BRATISLAVA LAW REVIEW

PUBLISHED BY
COMENIUS UNIVERSITY BRATISLAVA
FACULTY OF LAW

p-ISSN 2585-7088
e-ISSN 2644-6359

NATIONALITY IN INTERNATIONAL PRIVATE LAW: RELIC OR RELEVANCE

JUDr. Ing. Dominika Moravcová, PhD. LL.M., MBA
Assistant Professor
Trnava University, Faculty of Law
Department of Civil
and Commercial Law
Kollárova 545/10
917 01 Trnava; Slovakia
dominika.moravcova@truni.sk
ORCID: 0000-0003-0936-6749

Abstract: *Nationality, lex patriae, continues to play a significant role as a connecting factor in resolving private-law relationships involving a foreign element, both in the context of conflict-of-law rules and in determining international jurisdiction. Although EU regulations and multilateral instruments adopted under the auspices of the Hague Conference on Private International Law have tended to move away from this criterion in favour of more factual connecting factors, its relevance remains preserved through its continued presence in domestic legislation and bilateral treaties. This article addresses the issue of nationality as a legal connecting factor and explores the question of whether the assumption, that an individual should, for the purposes of international private and procedural law, be considered exclusively a national of a single state, can be regarded as a generally applicable rule across the entire field and all norms of international private and procedural law.*

Key words: *Nationality; Lex Patriae; International Private and Procedural Law*

Suggested citation:
Moravcová, D. (2025). Nationality in International Private Law: Relic or Relevance. *Bratislava Law Review*, 9(Spec), 147-160. https://doi.org/10.46282/blr.2025.9.Spec.1052

Submitted: 17 May 2025
Accepted: 11 December 2025
Published: 28 December 2025

1. INTRODUCTION

Disputes arising from private law relationships involving a foreign element are increasingly being brought before the courts of the Slovak Republic, as well as before the courts of Member States of the European union (hereinafter referred to as the "EU") more generally. A significant portion of these intra-EU relationships is governed, from the perspective of international private and procedural law, by EU regulations adopted within the framework of judicial cooperation in civil and commercial matters. However, there is a growing number of private-law relationships involving a foreign element linked to third (non-EU) countries. This development is driven by various external factors, such as the war in Ukraine, ongoing migration flows from third countries into Europe, and others. While EU legal instruments seldom rely on nationality as a connecting factor and multilateral conventions similarly tend to move away from it, nationality continues to appear as a relevant criterion in bilateral treaties on legal assistance, as well as in domestic legislation, such as the Slovak Act on International Private and Procedural Law.[1]

The main objective of this article is to examine whether the assumption that, for the purposes of private international law, an individual must possess exclusive nationality of a single state should be regarded as an unwritten rule, or whether this assumption merely reflects the legacy of an outdated and inflexible legal framework, notably, though not exclusively, in Slovak private international law. A partial objective is to assess the current role of nationality as a connecting factor in international private and procedural law in general, and to evaluate whether the prevailing presumption, that the mere fact of

[1] Act No. 97/1963 Coll, on International Private and Procedural Law (hereinafter referred to as the "Act on PIL").

an individual not being a Slovak national, automatically triggers the application of private international law rules, remains valid. In this regard, the article also seeks to explore whether it may be time to shift from a formalistic emphasis on registrability toward a more fact-based approach.

In pursuit of these objectives, the article employs a combination of scientific and theoretical legal methods. Following an initial descriptive overview of relevant characteristics, the paper proceeds with an analysis of selected provisions of the legal framework, supplemented by a comparative study of the national regulations of Slovakia and Czech Republic, relevant international treaties, and EU law. Deductive reasoning is applied to allow the formulation of final conclusions, based on the analysis of the aforementioned sources and the accompanying case law.

2. NATIONALITY AS A CONNECTING FACTOR IN PRIVATE INTERNATIONAL LAW

The concept of nationality, *lex patriae*, serves as a criterion in both the realm of conflict of laws rules and the determination of jurisdiction in cross-border disputes. This is particularly evident in the context of so-called personal status issues, which experts in the field refer to as "personal law". This concept permeates several legal areas, including family law and succession law. For centuries, legal doctrine has debated the appropriate personal connecting factor in private international law, with nationality (*lex patriae*) and domicile (*lex domicilii*) emerging as the principal contenders. In Continental European systems, nationality traditionally prevailed. However, evolving legal and societal paradigms, particularly the influence of multiculturalism and globalisation, have led to a paradigm shift toward habitual residence as the preferred connecting factor. This evolution is also reflected in the progressive harmonisation of conflict-of-law rules, extending even to legally sensitive domains such as family and succession law (Davrados, 2017). While nationality and domicile are legal criteria, habitual residence is a factual one (Davrados, 2017). The term "domicile" is employed in the field of jurisdiction, particularly within the context of the EU's key regulation, Brussels I bis.[2] This regulation offers an interpretation of the concept exclusively for legal persons.[3] For natural persons, the term refers to the determination of their domicile within a specific country in accordance with the *lex fori* rules. As experts in the field have repeatedly emphasised, nationality carries no relevance in this regard unless a person is domiciled outside the EU (Magnus and Mankowski, 2007, p. 73). Despite its legal character, the concept of domicile marks a departure from the rigidly formal nature of nationality, introducing a more fact-oriented connecting factor. This evolution is particularly welcomed. Even further along this factual continuum lies habitual residence, a notion which, though not entirely devoid of legal definition, primarily reflects where a person resides as a matter of habit (iFLG, 2023). It is the centre of an individual's interests and life, a place where residence shows a certain stability or regularity and must reflect a certain degree of integration into social and family life.[4]

