Which country's law applies?

Rakousko

1 Sources of the rules in force

1.1 National rules

Austrian private international law has been codified, principally in the Private International Law Act (*Gesetz über das internationale Privatrecht – IPR-Gesetz*) of 15 June 1978, BGBl. No 304/1978. The following conflict-of-law provisions are to be found in laws other than the Private International Law Act (below, IPRG):

§ 13a of the Federal Act of 8 March 1979 adopting consumer protection provisions (Consumer Protection Act – KSchG) (*Bundesgesetz vom 8. März 1979, mit dem Bestimmungen zum Schutz der Verbraucher getroffen werden (Konsumentenschutzgesetz - KSchG)*), BGBl. No 140/1979

§ 11 of the Federal Act on the purchase of the right to use immovable properties on a timeshare basis (Timeshare Act – TNG) (*Bundesgesetz über den Erwerb von Teilzeitnutzungsrechten an unbeweglichen Sachen (Teilzeitnutzungsgesetz – TNG)*), BGBl. I No 32/1997

§ 20 of the Federal Act implementing Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State of the European Community (*Bundesgesetz zur Umsetzung der Richtlinie 93/7/EWG über die Rückgabe von unrechtmäßig aus dem Hoheitsgebiet eines Mitgliedstaates der Europäischen Gemeinschaft verbrachten Kulturgütern*), BGBl. I No 67/1998

§ 23 of the Federal Act on civil liability for damage caused by radioactivity (Nuclear Liability Act 1999 – AtomHG 1999) (*Bundesgesetz über die zivilrechtliche Haftung für Schäden durch Radioaktivität (Atomhaftungsgesetz 1999 – AtomHG 1999)*), BGBl. I No 170/1998

§§ 16 and 18 of the Federal Act on settlement finality in payment and securities settlement systems (Settlement Finality Act) (*Bundesgesetz über die Wirksamkeit von Abrechnungen in Zahlungs- sowie Wertpapierliefer und -abrechnungssystemen (Finalitätsgesetz)*), BGBl. I No 98/2001

§§ 221 to 235 of the Insolvency Code (*Insolvenzordnung*)

• § 1 of the Federal Act on advance directives (Advance Directives Act) (*Bundesgesetz über Patientenverfügungen (Patientenverfügungs-Gesetz – PatVG)*), BGBl. I No 55/2006

• § 1 of the Federal Act establishing death directives (Death Directives Act) (*Bundesgesetz über die Errichtung von Sterbeverfügungen (Sterbeverfügungsgesetz – StVfG)*), BGBl. I No 242/2021

1.2 Multilateral international conventions

§ 53 IPRG states that it does not affect international agreements, which take precedence not only over the provisions of this Act, but also over other national conflict-of-law rules. The following **multilateral international conventions**, to which Austria is party, contain conflict-of-law rules:

Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children

Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants

Hague Convention of 5 October 1961 on the conflicts of laws relating to the form of testamentary dispositions

Hague Convention of 4 May 1971 on the law applicable to traffic accidents

CIEC Convention of 20 September 1970 on legitimation through subsequent marriage

Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children

Hague Convention of 13 January 2000 on the international protection of adults

Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations

1.3 Principal bilateral conventions

The following bilateral treaties contain conflict-of-law rules:

Friendship and Residence Treaty of 9 September 1959 between the Republic of Austria and the Empire of Iran

Treaty of 16 December 1954 between the Republic of Austria and the Federal People's Republic of Yugoslavia on mutual legal dealings

Treaty of 11 December 1963 between the Republic of Austria and the People's Republic of Poland on mutual relations in civil law matters and on documentation

2 Implementation of conflict of law rules

2.1 Obligation of the judge to apply conflict of law rules on his own initiative

Foreign law is applicable officially and as in its original area of application (§ 3 IPRG).

2.2 Renvoi

According to § 5 IPRG, *renvoi* is to be complied with unless particular reference is made to the substantive law of the other State. If the foreign law refers back to Austrian law, then Austrian law is decisive. If the foreign law refers to law to which reference has already been made, the applicable law is that to which reference was first made.

