

DRAFT OF THE NEW PRIVATE INTERNATIONAL LAW ACT OF THE REPUBLIC OF SERBIA

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DRAFT OF THE NEW PRIVATE INTERNATIONAL LAW ACT OF THE REPUBLIC OF SERBIA

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PART I GENERAL PART

CHAPTER I INTRODUCTORY PROVISIONS

Scope

Article 1

This Act establishes the rules governing:

1. the international jurisdiction of courts and other authorities of the Republic of Serbia and the rules of procedure;
2. the applicable law; and
3. the recognition and enforcement of foreign judgments in the Republic of Serbia

in private matters involving an international element.

Primacy of international treaties

Article 2

The international treaties which are binding upon the Republic of Serbia² have priority over the provisions of this Act.

¹ I would like to express my sincere gratitude to Professor Mirko Živković (Faculty of Law University of Niš; President of the Working Group for drafting the new Private International Law Act, assembled by the Ministry of Justice of the Republic of Serbia), Professor Maja Stanivuković (Faculty of Law University of Novi Sad; Member of the Working Group for drafting the new Private International Law Act, assembled by the Ministry of Justice of the Republic of Serbia) and Gordana Ignjatović (English language lecturer, Faculty of Law University of Niš) for their generous help and kind suggestions concerning this translation.

² In the following “Serbia”.

Characterization

Article 3

1. The characterization of the facts, legal relationships and institutes are to be made pursuant to Serbian law, unless otherwise is provided in this Act.
2. The characterization of a legal relationship or an institute which is unknown under Serbian law is to be made by having regard to the functions of that legal relationship or institute in the corresponding foreign law.

Domicile of a natural person

Article 4

1. For the purposes of this Act, the domicile of a natural person is deemed to be the place where that person has settled with intention to live there permanently.
2. A natural person is presumed to have established a domicile in the State where his/her domicile is registered.
3. Where the registration referred to in paragraph 2 of this Article was made in several States, a natural person is deemed to be domiciled in the State in which the registration was made and to which the person is most closely connected.

Domicile of a legal person and an organization without legal personality

Article 5

A legal person or an organization without legal personality is deemed to be domiciled at the place where it has its:

- a) statutory seat;
- b) central administration; or
- c) principal place of business.

Habitual residence of a natural person

Article 6

1. The habitual residence of a natural person is deemed to be the place in the State where that person has the centre of his/her vital interests and where that person habitually resides, even in the absence of registration by the competent authority and independent of a residence or establishment permit.
2. In order to determine habitual residence within the meaning of paragraph 1 of this Article, regard will be had to all the circumstances of personal or professional nature that show durable connections with the specific State or indicate an intention to create such connections.
3. The habitual residence of a natural person acting in the course of his/her business activity is deemed to be in the State where that person's principal place of business is located.

Habitual residence of a legal person or an organization without legal personality

Article 7

1. The habitual residence of a legal person or an organization without legal personality is deemed to be the place in the State where its central administration is located.
2. In contractual obligations, the habitual residence of a legal person or an organization without legal personality is deemed to be in the State where the branch, agency or any other establishment is located at the time of the conclusion of the contract, provided that:
 - a) the contract is concluded in the course of operation of a branch, agency or any other establishment, or
 - b) under the contract, performance of the contractual obligation is the responsibility of such a branch, agency or establishment.
3. In non-contractual obligations, the habitual residence of legal person or an organization without legal personality is deemed to be in the State where a branch, agency or any other establishment is located, provided that:
 - a) the event giving rise to the damage occurs, or
 - b) the damage arisesin the course of operation of the branch, agency or any other establishment.

Persons of multiple nationalities

Article 8

1. The determination of whether a natural person has the nationality of a specific State is governed by the law of that State.
2. If a Serbian national holds the nationality of another State, that person is deemed to be holding only Serbian nationality, unless otherwise provided in this Act.
3. If a foreigner holds two or more foreign nationalities, that person is deemed to be a national of the State whose nationality he/she holds and to which that person is most closely connected, having regard to all the circumstances of the case.

Stateless persons and refugees

Article 9

1. If a person is stateless, the provisions of the 1954 Convention Relating to the Status of Stateless Persons (Official Gazette of FNRJ-Appendix 9/1959) shall apply.
2. If a person has the status of a refugee, the provisions of the 1951 Convention Relating to the Status of Refugees (Official Gazette of FNRJ – Appendix 7/1960, Official Gazette of SFRJ – Appendix 15/1967) shall apply.

Nationality of a legal person and an organization without legal personality

Article 10

1. A legal person and an organization without legal personality have the nationality of the State in whose public register they were registered.
2. If a legal person is still not registered or is not required to be registered, it is deemed to have the nationality of the State under whose law it was established.
3. If an organization without legal personality is still not registered or is not required to be registered, it is deemed to have the nationality of the State under whose law it was organized.

CHAPTER II
GENERAL PROVISIONS

**1. JURISDICTION OF A COURT AND OTHER AUTHORITY OF THE REPUBLIC
OF SERBIA IN MATTERS INVOLVING AN INTERNATIONAL ELEMENT**

Establishing jurisdiction

Article 11

1. A court or other authority of Serbia shall have jurisdiction in matters involving an international element if its jurisdiction is expressly provided for in an international treaty or a legislative Act of Serbia.
2. Absent an express provision on the jurisdiction of a Serbian court in an international treaty or a legislative Act, a Serbian court shall also have jurisdiction when its jurisdiction arises from the provisions regulating the territorial jurisdiction of courts.
3. The court or other authority of Serbia shall establish its jurisdiction in the matters involving an international element on its own motion, according to the facts and circumstances existing at the time of instituting the proceedings.
4. A Serbian court shall on its own motion declare lack of jurisdiction, revoke the procedural actions already taken and dismiss the claim or application if it determines in the course of the proceedings that a Serbian court has no jurisdiction, unless the jurisdiction of a Serbian court is conditional on the defendant's consent and the defendant has so consented.

Principle of continued jurisdiction (perpetuatio iurisdictionis)

Article 12

A court or other authority of Serbia shall retain its jurisdiction even if the decisive facts on which its jurisdiction was based change in the course of the proceedings.

General jurisdiction in litigious proceedings

Article 13

1. A Serbian court shall have jurisdiction in litigious proceedings if the defendant is domiciled or habitually resident in Serbia.
2. The jurisdiction referred to in paragraph 1 of this Article pertains to all litigious proceedings, unless otherwise expressly provided in this Act.

Jurisdiction in a lawsuit involving co-defendants

Article 14

In a lawsuit involving co-defendants who are in a legal community as to the subject matter of the dispute or whose rights and obligations arise from the same factual and legal basis, a court of Serbia shall also have jurisdiction when the general jurisdiction can be established in respect of one of the co-defendants.

Jurisdiction for related actions

Article 15

1. If a court of Serbia has jurisdiction to decide on one claim amongst several submitted claims, it also has jurisdiction to decide on other claims to the extent that they are related to the claim over which it has jurisdiction.
2. Actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Jurisdiction for a counterclaim

Article 16

If a court of Serbia has jurisdiction to decide on a claim, it also has jurisdiction to decide on a counterclaim arising from the same legal and factual ground, or provided that the decision on the claim fully or partially depends on the merits of the counterclaim.

Jurisdiction in preliminary ruling

Article 17

A Serbian court may be entitled to decide on some issue that is beyond its jurisdiction as a preliminary issue provided that the decision on the main issue fully or partially depends on the merits of the preliminary issue.

General jurisdiction in non-litigious proceedings

Article 18

1. A Serbian court shall have jurisdiction in non-litigious proceedings involving the participation of several persons if the person to whom the application has been submitted is domiciled or habitually resident in Serbia.
2. A Serbian court shall have jurisdiction in non-litigious proceedings involving the participation of a single person if the applicant is domiciled or habitually resident in Serbia.
3. The jurisdiction referred to in paragraphs 1 and 2 of this Article pertains to all non-litigious proceedings, unless otherwise expressly provided in this Act.

Jurisdiction in security proceedings

Article 19

1. A Serbian court shall have jurisdiction in security proceedings even if it has no jurisdiction to decide on the merits of the case pursuant to the provisions of this Act.

2. A Serbian court shall have jurisdiction in security proceedings even if the proceeding on the merits of the case was instituted before a foreign court.

Jurisdiction based on the defendant's property in the Republic of Serbia

Article 20

A Serbian court shall have jurisdiction to decide on property relations involving an international element if the defendant's property is situated in Serbia, provided that:

- a) the property value is not significantly lower than the value of the claim and
- b) the dispute has sufficient connection with Serbia.

Exceptional jurisdiction (forum necessitatis)

Article 21

Where no court or other authority of Serbia has jurisdiction pursuant to this Act, the court or other authority of Serbia may hear the case if the proceedings would be impossible to bring or to conduct abroad, or if the proceedings cannot be reasonably expected to be brought abroad, if the dispute has sufficient connection with Serbia.

Exclusive jurisdiction

Article 22

A court or other authority of Serbia shall have exclusive jurisdiction if it is expressly provided so in an international treaty or a legislative Act.

Jurisdiction in proceedings which have as their object an entry in public registers

Article 23

A court or other authority of Serbia shall have exclusive jurisdiction in proceedings which have as their object an entry in public registers kept in Serbia, including the disputes on the validity of that entry.

Jurisdiction in enforcement proceedings

Article 24

A Serbian court shall have exclusive jurisdiction in proceedings concerning the enforcement of a foreign judgment which is to be enforced or has been enforced in Serbia.

Prorogation of jurisdiction of a court of the Republic of Serbia

Article 25

1. In matters involving an international element, where the parties are allowed to freely dispose of their rights in compliance with the law of Serbia, the parties may agree upon the jurisdiction of a court or courts of Serbia to settle a dispute which has arisen or may arise in connection with a particular legal relationship.
2. The jurisdiction of a Serbian court referred to in paragraph 1 of this Article shall be exclusive, unless the parties have agreed otherwise.
3. The material validity of the agreement on jurisdiction of the Serbian court shall be governed by the law of Serbia.

Prorogation of jurisdiction of a foreign court

Article 26

1. In matters involving an international element, where the parties are allowed to freely dispose of their rights in compliance with the law of Serbia, the parties may agree upon the jurisdiction of a foreign court or courts to settle a dispute which has arisen or may arise in connection with a particular legal relationship.
2. The jurisdiction of the foreign court referred to in paragraph 1 of this Article shall be exclusive, unless the parties have agreed otherwise.
3. A Serbian court when seised of an action in a matter in respect of which the jurisdiction of the foreign court has been agreed shall upon the objection of a party declare its lack of jurisdiction and dismiss the claim unless it finds that the choice of prorogation agreement is null and void.

4. The objection referred to in paragraph 3 of this Article must be raised before the party pleads to the merits.

5. The material and formal validity of the agreement on the prorogation of a foreign court shall be governed by the law of the State of the chosen court, whereas the admissibility of the agreement is concurrently governed by the law of Serbia.

Form of the prorogation agreement

Article 27

1. The prorogation agreement shall be concluded:

a) in writing or orally evidenced in writing; or

b) in a form which accords with practices which the parties have established between themselves; or

c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which, in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the same type involved in the particular trade or commerce concerned.

2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to agreement in “writing”.

3. An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

4. The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid.

Tacit consent of the defendant to the jurisdiction

Article 28

1. The defendant is deemed to have given consent to the jurisdiction of the Serbian court if:

a) the defendant has filed a written answer to the claim, or the defendant has filed an objection to the payment order, without contesting jurisdiction; or

b) the defendant has pleaded to the merits at the preparatory hearing or, if the preparatory hearing has not been held, at the first hearing on the merits, without contesting jurisdiction; or

c) the defendant has filed a counterclaim.

2. Notwithstanding paragraph 1 of this Article, in disputes relating to insurance, consumer contracts, individual contracts of employment and maintenance disputes, where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer, the employee or maintenance creditor is the defendant, Serbian court shall, before assuming jurisdiction, ensure that the defendant is informed of his right to contest the jurisdiction of the court and of the consequences of entering an appearance.

2. THE PROCEEDINGS

Law applicable to proceedings

Article 29

The proceedings in matters involving an international element which are instituted before a court or other authority of Serbia shall be governed by the law of Serbia.

Law applicable to capacity to be a party and to act independently in civil proceedings

Article 30

1. Capacity of a natural person to be a party and to act independently in civil proceedings shall be governed by the law of the State of his/her nationality.
2. If it is determined by virtue of paragraph 1 of this Article that a foreign national would lack capacity to act independently in civil proceedings but would have the capacity to act independently pursuant to the law of Serbia, then that foreign national may act independently in the proceedings.

3. A statutory representative of a foreign national referred to in paragraph 2 of this Article may act in the proceedings only as long as that foreign national does not declare the intention to take over himself the conduct of the proceedings.
4. The law applicable to the capacity of a foreign legal person or an organization without legal personality to be a party and to act independently in civil proceedings shall be determined pursuant to Article 64 of this Act.

Security for costs (cautio iudicatum solvi)

Article 31

1. When a plaintiff who is not habitually resident in Serbia institutes a litigious proceeding before a Serbian court, the plaintiff is obliged to deposit security for costs in favour of the defendant, at the defendant's request.
2. The defendant is obliged to submit the request for the security for costs no later than the preparatory hearing or, if the preparatory hearing has not been held, at the first hearing on the merits, before the defendant pleads to the merits.
3. Security for costs must be provided in monetary form, but the court may also approve the provision of security in some other suitable form.

