

Početna stranica>Pokretanje sudskog postupka>Gdje i kako>Pravo koje države je mjerodavno?

Which country's law applies?

Bugarska

## 1 Sources of the rules in force

### 1.1 National rules

The essential provisions of Bulgarian private international law are contained in the Private International Law Code (*Kodeks na mezhdunarodnoto chastno pravo*) (KMCP). The main principle determining the law applicable to relationships at private law with an international element is that such relationships are governed by the law of the State with which they are most closely connected.

Under the Constitution, ratified international treaties are part of the country's domestic law and prevail over the rules of national legislation.

Conflict of law rules that are applied in civil proceedings can also be found in the Code of Civil Procedure (*Grazhdanski protsesualen kodeks, GPK*).

### 1.2 Multilateral international conventions

See above

### 1.3 Principal bilateral conventions

See above

## 2 Implementation of conflict of law rules

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

Under Article 28 of the KMCP, international jurisdiction is verified by the court on its own motion, without the parties to the case having to request this. The ruling determining that such jurisdiction exists or is absent is subject to intermediate and cassation appeal. The court is bound to be familiar with and apply conflict of laws rules.

Where determining which law applies depends on the classification of the essential elements or of the legal relationship, these elements or relationships are classified under Bulgarian law. In assessing the classification, the court must take account of the international element in the relationships that are being settled.

### 2.2 Renvoi

Bulgarian private international law is familiar with and resorts to the *renvoi* doctrine. Remission to Bulgarian law and transmission to the law of a third country are inadmissible with regard to:

1. the legal status of legal persons and of unincorporated entities;
2. the formal requirements for legal transactions;
3. the choice of applicable law;
4. maintenance;
5. contractual relationships;
6. non-contractual relationships.

Under Article 40(3) of the KMPC, Bulgarian substantive law or, respectively, the substantive law of the third country, applies in case *renvoi* is admitted.

### 2.3 Change of connecting factor

Under Article 27 of the KMCP, if the grounds for international jurisdiction existed when the case was instituted, such jurisdiction is retained even if these grounds lapse while the proceedings are in progress. If international jurisdiction did not exist when the case was instituted, such jurisdiction is conferred if the grounds for it arise while the proceedings are in progress

Any intervening change of circumstances that underlay the determination of the applicable law does not have a retroactive effect: Article 42 of the KMCP.

If the location of property is changed after a right *in rem* has been established or extinguished, the law applicable is changed accordingly. Under Article 66 of the KMCP, where a property is relocated, the rights acquired pursuant to the law of the State in which that property was previously located may not be exercised to the prejudice of the law of the State to which that property has been relocated.

Under Article 93(4) of the KMCP, the parties to a contract may at any time agree to subject that contract in whole or in part to a law other than that which previously governed the contract concerned.

### 2.4 Exceptions to the normal application of conflict rules

The only case where a provision of a foreign law does not apply is if the consequences of its application are manifestly incompatible with Bulgarian public policy.

The application of the conflict of law rules in the Private International Law Code does not prejudice the application of the mandatory rules of Bulgarian law that, considering their subject matter and purpose, must apply notwithstanding the transmission to a foreign law.

The court may have regard to the mandatory rules of another State with which the relationship has a close connection if these rules, under the law of the State that laid them down, must be applied notwithstanding what law has been determined as applicable by a conflict of law rule of the Code. To decide whether to have regard to such special mandatory rules, the court must have regard to the nature of these rules and their subject matter and to the consequences of applying or not applying them.

Bulgarian courts have jurisdiction over actions brought against multiple defendants if the grounds for jurisdiction exist in respect of one of these defendants. Where Bulgarian courts have jurisdiction over one of the actions brought by the claimant, they have jurisdiction for examining the rest of the actions as well.

### 2.5 Proof of foreign law

The court or another authority applying the law establishes the contents of the foreign law of its own motion. The court may resort to the methods provided for in international treaties, may request information from the Ministry of Justice or from another body, and request opinions from experts and specialised institutions.

Notwithstanding the above, the parties have the right to produce documents establishing the contents of the provisions of the foreign law on which they base their motions or objections, or otherwise assist the court or another authority applying the law. The court or another authority applying the law may order the parties to assist in establishing the contents of the foreign law.

The foreign law is interpreted and applied as it is interpreted and applied in the State which created it.