[2] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, 1–32 (hereinafter referred to as the "Brussels I bis").
[3] Art. 60 of the Brussels I bis.
[4] Interpreted by the Court of Justice of the European Union (hereinafter referred to as the "CJEU") in particular in relation to family matters and the Brussels II ter Regulation - e.g.: CJEU, judgment of 22 December 2010, Mercredi, C-497/10, ECLI:EU:C:2010:829, paras 41-56.

Although habitual residence and domicile are frequently linked to a person's nationality, this is not an absolute rule. Nationality is defined as a bond between a state and an individual, which is typically established based on the individual's connection to the state. Although nationality also carries a political and symbolic meaning for the legislature, reflecting identity, sovereignty, and political belonging, this dimension should not affect its function as a connecting factor in private international law. The International Court of Justice has stated in the *Nottebohm* case, that nationality "is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties." States, as original subjects of public international law, retain exclusive sovereign authority to determine the criteria for the acquisition of their nationality. In this context, two primary principles govern the attribution of nationality at birth: *ius soli* and *ius sanguinis* (Malcolm, 2014). Under the *ius sanguinis* model, a child born to nationals residing abroad acquires the nationality of the parents' state, even in the absence of any actual residence or connection to that state. Consequently, individuals may also acquire dual nationality or, conversely, remain stateless from birth. With regard to naturalisation and nationality acquired by law, significant divergences persist across jurisdictions. In general, however, an individual's legal nationality does not necessarily reflect the state in which they reside, work, or maintain substantial personal or economic ties. Despite this, nationality is generally understood to be based on a genuine connection between the individual and the state.[5] For this reason, conflict-of-law rules and jurisdictional norms in international private and procedural law have often relied on nationality as a connecting factor, a practice that persists primarily in domestic legislation, such as the Slovak Act on PIL. This criterion remains particularly relevant in matters concerning the personal status of individuals, including certain aspects of family and succession law. It also appears in some procedural law provisions, where nationality determines the Slovak court's jurisdiction to adjudicate.[6]

In the not-so-distant past, national legal systems sought to avoid the occurrence of dual nationality (Raiteri, 2014), inter alia through bilateral regimes aimed at the prevention of multiple or concurrent citizenship. This approach was likewise reflected in the Council of Europe Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality of 1963. The Convention was grounded in the then-prevailing view, shared by many Western European states, that multiple nationality was undesirable (Achiron, 2005). From the perspective of international private and procedural law, it may be observed that the application of conflict-of-law norms relying on nationality as a connecting factor is considerably simpler where an individual holds only a single nationality, as this avoids potential overlaps or conflicts between competing legal orders. The 1997 European Convention on Nationality, adopted under the auspices of the Council of Europe, introduced a modern framework governing nationality, including the recognition of multiple citizenship. It reflected a clear shift from the earlier restrictive approach of the 1963 Convention, acknowledging the growing acceptance of plural nationality within European legal systems. The Convention sought to consolidate developments in both domestic and international law since the

[5] See in this regard CJEU, judgment of 29 April 2025, Commission v Malta (Citoyenneté par investissement), C-181/23, ECLI:EU:C:2025:283. And for comparison CJEU, judgment of 7 July 1992, Micheletti and Others v Delegación del Gobierno en Cantabria, C-369/90, ECLI:EU:C:1992:295.

[6] E.g. Section 38(1) of the Act on IPL: "In matters of marriage (proceedings for dissolution of marriage by divorce, annulment of marriage, or determination as to whether a marriage exists or not), the jurisdiction of Slovak courts is established if at least one of the spouses is a Slovak citizen."

DOI: 10.46282/blr.2025.9.Spec.1052

1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, thereby providing a coherent and up-to-date legal basis for addressing nationality conflicts (Achiron, 2005). At present, there is a strong global trend toward the toleration of dual citizenship (Bauböck, 2021), which in turn reinforces the relevance of nationality within the framework of private international law and procedural law.[7] As will be demonstrated in this article, remnants of the earlier restrictive approach continue to surface primarily in older bilateral treaties on legal assistance, which fail to adequately address the issue of dual nationality.