Exemptions from the obligation to provide security for costs

Article 32

A defendant shall not be entitled to receive security for costs:

- a) if the plaintiff enjoys the right to asylum in Serbia or has a status of a refugee in Serbia;
- b) if the claim is related to the plaintiff's claim arising from a contract of employment in Serbia;
- c) if the claim refers to consumer protection;
- d) in marital disputes or disputes concerning establishing or contesting paternity or maternity, or disputes concerning protection of the child's rights or the exercise or deprivation of parental responsibility, or disputes concerning the annulment of adoption

or maintenance disputes, or disputes concerning civil protection against domestic violence, or disputes concerning property relations of the spouses or cohabitants;

e) in proceedings upon a bill of exchange or cheque;

f) in proceedings upon an order for payment; or

g) in proceedings upon a counterclaim.

Effect of request for the security for costs

Article 33

1. The court shall determine the amount of security for costs and the time-limit within which the security must be deposited, in the ruling by which the request for the security for costs is granted, and it shall warn the plaintiff of the legal consequences of the expiry of the time-limit.

2. If the plaintiff fails to prove within the specified time-limit that he has deposited the security for costs, the claim shall be considered withdrawn.

3. The defendant who in a timely manner has submitted the security for costs request is not obliged to continue the proceedings on the merits until a final decision upon that request has been made, whereas if the request is granted, the defendant is not obliged to continue the proceedings until the plaintiff has deposited the security for costs.

4. If the court denies the request for depositing a security for costs, it may decide that the proceedings continue even before the ruling on denial becomes final.

International lis pendens

Article 34

1. A Serbian court shall stay the proceeding at the request of a party if proceedings involving the same legal matter and between the same parties are pending before a foreign court, if:

a) the proceedings were first instituted before a foreign court,

b) the court of Serbia does not have exclusive jurisdiction, and

c) it is to be expected that a foreign court will give a decision capable of recognition in Serbia.

2. The moment of instituting the proceedings shall be determined according to the law of the State before whose court the proceedings were instituted.
3. The identity of disputes and parties shall be determined according to Serbian law.
4. A Serbian court shall, at the request of a party, continue the stayed proceedings if:
 - a) a foreign court has dismissed the action, or
 - b) a foreign court has stayed the proceedings, or
 - c) it appears to the Serbian court that the proceedings in the foreign court are unlikely to be concluded within a reasonable time, or
 - d) the recognition of a foreign decision in Serbia has been denied.
5. Any limitation periods pursuant to the applicable law shall not run during the stay of the proceeding.
6. The court of Serbia shall dismiss the claim and revoke the procedural actions already taken if the decision of the foreign court has been recognized in Serbia.

Stay of proceedings on related actions

Article 35

1. A Serbian court may stay the proceeding at the request of a party if a proceeding on a related action is pending before a foreign court, if:
 - a) it is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings;
 - b) the proceedings were first instituted before a foreign court;
 - c) the Serbian court does not have exclusive jurisdiction, and
 - d) it is to be expected that the foreign court will give a decision capable of recognition in Serbia.
2. The Serbian court may, at the request of a party, continue the stayed proceeding if:
 - a) it appears that there is no longer a risk of irreconcilable judgments, or
 - b) a foreign court has dismissed the action, or
 - c) a foreign court has stayed the proceedings, or
 - d) it appears to the Serbian court that the proceeding in the foreign court are unlikely to be concluded within a reasonable time or

- e) the recognition of a foreign decision in Serbia has been denied.
3. The Serbian court shall dismiss the claim and revoke the procedural actions already taken if the decision of the foreign court has been recognized in Serbia.

3. APPLICABLE LAW

Gap Filling

Article 36

If this Act does not include a provision on the applicable law concerning a particular private law relationship, other provisions in this Act or principles and rules of private international law shall apply.

Renvoi

Article 37

1. The law of a foreign State applies to the exclusion of its conflict-of-laws rules, unless provided otherwise in this Act or in another legislative Act of Serbia.
2. If the remission is allowed, it is deemed that the foreign conflict-of-laws rules refer back to the substantive law of Serbia.
3. If the transmission is allowed, it is deemed that foreign conflict-of-laws rules refer to the substantive law of the third State.

Non-unified legal systems

Article 38

1. If the law of a State whose legal system is not unified is applicable, the law of the legal unit within that State to which the conflict-of-laws rules of Serbia refer shall apply.
2. If the conflict-of-laws rules of Serbia do not refer to a particular legal unit of a State whose legal system is not unified, the legal unit of that State shall be determined by the rules in force in that State.

3. If a legal unit within a State whose legal system is not unified cannot be determined pursuant to paragraphs 1 and 2 of this Article, the law of the legal unit of that State that is the most closely connected shall apply.

General escape clause

Article 39

1. By way of exception, the law designated by this Act shall not apply if it appears manifestly from all the circumstances of the case that the matter has only a slight connection with the State whose law was designated but is more closely connected to another State.
2. If the requirements referred to in paragraph 1 of this Article are met, the law of the State with which the legal relationship is more closely connected shall apply.
3. The provision of paragraphs 1 and 2 of this Article shall not apply in case of the choice of applicable law or if the determination of applicable law is intended to produce a certain substantive result.

Determining the content of foreign law

Article 40

1. A court or other competent authority of Serbia shall on its own motion determine the content of a foreign applicable law.
2. A court or other competent authority of Serbia may request information on the content of a foreign law from the authority competent in the field of justice.³
3. A court or other competent authority of Serbia may request an expert opinion on the content of a foreign law or determine the content of a foreign law in any other suitable manner.
4. The parties may request the information from the authority competent in the field of justice or submit documents or expert opinions about the content of foreign law.

³ The authority competent in the field of justice is Ministry of Justice of the Republic of Serbia.

Certificate on the legislation of the Republic of Serbia

Article 41

1. A certificate on legislation that is in force or was in force in Serbia is issued for their use before the authorities of a foreign State, by the authority competent in the field of justice.
2. The certificate referred to in paragraph 1 of this Article shall specify the name of the piece of legislation, date when it was promulgated or when it ceased to be in force, and quote the literal wording of the relevant provisions from that piece of legislation.

Interpretation and application of the applicable law

Article 42

The provisions and notions of the applicable foreign law are to be interpreted and applied according to the meaning they have in the legal system to which they belong.

Public policy

Article 43

1. A provision of foreign law shall not apply if its effects would be manifestly contrary to the public policy of Serbia.
2. In applying paragraph 1 of this Article, special regard is to be had to the extent to which the situation is connected with the legal order of Serbia, and to the significance of the consequences that would be produced by application of the foreign law.
3. If a provision of a foreign law cannot be applied due to the violation of public policy, a relevant provision of the law of Serbia shall apply if needed.

Overriding mandatory provisions

Article 44

1. Overriding mandatory provisions of the law of Serbia shall apply to any situation falling within their scope, irrespective of the law otherwise applicable.

2. A court may apply or may give effect to the overriding mandatory provisions of another State with which the situation has a close connection.

3. In considering whether to apply or to give effect to the provisions referred to in paragraph 2 of this Article, the court shall have regard to their nature and purpose as well as the consequences of their application or non-application.

Formal validity of a legal transaction or a legal act

Article 45

Unless provided otherwise in this Act or in other legislative Act of Serbia, a legal transaction or a legal act is deemed valid as to its form if it is valid either according to the law of the State where a legal transaction was entered into or where the legal act was undertaken, or according to the law of the State applicable to the content of that legal transaction or legal act.

PART II
SPECIAL PART

CHAPTER I
STATUS RELATIONSHIPS

1. NATURAL PERSONS

A) LEGAL CAPACITY AND CAPACITY TO ACT

Jurisdiction

Article 46

1. A Serbian court shall have jurisdiction to determine the legal capacity and capacity to act of a natural person if it has jurisdiction to decide on the legal relationship giving rise to the issue of the legal capacity or capacity to act.
2. Otherwise, a Serbian court shall have jurisdiction to determine the legal capacity or capacity of a natural person to act if, at the time of instituting the proceedings, that person:
 - a) is a national of Serbia, or
 - b) is domiciled in Serbia, or
 - c) is habitually resident in Serbia.

Law applicable to legal capacity

Article 47

1. Legal capacity of a natural person shall be governed by the law of the State of which he/she is a national at the time of instituting the proceeding.
2. The application of the law referred to in paragraph 1 of this Article includes application of its conflict-of-laws rules.

Law applicable to capacity to act

Article 48

1. Capacity of a natural person to act shall be governed by the law of the State of which he/she is a national.
2. The application of the law referred to in paragraph 1 of this Article includes application of its conflict-of-laws rules.
3. A natural person who would lack capacity to act under the law of the State referred to in paragraphs 1 and 2 of this Article has the capacity to act if that person has such capacity under the law of the place where the obligation arose.
4. The provision of paragraph 3 of this Article shall not be applied to family and succession relations.
5. The capacity to act acquired by virtue of the law referred to in paragraphs 1 and 2 of this Article shall not be lost as a result of a change in nationality.
6. A special capacity to act shall be governed by the law applicable to the legal relationship giving rise to this issue.

Law applicable to the capacity of a natural person acting in the course of his business activity

Article 49

1. Capacity of a natural person acting in the course of his/her business activity without the status of a legal person shall be governed by the law of the State in which that person has been registered as a person acting in the course of his/her business activity.
2. If the registration is not necessary, the law of the State of the person's principal place of business shall apply.

B) DECLARATION OF DEATH OF A MISSING PERSON AND PROVING THE DEATH

Jurisdiction

Article 50

1. A Serbian court shall have jurisdiction concerning the declaration of death of a missing person and proving the death if, according to the latest news available during the person's lifetime, that person:
 - a) was a national of Serbia, or
 - b) was domiciled in Serbia, or
 - c) was habitually resident in Serbia.
2. A court of Serbia shall also have jurisdiction when the declaration of death of a missing person or proving the death is to produce legal consequences in the legal system of Serbia provided that it directly affects the applicant's legal interest.

Applicable law

Article 51

1. Declaration of death of a missing person shall be governed by the law of the State whose national that person was at the time of disappearance.
2. Serbian law is applicable if the missing person cannot be declared deceased pursuant the law referred to in paragraph 1 of this Article and a Serbian court has established its jurisdiction pursuant to Article 50 paragraph 2 of this Act.
3. Proving the death shall be governed by Serbian law.

Commorientes

Article 52

Where two or more persons die in circumstances under which it is uncertain in what order their deaths occurred and if different laws governing the legal relationship giving rise to this issue

provide differently for that situation or make no provisions whatsoever on that matter, then these persons shall be deemed to have died simultaneously.

C) DEPRIVATION OF CAPACITY TO ACT AND GUARDIANSHIP OVER ADULTS

Jurisdiction

Article 53

1. An authority of Serbia shall have jurisdiction to decide on the deprivation of capacity to act, including the restoration of capacity to act and the placement of an adult person under guardianship if, at the time of instituting the proceeding, the adult whose capacity is to be decided on or the ward has:
 - a) the nationality of Serbia, or
 - b) the domicile in Serbia, or
 - c) the habitual residence in Serbia.
2. The authority of Serbia shall also have jurisdiction over an adult person who is present in Serbia if his/her habitual residence cannot be determined or if the adult is a refugee or internationally displaced person due to disturbances occurring in the State of his/her habitual residence.
3. The authority of Serbia shall take the necessary provisional measures for the protection of personality, rights and interests of a foreign national who is present or has property in Serbia, and it shall inform accordingly the authority of the State of his/her nationality and the authority of the State of his/her his habitual residence.

Law applicable to the deprivation of capacity to act and to guardianship

Article 54

1. When deciding on the deprivation of the capacity to act and guardianship over adults, the court or authority of Serbia shall apply Serbian law.

2. Insofar as it is required for the protection of personality or the property of an adult person whose capacity to act is being decided upon or a ward, the court or authority of Serbia may exceptionally apply or give effect to the law of another State with which the situation has a close connection.

3. Necessary provisional measures for the protection of personality, rights and interests of a ward who is present in Serbia are governed by Serbian law.

4. Measures referred to in paragraph 3 of this Article cease when the authority of the State informed pursuant to Article 53 paragraph 3 in this Act renders the decision and takes necessary measures.

Law applicable to a legal transaction or a legal act in case of guardianship organized abroad

Article 55

If a guardian has to enter into a legal transaction or undertake a legal act in Serbia within powers conferred under the guardianship organized abroad, the conditions for entering into that transaction or undertaking that act as envisaged under Serbian law have to be met.

Law applicable to the representation of adults

Article 56

1. Depending on the choice made by an adult, the existence, extent, modification and extinction of powers of representation granted by an adult to be exercised when that adult is deprived of his/her capacity to act is governed by:

- a) the law of the State of which the adult is a national at the time of choice, or
- b) the law of the State of habitual residence of the adult at the time of choice, or
- c) the law of the State where the property of the adult is located at the time of choice, if the representation relates to that property.

2. The choice of the applicable law referred to in paragraph 1 of this Article must be designated expressly in writing.

3. If the applicable law has not been chosen, the existence, extent, modification and extinction of powers of representation are governed by the law of the State of the adult's habitual residence at the time of granting the powers of representation.

4. The manner of exercising the powers of representation shall be governed by the law of the State in which they are exercised.

D) PERSONAL NAME

Jurisdiction

Article 57

1. The authority of Serbia shall have jurisdiction to enter the personal name of the child in the civil registry if the child is born or found in Serbia, or one of the parents is a national of Serbia at the time of instituting the proceeding, or the child is born in a means of transport and the mother's travel ends in Serbia.

