UNIWERSYTET
MIKOŁAJA KOPERNIKA
W TORUNIU

Toruń, 28 April 2025

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DOCTORAL DISSERTATION ABSTRACT

Scientific discipline: **law**

Title of the doctoral dissertation: **The law applicable to cross-border road traffic accidents**

The subject of the dissertation is the law applicable to non-contractual liability arising from cross-border road traffic accidents. This issue is examined from two perspectives. Firstly, the dissertation addresses the problem of scattering of conflict-of-laws rules in the various sources of law. It originates from the existence of competing conflict-of-laws regimes, in particular, the 1971 Hague Convention on the law applicable to traffic accidents and the EU Regulation No 864/2007 on the law applicable to non-contractual obligations (Rome II). Secondly, the dissertation investigates whether existing conflict-of-laws rules comply with the current system of protection mechanisms for the victims of cross-border road traffic accidents.

The dissertation has four research objectives. Firstly, given the plurality of the sources of law that determine the law applicable to the matter in question, it is necessary to examine the relations between them. This issue should be seen in the context of the competing methods of unification of private international law within Europe, which include the convention method and the method used by the EU legislator. The second objective is to determine how these two methods should be coordinated so that they coexist for the greater benefit of the application of law in the international context.

The third objective is to define the criteria for determining whether a given private international law regime complies with the current requirements. In this regard, it is significant that the need to protect the weaker party in the legal relationship, a category which includes the victims of traffic accidents, is now increasingly emphasised in substantive law. A reflection should, therefore, be undertaken on the legitimacy and possible form of implementation of such protection in the field of private international law. It is also crucial that the conflict-of-laws rules determining the law

applicable should reflect the particularities of this type of cases, notably their frequency, the rules for the settlement of claims, as well as the distinctive personal configuration due to the special function of compulsory motor insurance. The fourth objective is to assess the existing private international law regimes based on the criteria thus defined.

The methodology employed in the dissertation includes several research approaches, primarily the dogmatic-legal method. The comparative-legal and historical-legal methods were also used to some extent.

Apart from the introduction and concluding remarks, the dissertation consists of six chapters. Each of them begins with introductory observations and ends with conclusions.

The first chapter refers to the origins of the current system of conflict-of-laws rules, which determine the law applicable to non-contractual liability arising from traffic accidents. This section of the thesis describes the development process of the conflict-of-laws rules. It is followed by the discussion of the fundamental aspects of the methods of unification of private international law in Europe: the convention method and the method of the EU legislator.

The second chapter presents the system of current rules determining the law applicable to cross-border traffic accidents. The subject of jurisdictional grounds in this type of case is addressed first. The following section deals with the issue of the relationship between sources of private international law. Subsequently, the chapter discusses the scope of application of the 1971 Hague Convention and the Rome II Regulation from a temporal, territorial and material perspective.

The third chapter explores the question of the determination of the law applicable to non-contractual liability arising from traffic accidents. First, the role of the subjective connecting factor is examined. Subsequently, the objective connecting factors stipulated in the 1971 Hague Convention and the Rome II Regulation are described and compared. The question of the scope of the law applicable is then addressed.

The fourth chapter covers three private international law institutions relevant to cross-border traffic accident cases. First, the issue of taking into account the rules of the place of the traffic accident is explored. Furthermore, consideration is given to the rectifying mechanisms: the overriding mandatory provisions and the public policy exception.

The fifth chapter deals with selected aspects of the compulsory motor vehicle insurance, the role of insurers in the process of settling claims, as well as the operation of systems of protection mechanism for victims of road traffic accidents, i.e. the Green Card System and the system of EU motor insurance directives. Next, the issue of the law applicable to a direct claim against the insurer is presented. The fifth chapter concludes with an analysis of the conflict-of-laws aspects of the settlement of claims under the above-mentioned systems of protection mechanisms for victims of cross-border traffic accidents.

The sixth chapter attempts to assess the 1971 Hague Convention and Rome II Regulation. This is followed by a presentation of how the current system functions in practice in the light of the case law of Polish courts and the courts of other European states. The discussion concludes with *de lege ferenda* remarks on improving the current legal framework.

The findings of the research lead to the following conclusions. Firstly, they confirm the thesis of the complexity of the current legal framework, which results in practical difficulties in determining the applicable law in road traffic accident cases. They also prove that the Rome II Regulation is more accurate legal framework compared to the 1971 Hague Convention.

This points to the conclusion that the EU Member States, which are signatories to the 1971 Hague Convention, should decide to denounce its provisions. At the same time, however, to strengthen coordination between the indicated methods of unification of private international law, consideration should be given to drafting a new Hague Convention on non-contractual obligations, which could be based on the wording of the Rome II Regulation. States wishing to deepen regional cooperation in Europe could be particularly interested in ratifying such a convention.

When considering the issue at hand from the point of view of the system of protection mechanisms for victims of cross-border road traffic accidents, it must be acknowledged that the existing conflict-of-laws rules are ill-suited to contemporary challenges. Their outdatedness is particularly exposed against the necessity of achieving greater efficiency of this system.

The conflict-of-laws rules should take into account the particularities of cross-border road traffic accident cases so that, on the one hand, they lead to more effective protection of victims and, on the other hand, contribute to enhancing settlement of claims proceedings. Traffic accident claims

present several features that allow for their separation from the broader category of non-contractual obligations and to regulate them separately on the private international law level.

It is concluded that the most favourable solution would be to introduce in the Rome II Regulation a separate conflict-of-laws rule for non-contractual liability arising from traffic accidents, which would indicate as applicable the law of the habitual residence of the victim. The amendment provides for the achievement of greater efficiency of the victim protection system. It also enhances and reduces the costs of proceedings and introduces adequate forms of compensation. Most importantly, the proposal incorporates the developments that have taken place in recent decades in the fields of private international law, tort law and insurance law.

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