### Introduction to Polish PIL: Law Applicable to Natural Persons

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# Slajd 2

#### Three Notions

One should make a distinction hetween:

- the law applicable to natural persons
- the personal status of natural persons
- the personal law (lex personalis) or natural persons

# Slajd 3

## Law Applicable to Persons

In Polisit: statut personally: French: le statut personale; German: das Personalistatut; Spanista: el statuta seems incorrect (statute » law, act of Parliament, not the legal system referred to as applicable). In this case we have in mind the law governing persons in general (the beginning and the end of their existency, issues of legal capacity or capacity to act, the pomp, etc.). The scope of the law applicable diffes under various systems of law of conflict (e.g., in Austria das Personalistatut means the law applicable to all the personal relationships, ind. marriage, family status, etc.) = more or less equivalent to the notion of the (personal law (ide. personales).

#### Personal status

# Slajd 5

- Means <u>every law</u> indicated by the personal connecting factors, as applicable for any relationship within the scope of personal, family, or succession law (everything <u>sctrictly tied to the personality of a man</u>)

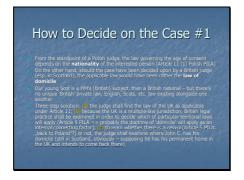
  Personal connecting factors for the natural persons are: 1) nationality (citizenship), 2) residence (domicilium), 3) habitual residence

# Slajd 6

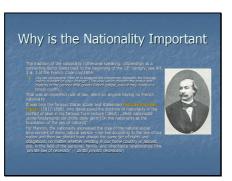
#### Case #1

# Observations The law applicable to a contract, here: Polish law (the law in force at the seller's place of labilitial residence, sovers lie invalidation of the seller's place of labilitial residence, sovers lie invalidation of the lag lability (Polish 1997). The seller lability (Polish 1997) is seller lability (Polish 1997) in the consequences of the lag lability of a preson seems to be the so-called sub-question (Tell'resolute German), i.e. a leval problem which itself has no independent meaning and in spite of that it shall be subject to the conflicts rule, and to the law, other that that one governing the subject matter of the case (here: the nullity of the contract). One might say that Article 18 of Polish (Civ.C., which mentions a limited lead capability" as a necessary prerequisite for the avoidance of a jurificial act concluded without a legal representative sassent, makes an implied reference to the law governing the personal status of a person

# Slajd 8



# Slajd 9



#### Weak Points in the Concept

- What to do with dual/multiple nationals (b/-, polipatridae)?
  How to treat people whose connection with their mother countries have been breached (esp. refugees)? What about stateless persons?
  Is the connecting point of the nationality in line with the EU law (prohibition of discrimination under Article 18 TFEU...)? Is it still reasonable to believe that the nationality mirrors a natural person's legal culture and environment (heterogenous societies, often and easy changing of domicile)?

# Slajd 11

#### Conflicts of Nationality (dual/multiple nationality)

- The law of conflicts does not try to resolve the matters of multiple nationals

  Every sovereign State is in the position to regulate who is its national

# Slajd 12

#### Case #2

- Mario S. is a son of an Italian-Polish couple. He was born in Milan in 1980, he does not speak Polish at all and moreover,

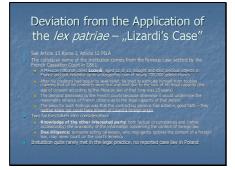
#### Remarks and Reflections

# Slajd 14

# Slajd 15

#### Stateless Persons and Refugees

- Their personal status cannot be determined according to the nationality (either because it is impossible or it is not reasonable). Two subsidiary connecting factors under Article 3 (1): the law of the country of the place of <u>homotile</u> or, in the absence of the latter, the law of the place of <u>note plantial residence</u>. Domicle and habitual residence—a unite a difficult distinction; both depend on where a given person has his or her real centre of life. The intention to stay (animum maneral) also plays a role here (e.g., a person imprisoned in a foreign State generally should not be deemed to have established his or her dominic/plabitual residence in that latter country). Habitual residence seems rather to be directed towards the objective criteria but indeed, the difference is the slight one

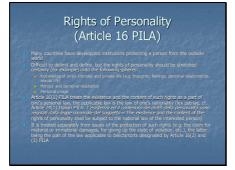


# Slajd 17

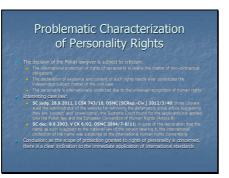


# Slajd 18

# Determination of death impation of death (Article 14) is used in the sense of an official (court infortative) method of establishing the fact or the time of the death spit (2) (is another exception from the rule that the law of antionality is the end of the person's legal existence and espacity to act dinary presumptions of death (known to the law of some common interes) are always subject to the national law of a person presumed ead, even if they are used in the course of the court proceedings increasing the succession matters) plication of the courts own law (lex ron) depends of procedural the Polich court must be seeded with the case concerning the imitation of the death of a foreigner, which is possible only if it has born (see Article 1016 COP; the place of domicile or habitual ce shall be sufficient)