2. The authority of Serbia shall have jurisdiction to decide upon the parents' request on the change of the child's personal name irrespective of his/her family status changes if the child is a national of Serbia or was born in Serbia and is habitually resident in Serbia at the time of the submission of the request.

3. The authority of Serbia shall have jurisdiction to decide on the change of a surname following marital or family status changes if, at the time of the submission of the request or at the time of giving the statement, the person concerned is a national of Serbia or is habitually resident in Serbia, or if the authority of Serbia has jurisdiction to conduct the marriage ceremony.

4. The authority of Serbia shall have jurisdiction to decide on the request for the change of personal name irrespective of the marital or family status changes if the person concerned is a national of Serbia or is habitually resident in Serbia for a period of no less than five years prior to the submission of request.

Law applicable to the determination and change of a child's personal name

Article 58

1. The determination of a child's personal name shall be governed by the law of the State whose national the child is at the time of instituting the proceeding for entry in the registry, or by the law of Serbia, depending on the choice made by the parents.
2. If the parents cannot agree upon the personal name of their child or have not decided on the child's name within the time-limit set by the law, or if the parents are unknown or deceased, the child's personal name shall be determined by the guardianship authority⁴ in accordance with the law of the State of the child's nationality or Serbian law.
3. The change of the child's personal name shall be governed by the law of the State whose national the child is at the time of the submission of the request or Serbian law, depending on the choice made by the parents.
4. If the child has two or more nationalities and the applicable law governing the determination or the change of the child's personal name is the law of the State of the child's nationality, the parents or the guardianship authority may choose the law of any of these States and the paragraphs 2 and 3 of Article 8 of this Act shall not apply.

Law applicable to the change of surname following marital or family status changes

Article 59

1. The applicable law governing the change of surname following the marital or family status changes shall be as follows:
 - a) in case of celebration of marriage, depending on the choice made by the spouses, the applicable law is the law of the State whose national one of the spouses is at the time of celebration of marriage, or Serbian law if one of them is habitually resident in Serbia at the time of celebration of marriage;
 - b) following divorce, depending on the choice made by a former spouse, the applicable law is the law of the State of that spouse's nationality at the time of divorce, or the law of

⁴ A guardianship authority is a Social Welfare Center.

Serbia if that spouse is habitually resident in Serbia at the time of giving the statement on the change of surname;

c) paragraph 2 of this Article applies correspondingly in case of changing a surname after the annulment of marriage or its termination through the death of a spouse;

d) after paternity or maternity has been established or contested, depending on the choice made by the child or the parents, the applicable law is the law of the State of the child's nationality, or the law of Serbia if the child is habitually resident in Serbia at the time of the submission of the claim;

e) following adoption, the applicable law is the law governing the effects of adoption;

f) following annulment of an adoption, the applicable law is the law of the State where the adoption was established.

2. In cases regulated by paragraph 1 of this Article, if the person concerned has two or more nationalities, the law of any of these States may be chosen as applicable and the paragraphs 2 and 3 of Article 8 of this Act shall not apply.

Law applicable to the change of personal name irrespective of marital or family status changes

Article 60

The change of personal name irrespective of the marital or family status changes in the proceeding instituted before the authority of Serbia shall be governed by Serbian law.

Recognition of foreign decisions concerning a change of a surname or personal name of a Serbian national

Article 61

1. The change of surname of a Serbian national made abroad following the change of marital or family status shall be recognized in Serbia if the foreign decision on the basis of which the change was made is recognized and if the decision on the change of personal name is not manifestly contrary to public policy of Serbia.

2. The change of personal name of a Serbian national made abroad irrespective of the marital or family status changes shall be recognized in Serbia if the person concerned, at the time when the personal name was changed, was habitually resident in the State where the change was made for a period no less than five years, provided that the conditions for such a change as envisaged under Serbian law have been met.

Protection of the right to personal name

Article 62

Articles 165 to 166 of this Act shall apply to the protection of the right to personal name.

2. LEGAL PERSONS AND ORGANIZATIONS WITHOUT LEGAL PERSONALITY

Jurisdiction

Article 63

1. A Serbian court shall have exclusive jurisdiction in disputes concerning the validity and nullity of establishment, or the dissolution of a legal person or an organization without legal personality, or the validity of the decisions of its bodies, provided that the legal person or the organization without legal personality has its seat in Serbia.
2. In the proceedings concerning other issues referred to in Article 65 of this Act, the jurisdiction of a Serbian court shall be determined pursuant to Articles 13 or 18 of this Act.

Applicable law

Article 64

1. Legal persons and organizations without legal personality shall be governed by the law of the State in which they have been entered in the public register.
2. A legal person which is still not registered, or an organization without legal personality which is still not registered or whose registration in the public register is not required, shall be governed by the law of the State under whose law it was organized.

Scope of the applicable law

Article 65

The law applicable pursuant to Article 64 of this Act shall apply in particular to:

- a) legal nature, the legal capacity and the capacity of legal persons or organization without legal personality to act;
- b) its establishment, legal form, and dissolution;
- d) name and sign;
- e) internal organization;
- f) powers of representative of a legal person or organization without legal personality,
- g) acquisition and loss of membership, and the exercise of rights and obligations related to the membership,
- h) liability of a legal person or organization without legal personality, its members and the members of its bodies for the obligations of legal person or organization without legal personality,
- i) liability for the violation of obligations laid down in its statute or in the law governing the status of the legal person or organization without legal personality,
- j) capacity to be a party and capacity to act independently in civil proceedings.

Status changes

Article 66

1. Mergers and other status changes of legal persons or organizations without legal personality shall be governed by the laws of the States in which they were registered or established or organized.
2. The time of termination of a status change shall be determined according to the law applicable pursuant to Article 64 of this Act to the legal person or organization without legal personality resulting from the status change.

CHAPTER II

FAMILY LAW

1. MARRIAGE AND COHABITATION

A) CELEBRATION OF MARRIAGE

Jurisdiction to conduct the marriage ceremony

Article 67

An authority of Serbia shall have jurisdiction to conduct the marriage ceremony if one of the prospective spouses is a national of Serbia, or if both of them are foreign nationals having their residence in Serbia in accordance to the legislative Act regulating the residence of foreigners.

Jurisdiction for granting permission for celebration of marriage

Article 68

A Serbian court shall have jurisdiction for granting permission for celebration of marriage if the applicant or applicants are nationals of Serbia, or if they are habitually resident in Serbia at time of the submission of application.

Law applicable to celebration of marriage

Article 69

1. As regards the conditions for celebration of marriage, the governing law for each prospective spouse shall be the law of the State whose national that person is at the time of marriage.
2. The formal validity of marriage, including the possibility of celebration of marriage by proxy shall be governed by the law of the State on whose territory the marriage is celebrated.

3. Material and formal validity of the proxy's authorization referred to in paragraph 2 of this Article shall be governed by the law of the State on the territory of which the marriage is celebrated.

Law applicable to granting permission for celebration of marriage

Article 70

A grant of permission to celebrate marriage shall be governed by the law of the State of the applicant's nationality at the time of submission of the application.

Recognition of marriages concluded abroad

Article 71

A marriage that is validly celebrated abroad shall be recognized in Serbia if it is not manifestly contrary to the public policy of Serbia.

Consular marriages

Article 72

1. The nationals of Serbia may celebrate marriage abroad with each other before the authorized consular office or diplomatic office of Serbia rendering consular services, provided that the receiving State does not object.
2. A marriage celebrated by a national of Serbia before the authorized consular office or diplomatic office of the foreign State situated in Serbia is null and void.
3. The marriage between a Serbian national and a national of the receiving State is null and void if it is celebrated before the authorized consular office or diplomatic office of Serbia in the receiving State.

B) EFFECTS OF MARRIAGE

1. PERSONAL EFFECTS

Jurisdiction

Article 73

A Serbian court shall have jurisdiction in disputes concerning the personal effects of marriage pursuant to Article 78 paragraph 1 of this Act.

Choice of the applicable law

Article 74

1. The spouses may choose, prior to or during their marriage, as the applicable law to personal effects of marriage, the law of the State of their common nationality or the law of the State where they have common habitual residence at the time of choice.
2. If one of the spouses has two or more nationalities at the time of the choice, the spouses may choose the law of the State of their common nationality and the paragraphs 2 and 3 of Article 8 of this Act shall not apply.
3. Formal validity of the agreement on the choice of applicable law shall be governed by the law referred to in Article 80 of this Act.

Applicable law in the absence of choice

Article 75

To the extent that the applicable law has not been chosen by the spouses, the personal effects of marriage shall be governed by:

- a) the law of the State of their common nationality; or failing that
- b) the law of the State where the spouses have their common habitual residence; or failing that
- c) Serbian law.

2. MATRIMONIAL PROPERTY REGIME

Jurisdiction in the event of death of one of the spouses

Article 76

A Serbian court shall have jurisdiction to rule on matters concerning the matrimonial property regime arising in connection with the termination of marriage due to a death of one spouse if the Serbian court has jurisdiction in matters of the succession of the deceased spouse, pursuant to Article 114 of this Act.

Jurisdiction in cases of divorce or marriage annulment

Article 77

A Serbian court which has jurisdiction to rule on matters concerning the divorce or marriage annulment pursuant to Article 88 of this Act shall also have jurisdiction to rule on matters of the matrimonial property regime if the spouses have expressly consented to such jurisdiction or have otherwise given their consent in an unequivocal manner.

Jurisdiction in other events

Article 78

1. In cases other than those provided for in Articles 76 and 77 of this Act, a Serbian court shall have jurisdiction in disputes concerning the matrimonial property regime if:
 - a) the spouses have habitual residence in Serbia at the time of instituting the proceedings; or
 - b) the spouses had last common habitual residence in Serbia, if one of them still resides there at the time of instituting the proceedings; or
 - c) the spouses are the nationals of Serbia at the time of instituting the proceedings, or
 - d) the property which is the subject matter of the claim is located in Serbia.

2. If the spouses have chosen the law of Serbia as the law applicable to their matrimonial property regime, they may also agree that a Serbian court shall have jurisdiction to rule on matters of their matrimonial property regime.

3. If the law applicable to the matrimonial regime has not be chosen, spouses may agree that a Serbian court shall have jurisdiction to rule on matters of their matrimonial property regime provided that Serbian law would be applicable pursuant to Article 81 of this Act.

4. The agreement referred to in paragraphs 2 and 3 of this Article must be drawn up in accordance with Article 27 of this Act, except that paragraphs 1(b) and (c) shall not apply.

Choice and change of applicable law

Article 79

1. The spouses or prospective spouses may agree to choose the law of the State where one of them is habitually resident or of which one of them is a national at the time the choice is made, as applicable to their matrimonial property regime.

2. The spouses or prospective spouses may change their previous choice by designating another applicable law among those referred to in paragraph 1 of this Article.

3. Unless the spouses agree otherwise, a change of the law applicable to the matrimonial property regime made during the marriage shall be effective only in the future.

4. If the spouses choose to make this change of applicable law retrospective, the retrospective effect may not affect the validity of previous transactions entered into under the law applicable hitherto or the rights of third parties deriving from the law previously applicable.

Form of agreement on the choice of applicable law

Article 80

1. Agreement on the choice of applicable law must be expressed in writing, dated and signed by both spouses.

2. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing referred to in paragraph 1 of this Article.

3. The agreement shall comply with the formal requirements of the law applicable to the matrimonial property regime or of the law of the State in which the agreement was concluded.

4. If the law of the State in which both spouses had their habitual residence at the time when the choice of the applicable law was made provides for additional formal requirements for this type of choice, these requirements shall apply.

5. If the spouses are habitually resident in different States at the time when the choice of applicable law was made and the laws of those States provide for different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

Applicable law in the absence of a choice

Article 81

To the extent that the applicable law has not been chosen by the spouses, the matrimonial property regime shall be governed by:

- a) the law of the State of the spouses' common habitual residence at the time of celebration of their marriage; or failing that
- b) the law of the State of the spouses' first common habitual residence after the celebration of their marriage; or failing that
- c) the law of the State of the spouses' common nationality at the time of celebration of their marriage; or failing that,
- d) the law of the State with which the spouses jointly have the closest connection, having regard to all the circumstances.

Form of marriage contract

Article 82

The form of a marriage contract shall be governed by the law referred to in Article 80 of this Act.

Scope of the applicable law

Article 83

The law applicable to a matrimonial property regime shall apply in particular to:

- a) determining the matrimonial property regime in respect of the spouses' property acquired before and during marriage;
- b) the transfer of property from one regime to another;
- c) liability for the spouse's debts;
- d) the spouses' rights of disposal during marriage;
- e) dissolving the matrimonial property regime and division of property;
- f) the impact of the matrimonial property regime on a legal relationship between one of the spouses and a third party on the basis of Article 85 of this Act;
- g) the admissibility of contracts, gifts on the occasion of marriage and gifts between the spouses, including the annulment of these transactions.

Adaptation of unknown rights in rem

Article 84

Where a person invokes in Serbia a right *in rem* to which that person is entitled to under the law applicable to the matrimonial property regime, and the law of Serbia does not recognize the right *in rem* in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right *in rem* recognized by Serbian law, taking into account its aims, effects and functions attached to it.

Effects in respect of third parties

Article 85

1. The effects of the matrimonial property regime on a legal relationship between a spouse and a third party shall be governed by the law applicable to matrimonial property regime.
2. Notwithstanding paragraph 1 of this Article, where a spouse and a third person had the habitual residence in the same State at the time of establishing the legal relationship, the law of that State shall apply.

