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CONFLICTS OF LAW IN THE SPHERE OF MATRIMONIAL RELATIONS WITH A FOREIGN ELEMENT

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The article discusses the issue of determining the law applicable to marriage with a foreigner or on the territory of a foreign state. Aspects of the form of marriage and the material conditions of its validity are analyzed. A small comparative study of the legislation of foreign states in this area is being carried out. The Family Code of the Republic of Moldova and some national laws are considered as the basis for internal legal regulation.
Keywords: *marriage, conflict of laws, conditions of validity of marriage, marital capacity, polygamy, applicable law, private international law.*

Conflictele de legi în domeniul raporturilor de căsătorie cu element de extraneitate
Articolul examinează problema stabilirii legii aplicabile căsătoriei cu un străin sau pe teritoriul unui stat străin. Sunt analizate aspectele formei căsătoriei și condițiile materiale ale valabilității acesteia. Se desfășoară un mic studiu comparativ al legislației statelor străine în acest domeniu. Codul familiei al Republicii Moldova și unele legi naționale sunt considerate ca bază pentru reglementarea juridică internă.
Cuvinte cheie: *căsătorie, conflict de legi, condiții de valabilitate a căsătoriei, capacitate matrimonială, poligamie, drept aplicabil, drept internațional privat.*

1. Some general provisions on marriage and family relations in private international law

Marriage and family relations are complex relations of a personal non–property and property nature, based on kinship ties and regulated by the norms of civil law in a broad sense. In many countries, there is no family law as an independent branch of law, and legal relations in family domain are regulated by civil legislation (e.g., Germany, Switzerland). In France, the first Family code was adopted only in 1998. In most modern States, family law is separated from civil law, codified and represents an independent branch of law[1] (including Republic of Moldova). Marriage and family relations in private international law include the following issues: concluding and dissolving a marriage, declaring a marriage invalid, determining the regime of property between spouses, alimony obligations, adoption, guardianship, custody

1 Getman–Pavlova I.V. International private law: Textbook, Moscow: EKSMO, 2005, p. 332.

and other related issues, provided that they are of an international nature, that is, complicated by a foreign element[2].

In modern legal doctrine and judicial practice, marriage is defined as a *contract*, *status* or *partnership*, with the most common view being that marriage is a contract, a special type of civil transaction that gives rise to the personal and property rights and obligations of the spouses. In the normative acts of most states, there is no legal definition of marriage, but it is practically recognized that marriage is a legally formed voluntary union of a man and a woman, aimed at creating a family and involving cohabitation with the management of a common household[3]. However, such a definition cannot be considered uniform for all states, since it is in the marriage and family sphere that the differences between legal systems are very pronounced. This is due to the fact that marriage as a legal and social institution is closely connected with the culture, history, religion and traditions of a particular state, as well as with its economy and politics. In some cases, these differences are so great that the unification of substantive norms of the law of different states becomes impossible in principle, as a result of which the unification of conflict–of–laws norms rather than material ones has been carried out in marriage and family law for quite a long time[4]. One of the first attempts at unification was the adoption of the Hague conventions of 1902—1905 on marriage, divorce, judicial separation of spouses, etc. The very fact that these conventions appeared at the beginning of the 20th century was important, but they were not widely recognized and did not become an international regulator of marriage and family relations[5].

Among the newer instruments that have been recognized and entered into force, we can mention the following international conventions adopted in this area:

1) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962);
2) Convention on Celebration and Recognition of the Validity of Marriages (1978);
3) Convention on the Law Applicable to Matrimonial Property Regimes (1978), etc.

Family relations with a foreign element are an integral part of international civil legal relations. The foreign element in marriage and family relations can manifest itself in all its variants. The legislation of some countries specifically distinguishes **foreign** (between foreigners) and **mixed** (between foreigners and their own citizens) marriages.

As has already been mentioned, the relevant material norms of different states differ dramatically, and as a result various conflicts of law arise. Technically, marriage

2 Private international law. Textbook. / Edited by G. K. Dmitrieva, Moscow: Prospekt publ., 2001, p. 540.

3 Getman–Pavlova I.V. Op.cit., p. 333.

4 Anufrieva L. P. Private international law: in 3 volumes. Volume 2. Special part: Textbook, 2nd ed., reprint. Moscow: BEK Publishing house, 2002, p. 546.