2.3 Change of connecting factor

Subsequent changes to the conditions that are decisive for the connection to a specific legal system do not normally affect elements of a case that have already been resolved (§ 7 IPRG), although some specific conflict-of-law rules contain exceptions to this principle. In principle, the decisive law for issues which have already been drawn to a conclusion is the law applicable at the time these issues arose and the decisive law for unresolved issues is the law applicable at the time of judgment.

2.4 Exceptions to the normal application of conflict rules

The law referred to is not applicable if its application were to produce a result that is incompatible with the fundamental values of the Austrian legal system (§ 6 IPRG).

Under Austrian law, there are provisions which are applicable irrespective of the rules of private international law (overriding mandatory rules). For some of these provisions, their character as overriding mandatory rules arises from their wording, in others merely from their object.

Overriding mandatory rules are laid down, for example, in §§ 7, 7a and 7b of the Act amending the labour contract law (*Arbeitsvertragsrechts-Anpassungsgesetz – AVRAG*) and provide that, irrespective of the applicable law, workers in Austria are entitled to at least the wages negotiated by

collective agreement and to minimum holiday. A further overriding mandatory rule is provided for in § 13a(2) KSchG, according to which § 6 KSchG (on inadmissible contract terms), § 864a of the Civil Code (ABGB) (on the validity of unusual provisions in general terms of business and contract forms) and § 879(3) ABGB (on the nullity of contractual provisions in general terms of business and contract forms which are grossly prejudicial to consumer protection) are decisive, irrespective of the law governing the contract, if the contract was concluded in connection with an activity carried out by the trader in Austria with the aim of concluding such contracts.

2.5 Proof of foreign law

Foreign law is to be established officially. To this end, the court can rely on the cooperation of the parties, on information from the Federal Ministry of Justice or on expert reports. If, despite considerable efforts, it is unable to prove the foreign law within a reasonable period of time, Austrian law is applicable (§ 4 IPRG).

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Contractual obligations which are not covered by Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I), OJ L 177 of 4 July 2008, p. 6, are to be judged according to the choice of law expressly or conclusively specified by the parties. If no choice of law has been made, the decisive law is that of the State of the habitual residence (establishment) of the party performing the service that is characteristic of the contract (§ 35 IPRG). Special conflict-of-law rules apply to consumer contracts. The conflict-of-law rules provided for in a number of consumer protection directives are transposed in Article 13a(1) of the Consumer Protection Act, which mainly restricts the freedom of choice of law in order to ensure consumer protection.

3.2 Non-contractual obligations

Non-contractual rights to claim damages which are not covered by Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II – OJ L 199 of 31 July 2007, p. 40) are to be judged according to the choice of law expressly or conclusively demonstrated by the parties. If no choice of law has been made, the decisive law is that of the State in which the conduct giving rise to the damages occurred. However if, for the parties concerned, there is a stronger connection to the law of one and the same different State, then the law of that State is decisive (§ 48 IPRG).

This conflict-of-law rule determines the applicable law for the question of whether liability for damages has arisen, who is liable for damages and how much is payable. It also includes questions of contributory negligence and the direct claim of the injured party against the insurer, as well as the limitation period for claims for damages.

Rights to claim compensation arising from **traffic accidents**, which fall within the scope of the Hague Convention of 4 May 1971 on the law applicable to traffic accidents, are to be connected under this Convention.

Non-contractual rights to claim damages which have arisen in Austria as a result of **ionising radiation** are, at the request of the injured party, to be judged under Austrian law (§ 23(1) AtomHG 1999). If damage caused by ionising radiation occurs abroad and is to be judged under Austrian law, damages are to be awarded only if and to the extent that the personal status of the injured party so provides (§ 23(2) AtomHG 1999).

Which law is applicable to ***negotiorum gestio*** or to **claims arising out of unjust enrichment** is regulated in the Rome II Regulation.

3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)

A person's **personal status** is governed by the law of the State of his or her nationality. If a person has more than one nationality, the decisive law is that of the State to which the person has the closest connection; however, Austrian citizenship always takes precedence. For refugees and stateless persons, the personal status is governed by the law of the State of their habitual residence (§ 9 IPRG).

The right of a person to bear a **name** is to be judged according to their respective personal status, whatever the ground on which the taking of the name is based (§ 13 IPRG).