C) PROPERTY CONSEQUENCES OF COHABITATION

Jurisdiction

Article 86

1. A Serbian court shall have jurisdiction to rule on matters of the property consequences of the registered and unregistered cohabitation:
 - a) during the existence of the cohabitation or in cases of dissolution, pursuant to Article 78 of this Act;
 - b) in the event of death of one of the cohabitants, pursuant to Article 76 of this Act.
2. If the cohabitants have chosen the law of Serbia as the applicable law or this law is applicable in the absence of a choice, they may also agree on the jurisdiction of a Serbian court.

Applicable law

Article 87

1. Property consequences of unregistered cohabitation shall be governed correspondingly by the applicable law referred to in Articles 79 to 85 of this Act.
2. Property consequences of registered cohabitation shall be governed correspondingly by the applicable law referred to in Articles 79 to 85 of this Act.
3. Besides the law referred to in Article 79 of this Act, the cohabitants may also agree to choose the law of a State in which the cohabitation is registered.
4. If the chosen law does not recognize the institution of registered cohabitation, the applicable law shall be determined in accordance with Article 81 of this Act.
5. If the law applicable pursuant to Article 81 of this Act does not recognize the institution of registered cohabitation, the law of a State in which the cohabitation is registered shall apply.
6. If the cohabitation is registered in different States, the law of the State where the cohabitation was most recently registered shall apply.

D) TERMINATION OF MARRIAGE

Jurisdiction in matrimonial disputes

Article 88

A Serbian court shall have jurisdiction in matrimonial disputes⁵ if:

- a) the spouses have habitual residence in Serbia at the time of instituting the proceedings, or
- b) the spouses were last habitually resident in Serbia, insofar as one of them still resides there at the time of instituting the proceedings, or
- c) in the event of a joint application, either of the spouses is habitually resident in Serbia at the time of instituting the proceedings, or
- d) the plaintiff has had habitual residence in Serbia for at least a year immediately before the proceedings were instituted, or
- e) the plaintiff who is a national of Serbia has been habitually resident in Serbia for at least six months immediately before the proceedings were instituted, or
- f) both spouses have Serbian nationality at the time of instituting the proceedings.

Law applicable to marriage annulment

Article 89

The annulment of a marriage shall be governed by the law according to which the marriage was celebrated.

Choice of law applicable to divorce

Article 90

1. The spouses may agree to choose the law applicable to a divorce provided that it is one of the following laws:
 - a) the law of the State where the spouses are habitually resident at the time the choice is made; or

⁵ According to the 2005 Family Act of the Republic of Serbia, 'matrimonial disputes' include proceedings for determining the existence or nonexistence of a marriage, as well as for the annulment and divorce of a marriage (Article 210).

- b) the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the choice is made; or
 - c) the law of the State of nationality of either spouse at the time the choice is made; or
 - d) the law of Serbia.
2. An agreement referred to in paragraph 1 of this Article may be concluded or modified at any time, but at the latest at the time the court is seised in the divorce proceedings.

Material validity of the agreement on the choice of applicable law

Article 91

The existence and validity of an agreement on choice of law or of any term thereof shall be determined by the law which would govern it under this Act if the agreement or term were valid.

Formal validity of the agreement on the choice of applicable law

Article 92

1. The agreement on the choice of applicable law must be expressed in writing, dated and signed by both spouses.
2. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing referred to in paragraph 1 of this Article.
3. If the law of the State in which both spouses have their habitual residence at the time the agreement is concluded lays down additional formal requirements for this type of agreement, those requirements shall apply.
4. If the spouses are habitually resident in different States at the time the agreement is concluded and the laws of those States provide for different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

Law applicable in the absence of choice

Article 93

In case the law applicable to divorce has not been chosen pursuant to Article 90 of this Act, divorce shall be subject to:

- a) the law of the State where the spouses are habitually resident at the time of instituting the proceedings; or failing that
- b) the law of the State where the spouses were last habitually resident, provided that the period of residence lasted at least 1 year before the proceeding was instituted, insofar as one of the spouses still resides in that State at the time of instituting the proceedings; or failing that
- c) the law of the State of which both spouses are nationals at the time of instituting the proceeding; or failing that
- d) Serbian law.

Application of the law of the Republic of Serbia

Article 94

Where the law applicable pursuant to Articles 90 and 93 of this Act makes no provision for divorce or does not grant one of the spouses' equal access to divorce thus giving rise to discrimination, Serbian law shall apply.

2. PATERNITY AND MATERNITY

Jurisdiction

Article 95

1. A Serbian court shall have jurisdiction in disputes for establishing or contesting maternity or paternity if at the time of instituting the proceeding:

- a) the child is habitually resident in Serbia; or
- b) the person whose maternity or paternity is established or contested is habitually resident in Serbia; or
- c) the child and the person whose paternity or maternity is established or contested have Serbian nationality.

2. Paragraph 1 of this Article also applies to the establishment of paternity by acknowledgment.
3. For the purpose of applying paragraph 2 of this Article, the relevant point in time shall be the time of the declaration of acknowledgment.

Applicable law

Article 96

1. The establishment and contestation of maternity or paternity shall be governed by:
 - a) the law of the State of the child's habitual residence, or
 - b) provided that it is in the child's best interest:
 - the law of the State of child's nationality, or
 - the law of the State of the habitual residence or nationality of the person whose paternity or maternity is established.
2. For the purpose of application of paragraph 1 of this Article, the relevant point in time shall be the time of instituting the proceedings.
3. Establishment of paternity by acknowledgment shall be governed by the law of the State of the competent authority before which the declaration of acknowledgment is given, or, provided that it is in the best interest of the child, the law of the State of habitual residence or nationality of the person giving the declaration of acknowledgment.
4. For the purpose of applying paragraph 3 of this Article, the relevant point in time shall be the time of the acknowledgment of paternity.
5. Nullity of acknowledgment shall be governed by the law of the State which was applied to the declaration of acknowledgment.
6. The formal requirements for the acknowledgment shall be governed by the law of the State on the territory of which the declaration is given.

Scope of the applicable law

Article 97

The law applicable pursuant to Article 96 of this Act shall apply in particular to:

- a) persons authorized to bring a lawsuit,

- b) persons who can be sued,
- c) the burden of proof,
- d) the time limits,
- e) the consent of the child, of the mother, or of the competent authority.

3. ADOPTION

Jurisdiction

Article 98

1. An authority of Serbia shall have jurisdiction to decide on establishing adoption if the prospective adoptee is a national of Serbia or is habitually resident in Serbia at the time of instituting the adoption proceedings.
2. A Serbian court shall have jurisdiction to rule on annulment of an adoption if the adoption was established by the decision of the authority of Serbia, or if the adoptee is habitually resident in Serbia at the time of instituting the annulment proceedings.

Law applicable to requirements and form for establishing adoption

Article 99

1. Requirements for establishing adoption for the prospective adopter shall be governed by the law of the State of his/her habitual residence at the time of the submission of request for adoption.
2. In case of a joint adoption by the spouses or cohabitants, the applicable law shall be the law of the State where the spouses have common habitual residence at the time of the submission of request for adoption.
3. In case of a change in the habitual residence of the prospective adopter or adopters after the submission of request for establishing adoption, the applicable law shall be the law of the State of the new habitual residence.

4. Requirements for establishing adoption regarding the prospective adoptee and the requirements regarding the relationship between the adoptee and the prospective adopters shall be governed by the law of the State of the adoptee's habitual residence at the time of the submission of request for adoption.

5. The formal requirements for the adoption shall be governed by the law of the State in which the adoption is being established.

Law applicable to the effects of adoption

Article 100

Effects of adoption shall be governed by the law referred to in Article 99 paragraphs 1 to 3 of this Act.

Law applicable to the annulment of adoption

Article 101

1. Depending on the specific grounds for annulment, annulment of an adoption shall be governed by the law referred to in Article 99 paragraphs 1 to 5 of this Act.

2. The effects of the annulment of an adoption shall be governed by the law of the State in which the adoption was established.

Conversion of adoption

Article 102

An adoption established abroad may be converted into an adoption in Serbia, upon request by the adopter before the competent guardianship authority in Serbia, if:

- a) the adoptee is a minor according to the applicable law at the time of the submission of request for conversion,
- b) the foreign decision on adoption has been recognized by the Serbian court,
- c) the consent of all persons whose consent to the establishment of adoption for the purpose of such an adoption is required in the given case pursuant to the law of the State in which the adoption was established and Serbian law has been given, and

d) the conversion is in the best interests of the adoptee.

Recognition of an adoption established abroad

Article 103

A Serbian court shall recognize a foreign decision on adoption if it was rendered in the State of the adoptee's habitual residence or in the State of adoptee's nationality at the time of instituting the proceedings for establishing adoption, provided that the decision is not manifestly contrary to the public policy of Serbia particularly taking into account the best interest of the adoptee.

4. PARENTAL RESPONSIBILITY AND THE PROTECTION OF CHILDREN

Jurisdiction

Article 104

1. A court or other authority of Serbia shall have jurisdiction to rule on proceedings on the exercise or deprivation of parental responsibility as well as in other proceedings referred to in Article 106 of this Act, provided that:

- a) the child is habitually resident in Serbia at the time of instituting the proceeding;
- b) the dispute over parental responsibility is ancillary to the proceeding in a marital dispute, or to the proceeding in maternity or paternity dispute, or to the proceeding in a dispute over the protection of the child's rights, already pending before the competent Serbian court;
- c) if the child whose habitual residence cannot be established, or the child who is a refugee or internationally displaced person due to disturbances occurring in his/her State, is present in Serbia at the time of instituting the proceeding.

2. Paragraph 1 of this Article also applies to the jurisdiction of a Serbian court in the proceeding in a dispute over the protection of child's rights.

3. The authority of Serbia shall have jurisdiction to take the necessary provisional measures for the protection of personality, rights and interests of a minor who is foreign national if the minor is present or has property in Serbia, and it shall inform accordingly the authority of the State whose national that child is and the authority of the State in which that child has habitual residence.

Applicable law

Article 105

1. When deciding on the parental responsibility and other issues referred to in Article 106 of this Act, the court or other authority of Serbia shall apply Serbian law.
2. Insofar as the protection of the personality or the property of the child requires, the court or other authority of Serbia may exceptionally apply or give effect to the law of another State with which the situation has a close connection.
3. The necessary provisional measures referred to in Article 104 paragraph 3 of this Act cease when the authority of the State which has been notified accordingly renders the decision and takes the necessary measures.

Scope of the applicable law

Article 106

The law applicable pursuant to Article 105 of this Act shall apply in particular to:

- a) guardianship,
- b) joint or sole exercise of parental responsibility,
- c) partial or complete deprivation of the parental responsibility,
- d) restoration of parental responsibility,
- e) prolongation of parental responsibility,
- f) termination of parental responsibility,
- g) supervision over the exercise of parental responsibility,
- h) rights of the child,
- i) rights of access,
- j) protection, raising, upbringing and education of the child,
- k) child representation,
- l) management and disposal of the child's property,
- m) parents' liability for damage caused to the child's property or for damage caused by the child to third parties,

n) foster care.

If the ratification of the 1996 Hague Children Protection Convention takes place before this Act enters into force, the Working Group has agreed (at the meeting in Orašac on 22 June 2014) that the provisions on the applicable law are to be deleted (while Article 104 should remain the same).

Thus, the referral to this Convention in Article 105 „Applicable law“ is to read as follows:

„The applicable law governing the parental responsibility and the protection of the child shall be determined pursuant to the provisions of the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, adopted in the Hague on 19 October 1996 („Official Gazette – Supplement International Treaties “ No...).“

5. MAINTENANCE OBLIGATIONS

Jurisdiction

Article 107

A Serbian court shall have jurisdiction to rule in disputes concerning maintenance obligations:

- a) if the creditor is habitually resident in Serbia, or
- b) if the maintenance dispute is ancillary to the proceeding in a marital dispute, or to the proceeding on maternity or paternity dispute, or to the proceedings on dispute over parental responsibility, or to the proceedings on protection of the child’s rights, already pending before the Serbian court.

Choice of a court of the Republic of Serbia

Article 108

1. The parties may agree that the Serbian court shall have jurisdiction to settle any dispute in matters relating to a maintenance obligation which have arisen or may arise between them if:
 - a) one of the parties is habitually resident in Serbia, or
 - b) one of the parties has the nationality of Serbia, or
 - c) in cases of maintenance obligations between spouses or former spouses:

- the Serbian court has decided on their matrimonial dispute, or
 - the spouses had their last common habitual residence in Serbia for a period no less than one year.
2. The condition referred to in paragraph 1 of this Article has to be met at the time the choice of court agreement is concluded or at the time of the submission of the claim to the court.
 3. A choice of court agreement must be designated in writing, dated and signed by both parties.
 4. The provisions of this Article shall not apply to a dispute relating to a maintenance obligation towards a child under the age of 18.

Jurisdiction based on the common nationality of the parties

Article 109

Where no Serbian court has jurisdiction pursuant to Articles 107 and 108 of this Act, the Serbian court shall have jurisdiction, provided that both parties have Serbian nationality.

Applicable law

Article 110

The law applicable to maintenance obligations shall be determined in accordance with the 2007 Protocol on the Law Applicable to Maintenance Obligations („Official Gazette of the Republic of Serbia – Supplement International Treaties“, No 1/2013).