5 Private international law. Op.cit., p. 541.

can be recognized in one country and not recognized in another; this phenomenon is called **limping marriage** and is a special case of limping relationships as such.

The main issues referring to conflict–of–laws in the sphere of marriage are as follows:

1) form and conditions of marriage;
2) racial and religious restrictions;
3) bans on marriages with foreigners;
4) the need for permission (diplomatic, parents or guardians) to enter into marriage;
5) personal law (primacy) of the husband;
6) marriage by proxy and through a representative;
7) polygamy and monogamy;
8) same–sex marriage;
9) legal liability for refusal to enter into a promised marriage;
10) limping marriages, etc.[6]

The doctrine and jurisprudence of some states widely apply the theory of statutes in resolving disputes in the field of family relations with a foreign element: a single family (marriage) statute, the statute of the general consequences of marriage, the statute of the right to a name (change of surname due to marriage), the statute of marriage, dissolution of marriage, statute of property relations between spouses, etc. The use of the theory of statutes allows for a more detailed regulation of all issues of marriage and family relations[7].

It is in the sphere of marriage and family relations with a foreign element that most often it becomes necessary to resolve a preliminary conflict issue (for example, the question of the validity of a marriage — to resolve the issue of the fate of a child in case of termination of a marriage), problems of adaptation of conflict norms, a plurality of conflict ties, limping relationships and interpersonal collisions, the application of the public policy clause[8].

The doctrine of law, using a comparative analysis, identified the most common conflict of laws for establishing applicable law:

1) law of the place of marriage;
2) personal law of both spouses;
3) law of the child's country of permanent residence;
4) personal law of the adoptive parent;
5) the law of the competent institution;
6) law of the court;
7) law of the country of joint residence of spouses;
8) the law of the last joint residence;
9) the child's personal law;
10) the law of the location of common family property.

6 Getman–Pavlova I.V. Op.cit., p. 334.
7 Ibidem.
8 Idem, p.335.

2. Regulation of marriage issues in private international law of the Republic of Moldova

In the Family Code of the Republic of Moldova No.1316–XIV of October 26, 2000[9], family relations with the participation of foreign citizens and stateless persons are regulated in Section VI. According to Article 154, foreign citizens and stateless persons residing in the Republic of Moldova enjoy the same rights and bear the same responsibilities in family relations as citizens of the Republic of Moldova. This corresponds to the general principle of national treatment, which is established in Article 19 of the Constitution of the Republic of Moldova and Article 84[1] of the Law of the Republic of Moldova "On the Regime of Foreigners" No. 100 of July 16, 2010[10] and consists in the following:

— Foreign citizens and stateless persons have the same rights, freedoms and obligations as citizens of the Republic of Moldova, with exceptions established by law.
— The exercise of rights and freedoms by foreign citizens and stateless persons should not prejudice the interests of the state, the rights and legitimate interests of citizens of the Republic of Moldova and other persons.
— Foreign citizens and stateless persons are equal before the law and the authorities, regardless of race, nationality, ethnic origin, language, religion, gender, opinion, political affiliation, property status or social origin.

According to Article 155 of the Family Code, the form and procedure for the conclusion of marriages by foreign citizens and stateless persons on the territory of the Republic of Moldova are determined by the legislation of the Republic of Moldova. Foreign citizens residing outside the Republic of Moldova enter into marriages on its territory in accordance with the legislation of the Republic of Moldova, if they are entitled to marry in accordance with the legislation of the states of which they are citizens. The conditions for the conclusion of marriages by stateless persons on the territory of the Republic of Moldova are determined by the legislation of the Republic of Moldova, taking into account the legislation of the states in which these persons live. Marriages concluded in foreign diplomatic missions and consular offices are recognized on the territory of the Republic of Moldova on a reciprocal basis.