Although EU regulations and Hague Conference multilateral conventions have largely moved away from nationality as a connecting factor, references to it persist in certain contexts, notably also in bilateral international legal assistance treaties, which receive comparatively limited attention in international private and procedural law doctrine. However, from the perspective of the analysed area, they occupy a significant position, since in general, the areas excluded from the EU's regulations *ratione materiae* are those where the criteria of nationality prevail at the level of a national rule or a bilateral treaty. Not only in these areas but throughout all fields covered by bilateral treaties between EU Member States and third countries, treaties which continue to apply in relations with third states, Member States are obliged to give these treaties precedence over domestic law, and, in the case of third countries, also over EU regulations, pursuant to the rules contained therein. For Slovakia, the relevance of the bilateral regime has notably increased in relation to Ukraine, as Ukrainian nationals frequently seek refuge from the ongoing conflict in neighbouring Member States, including Slovakia. In principle, all private-law relations involving these persons on Slovak territory fall within the scope of international private and procedural law, often intersecting with the bilateral legal assistance treaty concluded with Ukraine. Although such bilateral treaties do not explicitly define their personal scope, their provisions imply application to nationals of the contracting parties, thus nationality remains indispensable for activating the treaty's application. Consequently, even in the event of a Slovak national seeking a divorce from a Ukrainian national, the treaty is invoked. However, in the event that an individual is domiciled in Ukraine but holds Albanian nationality, it would be reasonable to assume that the court would invoke the legal assistance treaty concluded with Albania.

In this particular instance, the Brussels II Ter Regulation is applicable in terms of jurisdiction. However, in instances where an active treaty exists with a third country, the provisions of the treaty take application precedence. As is evident, outside the regime of multilateral conventions and the sources of the EU acquis in the field of private international law, the criterion of nationality still has an integral role. The central question in this case pertains to the validity of the principle that, from the perspective of international private and procedural law, an individual should be the bearer of only one nationality.

3. SOLE NATIONALITY AS A NECESSARY CONDITION FOR THE CONFLICT-OF-LAW CRITERION *LEX PATRIAE*?

The Slovak Act on PIL contains provision addressing the issue of dual nationality and statelessness within its scope. Naturally, the applicable law governing a private-law relationship with a foreign element should be the legal system of a single state, therefore, when the Act refers to the criterion of nationality, the determination of the applicable law

[7] As Drgonec notes, the Constitution of the Slovak Republic likewise remains silent on the issue of bipolitism (Drgonec, 2018).

should result in the identification of one governing legal system. Likewise, in the procedural dimension, nationality may serve as the basis upon which Slovak courts assert extra-orbitant jurisdiction over a dispute. This may occur, for instance, in divorce proceedings, where spouses of a common foreign nationality, if the state is not an EU Member State, reside in the state of that nationality, yet the mere fact that one spouse also possesses Slovak nationality confers jurisdiction upon Slovak courts, even in the absence of any other connecting link to Slovakia.[8] In this respect, however, we are referring exclusively to the regime laid down in the Slovak Act on PIL, the practical applicability of which is significantly narrowed by the relevant EU regulations, as the criterion of nationality is employed therein only in exceptional circumstances.

For this purpose, section 33(1) of the Act on PIL provides: "If a person is, at the relevant time, a Slovak national and is also considered a national by another state, the decisive nationality shall be Slovak." This can also be supported by the internationally recognised principle that "person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses."[9] Multiple nationality in the absence of Slovak nationality is addressed by the second paragraph: "If a person is, at the relevant time, simultaneously a national of multiple foreign states, the nationality most recently acquired shall prevail." The third paragraph of the aforementioned section contains the so-called nationality fiction applicable to stateless persons. "A person who, at the relevant time, is not a national of any state, or whose most recently acquired nationality cannot be determined or ascertained, shall be considered a national of the state in whose territory they had their domicile at the relevant time, and if domicile cannot be determined, then of the state in whose territory they had their residence; if neither can be established, they shall be treated as a Slovak national."[10] From the wording of the section, it can be concluded that the legislator's aim in the regime of the Act was to ensure that a person is considered to be a national of one State, and the law of that State will be applicable in the event of conflict of laws with the *lex patriae* criterion. The authors of the commentary state that the relevant time for establishing nationality is the status at the time of adjudication (Lysina, Štefanková, Ďuriš and Števček, 2012, p. 166), which lacks explicit articulation. In this particular instance, closer alignment may be observed with the interpretation proposed by the authors of the Czech commentary, who state that the decisive moment is the moment to which the boundary determinant is anchored in time. Consequently, in the context of the conflict-of-law rule pertaining to divorce, it is the initiation of the legal proceedings that is signified, whereas in the context of the conflict-of-law rule concerning the capacity to marry, it is the moment of the marriage itself that is denoted (Bříza et al., 2014, p. 173).