6. CIVIL PROTECTION AGAINST DOMESTIC VIOLENCE

Jurisdiction

Article 111

A Serbian court shall have jurisdiction to decide in a dispute on protection against domestic violence:

- a) if a family member who has been subject to domestic violence is domiciled or habitually resident in Serbia, or if he/she is present in the territory of Serbia at the time of the submission of the claim, or
- b) if the proceeding in a marital dispute or the proceeding in a paternity or maternity dispute or the proceedings in a dispute on the protection of the rights of the child or the proceeding in a dispute on the exercise or deprivation of parental responsibility is already pending before the competent Serbian court.

Applicable law

Article 112

The civil protection against domestic violence shall be governed by the law of Serbia in the proceeding instituted before the Serbian court.

Recognition and enforcement

Article 113

1. The Serbian court shall recognize a foreign judgment on a protection measure against domestic violence, including interim measures and measures rendered by default (due to the defendants' failure to appear) and Article 185 of this Act shall not apply.
2. The foreign judgment referred to in paragraph 1 of this Article shall be provided with a certified translation into the official language of the court.

3. The Serbian court shall decide on the application for the recognition of a foreign judgment in non-litigious proceedings, without a hearing, within a period of two days from the application submission date.
4. If a foreign protection measure referred to in paragraph 1 of this Article is unknown under Serbian law, the Serbian court shall adjust it in the recognition proceedings to the most similar domestic protection measure against domestic violence taking into account its purpose, functions and effects.
5. The Serbian court may refuse to recognize a foreign protection measure if the person against whom the foreign judgment has been rendered proves in the appeal proceedings that the measure is manifestly contrary to the public policy of Serbia.
6. The appeal does not suspend the enforcement of the decision on recognition.
7. All other issues concerning the recognition and enforcement of the judgment referred to in paragraph 1 of this Article shall be governed by the relevant provisions of Part III of this Act.

CHAPTER III SUCCESSION

Jurisdiction

Article 114

1. A Serbian court shall have jurisdiction to rule on the succession as a whole if the deceased had his/her domicile or habitual residence in Serbia at the time of death and Article 18 of this Act shall not apply.
2. Where the requirements referred to in paragraph 1 of this Article are not fulfilled, the Serbian court shall nevertheless have jurisdiction to rule on the succession as a whole in so far as the deceased had Serbian nationality at the time of death and if a part of the assets of the estate is located in Serbia.
3. Where no Serbian court has jurisdiction pursuant to paragraphs 1 and 2 of this Article, the Serbian court shall nevertheless have jurisdiction to rule on the assets located in Serbia.
4. The provisions of paragraphs 1 to 3 of this Article also apply to jurisdiction in disputes arising from succession relations and in disputes concerning the disposition of the estate *inter vivos*.

Limitation of proceedings

Article 115

Where the estate of the deceased comprises assets located abroad, the Serbian court that has jurisdiction to decide on the succession pursuant to Article 114 of this Act may, on request by one of the parties, decide not to rule on one or more of such assets.

Choice of applicable law

Article 116

1. A person may choose as the law to govern his/her succession as a whole the law of the State whose nationality he/she possesses at the time of making the choice.

2. A person having multiple nationalities may choose the law of any of the States whose nationality he/she possesses at the time of making the choice and the paragraphs 2 and 3 of Article 8 of this Act shall not apply.
3. The choice of the applicable law shall be made expressly in the form of a disposition of property upon death.
4. The existence and the material validity of the choice of applicable law shall be governed by the chosen law.
5. Paragraphs 1 to 4 of this Article also apply to any modification or revocation of the previously chosen applicable law.

Applicable law in the absence of choice

Article 117

1. To the extent that the applicable law has not been chosen, the succession as a whole shall be governed by law of the State in which the deceased had his/her habitual residence at the time of death.
2. Where it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable pursuant to paragraph 1 of this Article, then the law applicable to the succession shall be the law of that other State.
3. If a foreign law is applicable pursuant to paragraph 1 of this Article, its conflict-of-laws rules apply insofar as they refer back to the law of Serbia.

Law applicable to a Will

Article 118

1. Material validity and interpretation of a Will shall be governed by the law which under this Act would have been applicable to the succession of the testator who made the disposition if he/she had died on the day on which the disposition was made.

2. Notwithstanding paragraph 1 of this Article, a testator may choose the law governing his/her Will, as regards its material validity and interpretation in accordance with Article 116 of this Act.
3. Paragraphs 1 and 2 of this Article also apply to the modification or revocation of a former Will.
4. A Will and its revocation shall be valid in terms of form if they are valid according to:
 - a) one of the laws provided in the Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (“Official Gazette FPRY – Supplement International Treaties and Other Agreements” No 10/62), or
 - b) Serbian law.

Law applicable to the capacity to make a Will

Article 119

1. The capacity to make a Will shall be governed by:
 - a) the law of the State where the testator was habitually resident at the time of making the Will, or
 - b) the law of the State whose nationality the testator had at the time of making the Will.
2. A subsequent change of the applicable law shall not affect capacity to make a Will which is already acquired.

Disposition of the estate inter vivos

Article 120

1. The material validity, interpretation, effects and the termination of legal transactions concerning dispositions of the estate *inter vivos* shall be governed by the law of the State where the person who disposes of his/her property is habitually resident at the time of entering into the legal transaction.
2. The contracting parties may agree to choose the applicable law pursuant to Article 116 of this Act.
3. The formal validity of legal transactions disposing of the estate *inter vivos* shall be governed by the law referred to in Article 159 of this Act.

4. The validity, interpretation, effects and the termination of the lifetime maintenance agreement concluded before the competent authority of Serbia shall be governed by the law of Serbia, provided that the agreement concurrently includes the property located in Serbia, or that the maintenance creditor is habitually resident in Serbia at the time of the conclusion of agreement.

5. If the law of Serbia is applicable to succession, a legal transaction validly entered into abroad shall be regarded as a lifetime maintenance agreement, provided that the requirements for its formal and material validity are equivalent to those attached to the lifetime maintenance agreement regulated by the legislative Act of Serbia.

6. Paragraphs 4 and 5 of this Article apply correspondingly to the contract on the assignment and the disposition of property during one's lifetime.

Scope of the applicable law

Article 121

The law governing succession shall apply in particular to:

- a) grounds for invoking succession, time and place of opening a succession;
- b) the transfer of estate to heirs;
- c) the persons that may be entitled to inherit and the order of intestate succession;
- d) the size of hereditary portions;
- e) the capacity to inherit and the worthiness to inherit;
- f) disinheritance, deprivation of the reserved part and renouncing the inheritance;
- g) powers of co-heirs to dispose of the estate and the division of the estate;
- h) liability for debts incurred by the deceased;
- i) status of the estate without a claimant (*bona vacantia*);
- j) freedom of disposition and forms of disposition in case of death;
- k) persons that may be universal and singular successors;
- l) compulsory successors and the size of their portions;
- m) determination of the executor of the Will;
- n) determination of the administrator of the estate;
- o) accounting for gifts and legacies when determining the hereditary shares and reserved portions (*collatio bonorum*);

p) transfer of the estate.

Estate without a claimant (bona vacantia)

Article 122

To the extent that, under the law applicable to the succession pursuant to this Act there are no testamentary heirs or heirs by operation of law, Serbia is entitled to appropriate the assets of the estate located on its territory.

CHAPTER IV
PROPERTY RELATIONS (RIGHTS *IN REM*)

Characterization of things

Article 123

A thing shall be characterized as a movable or an immovable according to the law of the State where that thing is located.

Jurisdiction

Article 124

1. A Serbian court shall have exclusive jurisdiction in proceedings which have as their object rights *in rem* in respect of an immovable property or a tenancies of immovable property, if the immovable property is situated in Serbia.
2. Notwithstanding paragraph 1 of this Article, a Serbian court shall not have exclusive jurisdiction in proceedings which have as their object tenancies of immovable property situated in Serbia concluded for temporary private use for a maximum period of six consecutive months, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same foreign State.
3. The jurisdiction of a Serbian court is excluded for the proceedings referred to in paragraph 1 of this Article if the immovable property is situated abroad.
4. Notwithstanding paragraph 3 of this Article, a Serbian court shall have jurisdiction in proceedings which have as their object tenancies of immovable property situated abroad concluded for temporary private use for a maximum period of six consecutive months, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in Serbia.
5. A Serbian court shall also have jurisdiction in proceedings which have as their object rights *in rem* in respect of movable property if the property is located in Serbia at the time of instituting the proceeding.

6. A Serbian court shall have jurisdiction in proceedings on revindication of movable cultural objects if it is located in Serbia at the time of instituting the proceeding.

Jurisdiction in disputes on the right in rem in respect of a ship/vessel and an aircraft

Article 125

1. A Serbian court shall also have jurisdiction in disputes on the rights *in rem* in respect of a ship/vessel, including disputes on lease of ship/vessel, provided that the register in which the ship/vessel was entered is kept in Serbia.
2. A Serbian court shall also have jurisdiction in disputes on the rights *in rem* in respect of an aircraft, including disputes on lease of aircraft, provided that the register in which the aircraft was entered is kept in Serbia.

Law applicable to rights in rem in respect of an immovable property

Article 126

Rights *in rem* in respect of an immovable property shall be governed by the law of the State where that property is situated.

Law applicable to contracts relating to rights in rem in respect of an immovable property and a tenancy of immovable property

Article 127

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 145 of this Act, the contracts relating to rights *in rem* in respect of an immovable property or a tenancy of immovable property shall be governed by the law of the State where that property is situated.
2. Notwithstanding paragraph 1 of this Article, a tenancy of immovable property concluded for temporary private use for a period of no more than six consecutive months shall be governed by the law of the State where the landlord is habitually resident, provided that the tenant is a natural person and has his/her habitual residence in the same State.

3. In determining the applicable law pursuant to preceding paragraphs, Article 39 of this Act shall not apply.

Law applicable to rights in rem in respect of a movable property

Article 128

1. Acquisition and termination of a right *in rem* in respect of a movable property shall be governed by the law of the State where that movable property was located at the time when the act was undertaken or when the fact giving rise to the acquisition or termination of the right *in rem* took place.
2. Where certain acts or facts that are required for the acquisition or termination of the right *in rem* in respect of a movable property were undertaken or took place in one State, it is deemed that they were also completed in the other State where the last act or fact giving rise to the acquisition or termination of right *in rem* was undertaken or took place.
3. The content and effects of a right *in rem* in respect of a movable property shall be governed by the law of the State where that property is located.

Relocation of movable property into the Republic of Serbia

(conflit mobile)

Article 129

1. Where a movable property in which the right *in rem* was validly acquired abroad is relocated into Serbia, such acquired right *in rem* shall be recognized in Serbia insofar as it is equivalent to the right *in rem* known under the law of Serbia, taking into account its content and effects attached to it.
2. The content and effects of the recognized foreign right *in rem* referred to in paragraph 1 of this Article shall be governed by the law of Serbia.
3. If a foreign right *in rem* referred to in paragraph 1 of this Article is recognized in a form of pledge on movable property required to be entered in the pledge register kept in Serbia, and where the entry is made within 60 days after the date when the property was relocated into

Serbia, it is deemed that the entry date is the date when the property was relocated into Serbia.

4. The entry of the pledge referred to in paragraph 3 of this Article in the pledge register may be requested either by a pledgor or a creditor who shall not need the consent of the pledgor.

Law applicable to things in transit (res in transitu)

Article 130

1. For the acquisition and termination of the right *in rem* in respect of things in transit, the parties may agree to choose the law otherwise applicable to the legal transaction on the basis of which such right *in rem* is acquired or terminated, or the law of the State of dispatch.
2. To the extent that the applicable law has not been chosen pursuant to paragraph 1 of this Article, the acquisition and termination of the right *in rem* in respect of things in transit shall be governed by the law of the State of destination.
3. The choice of the applicable law referred to in paragraph 1 of this Article shall not prejudice the rights of third parties.

Means of railway transportation

Article 131

The rights *in rem* in respect of means of railway transportation shall be governed by the law of the State in which such means of transportation is registered.

Cultural objects

Article 132

1. If an item which is proclaimed to be part of a State's cultural heritage has left the territory of that State in a way which is deemed to be illegitimate, the revindication by that State shall be governed by its law, unless the State chooses the law of the State where that item is located at the time of the submission of the request for revindication.

2. If the law of the State that considers particular item as being included in its cultural heritage does not grant any protection to the possessor acting in good faith, the latter may invoke the protection that is attributed to him by the law of the State on the territory of which the item is located at the time of the submission of the request for revindication.

Scope of the applicable law

Article 133

The law applicable to rights *in rem* shall apply in particular to:

- a) existence, type, subject matter, and scope of a right *in rem*,
- b) content of the right *in rem*,
- c) holder of the right *in rem*,
- d) manner in which the right *in rem* is constituted, transferred and extinguished,
- e) transferability of the rights *in rem*,
- f) effects of the right *in rem* on a third person,
- g) mandatory registration of the right *in rem*,
- h) protection of the right *in rem*.

Commodity-backed securities

Article 134

1. The law of the State which is expressly indicated in a commodity-backed security determines whether it meets the requirements to be regarded as a commodity-backed security.
2. If the law referred to in paragraph 1 of this Article is not expressly indicated, the assessment of compliance with the requirements referred to in paragraph 1 of this Article shall be governed by the law of the State in which the issuer of the commodity-backed security is habitually resident at the time of issuing the commodity-bank security.
3. The acquisition and termination of the right *in rem* in respect of a commodity-backed security and in respect of such a commodity shall be governed by the law of the State in which the commodity-backed security is located at the time when such act was undertaken or such fact was produced, thus giving rise to the acquisition and termination of the right *in rem* in respect of a commodity-backed security.