The married name, for example, is therefore not to be judged according to marital status, but according to the name status. The general formal status of § 8 IPRG applies for the form of name designation declarations. (Accordingly, the form of a legal act is to be judged by the same law as the legal act itself; however, compliance with the formal requirements of the State in which the legal act is carried out suffices.) According to case-law, a name taken under a previous personal status is changed not simply by changing the personal status (nationality).

A person's **legal capacity and capacity to act** are also to be judged according to that person's personal status (§ 12 IPRG). This reference includes any restriction of the capacity to act, for example as a result of mental illness, but not capacity to marry. If a person has come of age, then they remain so, even if they would not yet have done according to a newly acquired personal status.

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

The requirements for the **legitimacy of a child** and for contesting it are to be judged according to the personal status that the spouses had at the time of the birth of the child or, if the marriage has been dissolved beforehand, at the time of the dissolution. If the spouses have different personal statuses, the personal status of the child at the time of birth is decisive. The scope of application of this conflict-of-law rule also includes the presumption of paternity of the husband, the grounds for contesting legitimacy and also the question of which persons are entitled to contest legitimacy and time limits in which to do so.

The requirements for **legitimation** of an illegitimate child through a declaration of legitimacy (i.e. by act of a public authority, not by subsequent marriage), are to be judged according to the personal status of the father (§ 23 IPRG).

Under the legitimation agreement, legitimation through subsequent marriage of the parents is effective if such is the case according to the law of the State of nationality of the father or mother.

The requirements for the **establishment and recognition of paternity** in relation to an illegitimate child are to be assessed according to the personal status of the child at the time of birth. A subsequent personal status of the child is decisive if establishment or recognition is permissible according to this status, but not according to the personal status at the time of birth. The law under which paternity is established or recognised is also decisive for contesting it (§ 25 IPRG).

Parent-child relationship: The **effects** of the legitimacy and legitimation of a child and of illegitimacy are to be judged according to the personal status of the child. §§ 24 and 25 IPRG cover questions of care and upbringing of the child, administration and use of the child's assets, legal representation by one or both parents, including the need for official approval of certain acts of representation, as well as, for legitimate children, the settlement of custody after divorce of the parents and mutual maintenance claims. These provisions are largely overlapped by the Hague Convention on the Protection of Children and by the Hague Convention of the Protection of Infants of 1961 in cases where it is (still) in force (in relation to Turkey and Macao). Accordingly, the competent authorities have to apply their domestic law for measures to ensure the protection of minors; the authorities in the State of residence are usually competent. Whereas for questions of parentage, it comes down to the personal status at a given time, this is not so for questions regarding the relationship between parents and child; what matters is the respective personal status of the child. If the personal status changes, the parent-child relationship is to be assessed according to the new personal status from the time of the change of status (the change of the relevant connecting factors, nationality).

Case-law has repeatedly not applied custody regulations under foreign legal systems on the grounds that they were **contrary to public order** if they did not consider the best interests of the child.

3.4.2 Adoption

Under § 26 IPRG, the conditions for the adoption of a child and for terminating the adoption are based on the personal status of each adopter. In addition, the personal status of the child is decisive, although in the case of children who are minors, only to the extent that it provides for the consent of the child or of a third party who has a family-law relationship with the child. The conditions for adoption of a child include for example the age of the adopter, the difference in age between the adopters and the child for adoption and the question of whether and under what conditions the existence of the adopter's own children bars adoption of a child, as well as any requirements of consent, including the possibility of officially overruling refused consent.

The effects of the adoption of a child are to be judged according to the personal status of the adopter and in the case of adoption by spouses, according to the decisive law in terms of governing the personal legal effects of the marriage. Following the death of one of the spouses, the personal status of the other spouse is decisive for these effects.

The effects of the adoption of a child in terms of succession law are to be judged not according to the adoption status, but according to the succession status. The adoption of a child as such is a concluded factual circumstance, so the judgment does not change if the personal status or the connecting factor is subsequently changed. The adoptee status is inherently a permanent legal relationship. The status that is decisive for the effects of the adoption of a child may therefore change: it depends on the respective personal status of the adopter.