Section 33 of the Act on PIL does not account for factual circumstances, nor does it refer to habitual residence or domicile. Consequently, a person subject to the jurisdiction of Slovak courts may be governed by the legal system of a state of their nationality, even if they have never set foot in that country. For instance, consider a Hungarian national residing permanently in a Slovak border village who marries a national of State X, also long-term resident in Slovakia, and thereby acquires nationality of State X. Under the Act on PIL, legal matters tied to nationality would then fall under the law of State X, despite the individual having no actual link to it. A limited acknowledgment of factual elements appears only in paragraph 3 which refers to domicile or, where

[8] See section 38(1) of the Act on PIL. The question of the subsequent recognition of the decision should always be taken into consideration.
[9] Art. 3 of the Convention on Certain Questions Relating to the Conflict of Nationality Law.
[10] Section 33 of the Act on PIL.

DOI: 10.46282/blr.2025.9.Spec.1052

appropriate, residence in cases involving stateless persons or those of undetermined nationality. Where neither can be established, a legal fiction of nationality applies. It is submitted that a failure to adjudicate a dispute solely due to the court's inability to determine the applicable law could amount to a denial of justice and a breach of the principle of *denegatio iustitiae*. In this context, the significance of the relevant provision of the Act on PIL, which is designed to preclude such situations, cannot be overstated.

A closely analogous provision is found in the Czech Act on Private International Law,[11] where Section 28(1) substantially corresponds to the Slovak equivalent. However, Section 28(2) represents a welcome deviation by incorporating a factual element in cases of multiple nationality. While it generally prioritises the most recently acquired nationality, it further provides: "unless, in view of the person's life circumstances, their connection to another foreign state of which they are a national significantly prevails; in such case, the nationality of that state shall be decisive."[12] This addition allows for a more fact-sensitive determination of the applicable law, based on the individual's real and substantial ties. It is submitted that Slovak legislation should evolve toward a more reality-based approach, aligning with frameworks that prioritise factual connections. Notably, in cases of indeterminate nationality, Czech law refers to the individual's habitual residence before applying a fiction of Czech nationality, an approach worthy of emulation. The concept of habitual residence is a prevailing standard in modern private international law, both at the EU level and within instruments of the Hague Conference. It is therefore time for the Slovak Act on PIL to formally embrace it.

As noted by Lysina et al., the purpose of the provision in section 33 of the Act on PIL is to determine, for the purposes of this Act, which nationality shall be regarded as decisive. The authors correctly emphasise that the provision applies solely within the framework of the Act on PIL and therefore does not operate universally. Its scope is triggered exclusively upon the application of this Act, and it cannot, under any circumstances, affect the existence or acquisition of nationality itself (Lysina, Štefanková, Ďuriš and Števček, 2012, pp. 166-167). Accordingly, the provision should have no legal effect beyond the material scope of the Act (Bříza et al., 2014, p. 172).

A very similar formulation of a corresponding provision was contained in the former Hungarian private international law legislation. The preferential treatment of Hungarian nationality in cases of multiple citizenship proved problematic in practice and led to a number of anomalies, particularly in inheritance proceedings involving individuals residing abroad on a long-term basis who had no genuine connection with their "home" country, yet remained subject to Hungarian law (Nagy, 2012). The new Hungarian codification revised this principle. While it maintains a presumption in favour of Hungarian law, this presumption is expressly rebuttable (Nagy, 2024).

The legal framework under the German Introductory Act to the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuche - hereinafter referred to as the „EGBGB") appears to be formulated in a very similar manner. Article 5, entitled Personal Statute, provides in its first paragraph the following rule: "If referral is made to the law of a State of which a person is a national and where this person is a bi- or multinational, the law applicable shall be that of the State with which the person has the closest connection, especially through his or her habitual residence or through the course of his or her life. If such person is also a German national, that legal status shall prevail."[13] Later in this article, it will be indicated that the approach to the applicability of this provision beyond

[11] Czech Act No. 91/2012 Coll. on Private International Law (hereinafter referred to as the "Czech Act on PIL").
[12] Section 28(2) of the Czech Act on PIL.
[13] Art. 5 of the EGBGB.

the confines of the statute in which it is contained is conceptually distinct under German law.