Article 156 stipulates that citizens of the Republic of Moldova enter into marriage outside its borders in diplomatic missions or consular offices of the Republic of Moldova. Marriages between citizens of the Republic of Moldova, as well as between citizens of the Republic of Moldova and foreign citizens or stateless persons, concluded outside the Republic of Moldova in compliance with the legislation of the states in which they were concluded, are recognized as valid in the Republic of Moldova only if the conditions stipulated in Articles 11 and 14 of this code are met.

9 https://www.legis.md/cautare/getResults?doc_id=94330&lang=ro
10 https://www.legis.md/cautare/getResults?doc_id=106814&lang=ro

According to Article 157, the personal non–property and property rights and obligations of spouses are determined by the legislation of the state on the territory of which the spouses have a common place of residence, and in its absence — by the legislation of the state in whose territory they had their last common place of residence. If the spouses do not have and did not have a common place of residence, their personal non–property and property rights and obligations on the territory of the Republic of Moldova are determined by the legislation of the Republic of Moldova. With the mutual consent of the spouses, their marriage contract and the agreement on the payment of alimony may be subject to the laws of the state in which one of the spouses lives. In the absence of such an agreement, the marriage contract and the agreement on the payment of alimony are subject to the requirements established by paragraphs (1) and (2) of Article 157.

Since among the sources of private international law of the Republic of Moldova, both domestic legislative acts and international documents are of equal importance, it is also worth mentioning the regulation of this issue in the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters[11]. According to Article 26 of this Convention, the conditions for contracting a marriage are determined for each of the prospective spouses by the legislation of the Contracting Party of which he is a citizen, and for stateless persons — by the legislation of the Contracting Party that is their permanent place of residence. In addition, the legal requirements of the Contracting Party in whose territory the marriage is being contracted must be complied with regard to barriers to marriage.

In addition, another normative legal act is related to the issue under consideration — the Law of the Republic of Moldova "On acts of civil status" No. 100–XV of 26.04.2001[12]. Article 10 of this Law provides that foreign citizens residing or temporarily staying on the territory of the Republic of Moldova have the right to demand registration of acts of civil status under the same conditions as citizens of the Republic of Moldova. Stateless persons residing in the Republic of Moldova, asylum seekers and refugees, when registering their civil status, have the same rights and bear the same obligations as citizens of the Republic of Moldova. According to article 13, documents on registration of acts of civil status issued to foreign citizens and stateless persons by the competent authorities of foreign states in accordance with the laws of these states are recognized as valid in the Republic of Moldova if they are legalized in accordance with the established procedure and unless otherwise provided by international agreements. The civil status records compiled by the competent authorities of foreign states are probative in the country only if they are re–registered (re–listed) in the civil status registers of the Republic of Moldova. The re–registration of civil status records and the entry of marks received from abroad in the civil status records are carried out by the civil registration authority of the

11 http://www.consultant.ru/document/cons_doc_LAW_5942/

12 http://www.asp.gov.md/en/node/5948

Chisinau municipality in agreement with the Main Department of Civil Status. Citizens of the Republic of Moldova are required to submit an application for re–registration within six months from the date of return to the country or from the date of receipt from abroad of a certificate of registration of a civil status act, a copy of a civil status record or an extract from such a record.

3. Material conditions and form of marriage in foreign countries

It is known that there are two groups of conditions that determine the conclusion of marriage:

— *formal conditions* defining the marriage procedure.

— *material conditions* that determine the validity of a marriage as such.

It should be borne in mind that the same condition in one country can act as a formal one, and in another — as a material one. The most famous example in this area is parental consent to the marriage of children under the age of majority: in the UK, it refers to the conditions of form, and in the countries of the continental legal system — to material conditions.

Let us now consider the basic ***material conditions***, which over time have become common, with certain variations, for many countries.

Monogamy — the absence of the state of any of the future spouses in another marriage.

This condition does not apply in Muslim countries, as the Qur'an allows a Muslim to have four wives, provided that he can support them properly. In 1953, a Syrian legislator interpreted the Qur'an differently, regarding the ability to support two wives as a precondition for a second marriage, and ruled that a judge could refuse permission for a second marriage if it was proven that the husband was unable to create satisfactory conditions and properly support two wives. In Tunisia, in 1956, polygamy was legally prohibited on the basis that the "impartiality" of the husband in the issue of fair treatment of both wives in modern conditions cannot be guaranteed[13].