3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations

3.5.1 Marriage

The **form of a marriage** in Austria is to be judged according to Austrian law and the form of a marriage abroad is to be judged according to the personal status of each of the betrothed persons; however, it is sufficient to comply with the formal requirements of the place of celebration of the marriage (§ 16 IPRG). The limited reference to the formal requirements of the place of celebration of the marriage refers to the substantive law provisions of the law referred to, so any *renvoi* under local law is therefore irrelevant (exception from § 5 IPRG).

The **requirements for marriage** and **nullity of a marriage** and the requirements for **annulling** the marriage (as distinct from divorce) are to be judged for each of the betrothed persons according to their personal status (§ 17 IPRG). However, if the law applicable to the personal status of one or both of the betrothed persons makes no marriage provisions on the basis of the gender of one or both of the betrothed persons, the requirements for marriage are to be judged in accordance with the law of the State in which the marriage is founded.

This conflict-of-law rule relates to material requirements for marriage, such as the required age, the absence of impediments to marriage, any consent requirements and their substitutability.

Under § 18 IPRG, the **personal legal effects of marriage** are to be judged according to the common personal status of the spouses or, in the absence of a common personal status, according to the last common personal status, if one of them has kept it. Otherwise, they are to be judged according to the law of the State in which both spouses habitually reside or, in the absence of such a residence, according to the law of the State in which both spouses had their last habitual residence, if one of them has kept it.

The scope of this conflict-of-law rule also covers the obligation of conjugal community, consequence for residence, obligation to provide assistance, as well as each spouse's right to maintenance, but not the law relating to the use of the married name or the marital property regime. The reference may change; if the connecting factors change, a different law may become decisive.

3.5.2 Unmarried/Cohabiting couples and partnerships

The Registered Partnership Act (Gesetz über die eingetragene Partnerschaft) inserted §§ 27a to 27d in the IPRG.

The **requirements (and also the form) of the registered partnership**, its **nullity** and **dissolution due to fault** are to be judged according to the law of the State in which it was founded (§ 27a IPRG).

Under § 27b IPRG, the **personal effects of the registered partnership** are to be judged according to the law of the State in which the registered partners have their common habitual residence or, in the absence of a common habitual residence, according to the law of the State in which both had their last habitual residence, if one of them has kept it. If, accordingly, the law of the State of residence cannot be applied or if this law does not regulate the personal legal effects, the common personal status of the registered partners is decisive or, in the absence of a common personal status, the last common personal status, if one of them has kept it. Otherwise, Austrian law is applicable, which is also the case if the personal status does not regulate the personal legal effects of the registered partnership.

The **property regime** of the registered partnership is to be judged according to the law applicable since 29 January 2019 under **Regulation (EU) 2016/1104 on the property consequences of registered partnerships**.

The **dissolution** of the registered partnership not due to fault is governed by the law of the State in which the registered partners have their common habitual residence at the time of the dissolution, or in the absence of such a common habitual residence, according to the law of the State in which they had their last common habitual residence, if one of them has kept it. If, accordingly, the law of the State of residence cannot be applied or if, accordingly, the registered partnership cannot be dissolved on the basis of the facts adduced, the common personal status of the registered partners is decisive or, in the absence of a common personal status, the last common personal status, if one of them has kept it. Otherwise, Austrian law is applicable, which is also the case if the personal status does not allow the dissolution of the registered partnership on the basis of the facts adduced.

3.5.3 Divorce and judicial separation

Under § 20 IPRG, aspects of **divorce** not regulated by the Rome III Regulation (Council Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 343 of 29 December 2010, p. 10) (property consequences of divorce) are to be judged according to the law that is decisive for the personal legal effects of the marriage. What matters here is the time of the divorce; the reference therefore cannot be changed.

The **matrimonial property regime** is to be judged according to the law applicable since 29 January 2019 under **Regulation (EU) 2016/1103 in matters of matrimonial property regimes**.

The **dissolution of a marriage** is unknown under Austrian law. In so far as it is not regulated by the Rome III Regulation, it would have to be connected according to the closest relationship in accordance with § 1 IPRG. The closest relationship could well be found in case-law by analogy with § 20 IPRG.

3.5.4 Maintenance obligations

Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, p. 1 (EU Maintenance Regulation), refers for the maintenance status to the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations. Accordingly, the law of the State in which the person to whom maintenance is owed has his or her habitual place of residence is primarily applicable (supplemented by tendencies towards *lex fori*, special connecting factors, a defensive clause against 'surprising' claims and a – very restrictive – possibility to choose the applicable law).