As previously noted, the norms of international private and procedural law at the EU level rarely refer to nationality as a connecting factor. When they do, it is typically in the context of a so-called composite connecting factor. A pertinent example can be found in Article 22(1) of the Succession Regulation: "(...) A person possessing multiple nationalities may choose the law of any of the States whose nationality he possesses at the time of making the choice or at the time of death."[14] Another example may be found in Article 8(1)(a) of the Hague Protocol on the Law Applicable to Maintenance Obligations, concluded *per se* by the EU, which provides that "(...) the maintenance creditor and debtor may at any time designate one of the following laws as applicable to a maintenance obligation - a) the law of any State of which either party is a national at the time of the designation; (...)"[15] The cited provision of the Succession Regulation deals directly with the issue of multiple nationality, which makes it a rather unique provision in EU law. May the same approach be adopted for all Union regulations? The answer is given by the Rome III Regulation, which was adopted in the form of enhanced cooperation, in which the Slovak Republic does not participate, but which can be used to demonstrate that the way in which the Succession Regulation deals with multiple nationality cannot be extended beyond the scope of the Regulation. The preambular part of the Rome III, which, although legally non-binding,[16] is highly relevant from the point of view of interpretation, states that "Where this Regulation refers to nationality as a connecting factor for the application of the law of a State, the question of how to deal with cases of multiple nationality should be left to national law, in full observance of the general principles of the European Union."[17] Consequently, in the event that a Member State is bound by the Rome III, it is permitted to utilise the national rules to address this issue. Within the context of the Slovak Republic, in the event of being bound by the Rome III, this would be the aforementioned Section 33 of the Act on IPL. A case falling within the scope of the Rome III Regulation was also examined by the German Federal Court of Justice (hereinafter referred to as the "BGH"), which addressed the issue of dual nationality through the application of Article 5 of the EGBGB. The case concerned individuals holding both German and Syrian nationality, and the Court, quite correctly, in our view, refrained from applying the reasoning developed in Micheletti, as the situation did not involve the nationality of another Member State. From our point of view, it was likewise well-founded that the German BGH did not extend the reasoning developed in Hadadi case. In Hadadi, which concerned international jurisdiction under the Brussels IIa Regulation, the Court of Justice held that, in cases of dual nationality, the reference to nationality as a jurisdictional connecting factor must be interpreted in such a way that, where both spouses possess the same dual nationality, the courts of both Member States have jurisdiction.[18] In the context of the Rome III, however, where the task is to determine the applicable law, these conclusions cannot be transposed to the interpretation of

[14] Article 22(1) of the 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, 27.7.2012, 107–134 (hereinafter referred to as the "Succession Regulation").
[15] Article 8(1)(a) of the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.
[16] CJEU, judgment of 19 November 1998, Nilsson and Others, C-162/97, ECLI:EU:C:1998:554, para. 54.
[17] Recital 22 of the preamble to the 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, OJ L 343, 29.12.2010, 10-16 (hereinafter referred to as the "Rome III").
[18] CJEU, judgment of 16 July 2009, Hadadi, C-168/08, ECLI:EU:C:2009:474, see p. 8.

DOI: 10.46282/blr.2025.9.Spec.1052

nationality as a conflict-of-laws connecting factor. Rome III expressly refers to the subsidiary application of national law, thereby allowing recourse to domestic conflict-of-laws rules such as Article 5 EGBGB.[19] The analogous use of an interpretative approach developed for a procedural norm therefore cannot, in this respect, be extended to the interpretation of the nationality connecting factor contained in a conflict-of-laws rule governing the determination of the applicable law under the Rome III Regulation.

Thus, the choice of law regime in the Union regulations should be discussed, as it employs the nationality criterion in the composite connecting factor, but do not address the issue of multiple nationality or even statelessness. Let us consider, as a model example, Art. 7(3)(c) of the Rome I, which provides the parties with the option to choose the applicable law, as follows: „in the case of life assurance, the law of the Member State of which the policy holder is a national."[20] Rome I does not address the issue of multiple nationality. Accordingly, one may either adopt the approach of Rome III and interpret the matter through the lens of Act on PIL, or consider that the cited provision affords parties greater flexibility in the choice of applicable law. On the one hand, it must be acknowledged that the Act on PIL applies within the scope of its application. Its scope is generally fulfilled even in situations governed by EU regulations; however, such regulations take application precedence over the national law. In this context, the issue at hand is not regulated by any EU provision, thus logically requiring recourse to a lower level in the hierarchy of sources, namely the Act on PIL. Similarly, where, for example, Rome I does not address questions of property rights in movable property, it may be assumed that, even when applying Rome I, subsidiary issues relating to these rights would be resolved under the Act on PIL, as Rome I offers no guidance in this regard. From this logical sequence, it follows that questions concerning multiple or indeterminate nationality should be addressed through the provisions of Section 33 of the Act on PIL. On the other hand, the purpose of the aforementioned provision of Rome I is precisely to delineate the parties' options in selecting the applicable law. Were one to determine nationality pursuant to Section 33 of the Act on PIL it would lead to the conclusion that this provision affords the parties only a single option, namely that prescribed by the Act on PIL. For instance, if an individual holds both Hungarian and Spanish nationality, with the latter being the most recently acquired, Article 7(3)(c) of Rome I would permit the parties to choose Spanish law. However, if the adjudicating court were Czech and, under its Section 28 of the Czech Act on PIL, the same individual was considered Hungarian based on a genuine connection, would such a scenario ensure legal predictability? Should the parties be expected to anticipate which court may have jurisdiction and, consequently, which national rules on nationality would be applied? We submit that they should not. Therefore, we advocate the view that where an EU instrument is silent on multiple or indeterminate nationality, provisions generally referring alternatively to nationality should be interpreted such that in cases of multiple nationality, the choice extends to all states of which the person is a national, conversely, in cases of statelessness, the provision should be deemed inapplicable and not expand the options for choice of law. Such a teleological interpretation, we contend, best secures the objective of legal certainty and predictability in these relations. Similarly, P. Wautelet points out in this respect that there is no reason, in the case of multiple nationality, to apply the classic rules on multiple nationality to these conflict-of-law rules (Wautelet, 2012).