Reaching the age of legal capacity by persons entering into marriage.

This age is very different in different countries. Thus, in France it is 18 years for men and 15 years for women; in Italy — 16 and 14, respectively; in Spain — 14 and 12 years old; in Japan — 18 and 16 years old. In the Federal Republic of Germany and Sweden, there is a uniform marriageable age of 18, while in England you can get married at 16 with parental consent, and at 18 without parental consent[14].

Absence of kinship or in–law relationships between persons entering into marriage.

As a general rule, the law prohibits marriage between relatives in a direct ascending and descending line, between full and half brothers and sisters, between

13 Zweigert K., Ketz H. Introduction to comparative law in the field of private law: In 2 volumes — Vol. I. M.: Mezhdunarodnye otnosheniya, 2000. — p. 459.

14 Anufrieva L.P. Op.cit., pp. 553–554.

adoptive parents and adopted children. However, this condition is also interpreted in the legislation of different countries in different ways. For example, in France, marriages between relatives and in–laws in the ascending and descending lines, as well as between brothers and sisters, uncles and nieces, aunts and nephews, are prohibited (Articles 161–163 of the French Civil Code). In Bulgaria, relatives in the lateral line up to and including the 4th degree of kinship (article 10 of the Civil Code of Bulgaria) cannot marry[15].

The consent of the intending spouses.

This rule is present in all legal systems. In some cases, such as in France, it is specified by the relevant judicial practice.

The spouses belong to different genders.

This condition is no longer required for some countries. Holland, Canada, Belgium and Spain now allow same–sex marriage in accordance with legislation passed in 2005[16]. In Denmark, this opportunity has existed since 1989[17]. In 2004, the Supreme Court of South Africa, for the first time in the history of this traditionally very moral and devout country, passed a ruling deeming unconstitutional the legal description of marriage as "a union between a man and a woman," recognizing it as necessary to consider marriage as a "union of two persons"[18].

In addition to the conditions listed above, there are also specific requirements that exist in individual countries. So, in Japan, the "mourning period" is legally established — a period of time during which a woman cannot marry after a divorce or the death of her spouse. In accordance with article 733 of the Civil Code of Japan, this period is 6 months.

In some countries, the presence of certain illnesses, such as serious mental illness, can become an obstacle to marriage[19].

Another unusual condition exists in the legislation of Spain: two persons cannot marry, one of whom has been found guilty of the death of the spouse of another person (paragraph 3 of Article 47 of the Civil Code of Spain).

In other countries, there are also specific conditions — for example, for some Muslim countries religious restrictions are characteristic (a marriage between a devout Muslim and an infidel, i.e. non–Muslim, is considered invalid in such countries); some states prohibit marriages between persons with a significant age difference, etc.[20]

As for ***the form of marriage***, we note the following options[21]:

15 Idem, p.555

16 http://www.rosbalt.ru/2005/7/20/218288.html

17 http://www.korrespondent.net/main/64179

18 http://www.africana.ru/news/2004/12/041201_yuar.htm

19 Anufrieva L. P. Op.cit., p. 557.

20 Tolstykh V. L. Conflict of laws regulation in private international law: problems of interpretation and application of section VII of the third part of the civil code of the Russian Federation, Moscow: Spark, 2002, p. 185.

21 Anufrieva L.P. Op.cit., p. 557.

Marriage registered with state authorities (special registry office or local public administration authority)	France, Belgium, Switzerland, Holland, Japan, Germany, Russia, Moldova.
Church marriage	Andorra, Liechtenstein, Cyprus, Greece, Israel, Iran.
Registered with government and church marriages are equally valid	England, USA, Brazil, Sweden, Norway, Denmark, Spain — the right to choose between the forms of marriage belongs to the future spouses.
Common law marriage (for the conclusion of such a marriage, the voluntary consent of the future spouses is enough; there are practically no formalities)	USA, Canadian provinces.

