings at first instance are generally resolved by the district courts .
2. The county (regional) court decides as the court of first instance
   a) in cases of mutual settlement benefits provided wrongly or higher than belonged, between an employer and a recipient of benefits under the legislation on social security ,
   b) the dispute between health insurance and employers for damages suffered by wrongful procedure in the performance of health insurance,
   c) in disputes involving a foreign country or persons enjoying diplomatic immunity and privileges, if such disputes are within the jurisdiction of the courts of the Slovak Republic.

§ 10

1. The county courts shall decide the appeals against decisions of the district courts.
2. The appeals against the decisions of regional courts as courts of first instance are decided by the Supreme Court of the Slovak Republic.

§ 10a

1. The recourse against decisions of the district courts as courts of appeal are decided by the Supreme Court of the Slovak Republic.
2. The recourse against decisions of the Supreme Court of the Slovak Republic as the court of appeal are decided by another panel of this court.
3. The extraordinary appeal against court decisions of the courts are decided by the Supreme Court of the Slovak Republic.
4. The extraordinary appeal against decisions of the Supreme Court of the Slovak Republic as the court of appeal are decided by another panel of this court.