The apportionment of the burden of proof is determined by the substantive law which governs the consequences of the fact requiring proof. Where the jurisdiction of the Bulgarian courts may be stipulated by an agreement between the parties to the dispute, this jurisdiction may be established even without any such agreement if the defendant accepts it explicitly or tacitly through acts on the merits of the dispute. The Bulgarian enforcement authorities have exclusive jurisdiction to coerce enforcement where the obligation which is subject to such action must be performed by a person habitually resident in Bulgaria or where the subject matter of this action is located in Bulgaria.

### **3 Conflict of law rules**

#### **3.1 Contractual obligations and legal acts**

This area is governed by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), and Bulgaria is also party to the Rome Convention of 1980,

[Convention 80/934/EEC on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980](#).

In case the above-mentioned Regulation is inapplicable, the provisions of the Private International Law Code apply.

Bulgarian courts have jurisdiction over actions on contractual relationships where the defendant has a habitual residence, seat or principal place of business in Bulgaria, where the claimant or applicant is a Bulgarian national or is a legal person registered in Bulgaria, and where the place of performance of the obligation is in Bulgaria or where the defendant has a principal place of business in Bulgaria.

Contracts are governed by the law chosen by the parties.

Unless otherwise agreed, the parties are presumed to have accepted as applicable the usage of which the parties are or ought to have been aware, and which is widely known in international trade or commerce, and regularly observed by parties to contracts of the type involved in the particular trade or commerce involved.

By their choice, the parties can select a law applicable to the whole, or a part only, of the contract.

Where the subject matter of the contract is a right *in rem* in immovable property, the contract is presumed to be most closely connected with the State in which the immovable property is located.

The conclusion and material validity of a contract or of any separate provision of a contract is governed by the law of the State which applies to the validity of the contract. A contract is valid if it satisfies the formal requirements established by the law applicable to the contract as provided for by the Private International Law Code or by the law of the State in which the contract is concluded. The law governing the contract furthermore applies in connection with the proving of the contract, to the extent that this law contains rules which raise presumptions of law or other provisions regarding the burden of proof.

Bulgarian courts have jurisdiction over actions brought by a consumer where the defendant has a habitual residence, statutory seat or principal place of business in Bulgaria, where the claimant or applicant is a Bulgarian national or is a legal person registered in Bulgaria and where they have a habitual residence in Bulgaria.

The provisions of the Private International Law Code do not apply to any obligations arising under a bill of exchange, a promissory note and a cheque.

#### **3.2 Non-contractual obligations**

This area is governed by Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

In case the above-mentioned Regulation is inapplicable, the provisions of the Private International Law Code apply.

The obligations arising out of a tort or delict are governed by the law of the State within whose territory the direct damage arises or is likely to arise (*lex loci delicti commissi*). Where the author of the tort or delict and the person sustaining damage both have their habitual residence or place of business in the same State at the time when the damage occurs, the law of that State applies.

Notwithstanding the above, if it appears from the circumstances as a whole that the tort or delict is manifestly more closely connected with another State, the law of that other State applies. A manifestly closer connection may be based on a pre-existing relationship between the parties, such as a contract that is closely connected with the tort or delict in question.

Bulgarian courts have jurisdiction over actions on damage sustained as a result of a tort or delict where the defendant has a habitual residence, seat, where the claimant satisfies the same conditions, and where the harmful act was committed in Bulgaria or where the damage occurred in Bulgaria.

Where the damage is caused, or there is a risk of damage being caused, by a defective product, the obligation for compensation is governed by the law of the State in which the person sustaining the damage is habitually resident.

The obligations arising out of an act of unfair competition and of restriction of competition are governed by the law of the State within whose territory the interests of competitors in the relationships therebetween, or the collective interests of consumers, are, or are likely to be, directly and substantially affected.

The obligations arising out of a violation of rights relating to the personality by the mass communication media and out of the violation of rights relating to personal data protection are governed, depending on the preference of the person sustaining damage, by the law of the State in which that person is habitually resident, or the law of the State within whose territory the damage occurred, or the law of the State of the defendant's place of business.

The obligations arising out of a violation of the environment are governed by the law of the State within whose territory the damage arises.

The obligations arising from an infringement of copyrights, of rights neighbouring on copyright, and on industrial property rights are governed by the law of the State for which protection of the right is sought (*lex loci protectionis*).