4. The content and the exercise of the right *in rem* in respect of a commodity-backed security shall be governed by the law of the State in which the commodity-backed security is located at the time when these questions are raised.
5. If one person claims his rights *in rem* in respect of a commodity directly and the other person does this based on a commodity-backed security, the priority shall be governed by the law of the State in which the commodity is located.

CHAPTER V

SECURITIES HELD WITH AN INTERMEDIARY

Definition

Article 135

For the purposes of this Chapter, the securities held with an intermediary are deemed to include in particular the shares, bonds, debentures, warrants, certificates of deposit and other financial instruments required to be entered into an intermediary-held securities account.

Jurisdiction

Article 136

A Serbian court shall also have jurisdiction in disputes arising from the rights over the securities held by an intermediary if the intermediary is habitually resident or has a branch, agency or other establishment in Serbia under the conditions set out in Article 137 paragraph 2 a) and b) of this Act.

Applicable law

Article 137

1. The securities held with an intermediary shall be governed by the law of the State where the intermediary is habitually resident at the time when a written agreement on opening and keeping the securities account was entered into or, if there is no such agreement, at the time when the securities account is opened.

2. Notwithstanding paragraph 1 of this Article, the securities held with an intermediary shall be governed by the law of the State where the branch, agency or other establishment of the intermediary is located, provided that:
- a) a written securities account agreement was entered into or the securities account was opened within the operations of that establishment, and
 - b) such an establishment, within its operations, implements and administers credits to the securities account, makes payments or takes actions relating to the securities held with an intermediary, or otherwise participates in commercial or other activities relating to the maintenance of securities accounts.

Scope of the applicable law

Article 138

The law applicable pursuant to Article 137 of this Act shall apply in particular to:

- a) legal nature of the rights arising from entering the securities into the account and their effects on the intermediary or third parties;
- b) acquisition and disposition of the securities and their effects on the intermediary or third parties;
- c) whether a disposition of securities extends to entitlements to dividends, income, other distributions, disbursement, transfer fee or other reimbursement;
- d) whether one person's right in securities terminates or has priority over another person's right;
- e) duties of an intermediary to a person other than the securities account holder if that person relies on the security right which is contradiction with the right of the account holder or another person;
- f) requirements for exercising a security right.

CHAPTER VI
INTELLECTUAL PROPERTY

Jurisdiction

Article 139

1. A Serbian court shall have jurisdiction in disputes on intellectual property rights if the protection of these rights has been claimed for the territory of Serbia.
2. A Serbian court shall have exclusive jurisdiction in proceedings concerning the registration or validity of patents, trademarks or service marks, industrial pattern, model or other industrial property rights which have to be registered, if the registration has been claimed or has taken place in Serbia, or if the registration is deemed to have taken place in Serbia under the terms of an international treaty or a legislative Act.

Applicable law

Article 140

1. The existence, validity, effect, duration, termination and transferability of copyrights, related rights, and other unregistered intellectual property rights shall be governed by the law of the State for which the protection has been claimed.
2. The existence, validity, effect, duration, termination and transferability of industrial property rights shall be governed by the law of the State in which that right is registered or in which its registration has been claimed.
3. Non-contractual liability for damage inflicted by the infringement of the rights referred to in paragraphs 1 and 2 of this Article shall be governed pursuant to Article 171 of this Act.

Intellectual property rights arising from employment

Article 141

The law applicable to employment contracts designates the holder of the intellectual property right if the subject matter of that right emerged within the course of employment.

CHAPTER VII

CONTRACTUAL OBLIGATIONS

Jurisdiction in disputes on contractual relations

Article 142

1. A court of Serbia shall have jurisdiction to rule on disputes on contractual relations even if its jurisdiction does not arise from other provisions of this Act, where the grounds for the claim is an obligation that was performed or should have been performed in Serbia.
2. Unless the parties agreed otherwise, the place of performance of the obligation referred to in paragraph 1 of this Article is deemed to be in Serbia:
 - a) for contracts on sale of goods – if, under the contract, the goods were delivered or should have been delivered in Serbia;
 - b) for contracts on provision of services – if, under the contract, the services were provided or should have been provided in Serbia.

Jurisdiction over consumer contracts

Article 143

1. A Serbian court shall have jurisdiction in disputes on consumer contracts under this Article if the contract is concluded with a party who pursues commercial or professional activities in Serbia or directs such activities to Serbia or to several States including Serbia at the time of the conclusion of contract, and the contract falls within the scope of such activities.

2. In the proceedings instituted by a consumer against a trader, a Serbian court shall also have jurisdiction if the consumer is habitually resident in Serbia.

3. In the proceedings instituted by a trader against a consumer who is habitually resident in Serbia, only the Serbian court shall have jurisdiction.

4. The provisions of paragraphs 2 and 3 of this Article may be departed from only by an agreement on jurisdiction:

a) which is entered into before the dispute has arisen; or

b) which allows the consumer to bring proceedings in courts other than those indicated in paragraphs 1 and 2 of this Article; or

c) which is entered into by the consumer and the trader to the contract, both of whom are at the time of conclusion of the contract habitually resident in the same State, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

5. The formal validity of the agreement referred to in paragraph 4 of this Article shall be governed pursuant to Article 27 of this Act, except that paragraphs 1 b) and c) shall not apply.

6. The provisions of this Article shall not apply to a contract of transportation, other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Jurisdiction over individual contracts of employment

Article 144

1. A court of Serbia shall also have jurisdiction to rule in proceedings concerning individual contracts of employment instituted by an employee against an employer, if:

a) the place in which employee habitually carries out his/her work or the last place in which the employee carried out his/her work is in Serbia; or

b) the employee habitually carries or carried out his/her work in several States, if the establishment which engaged the employee is or was situated in Serbia.

2. In the proceedings instituted by an employer against an employee who is habitually resident in Serbia, only the Serbian court shall have jurisdiction.

3. The provisions of paragraphs 1 and 2 of this Article may be departed from only by an agreement on jurisdiction:

a) which is entered into after the dispute has arisen; or

b) which allows the employee to bring proceedings in courts other than those indicated in paragraphs 1 and 2 of this Article.

4. The formal validity of the agreement referred to in paragraph 3 of this Article shall be governed pursuant to Article 27 of this Act, except that paragraph 1 b) and c) shall not apply.

Choice of applicable law

Article 145

1. A contract shall be governed by the law chosen by the contracting parties.
2. The choice of the applicable law shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case.
3. By their choice the parties can choose the law applicable to the whole or to part only of the contract.
4. The parties may at any time agree to choose the applicable law or to subject the contract to a law other than that which previously governed it.
5. Any change in the applicable law that is made by the parties after the conclusion of the contract shall not prejudice its formal validity under Article 159 of this Act or adversely affect the rights of third parties.
6. Where all other elements relevant to the contract at the time of the choice are connected with a country other than the State whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other State which cannot be derogated from by agreement.
7. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 158, 159 and 48 of this Act.

Applicable law in the absence of choice

Article 146

1. To the extent that the law applicable to the contract has not been chosen and without prejudice to Articles 147, 148, 149 and 150 of this Act, the law governing the contract shall be determined as follows:
 - a) a contract on sale of goods is governed by the law of the State where the seller is habitually resident;
 - b) a contract on sale of goods by auction is governed by the law of the State in which the auction takes place, if such a place can be determined;
 - c) a contract on provision of services is governed by the law of the State where the service provider is habitually resident;
 - d) a contract of mandate is governed by the law of the State where the mandatory is habitually resident;
 - e) a contract of brokerage is governed by the law of the State where the broker is habitually resident;
 - f) a commission sales contract is governed by the law of the State where the commission agent is habitually resident;
 - g) a forwarding contract is governed by the law of the State where of the forwarder is habitually resident;
 - h) a contract on the lease of movables is governed by the law of the State where the lessor is habitually resident;
 - i) a loan contract is governed by the law of the State where the lender is habitually resident;
 - j) a contract on loan for use (*commodatum*) is governed by the law of the State where the lender is habitually resident;
 - k) a contract on deposit is governed by the law of the State where the depositary is habitually resident;
 - l) a contract of storage is governed by the law of the State where the warehouseman is habitually resident;

- m) a contract on agency is governed by the law of the State where the agent is habitually resident;
- n) a contract on the disposition of intellectual property rights is governed by the law of the State where the transferor of right is habitually resident;
- o) a contract of gift is governed by the law of the State where the donor is habitually resident;
- p) a stock exchange transactions is governed by the law of the State where the seat of stock exchange is located, if it can be determined;
- q) a contract on independent bank guarantees is governed by the law of the State where the guarantor is habitually resident;
- r) a franchise contract is governed by the law of the State where the franchisor is habitually resident;
- s) a contract on factoring and forfeiting is governed by the law of the State where the assignor is habitually resident;
- t) a distribution contract is governed by the law of the State where the distributor is habitually resident;
- u) a contract on foreign investments is governed by the law of the State where the foreign investment was made;
- v) a contract on insurance is governed by the law of the State where the insurer is habitually resident;
- w) a contract on mandatory insurance is governed by the law of the State imposing the mandatory insurance.

2. Where the contract is not covered by paragraph 1 of this Article, or where the elements of the contract would be covered by more than one of the points a) to w) in paragraph 1 of this Article, the contract shall be governed by the law of the State where the contracting party required to effect the characteristic performance of the contract has his/her habitual residence.

3. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a State not mentioned in paragraphs 1 or 2 of this Article, the law of that other State shall apply, except to a contract on mandatory insurance.

4. Where the applicable law cannot be determined pursuant to paragraphs 1 or 2 of this Article, the contract shall be governed by the law of the State with which it is more closely connected.

Law applicable to a contract for the carriage of goods

Article 147

1. To the extent that the law applicable to a contract for the carriage of goods has not been chosen, the applicable law shall be the law of the State of the habitual residence of the carrier, provided that the following places are situated in that State:

- a) the place of receipt or
- b) the place of delivery or
- c) the consignor's habitual residence.

2. If the requirements referred to in paragraph 1 of this Article are not met, the law of the State where the place of delivery as agreed by the parties is located shall apply.

Law applicable to a contract for the carriage of passengers

Article 148

1. The contracting parties may choose as the law applicable to a contract for the carriage of passengers the law of the State where:

- a) the passenger is habitually resident; or
- b) the carrier is habitually resident; or
- c) the carrier has his place of central administration; or
- d) the place of departure is located; or
- e) the place of destination is located.

2. To the extent that the law applicable to a contract for the carriage of passengers has not been chosen by the parties, the applicable law shall be the law of the State where the passenger has his/her habitual residence, provided that either the place of departure or the place of destination is located in that State.

3. If the requirements referred to in paragraph 2 of this Article are not met, the law of the State where the carrier has his/her habitual residence shall apply.

Law applicable to a consumer contract

Article 149

1. A consumer contract shall be governed by the law chosen by the contracting parties pursuant to Article 145 of this Act.

2. Such a choice may not have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 3 of this Article.

3. To the extent that the applicable law has not been chosen, the consumer contract shall be governed by the law of the State where the consumer has his habitual residence, provided that the trader:

- a) pursues his commercial or professional activities in the State where the consumer has his habitual residence, or
- b) by any means, directs such activities to that State or to several States including that State,

and the contract falls within the scope of such activities.

4. If the requirements in points a) or b) of paragraph 3 of this Article are not fulfilled, applicable law shall be determined pursuant to Article 146 paragraph 2 of this Act.

5. When determining the law applicable to consumer contract Article 39 of this Act shall not apply.

6. The provisions of this Article shall not apply to: contracts concluded on the financial market; contracts for the supply of services, where services are to be supplied to the consumer exclusively in the State other than that in which he has his habitual residence; contracts of carriage, except for travel contracts falling within the scope of consumer protection law; contracts relating to a right *in rem* in respect of an immovable property or a tenancy of immovable property, except for timeshare contracts governed by consumer protection law.

Law applicable to an individual contract of employment

Article 150

1. An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 145 of this Act.
2. Such a choice of law may not have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 3 and 5 of this Article.
3. To the extent that the applicable law to the individual contract of employment has not been chosen, the contract shall be governed by the law of the State in which or, failing that, from which the employee habitually carries out his work in performance of the contract.
4. The State where the work is habitually carried out shall not be deemed to have changed if the work is temporarily carried out in another State.
5. Where the law applicable cannot be determined pursuant to paragraph 3 of this Article, the contract shall be governed by the law of the State where the establishment through which the employee was engaged is located.

Law applicable to the voluntary assignment and contractual subrogation

Article 151

1. The relationship between assignor and assignee shall be governed by the law that applies to the contract between the assignor and assignee by virtue of this Act.
2. The law governing the assigned or subrogated claim shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment or subrogation can be invoked against the debtor and the manner in which the debtor's obligations have been discharged.
3. The concept of assignment in this Article includes transfers of claims by way of security and pledges or other security rights over claims.

Law applicable to legal subrogation

Article 152

Where a third person has a duty to satisfy the creditor instead of the debtor, or has in fact satisfied the creditor in discharge of that duty, the law governing the third person's duty to satisfy the creditor shall determine whether and to what extent the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.