[19] Bundesgerichtshof, BGH, XII ZB 158/18, 26. August 2020.
[20] Art. 7(3)(c) of the Rome I Regulation.

Moving on to the question of jurisdiction, here again the Union rules refer sporadically to the application of this criterion. As an example, Article 2(b) of the Brussels IIter Regulation gives jurisdiction in the event of divorce also to the courts „of the nationality of both spouses."[21] In Hadadi, the Court of Justice interpreted the provision in question as meaning that if the spouses have the nationality of two identical Member States, they may choose the courts of both States within the meaning of that provision.[22] The Court of Justice could have referred to the application of domestic rules in this regard but refrained from doing so, notably in the interest of ensuring legal certainty.[23] However, it is important to emphasise that the present interpretation proceeds from the premise that the purpose of the provisions is to afford parties a choice, whether concerning jurisdiction or applicable law. In determining the applicable law, only a single governing law should be established, therefore, if in the future an EU regulation were to designate *lex patriae* as the sole connecting factor in a conflict-of-law norm, such regulation ought to address the issue of multiple nationality, or alternatively, like Rome III, refer to domestic law. However, such a development is not anticipated, as the criterion of nationality is increasingly being supplanted by factors reflecting factual circumstances.

In addition to the EU regulations national legislation, international private and procedural law also incorporates the application of bilateral and multilateral treaties. In practice, multilateral treaties are principally conventions adopted at the Hague Conference, which only rarely address the criterion of nationality. However, the same cannot be said of bilateral legal assistance treaties, which, on the contrary, also derive their personal scope from the nationality of the person concerned, as was previously mentioned. In the event of cumulative fulfilment of the scope, the treaties take precedence over the national legislation contained in the Act in PIL,[24] but they do not always take precedence over EU regulations. The relationship between EU regulations and international treaties is usually addressed in the concluding articles of each regulation. However, for the purposes of the present article, it can be generalised and simplified to state that in the case of cumulative scope fulfilment, bilateral treaties with a third state take precedence, and between two Member States, the regulation takes precedence. In matters not covered by EU regulations, their scope is not triggered, and the applicable bilateral treaty, if one exists, takes precedence. For instance, in assessing personal status, unregulated at the EU level, a Slovak court would apply the bilateral treaty with Poland when evaluating a Polish national. This treaty provides: "The legal capacity of a natural person to have rights and perform legal acts shall be governed by the legal order of the contracting party of which that person is a national."[25] In this case, it is essential to determine the person's nationality. Where a person holds both Slovak and Polish nationality, we consider the activation of international private law *per se* to be questionable (an issue addressed in the final part of this article). Let us therefore assume

[21] Article 2(b) of the Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, OJ L 178, 2.7.2019, 1–115 (hereinafter referred to as the "Brussels IIter").
[22] CJEU, judgment of 16 July 2009, Hadadi, C-168/08, ECLI:EU:C:2009:474, para 58.
[23] In light of the Micheletti judgment, in which the Court of Justice excluded the possibility for a Member State to call into question the existence of the nationality of another Member State, the outcome in the Hadadi case could indeed have been anticipated (CJEU, judgment of 7 July 1992, Micheletti and Others v Delegación del Gobierno en Cantabria, C-369/90, ECLI:EU:C:1992:295).
[24] Section 2 of the Act on IPL. Stemming also from the Section 7 of No. 460/1992 Coll. Constitution of the Slovak Republic.
[25] Art. 20(1) of the Treaty between the Slovak Republic and the Czech Republic on Legal Assistance Provided by Judicial Authorities and on the Regulation of Certain Legal Relations in Civil and Criminal Matters, 193/1993 Coll.