3.6 Matrimonial property regimes

The **matrimonial property regime** is to be judged according to the law applicable since 29 January 2019 under **Regulation (EU) 2016/1103 in matters of matrimonial property regimes** (see above).

3.7 Wills and successions

Successions are regulated in the EU Succession Regulation (Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201 of 27 July 2012, p. 107). For old cases, § 28 IPRG applies, according to which the decisive law depends on the personal status of the deceased at the time of death. This conflict-of-law rule also in principle covered liability for the debts of the estate and the acquisition of succession. However, if probate proceedings were carried out in Austria, the acquisition of succession and liability for the debts of the estate were to be judged according to Austrian law (§ 28(2) IPRG).

3.8 Real property

The **acquisition and loss** of rights in rem in respect of tangible property, including possession, are to be judged according to the law of the State in which the property is located on completion of the factual circumstances underlying the acquisition or loss. The legal category of property and the content of the rights are to be judged according to the law of the State in which the property is located (§ 31 IPRG).

The scope of the conflict-of-law rule covers in particular ownership, servitudes (land charges), lien, building right, home ownership, but also rights of retention effective against third parties and reservation of title. The consequences of transfer of ownership are also covered by this law.

A subsequent change of location does not affect the applicable law because the acquisition of the right represents a completed factual circumstance.

The **effects** of acquisition of a right are based on the law of the respective location; this connecting factor may therefore change. Questions relating to the extent of legal protection of the owner, whether and to what extent the person entitled to the right in rem has a right of disposal, for example whether a pledge of chattels can be sold without judicial intervention, as well as other questions, are also to be judged according to this law.

A special regulation applies for **means of transport** (§ 33 IPRG). Rights in rem with respect to ships and aircraft that have been entered in a register are to be judged according to the law of the State of registry; for railway vehicles, the applicable law is that of the State in which the railway company in whose service the vehicles are used has its actual central administration. For legal and compulsorily justified pledges or legal rights of retention to secure claims for compensation for damage caused by the vehicle or expenditure on this, the applicable law is that of the State in which the property is located on completion of the underlying factual circumstances.

There is also a special regulation for **immovable tangible property**: if rights in rem to immovable property are also covered by the scope of another conflict-of-law rule (for example that for the matrimonial property regime), the property law reference, i.e. the connection to the law of the State in which the property is located, takes precedence.

There is no conflict-of-law rule for **intangible property**. Under § 1 IPRG, the applicable law under property law is that to which the closest connection exists. Securitised rights are judged according to the *lex cartae*. § 33a IPRG, which transposes Article 9 of Directive 2002/47/EC on financial collateral arrangements with a wider scope, contains a special rule for book entry securities. For securities in settlement systems, the special regulations of §§ 16 and 18 of the Settlement Finality Act (*Finalitätsgesetz*), which transpose Settlement Finality Directive 98/26/EC, are applicable.

3.9 Insolvency

International **insolvency law** is regulated in Part Eight of the Insolvency Code (IO). According to § 217 IO, the provisions are applicable only in so far as not otherwise provided by international law or in particular legal acts of the European Communities, primarily through Regulation (EC) No 848/2015 on insolvency proceedings (EU Insolvency Regulation). In terms of content, the provisions largely follow the corresponding provisions of the EU Insolvency Regulation.

In principle, the prerequisites for opening insolvency proceedings and the effects of the insolvency proceedings are governed by the law of the State in which the proceedings are opened. In particular, §§ 221 to 235 IO contain rules on third-party rights in rem, set-off, reservation of title, contracts relating to immovable property, regulated markets, contracts of employment, the effects of insolvency proceedings on rights subject to registration, as well as the law applicable to detrimental acts and the protection of third-party purchasers, the effects on lawsuits pending, the law of *lex rei sitae* with regard to the exercise of property rights or other rights, set-off and novation agreements, repurchase agreements and payments after the opening of insolvency proceedings.

Where regulations overlap with those of the IPRG or other conflict-of-law provisions, the more specialised provisions of the Insolvency Code take precedence.

Last update: 06/07/2023

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.