Law applicable to debt assumption agreement

Article 153

1. The relationship between the debtor and the assumer arising from a debt assumption agreement shall be governed by the law chosen by the debtor and the assumer in accordance with Article 145 of this Act.
2. To the extent that the applicable law has not been chosen, the relationship between the debtor and the assumer shall be governed by the law of the State where the assumer is habitually resident or has his/her seat.
3. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a State not mentioned in paragraph 2 of this Article, the law of that other State shall apply.
4. Notwithstanding paragraphs 1 to 3 of this Article, the law which is pursuant to this Act applicable to an assumed debt shall apply in particular to:
 - a) whether the consent of the creditor is required for the debt assumption and the manner in which such consent is provided;
 - b) effect of the debt assumption agreement on the creditor;
 - c) effect of the debt assumption agreement on subsidiary rights.

Law applicable to multiple liability

Article 154

1. If a creditor has a claim against several debtors who are liable for the same claim and one of the debtors has already satisfied the claim in whole or in part, the law governing the debtor's obligation towards the creditor also governs the debtor's right to claim recourse from the other debtors.
2. The other debtors may rely on the defences they had against the creditor to the extent allowed by the law governing their obligations towards the creditor.

Law applicable to set-off (compensation)

Article 155

To the extent that the applicable law has not be chosen by the contracting parties, a set-off shall be governed by the law applicable to the claim against which the right to set-off is asserted.

Law applicable to accessory legal transaction

Article 156

To the extent that the applicable law has not been chosen by the contracting parties, an accessory legal transaction shall be governed by the law applicable to the principal legal transaction.

Law applicable to a contracted agency

Article 157

1. The law applicable to a contract between an agent and a principal shall be determined pursuant to Articles 145, 146, and 149 of this Act.
2. The existence, extent and effects of the agency, including the consequences of the fact that the agent has exceeded his powers as well as the consequences of the unauthorized agency, shall be governed by the law chosen by the principal and a third person, provided that the agent knew or ought to have known that the choice of applicable law was made.

3. To the extent that the applicable law has not been chosen, the issues referred to in paragraph 2 of this Article shall be governed by the law of the State where the agent is habitually resident at the time when the power of representation has been assumed.

4. Where a third person did not know nor ought to have known of the agent's habitual residence, or where the agency agreement was concluded with an agent whose professional activity does not include agency activities, or where the agent performed the agency activities at a stock exchange or at an auction, then the matters referred to in paragraph 2 of this Article shall be governed by the law of the State in which the agency activity was performed.

5. Notwithstanding paragraphs 2 to 4 of this Article, where the agency concerns a right in immovable property, the applicable law shall be the law of the State in which that immovable property is situated.

6. The law determined pursuant to paragraphs 1 to 5 of this Article also applies to the relationship between the agent and a third person arising from the fact that the agent acted in accordance with his powers, or that the agent exceeded his powers, or that he acted without authorization.

Consent and material validity of a contract

Article 158

1. The existence and material validity of a contract or of any term of a contract shall be determined by the law which would govern it under this Act if the contract or term were valid.

2. In order to establish that he did not consent, a party may rely upon the law of the State in which he has his/her habitual residence if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1 of this Article.

Law applicable to formal validity

Article 159

1. A contract concluded between persons who, or whose agents, are in the same State at the time of its conclusion is formally valid if it satisfies the formal requirements of the law of the State where it is concluded or of the law which governs it in substance under this Act.
2. A contract concluded between persons who or whose agents, are in different States at the time of its conclusion is formally valid if it satisfies the formal requirements of:
 - a) the law which governs it in substance under this Act, or
 - b) the law of either of the States where either of the parties or their agent is present at the time of the conclusion, or
 - c) the law of the State where either of the parties had his/her habitual residence at the time of the conclusion.
3. A unilateral act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of:
 - a) the law which governs or would govern the contract in substance under this Act, or
 - b) the law of the State where the act was undertaken, or
 - c) the law of the State where the person by whom it was done had his/her habitual residence when the act was undertaken.
4. Notwithstanding paragraphs 1 to 3 of this Article, the formal validity of consumer contracts regulated in Article 149 of this Act shall be governed by the law of the State where the consumer is habitually resident.
5. Notwithstanding paragraphs 1 to 4 of this Article, formal validity of contracts the subject matter of which is a right *in rem* in respect of an immovable property or a tenancy of immovable property shall be subject to the requirements of form of the law of the State where the immovable property is situated.

Burden of proof

Article 160

1. The law governing a contractual or non-contractual obligation shall also apply to the burden of proof to the extent that, in matters of contractual or non-contractual obligations, it contains rules which raise presumptions of law or determine the burden of proof.

2. A contract or an act intended to have legal effect may be proved by any mode of proof recognized by the law of Serbia or the law under which that contract or act is formally valid in accordance with Article 159 of this Act, provided that such mode of proof can be administered by a Serbian court.

Determining the relevant point in time concerning contractual obligations

Article 161

For the purposes of determining the applicable law for contractual obligations, the relevant point in time shall be the time of conclusion of the contract, unless otherwise provided in this Act.

Scope of the applicable law

Article 162

1. The law applicable to contractual obligations by virtue of this Act shall apply in particular to:
 - a) the content of a contract;
 - b) interpretation of a contract;
 - c) performance of a contract;
 - d) the consequences of failure to perform the contractual obligations in whole or in part, including the assessment of damage and awarding damages;
 - e) the various ways of extinguishing obligations, and prescription and limitation of actions;
 - f) the consequences of nullity of the contract;
 - g) determining the moment from which the acquirer or the person who receives the movable property is entitled to take the products and fruits of the property;

- h) determining the moment from which the acquirer or the person who receives the movable property bears the risk of damage to property.
2. In relation to the manner of performance and the steps to be taken by the creditor in the event of defective performance, regard shall be had to the law of the State in which performance takes place.

CHAPTER VIII NON-CONTRACTUAL OBLIGATIONS

1. AUTONOMOUS CONCEPTS AND JURISDICTION

Non-contractual obligations

Article 163

1. For the purposes of this Chapter, damage shall cover any direct consequence arising out of tort/delict, unjust enrichment, *negotiorum gestio* or *culpa in contrahendo*.
2. The provisions of this Chapter shall also apply to non-contractual obligations that are likely to arise.
3. Any reference in this Chapter to:
- a) an event giving rise to damage - includes events giving rise to damage that are likely to occur; and
 - b) damage - includes damage that is likely to occur.

Jurisdiction

Article 164

1. A Serbian court shall also have jurisdiction to rule on the disputes on non-contractual obligations if:
- a) the event giving rise to damage or the damage occurred in the territory of Serbia, or
 - b) it is likely that the event giving rise to damage will take place or the damage will occur on the territory of Serbia.

2. The provisions of paragraph 1 of this Article also apply in disputes against an insurer on the basis of the legislation on direct liability, as well as in disputes on recourse claims against recourse debtors based on the compensation of damages.

2. LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS

Choice of the applicable law

Article 165

1. The parties may agree to submit non-contractual obligations to the law of their choice:
 - (a) after the event giving rise to the damage occurred; or
 - (b) before the event giving rise to the damage occurred where all the parties are pursuing a commercial activity.
2. The choice of applicable law shall not prejudice the rights of third parties and shall be expressed or clearly demonstrated by the circumstances of the case.
3. Where all the elements relevant to the case at the time when the event giving rise to the damage occurs are located in a State other than the State whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other State which cannot be derogated from by agreement.
4. Paragraphs 1 to 3 of this Article do not apply to non-contractual obligations regulated in Articles 167 to 169, 171 and 172 of this Act.

Law applicable to the non-contractual liability for damage

Article 166

1. A non-contractual liability for damage shall be governed by the law of the State in which the damage occurs irrespective of the State in which the event giving rise to the damage occurred and irrespective of the State in which the indirect consequences of that event occur.
2. Where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same State at the time when the damage occurs, the law of that State shall apply.

3. Where it is clear from all the circumstances of the case that the non-contractual liability for damage is manifestly more closely connected with a State other than that indicated in paragraphs 1 and 2 of this Article, the law of that other State shall apply.

4. A manifestly closer connection with another State referred to in paragraph 3 of this Article might be based in particular on a pre-existing relationship between the parties, such as a contract that is closely connected with the non-contractual liability for damage in question or factual relations.

5. Paragraphs 3 to 4 of this Article and Article 39 of this Act do not apply to other non-contractual obligations regulated in Articles 176, 177 and 178.

3. LAW APPLICABLE TO SPECIFIC FORMS OF NON-CONTRACTUAL LIABILITY FOR DAMAGES

Products liability

Article 167

The law applicable to non-contractual obligations arising out of damage caused by a defective product shall be determined in accordance with the 1973 Convention on the Law Applicable to Products Liability (“Official Gazette of SFRY – Supplement International Treaties”, No 8/77).

Unfair competition

Article 168

1. A non-contractual obligation arising out of an act of unfair competition shall be governed by the law of the State where the interests of competitors are, or are likely to be affected.

2. Where an act of unfair competition affects exclusively the interests of a specific competitor, the law of the State where he/she is habitually resident shall apply.

Acts restricting free competition

Article 169

A non-contractual obligation arising out of a restriction of competition shall be governed by the law of the State whose market has been directly or predominantly affected, or is most likely to be directly or predominantly affected.

Environmental damage

Article 170

1. For the purposes of this Article, the term 'environmental damage' covers the damage to environment and the damage sustained by persons or property as a result of such damage.
2. A non-contractual obligation arising from environmental damage shall be governed by the law of the State in which the damage occurs.
3. Notwithstanding the provision of paragraph 2 of this Article, the person seeking compensation for damage may choose to base his or her claim on the law of the State in which the event giving rise to the damage occurred.
4. Articles 166 paragraphs 3 and 4 and Article 39 of this Act do not apply in determining the applicable law.

Infringement of intellectual property rights

Article 171

1. A non-contractual liability for damages arising from an infringement of an intellectual property rights shall be governed by the law of the State for which protection is claimed.
2. Article 166 paragraphs 3 and 4 and Article 39 of this Act do not apply in determining the law applicable to an infringement of an intellectual property right.

Law applicable to traffic accidents

Article 172

The law applicable to non-contractual obligations arising from traffic accidents shall be determined in accordance with the 1971 Convention on the Law Applicable to Traffic Accidents („Official Gazette – Supplement International Treaties“, No 26/76).

Industrial action

Article 173

1. A non-contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the organizations representing their professional interests for damages caused by an industrial action, pending or carried out, shall be governed by the law of the State where the action is to be, or has been, taken.
2. Notwithstanding paragraph 1 of this Article, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same State at the time when the damage occurs or when the risk of damage occurs, the law of that State shall apply.
3. Article 166 paragraphs 3 and 4 and Article 39 of this Act do not apply in determining the applicable law.

Damage occurring on a ship/vessel or on an aircraft

Article 174

Damage that occurred on board a ship/vessel on the high seas or on board an aircraft shall be governed by the law of the State in which the ship/vessel or aircraft is registered.

Defamation of personality rights through mass media

Article 175

1. Depending on the choice of the person sustaining damage, a non-contractual liability for damage arising out of a defamation of personality rights through mass media, particularly through the press, internet, radio or television or other mass media, shall be governed by:
 - a) the law of the State where the person claimed to be liable is habitually resident, or

- b) the law of the State where the person sustaining damage is habitually resident, provided that the person claimed to be liable could reasonably foresee that the damage would occur in the territory of that State, or
 - c) the law of the State in which the damage occurred or is likely to occur, provided that the person claimed to be liable could reasonably foresee that the damage would or might occur in that State.
2. The right to respond regarding the defamation of personality rights made through mass media shall be governed by the law of the State where the publication was published or from which the programme has been broadcast.
 3. The law referred to in paragraph 1 of this Article also applies to the infringement of personality rights in the course of personal data processing as well as the infringement of the right of access to information on personal data.

4. LAW APPLICABLE TO OTHER NON-CONTRACTUAL OBLIGATIONS

Unjust enrichment

Article 176

1. If a non-contractual obligation arising out of unjust enrichment concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that unjust enrichment, it shall be governed by the law applicable to that relationship.
2. Where the applicable law cannot be determined on the basis of paragraph 1 of this Article and the parties have their habitual residence in the same State at the time when the event giving rise to unjust enrichment occurred, the law of that State shall apply.
3. Where the applicable law cannot be determined on the basis of paragraphs 1 or 2 of this Article, the law of the State in which the unjust enrichment took place shall apply.

Negotiorum gestio

Article 177

1. If a non-contractual obligation arising out of an act performed without due authority in connection with the affairs of another person concerns a relationship existing between the parties, such as one arising out of a contract or tort/delict, that is closely connected with that non-contractual obligation, it shall be governed by the law applicable to that relationship.
2. Where the applicable law cannot be determined on the basis of paragraph 1 of this Article and the parties have their habitual residence in the same State when the event giving rise to the damage occurs, the law of that State shall apply.
3. Where the applicable law cannot be determined on the basis of paragraphs 1 or 2 of this Article, the law of the State in which the act was performed shall apply.

Culpa in contrahendo

Article 178

1. The law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract, regardless of whether the contract was actually concluded or not, shall be the law that applies to the contract or that would have been applicable to it had it been concluded.
2. Where the applicable law cannot be determined on the basis of paragraph 1 of this Article, it shall be:
 - a) the law of the State in which the damage occurs, irrespective of the State in which the event giving rise to the damage occurred and irrespective of the State or States in which the indirect consequences of that event occurred; or
 - b) the law of the State where the parties have their habitual residence at the time when the event giving rise to the damage occurs.