DOI: 10.46282/blr.2025.9.Spec.1052

a scenario involving dual Hungarian and Polish nationality. In such a case, we are of the opinion that the correct approach must proceed in reverse order: first, the matter should be assessed under the Slovak Act on PIL, as the applicable bilateral treaty does not provide guidance on this specific point. Based on the determination of nationality pursuant to that Act, the relevant bilateral treaty should then be applied with respect to the state whose nationality the person is deemed to possess. From our perspective, it would be desirable for Section 33(2) to allow Slovak courts to consider the nationality of the state with which the individual has a stronger factual connection, similarly to the approach embedded in Czech legislation. On the other hand, the state whose nationality would thus be disregarded might argue that the Slovak court, in neglecting to apply the relevant bilateral treaty, effectively undermined the legal bond of nationality for the purposes of private international law. This places the court in a complex position that nevertheless demands resolution. Accordingly, we advocate for the proposed interpretive approach. Bilateral treaties frequently employ nationality as a connecting factor, which, particularly in the Slovak Republic, holds considerable practical significance in matters involving Ukrainian nationals.[26] For the purpose of applying bilateral treaties, it is essential to determine a single prevailing nationality. Since the treaties themselves do not resolve this issue, it remains at the discretion of the court to choose the appropriate approach. To ensure the protection of individuals, a clear methodology should be adopted. Where a person holds the nationality of a state with which the Slovak Republic has a bilateral treaty, and simultaneously the nationality of a third state with which no such treaty exists, with the latter nationality acquired subsequently, this individual should not be excluded from the protection offered under the treaty. Conversely, if the person is a dual national of two countries with which the Slovak Republic has bilateral treaties, the court should, pursuant to Section 33(2) of the Act on PIL, determine which nationality is decisive and proceed under the relevant treaty accordingly. This approach, however, calls for a revision of the current provision to allow Slovak courts, similarly to Czech practice, to consider the individual's genuine link with the respective states and identify the prevailing nationality based on substantive factual ties. As demonstrated, both under the Act on PIL and in the context of bilateral treaties on legal assistance, where nationality is a frequently used connecting factor, it is imperative to adhere to the principle that a person should, for these legal purposes, be regarded as the national of only one state.

M. Wilke argues that these general provisions should be applicable even beyond the confines of the statute in which they are contained (Wilke, 2023). We would, however, endorse this position only to a limited extent, namely insofar as the application of Section 33 of the Slovak Act on PIL must in no circumstance undermine the obligations arising from existing bilateral regimes, nor conflict with European Union law and the key jurisprudence of the Court of Justice. Where the application of national law is expressly enabled or permitted by an EU regulation itself, the situation must, of course, be regarded as a different one.

4. FOREIGN NATIONALITY AS THE ONLY CROSS-BORDER ELEMENT IN PRIVATE INTERNATIONAL LAW

In the context of nationality, the present article aims to raise one further topic for discussion: namely, the question of whether the possession of a foreign nationality *per*

[26] E.g., Art. 42 (capacity to make or revoke a will), art. 35 (matters of adoption) and other matters of the Treaty between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters, 95/1983 Coll.

se automatically activates the rules of international private and procedural law. Here, two situations should be distinguished, if a person is a national of the Slovak Republic and at the same time a national of another state, and what is the relevance if a person has only a nationality other than the Slovak one. In the first case, we are inclined to follow what the doctrine of Czech private international law also states, that if a Czech citizen also has the nationality of another state, this will not, in itself, constitute a foreign element (Bříza et al., 2014, p. 172). Generally speaking, therefore, we would argue that if a person has the nationality of the forum state and the private law relationship has no other foreign element, the mere fact that this person has dual nationality should not, in our view, be sufficient to activate the rules of international private and procedural law because of the absence of a foreign element. Scholars agree that the objective foreign element will most commonly arise from the subject, most notably through foreign nationality (Lysina et al., 2023, p. 10). As previously indicated, in cases of dual nationality involving Slovak citizenship, such status must be interpreted restrictively, treating the legal relationship as if the foreign nationality were absent. Notwithstanding the foregoing, the Act on PIL presumes that Slovak nationals may simultaneously hold the nationality of another state. However, it is our opinion that the application of Section 33(1), as well as all conflict-of-law provisions, is triggered only where the private-law relationship in question has an additional foreign element. A separate issue arises in the case of stateless persons whose personal and legal ties are limited exclusively to a single jurisdiction. As a general rule, it may be stated that if a party to a given relationship does not possess Slovak nationality, such a relationship will, from the perspective of Slovak private international law, invariably qualify as a relationship with a foreign element. This raises the further question of whether every legal relationship involving a stateless person must automatically be regarded as a private-law relationship with a foreign element.[27] This, however, invites a degree of critical reflection. In the case of an individual who, for instance, has resided in the territory of the Slovak Republic for their entire life, maintains habitual residence therein, and has established the centre of their personal and social interests within this jurisdiction, it is our considered view that not every legal relationship involving such a person should necessarily activate the provisions of private international law. This issue bears particular practical significance in the context of EU private international law, which does not expressly account for the legal status of stateless persons. In such scenarios, where no additional foreign element is present, can one truly speak of a conflict of laws? If a person has neither nationality nor any actual connection to another legal order, which legal systems could be said to be in conflict? Accordingly, we submit that a legal relationship should not automatically be classified as a private-law relationship with a foreign element solely on the basis of the individual's statelessness.