The obligations arising out of unjust enrichment are governed by the law of the State in which the enrichment takes place except where the unjust enrichment takes place in connection with another relationship between the parties (e.g. a contract that is closely connected with the unjust enrichment).

The obligations arising out of agency without authority are governed by the law of the State of habitual residence or place of business of the party concerned at the time of assuming the agency. Where the obligation arising out of agency without authority is connected to protection of a natural person or of a specific property, the applicable law is the law of the State in which the person was present or the property was located at the time of agency without authority. If it appears from the circumstances as a whole that the agency without authority is manifestly more closely connected with another State, the law of that other State applies.

After an obligation arising out of a non-contractual relationship comes into existence, the parties may submit this obligation to a law of their choice.

The law applicable to obligations arising out of a non-contractual relationship governs the conditions and extent of liability and the persons who are liable, the grounds for exemptions from liability and any limitation and division of liability, the measures taken to ensure enforcement, the kinds of injury or damage, the persons entitled to compensation for injury or damage sustained personally, the liability for injury caused by another person, the manners in which an obligation may be extinguished, and the proving of the obligations.

The applicable law does not govern the liability of the State and of bodies governed by public law, including their authorities and representatives, for acts performed by them in the course of exercise of their powers.

Whatever may be the applicable law, in determining liability, regard must be had to the rules of safety and conduct which were in force at the place and time of commission of the harmful act.

The right of persons who have suffered injury or damage to take direct action against the insurer of the person claimed to be liable is governed by the law applicable to the obligation arising out of the relevant non-contractual relationship.

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

The capacity of a person to have rights and duties and to enter into legal relationships is governed by their national law (*lex patriae*) (the law of the State whose nationality the person holds). Where the law applicable to a specific relationship establishes special conditions regarding the capacity to have rights and duties, that law applies. Under Article 50(2) of the KMCP, where the contract is entered into between persons who are present within the territory of the same State, the person who is capable of having rights and duties under the law of that State may not invoke their incapacity under the law of another State, except where the opposite party was aware of that incapacity or was unaware of that said incapacity through negligence at the time of the conclusion of the contract. The provision of paragraph 2 does not apply to any transactions in family and succession relationships, or to any transactions regarding rights *in rem* in immovable property located in a State other than the State of the place of conclusion of the transaction.

The capacity of a person to carry out activities of a commercial nature without incorporation of a legal person is determined by the law of the State where the person is registered as a merchant. Where registration is not required, the law of the State where the person has a principal place of business applies. Under Article 53 of the KMCP, the name of a person and the change of that name are governed by the national law of the person. The effect of the change of nationality on the name is determined by the law of the State whose nationality the person has acquired. Where any such person is stateless, the effect of the change of their habitual residence on the name is determined by the law of the State in which the person establishes their new habitual residence. The name and its change may be governed by Bulgarian law if this be requested by a person who is habitually resident in Bulgaria.

Bulgarian courts furthermore have jurisdiction over matters relating to a change or protection of a name where the person is a Bulgarian national or is habitually resident in Bulgaria, over matters relating to limitation or deprivation of Bulgarian nationals of the capacity to enter into legal relationships and over matters relating to revocation of the limitation or deprivation of the capacity of Bulgarian nationals to enter into legal relationships, to establish and terminate guardianship or curatorship, to declare an absence unheard from or death, where the person placed under guardianship or curatorship is a Bulgarian national or is habitually resident in Bulgaria.

### **3.4 Establishment of parent-child relationship, including adoption**

#### **3.4.1 Establishment of parent-child relationship**

Bulgarian courts and other authorities have jurisdiction over proceedings for establishment and contesting of a parent-child relationship where the defendant has a habitual residence in Bulgaria, where the claimant or applicant is a Bulgarian national, and where the child or the parent, who is a party, is a Bulgarian national or is habitually resident in Bulgaria. This jurisdiction furthermore applies to matters relating to relationships *in personam* and *in rem* between parents and children and to adoption, annulment or revocation of adoption, where the adopter, the adoptee or one of the parents of the adoptee is a Bulgarian national or is habitually resident in Bulgaria.

Establishment of a parent-child relationship is governed by the law of the State whose nationality the child acquired at the time of birth. The same law is applicable to the relationships *in personam* between the parents at the time of birth. *Renvoi* to the law of a third country is accepted where that law admits establishment of the child's parent-child relationship.