It should be noted, the opinion most often expressed in the doctrine is as follows: the subordination of the form of marriage to the law of the place of its celebration is considered the only possible solution to this problem, since the marriage is concluded with the participation of state bodies. The relationship associated with the order of registration of marriage and its form is an administrative relationship. Based on its composition, this relationship can be regulated only by the law of the state of the place of marriage[22].

4. Conflict of laws: regulations in the sphere of marriage

In the aspect of marriage, the following variants of legal relations may arise, complicated by a foreign element:

Marriage concluded on the territory of the Republic of Moldova:	**Marriage concluded abroad:**
Marriage between foreigners	Marriage is concluded between citizens of the Republic of Moldova
Marriage concluded between a citizen of the Republic of Moldova and a foreign citizen or a stateless person (mixed marriage)	Marriage concluded between a citizen of the Republic of Moldova and a foreign citizen or a stateless person (mixed marriage)

As already mentioned, in the Family Code of the Republic of Moldova, the conclusion of a marriage complicated by a foreign element is regulated by Articles 155–156. According to these articles, the following preliminary conclusion can be drawn:

— the formal conditions for the conclusion of a marriage are determined by the place of its conclusion — that is, they will be determined according to the legislation of the Republic of Moldova, if the marriage is concluded in Moldova, even if none of the parties to the marriage will have the citizenship of the Republic of Moldova (155 (1), 156 (1) Family Code);

22 Tolstykh V. L. Op.cit., p. 189.

— the material conditions for the validity of a marriage are determined according to the national law of persons entering into marriage — therefore, for citizens of the Republic of Moldova the law of the Republic of Moldova will be national, for foreign citizens — the law of the respective state of their citizenship, and for stateless persons — the law of the country of permanent residence (part (1), (2) Art. 155, part (2) Art. 156). We would like to note that part (1) of the Russian text of Article 156 of the Family Code contains a technical (translational) error: the wording "citizens of the Republic of Moldova enter into marriages outside its borders in diplomatic missions and consular offices of the Republic of Moldova" does not correspond to the wording in Romanian "cetăţenii Republicii Moldova se pot căsători în afara Republicii Moldova…". From part (1) of Article 156 in its current form, it follows that citizens of the Republic of Moldova outside its borders can marry only in diplomatic missions and consular offices, which is undoubtedly wrong. The citizens can apply to these institutions, but they can also use the procedure provided for by the legislation of the respective state — just like foreign citizens can get married in Moldova under Moldovan law. Therefore, the correct wording of this provision should be "citizens of the Republic of Moldova **can** marry outside its borders in diplomatic missions and consular offices of the Republic of Moldova".

In most cases, the rules governing marriage are found in the domestic legislation of the respective state, so the issue of choice of law becomes very important. In different countries, different conflict principles are used to resolve this problem, the main of which are:

- personal law (lex nationalis) in both its main forms (the law of citizenship in Italy, Spain, Germany, Austria, Belgium and the law of residence in Australia, New Zealand, Great Britain), applied both separately and simultaneously (France, Bulgaria);
- the law of the place of marriage (lex loci celebrationes), which is a special case of the general principle of lex loci actus (applied in the USA and Latin America).

In addition to these rules of conflict of laws, in the legal regulation of marriage and family relations, complicated by a foreign element, other rules may also be used — for example, the law of the child's country of residence, the law of the adoptive parent's citizenship, the law of a court or a competent institution. However, these are two especially important principles that are directly related to the issues of marriage — even though it should be noted that the laws of various states allow exceptions to the general rules.

As mentioned, the "lex loci celebrations" rule of conflict of laws is a special case of the law of the place of the conclusion of the contract (or the law of the place of the legal act). This rule is formulated in Article 155 of the Family Code of the Republic of Moldova, which stipulates that the form and procedure for the conclusion of mar-

riages by foreign citizens and stateless persons on the territory of the Republic of Moldova are determined by the legislation of the Republic of Moldova. L.P. Anufrieva notes that from a legal point of view, marriage is considered as a kind of contract, that is, as a civil law transaction. But this is not an ordinary type of agreement, but a special one, since the parties cannot voluntarily determine its consequences, change the conditions established by peremptory norms, and arbitrarily terminate its operation. The conclusion of such an agreement gives rise to a new legal status for the persons who entered into it[23].