5. COMMON RULES FOR NON-CONTRACTUAL LIABILITY FOR DAMAGE AND OTHER NON-CONTRACTUAL OBLIGATIONS

Scope of the applicable law

Article 179

The law applicable to non-contractual obligations shall apply in particular to:

- a) the basis, conditions and extent of liability, including the determination of persons who may be held liable for acts performed by them;
- b) the grounds for exemption from liability, any limitation of liability and any division of liability;
- c) the existence, the nature and the assessment of damage or the remedy claimed;
- d) the measures which the court may take to prevent or terminate injury or damage or to ensure the payment of compensation, within the limits of powers conferred on the court by the procedural law of Serbia;
- e) transferability of a right to claim damage, including by inheritance;
- f) persons entitled to compensation for damage sustained personally;
- g) liability for the acts of another person;
- h) strict liability for dangerous objects and activities;
- i) the manner in which an obligation may be extinguished and the rules of prescription and limitation, including the rules on the commencement of the preclusive time-limit for bringing an action or for specific performance, as well as the rules on the commencement, interruption and suspension of limitation.

Taking into account rules of safety and conduct

Article 180

In assessing the conduct of the person claimed to be liable, account shall be taken, as a matter of fact, of the rules of safety and conduct which were in force at the place and time of the event giving rise to the damage.

Direct actions against the insurer of the person liable

Article 181

The person having suffered damage may bring his or her claim directly against the insurer of the person liable to provide compensation if the law applicable to the non-contractual obligation or the law applicable to the insurance contract so provides.

PART III
RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

CHAPTER I
RECOGNITION OF A FOREIGN JUDGMENT

1. THE CONCEPT OF RECOGNITION AND CONDITIONS FOR RECOGNITION

Concept of a foreign judgment

Article 182

1. For the purposes of this Act, a foreign judgment, whatever the judgment may be called, shall mean any decision made by the court of a foreign State in the matters of private law relations.
2. A foreign judgment referred to in paragraph 1 of this Article shall include a decision of other authority which is considered equivalent to a judgment in the State in which it was rendered.
3. A foreign judgment referred to in paragraph 1 of this Article shall include a court settlement or a settlement made before other authority if it is considered equivalent to a court settlement in the State in which it was made.
4. A foreign judgment referred to in paragraph 1 of this Article shall also include a decision concerning any claim for indemnity, which it was decided upon in the criminal proceedings.
5. A foreign judgment referred to in this Article shall not include a foreign arbitral award.

Recognition of a foreign judgment

Article 183

1. The effects of a foreign judgment recognized by the Serbian court shall be equivalent to the effects of the judgment of the Serbian court.
2. The effects of a foreign judgment shall be recognized from the moment they were produced in the State in which the judgment was rendered.

3. A foreign judgment can also be partially recognized if the conditions for recognition are fulfilled regarding a particular severable part, whose separable recognition is viable and appropriate.

Modalities of foreign judgment recognition

Article 184

1. The recognition of a foreign judgment can be decided as the main legal issue of the proceeding envisaged in Articles 186 to 192 of this Act.
2. If the recognition of a foreign judgment was not decided as the main legal issue of a proceeding, any court may rule on the recognition of that judgment as a preliminary issue, but with the effect only in those proceedings.
3. Paragraph 2 of this Article shall not apply in the enforcement and security proceedings.

Conditions for recognition

Article 185

A foreign judgment shall be recognized in Serbia:

- a) if the judgment has become final (it is subject to no ordinary recourse) pursuant to the law of the State where it was rendered,
- b) if the court or other authority of Serbia lacks exclusive jurisdiction for deciding on the dispute,
- c) if a foreign court based its jurisdiction on the facts which are provided for in the law of Serbia as jurisdiction criteria for the Serbian court for deciding on the same dispute,
- d) if the judgment is not manifestly contrary to public policy of Serbia, especially having regard to the intensity of connection between the respective legal relation and the legal order of Serbia, including the significance of the consequences of the foreign judgment recognition,
- e) if the right to participate in the proceedings has not been violated in such a way that:
 - any complaint, summons, or other document by which the proceedings were instituted had not been served upon the party personally or no personal service had

been attempted, unless he/she has pleaded to the merits of the principal case in first instance proceedings, or

- a party was not given a real possibility to state his/her defence in the proceedings leading to the judgment, or

- the defendant was not allowed sufficient time to arrange for his/her defence from the time the claim was served to the time the hearing was scheduled, or

- the defendant was not personally served with the judgment even though he/she participated in the proceedings and no personal service had been attempted;

f) if no judgment in the same legal matter and between the same parties has been rendered by a domestic court or by a foreign court in a formerly instituted proceeding, provided that the recognition of that foreign decision has been sought and that it meets the conditions for recognition in Serbia;

g) if the recognition of the enforceability effects is also applied for, provided that a foreign judgment is enforceable in the State in which it was rendered.

2. If an earlier instituted proceeding in the same legal matter and between the same parties is pending before the Serbian court, the court shall stay the recognition of a foreign judgment until the final decision has been rendered in those proceedings.

3. A foreign judgment rendered in matters regulated in Chapters IV to VIII of the Part II of this Act shall be recognized only if the Serbian court determines that conditions referred to in paragraph 1 of this Article are fulfilled and that the judgments rendered in Serbia on the same subject matter are recognized in the State where the judgment was rendered.

4. The reciprocity condition referred to in paragraph 2 of this Article is presumed to be fulfilled, unless the respondent proves that the court of the State of origin would not recognize the decision of the Serbian court rendered in matters regulated in Chapters IV to VIII of the Part II of this Act.

5. The party must prove the non-existence of the reciprocity referred to in paragraph 3 of this Article in accordance with paragraph 4 of Article 40 of this Act.

2. PROCEEDINGS FOR RECOGNITION OF A FOREIGN JUDGEMENT

Instituting the proceedings

Article 186

Any person having a legal interest may submit an application for recognition of a foreign judgment.

Documents to be submitted

Article 187

The following documents must be submitted with the application for recognition of a foreign judgment:

- a) the judgment in original, or a certified copy with a certified translation by an authorized court translator,
- b) a certificate, seal, or any other evidence that the foreign judgment is final or that it cannot be subject to ordinary legal recourse pursuant to the law of the State of origin, and its certified translation,
- c) if recognition of the effect of enforceability of the foreign judgment is also applied for, a certificate, seal, or any other evidence that the foreign judgment is enforceable pursuant to the law of the State of origin, and its certified translation.

The course of the proceedings

Article 188

1. A court of Serbia having subject matter jurisdiction shall decide on the application referred to in Article 186 of this Act in a non-litigious proceeding, without a hearing, examining only the conditions provided in Article 185 subparagraphs a), b), d) and f); if the foreign judgment is eligible for enforcement, the court shall also examine the condition provided in subparagraph g).
2. In order to provide information, the court shall serve the application for the recognition to the respondent along with the judgment for which recognition has been sought, whereas the court shall decide on the basis of the documents submitted by the applicant.

3. A single judge shall decide on the application.
4. The proceeding is urgent and the court is obliged to render a decision within 15 days after the application is received.
5. The court decision on the application for recognition of a foreign judgment must be served on the applicant and the respondent.
6. In the decision on the application for recognition of a foreign judgment, the court must notify the parties that any untimely appeal shall be dismissed.

Right to appeal

Article 189

1. The court decision on the application for the recognition of a foreign judgment may be appealed against.
2. The enforcement of the decision on the recognition shall be suspended pending appeal.
3. In the appeal, a party may invoke any of the conditions provided in Article 185 of this Act.
4. An appeal shall be filed within 30 days after the written decision was served.

Appeal proceeding

Article 190

1. After receiving a timely submitted appeal, the first instance court shall serve the appeal on the other party for an answer which may be submitted within 30 days after the appeal was served on that party.
2. In the proceeding upon appeal, the first instance court shall always schedule a hearing and summon the parties, having particular regard to the urgency of the proceeding.
3. The first instance court shall decide on the appeal in a panel of three judges.
4. The appellant is obliged to provide evidence to prove his allegations to the court.
5. Notwithstanding paragraph 4 of this Article, if a foreign judgment was rendered by default and the respondent appeals on the ground that the complaint, summons or some other document notifying it of the instituted proceedings have not been served upon him/her personally, or that the judgment that is subject to the recognition has not been served upon him/her, the applicant proves that the service was duly performed.

6. If the first instance court does not modify its decision, it must submit the submitted appeal, the answer to appeal and the case files to the second instance court.

7. If the first instance court modifies its decisions, another appeal is permitted within 8 days after the modified decision is delivered.

8. The second instance court shall decide upon the appeal referred to in paragraphs 6 and 7 of this Article within 90 days after it has been submitted to the second instance court.

Extraordinary legal recourses

Article 191

1. Extraordinary legal recourses against a decision of the second instance court are not permitted.

2. By way of exception, an application for reopening the proceedings may be submitted against a decision on the recognition of a foreign judgment which is revoked or overturned by an extraordinary legal recourse in the State where it was rendered.

Security instruments

Article 192

A court may determine the security instruments on the basis of a foreign judgment even before the recognition proceedings are instituted; in such case, the court shall determine the time limit for the party seeking the security instrument for submitting the application for recognition.

CHAPTER II
ENFORCEMENT OF FOREIGN JUDGMENT

Enforcement of foreign judgment

Article 193

1. A foreign judgment which is enforceable pursuant to the law of the State in which it was rendered may be enforced in Serbia if it is recognized by a Serbian court.
2. A foreign judgment may also be partially enforced in Serbia provided that it fulfils the conditions for the recognition only in that specific part which is severable and its separable enforcement is viable and appropriate.
3. If an application was submitted for the enforcement of a foreign judgment in which it was decided on several claims and only certain parts of that judgment are enforceable, a Serbian court may enforce only those parts of the judgment.
4. A foreign judgment recognized by the Serbian court in the proceedings envisaged in Articles 186 to 192 of this Act shall be enforced in accordance with the legislative Act of Serbia regulating the enforcement proceedings.

PART IV
TRANSITIONAL AND FINAL PROVISIONS

Jurisdiction and proceedings

Article 194

1. The provision of this Act regarding the international jurisdiction of courts and other authorities of Serbia are applicable to proceedings instituted after this Act enters into force.
2. A court or other authority of Serbia where the proceedings involving an international element were instituted before this Act entered into force retains its jurisdiction even if its jurisdiction has not been provided for by this Act.
3. Proceedings involving an international element in which the court of other authority of Serbia declined its jurisdiction before this Act has entered into force may be reinstated after this Act enters into force if its jurisdiction is envisaged in the provisions of this Act and if the relevant claim can still be brought.
4. The provisions of this Act regulating the rules of procedure shall apply to proceedings instituted after this Act enters into force.

Applicable law

Article 195

1. The provisions of this Act shall determine the law applicable to legal relations and acts which come into existence or take place after this Act enters into force.
2. The conflict-of-laws rules of this Act shall apply to the effects of legal relations and acts which came into existence or took place before this Act has entered into force if these effects are produced after this Act enters into force, except for Chapters VII and VIII of this Act.
3. A choice of law made by parties before this Act has entered into force shall be valid if it satisfies the conditions of this Act even though the choice was not valid according to the former Act.

Recognition and enforcement

Article 196

The provisions of this Act regulating the recognition and enforcement of a foreign judgment shall apply to the applications for recognition submitted after this Act enters into force.

Cessation of validity of other legislative acts

Article 197

1. On the day of entry into force of this Act, the Act on Resolving the Conflict of Law with the Regulations of other Countries (*Official Gazette of SFRY*, No 43/82, and the *Official Gazette of FRY*, No 46/96) shall cease to apply.
2. On the day of entry into force of this Act, Article 16 paragraph 3, Articles 26, 41, 55 and 61 of the Litigious Proceeding Act (*Official Gazette of the Republic of Serbia*, No. 49/2013...55/2014) shall cease to apply.
3. On the day of entry into force of this Act, the second sentence of Article 7 paragraph 1 of the Enforcement and Security Act (*Official Gazette of the Republic of Serbia*, No. 31/2011...55/2014) („If the motion to enforce is based on foreign executive title that has not yet been recognized by a domestic court, the courts shall decide on its motion within 30 days following its submission, if the enforcement application has been submitted along with the application for recognition”), and Article 21 paragraphs 3 to 5 of the same Act shall cease to apply.
4. On the day of entry into force of this Act, Article 153 of the General Administrative Proceedings Act (*Official Gazette of the FRY*, No. 33/97 and 31/2001 and *Official Gazette of the Republic of Serbia*, No. 30/2010) shall cease to apply.

Amendments to other laws

Article 198

On the day of the commencement of the application of this Act, the provisions of the following laws shall be amended:

- a) in Article 43 paragraph 1 and 2 of the Litigious Proceeding Act, the term ‘domicile’ is replaced with the term ‘habitual residence’;
- b) in Article 48 paragraph 1 of the Litigious Proceeding Act, the term ‘last common domicile’ is replaced by the term ‘last habitual residence’;
- c) in Article 48 paragraph 2 of the Litigious Proceeding Act, the term ‘last common domicile’ is replaced by the term ‘last habitual residence’, and the term ‘domicile’ is replaced by the term ‘habitual residence’;
- d) in Article 49 of the Litigious Proceeding Act, the term ‘domicile’ is replaced by the term ‘habitual residence’;
- e) in Article 50 paragraph 2 of the Litigious Proceeding Act, the term ‘domicile’ is replaced by the term ‘habitual residence’.

Coming into force

Article 199

This Act shall enter into force on the first day following the expiration of a six-month period after the date of publishing this Act in the “Official Gazette of the Republic of Serbia”.