#### **3.4.2 Adoption**

The conditions for adoption are governed by the law of the State of which the adopter (or adopters) and the adoptee are nationals at the time of submission of the application for adoption. If these persons hold different nationalities, the national law of each of the persons applies. Where the adoptee is a Bulgarian national, the consent of the Minister of Justice must be requested. The terms and procedure for granting consent to the adoption of a person who is a Bulgarian national by a foreign national are established by a regulation of the Minister of Justice. Where the adoptee is a Bulgarian national, the adopter (whether a Bulgarian or a foreign national) who is habitually resident in another State must also satisfy the conditions for adoption under the law of that State. The effect of adoption is governed by the common national law of adopter and adoptee. If adopter and adoptee hold different nationalities, the law of the State in which they have a common habitual residence applies.

Bulgarian courts have jurisdiction over actions on maintenance in cases where the defendant is habitually resident in Bulgaria, where the claimant or the applicant is a Bulgarian national, and where the maintenance creditor is habitually resident in Bulgaria.

Maintenance obligations are governed by the law of the State in which the maintenance creditor is habitually resident, except where that creditor's national law is more favourable to them. In such cases, the national law of the maintenance creditor applies. Where the applicable law does not admit the award of maintenance, Bulgarian law applies.

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

#### **3.5.1 Marriage**

Marriage in Bulgaria is celebrated by a civil status registrar if one of the future spouses is a Bulgarian national or is habitually resident in Bulgaria. Marriage between foreign nationals may be celebrated in Bulgaria by a consular official or a diplomatic agent of the State of origin of the foreign nationals concerned if this is permissible under the law of that State. Bulgarian nationals abroad may enter into marriage before a competent authority of the foreign State if this is permissible under the law of that State. Marriage between Bulgarian nationals abroad may be celebrated by a Bulgarian consular official or diplomatic agent if this is permissible under the law of the receiving State. Marriage between a Bulgarian national and a foreign national may be celebrated abroad by a Bulgarian consular official or diplomatic agent if this is permissible under the law of the receiving State and the national law of the foreign national. Matrimonial matters are cognisable in Bulgarian courts if one of the spouses is a Bulgarian national or is habitually resident in Bulgaria. The formal requirements for marriages are governed by the law of the State of celebration.

The substantive requirements for entry into marriage are governed for each of the future spouses by the law of the State of which the person was a national at the time of celebration of the marriage.

In respect of a Bulgarian national who enters into marriage abroad, the authorisation referred to in Article 6(2) of the Family Code (*Semeen kodeks*) may be granted by the Bulgarian diplomatic agent or consular official.

Where one of the future spouses is a Bulgarian national or is habitually resident in Bulgaria, the marriage is celebrated by a Bulgarian civil status registrar and, if the applicable foreign internal law establishes any impediment to the entry into marriage which, under Bulgarian law, is incompatible with the freedom to enter into marriage, this impediment is disregarded.

A foreign national or a stateless person must certify to the Bulgarian civil status registrar that their national law recognises the validity of a marriage celebrated by a foreign competent authority and that there are no impediments to entry into that marriage under their national law.

#### **3.5.2 Unmarried/Cohabiting couples and partnerships**

There are no special conflict of law rules.

#### **3.5.3 Divorce and judicial separation**

This area is governed by Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

In case the above-mentioned Regulation is inapplicable, the provisions of the Private International Law Code apply.

The divorce of spouses of the same foreign nationality is governed by the law of the State whose nationals they are when the divorce petition is lodged.

The divorce of spouses of different nationalities is governed by the law of the State in which they have their common habitual residence when the divorce petition is lodged. When the spouses have no common habitual residence, Bulgarian law applies.

If the applicable foreign law does not admit the divorce and one of the spouses is a Bulgarian national or is habitually resident in Bulgaria when the divorce petition is lodged, Bulgarian law applies.

#### **3.5.4 Maintenance obligations**

This area is governed by 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.

In case the above-mentioned Regulation is inapplicable, the provisions of the Private International Law Code apply.

Maintenance obligations are governed by the law of the State in which the maintenance creditor is habitually resident, except where that creditor's national law is more favourable to them. In such cases, the national law of the maintenance creditor applies. Where the maintenance creditor and the maintenance debtor are nationals of the same State and the maintenance debtor is habitually resident in that State, the common national law of the two persons applies. Where the applicable law does not admit the award of maintenance in the situations above, Bulgarian law applies.