Considering the conflict of laws aspect of marriage, first of all, it should be mentioned that in this area there are two types of conflicts:

- conflicts in the form area;
- conflicts in the material area.

Each of these conflicts is resolved in its own way, while the aforementioned principle of lex loci celebrationes applies only to conflicts of form, and the validity of a marriage in terms of its essence can be determined by the law of citizenship or domicile of the parties to the marriage. It should be noted that the subordination of the issues of the validity of marriage to the personal law of each of those entering into marriage is currently one of the important trends in the conflict regulation of family relations in terms of concluding a marital union[24].

One should also pay attention to Article 164 of the Family Code, in particular to part (4), which reads the following: "The norms of family law of foreign states, contrary to moral norms or public order existing in the Republic of Moldova, are not applied on its territory". This provision constitutes a public policy clause (the general rule of private international law). However, in this case, it is appropriate to refer to the doctrine, since the Family Code does not regulate an important issue concerning the recognition in the Republic of Moldova of marriages concluded abroad and contradicting Articles 11 and 14 of the Code. Based on these provisions, a polygamous marriage, valid according to the law of the place of its conclusion, should not be recognized in Moldova, since it contradicts one of the material conditions for the validity of marriage — monogamy. The doctrine in this case adheres to a different opinion: it is believed that a polygamous marriage contracted in accordance with the legislation of another state should be recognized as valid in a state where the principle of monogamy is fundamental, and should generate legal consequences[25]. In the event of such a marriage, the family relationship arises outside the sphere of our legal order, as a result of which we cannot use the rules on public order provided for in the Civil and Family Codes.

23 Anufrieva L.P. Op.cit., p. 551

24 Idem, p. 567.

25 Lunts L. A. Course of private international law: In 3 volumes, Moscow: Spark, 2002, p. 721.

5. The regulation of marriage in the private international law of different countries[26]

Such a famous document in the field of international private law as the Bustamante Code regulates the conclusion of a marriage complicated by a foreign element as follows. Article 36 of the Code establishes that persons entering into marriage are subject to their personal law in everything that concerns their ability to marry, consent or presence of parents, obstacles to marriage and elimination of them by special permission. According to article 37, foreigners, prior to marriage, must prove that they have fulfilled the conditions required by their personal laws in accordance with article 36. They may do this by presenting the identity of their diplomatic or consular agents, or in any other manner that the local authorities find sufficient, which in all cases retains complete freedom of assessment. In accordance with article 38, local legislation applies to foreigners in respect of obstacles established by them and not eliminated by a special permit, with regard to the form of consent, binding or non–binding engagement, protesting against marriage, the obligation to declare obstacles and the civil consequences of false statements, forms of preliminary applications and authority competent to marry. Article 39 establishes that the personal general law — and if there is none, local law — regulates the issue of payment or non–payment of compensation for breaking the promise to marry and for the publication of advertisements in this case. According to Article 40, the Contracting States are not obliged to recognize a marriage contracted in one of them by their nationals or foreigners if this marriage is contrary to their laws: regarding the need to dissolve a previous marriage, regarding the degrees of relationship or property constituting an absolute obstacle to marriage, regarding the prohibition of marriage for those responsible for adultery, which caused the dissolution of a previous marriage, regarding the prohibition of a person guilty of an attempt on the life of one of the spouses to marry another surviving spouse and regarding any other reason for the invalidity of the marriage that cannot be removed by special permission. With regard to the form of marriage, the Code states the following: from the point of view of the form, a marriage committed in the form recognized as valid by the laws of the country where it was contracted will be considered fully valid. However, states whose legislation requires the performance of a religious ceremony may invalidate marriages contracted by their citizens abroad without observing this form (Article 41). In countries where this is permitted by law, marriages contracted before diplomatic or consular agents of both spouses are carried out in accordance with their personal law, while maintaining the possibility of applying the provisions of article 40 to these marriages.