# Slajd 20



#### Exhibit No. 1

P. H. Neuhaus, *Die Grundbegriffe des Internationalen Privatrechts*, Tübingen 1976, p. 201 (Anknüpfung des Personalstatuts - Point of connection for the law applicable to persons)<sup>1</sup>:

The notion of **Personalstatut** (law applicable to persons) means according to the current German language manner [...] the legal system which is proper either for all the personal legal relationships of the natural person concerned (and the moral person as well) or for the remaining personal entity. This word should be clearly differentiated from the English term: "**personal status**", which stands for one's individual or civil status, i.e. one's position within the legal society, be it the legal status as a married or single person, as the marital, extramarital or legitimate child, be it the position of a citizen or of a foreigner, as a capable or incapable to act in law, as the bankrupt debtor, as the culpable of high treason devoid of his civil rights, as the guardian, and the position of the moral person, too. Eventually, the shimmering French expression: "**statut personnel**" means sometimes the Personalstatut in German sense (it is called "**loi personnelle**", too), sometimes the personal situation just as the English word: "status" ("état et capacité"), and sometimes the whole of the issues governed by the Personalstatut (so the subject-matter of the connection, Anknüpfungsgegenstand).

#### Exhibit No. 2

Excerpts from the 1951 UN Convention Relating to the Status of Refugees

Article 12

#### Personal Status

- 1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.
- 2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Exhibit No. 3

Case C-148/02

#### Carlos Garcia Avello v État belge

#### Judgment of the Court (Full Court), 2 October 2003

Summary of the Judgment

1..

Citizenship of the European Union – Treaty provisions – Scope ratione personae – National of one Member State lawfully residing on the territory of another Member State – Whether included – Effect – Benefit of rights attaching to the status of citizen of the Union – Persons concerned also nationals of the State of residence – Not relevant – Discrimination on grounds of nationality in regard to the rules governing the surname – Not permissible

(Arts 12 EC, 17 EC and 18 EC)

Community law – Principles – Equal treatment – Discrimination on grounds of nationality – Minor children resident in a Member State and having dual nationality of that State and of another Member State – Application for a change of surname to enable those minor children to bear the surname to which they are entitled in the second Member State – Refusal of the administrative authority to grant that application – Not permissible

(Arts 12 EC and 17 EC)

<sup>&</sup>lt;sup>1</sup> English translation by M. Pilich.

Nationals of one Member State who are lawfully resident in the territory of another Member State may rely on the right set out in Article 12 EC not to suffer discrimination on grounds of nationality in regard to the rules governing their surname. Citizenship of the Union is destined to be the fundamental status of nationals of the Member States, enabling those nationals who find themselves in the same situation to enjoy, within the scope ratione materiae of the EC Treaty, the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for. The situations falling within the scope ratione materiae of Community law include those involving the exercise of the fundamental freedoms guaranteed by the Treaty, in particular those involving the freedom to move and reside within the territory of the Member States, as conferred by Article 18 EC. Although, as Community law stands at present, the rules governing a person's surname are matters coming within the competence of the Member States, the latter must none the less, when exercising that competence, comply with Community law, in particular with the Treaty provisions on the freedom of every citizen of the Union to move and reside in the territory of the Member States. Citizenship of the Union, established by Article 17 EC, is not, however, intended to extend the scope ratione materiae of the Treaty also to internal situations which have no link with Community law. Such a link with Community law does, however, exist in regard to persons in a situation such as that of a national of one Member State who is lawfully resident in the territory of another Member State. That conclusion cannot be invalidated by the fact that the persons concerned also have the nationality of the Member State in which they have been resident since their birth and which, according to the authorities of that State, is by virtue of that fact the only nationality recognised by the latter. It is not permissible for a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty.

see paras 22-29

Articles 12 EC and 17 EC must be construed as precluding the administrative authority of a Member State from refusing to grant an application for a change of surname made on behalf of minor children resident in that State and having dual nationality of that State and of another Member State, in the case where the purpose of that application is to enable those children to bear the surname to which they are entitled according to the law and tradition of the second Member State. First, with regard to the principle of the immutability of surnames as a means designed to prevent risks of confusion as to identity or parentage of persons, although that principle undoubtedly helps to facilitate recognition of the identity of persons and their parentage, it is still not indispensable to the point that it could not adapt itself to a practice of allowing children who are nationals of one Member State and who also hold the nationality of another Member State to take a surname which is composed of elements other than those provided for by the law of the first Member State and which has, moreover, been entered in an official register of the second Member State. Furthermore, by reason in particular of the scale of migration within the Union, different national systems for the attribution of surnames coexist in the same Member State, with the result that parentage cannot necessarily be assessed within the social life of a Member State solely on the basis of the criterion of the system applicable to nationals of that latter State. In addition, far from creating confusion as to the parentage of the children, a system allowing elements of the surnames of the two parents to be handed down may, on the contrary, contribute to reinforcing recognition of that connection with the two parents. Second, with regard to the objective of integration pursued by the practice in issue, the practice in issue is, in view of the coexistence in the Member States of different systems for the attribution of surnames applicable to those there resident, neither necessary nor even appropriate for promoting the integration of the nationals of other Member States within their State of residence.

see paras 42-43, 45, operative part