Where maintenance obligations between former spouses arise by reason of annulment of a marriage or by reason of divorce, the applicable law is the law which applied upon the divorce or the annulment of the marriage.

The law applicable to maintenance determines:

1. whether maintenance may be claimed, in what amount, and by whom;
2. who can claim maintenance and within what time limits;
3. whether and under what terms the maintenance may be modified;
4. the grounds for extinguishment of the right to maintenance;
5. the obligation of the maintenance debtor to reimburse the authority which paid the maintenance instead of that debtor.

Upon determination of the amount of maintenance, account must be taken of the financial capabilities of the maintenance debtor and of the actual needs of the maintenance creditor, even where the applicable foreign law provides for otherwise.

Marriage annulment is governed by the law that was applicable to the substantive requirements for entry into the marriage.

For marriage annulment and divorce, see the relevant topic.

#### **3.6 Matrimonial property regimes**

The court having jurisdiction over matters relating to annulment and divorce has jurisdiction over matters relating to relationships *in personam* and *in rem* between the spouses.

The relationships *in personam* between spouses are governed by their common national law. The relationships *in personam* between spouses holding different nationalities are governed by the law of the State in which they have a common habitual residence or, when they have no common habitual residence, by the law of the State with which both spouses are most closely connected. The relationships *in rem* between spouses are governed by the law applicable to the relationships *in personam* between them.

#### **3.7 Wills and successions**

This area is governed by Regulation (EU) No 650/2012 of 4 July 2012 on the 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.

In case the above-mentioned Regulation is inapplicable, the provisions of the Private International Law Code apply.

Bulgarian courts and other authorities have jurisdiction over actions relating to succession where the deceased at the time of their death were habitually resident in Bulgaria or were then Bulgarian nationals, and where part of their estate is located in Bulgaria.

Inheritance of movable property is governed by the law of the State in which the deceased was habitually resident at the time of their death. Inheritance of immovable property is governed by the law of the State in which the property is located. The deceased choose the law of the State whose nationality they held at the time of making that choice to govern the inheritance of the whole of their estate. The choice of an applicable law must not affect the reserved share of the heirs determined under the applicable law above.

The capacity of a person to dispose of their estate by a will (making and revocation) is governed by the law applicable to succession. A will is formally valid if it conforms to the law of the State in which it was made, or whose nationality was held by the testator at the time of making the will or at the time of their death, or where the testator was habitually resident, or where the immovable property subject to the will be located.

The law applicable to succession governs the time and place of opening the succession, the range and precedence of the heirs, the shares of the heirs, the capacity to inherit, the assumption of the obligations of the deceased and their apportionment among the heirs, the acceptance and renunciation of succession, the time limits for acceptance of the succession, the disposable portion of the estate, and the conditions for material validity of the will.

Where there are no heirs under the law applicable to the succession, the estate located within the territory of Bulgaria reverts to the Bulgarian State or to the municipality.

#### **3.8 Real property**

This area is governed by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 July 2008 on the law applicable to contractual obligations (Rome I).

In case the above-mentioned Regulation is inapplicable, the provisions of the Private International Law Code apply.

Matters relating to immovable property located in Bulgaria, matters relating to enforcement or security against such property and matters relating to the transfer or establishment of rights *in rem* in such property are exclusively cognisable in Bulgarian courts and other authorities.

Possession, ownership and other rights *in rem* in movable and immovable property are governed by the law of the State in which the property is located (*lex loci rei sitae*). Whether property is movable or immovable and the type of the rights *in rem* is determined by the same law.

The acquisition and termination of rights *in rem* and possessory rights is governed by the law of the State in which the property was located when the act was performed or when the circumstance justifying the acquisition or termination occurred.

The acquisition, transfer and termination of rights *in rem* in means of transport is governed by the law of the flag of the vessel, the law of the State where the aircraft is registered, or the law of the State where the operator of the railway rolling stock and of land motor vehicles has its place of business.

#### **3.9 Insolvency**

This area is governed by Council Regulation (EC) No 1346/2000 and, reckoned from 26 June 2017, by Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings.

[See Insolvency](#)

The following websites may be useful:

<https://www.justice.government.bg>

<http://www.vss.justice.bg>

<http://www.vks.bg/>

<http://www.vss.justice.bg/page/view/1397>

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