The Austrian Federal Law of 1978 "On Private International Law" provides the following regulation of matters of marriage law: the form of marriage within

26 Private international law: Foreign legislation / Preface by A. L. Makovsky; comp. A. N. Zhiltsov, A. I. Muranov, Moscow: Statut publ., 2000.

the country is determined according to local regulations on the form. The form of contraction of marriage abroad is determined according to the personal law of each of those entering into marriage; however, it is sufficient to comply with the regulations on the form of the place of contraction of marriage (§16). The conditions for the conclusion of a marriage, as well as its nullity and termination, are determined for each of the marriages in accordance with his personal law.

Hungarian Decree No. 13 on Private International Law regulates family law in chapter seven. According to §37 of this chapter, the substantive conditions for the validity of a marriage are determined by the common personal law of the spouses at the time of their marriage. If the personal laws of the spouses at the time of their marriage are different, the marriage is valid only if there are substantive conditions for this according to the personal law of each of the spouses. The form requirements for the validity of a marriage are determined by the law in force at the place and at the time of the marriage. According to §38, if a person who does not have Hungarian citizenship intends to marry in Hungary, he must prove that there are no barriers to marriage under his personal law. In justified cases, the head of the state administrative body competent for the given territory may exempt from such confirmation. A marriage cannot be contracted in Hungary if, according to Hungarian law, there are irreparable obstacles for it. If a Hungarian citizen or a stateless person residing in Hungary intends to marry abroad, the head of the competent capital or regional government authority for the territory attests that there are no obstacles to marriage under Hungarian law.

Turkish Law of 1982 "On Private International Law and International Civil Procedure" No. 2675 regulates the issues of marriage in section 2. According to article 12 of this section, the ability to marry and the conditions for marriage are regulated in relation to each marrying person by the law of his/her citizenship at the time of marriage. The form of marriage is subject to the law of the place of its conclusion. Marriages entered into in accordance with international agreements at consulates are valid. The general consequences of marriage are governed by the law of the country of common citizenship of the spouses. If the parties have different citizenships, the law of the spouses' common place of residence applies, in the absence of the latter, the law of their usual place of residence and, if there is none, Turkish law. Also in article 11 of this Law, it is said that the ability to get engaged and the conditions of engagement are determined for each of the betrothed by the law of the country of his citizenship. The legal issues and consequences of the betrothal are governed by the law of the country of common citizenship of the betrothed, and if the parties have different citizenship, by Turkish law.

The Swiss Federal Law of 1987 "On Private International Law" regulates marriage issues as follows. Section 43 of this Act provides that a marriage may be contracted in Switzerland if one of the spouses is a Swiss citizen or has a place of residence in Switzerland. The competent authority may authorize foreigners not domiciled in Switzerland to marry in Switzerland if such marriage is recognized in their state

of residence or their state of citizenship. Permission cannot be refused on the sole ground that a divorce decision made or recognized in Switzerland is not recognized abroad. According to article 44, the conditions for contracting a marriage in Switzerland are determined by Swiss law. A marriage between foreigners can also be contracted in the event that there are no conditions provided for by Swiss law, if the conditions established by the law of citizenship of one of the spouses are fulfilled. The form of marriage contracted in Switzerland is determined by Swiss law. Article 45 provides that a marriage contracted abroad and valid according to the law of the place where it was contracted is recognized in Switzerland. A marriage contracted abroad between persons domiciled in Switzerland, or between persons one of whom is of Swiss citizenship, is recognized in Switzerland, unless the marriage was contracted by them abroad with the explicit intention of circumventing the provisions of Swiss marriage recognition law invalid. According to article 45a, minors residing in Switzerland are considered to have reached the age of majority if they are married in Switzerland or a marriage contracted abroad is recognized.

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So, this article discusses issues related to marriage. The main conflict principles regulating this problem in different legal systems are indicated, namely: the principle of subordination of the material conditions of the validity of marriage to the personal law of those entering into marriage; the principle of subordination of the form of marriage to the place of its conclusion. Also, a small review of Moldovan legislation in relation to marriage in private international law was carried out (Constitution of the Republic of Moldova, Civil Code, Family Code, Law on the Regime of Foreigners, Law on Acts of Civil Status). The concluding part of the article provides an overview of the international private law regulation of the problem of marriage in some foreign countries.