The third issue that arises is whether foreign nationality *per se* automatically constitutes a foreign element in a private-law relationship. While doctrinal consensus largely affirms this link, foreign nationality being a typical indicator of the foreign element, this position merits re-examination. Across EU Member States, many third-country nationals reside permanently, often as family members of Union citizens. These individuals may never have set foot in the country whose nationality they formally hold. They possess habitual residence, personal and economic ties, and the centre of life interests in the host Member State. Nevertheless, their legal relationships are consistently treated as cross-border solely due to their nationality, triggering the application of private international law. In light of this, it may be time to reconsider whether nationality should

[27] Nevertheless, even under such circumstances, the Act on Private International and Procedural Law would, pursuant to Section 33(3), ultimately consider the person a Slovak citizen.

continue to operate as a standalone foreign element. A shift towards recognising foreign elements based on genuine and factual personal connections rather than formal nationality would reflect the contemporary legislative trend. This is supported by EU regulations and Hague Conference instruments, which increasingly prioritise habitual residence over nationality. It is, therefore, worth considering whether the factual foreign element embodied in the person should prevail for the purpose of activating conflict-of-law rules. We concur with the view that this does not imply that nationality has entirely lost its relevance within the framework of private international law, when appropriately employed, it may still contribute meeting the new challenges of an increasingly diverse and complex European society (De Vido, 2012).

5. CONCLUDING REMARKS

In the present article, the issue of nationality has been addressed from the perspective of private international and procedural law. Nationality as a criterion in conflict of laws norms and in norms determining international jurisdiction is constantly used both at the national level, in the context of the Slovak Republic in the Act on PIL, and in the case of bilateral treaties on legal assistance. In contrast, with a few exceptions, the EU acquis and the multipartite conventions do not include this criterion, instead focusing on criteria that are not legal but factual in nature, such as habitual residence and, in the context of jurisdiction, the criterion of domicile. Notwithstanding the foregoing, with regard to the application of conflict-of-law rules, in instances where the connection factor is *lex patriae*, it is imperative that the individual in question be regarded as a national of a single state. This is necessary so that the conflict-of-law rule can be employed to ascertain the state whose law will govern the private-law relationship with a foreign element under consideration. The Act on PIL accordingly sets out rules for addressing cases of multiple nationality, as well as for determining the legal status of individuals who possess no nationality at all. The procedure within the limits of the Act is therefore clear, although in our view it would require amendment of the wording in favour of taking account of the real link in the case of multiple nationalities. As outlined in the article, with minor discrepancies, a comparable provision can also be found in the national legal frameworks of other states. But is this "unwritten" rule generally applicable to rules of international private and procedural law?

As stated in this article, we do not consider this to constitute a general rule for the purposes of applying multilateral conventions and EU regulations. Where a regulation expressly addresses the issue of multiple nationality, its solution must be followed. In the more common scenario where no such rules are provided, we think that a Slovak court should not default to the Act on PIL to resolve the question. Instead, it should adopt a broader approach that takes into account all relevant nationalities. Perhaps the most complex situation arises in the context of bilateral international treaties. We propose a combined approach, contingent upon whether the Slovak Republic has concluded a bilateral treaty on legal assistance with the state in question. In such cases, we do not entirely exclude the subsidiary application of Section 33 of the Act on PIL. Although the applicability of Section 33 of the Act on PIL should not be extended beyond the scope of the act itself, it cannot be excluded that this provision may nevertheless be triggered in certain practical situations. These would include cases in which the relevant legal instrument, by virtue of its primacy of application, expressly refers to the use of national law for resolving this issue. At the same time, however, it is essential to ensure that such application does not give rise to any conflict with European Union law, particularly where

the nationality of Member States is concerned, and that it does not jeopardise the international obligations arising for Slovakia under its bilateral and multilateral treaties.

To conclude the article, we raised the question, within the context of nationality, whether foreign nationality *per se* constitutes a triggering element of international private and procedural law norms, functioning as a foreign element. In our view, in cases involving individuals with dual nationality holding both Slovak and foreign nationality, as well as stateless persons, such status should not be regarded, in and of itself, as a sufficient foreign element. Conversely, where exclusive foreign nationality is present, current developments in private international law doctrine would support treating this as a sufficient foreign element. However, is it not time to progress toward an approach that considers only those elements which reflect a genuine and effective link between the individual and the state in question?

BIBLIOGRAPHY:

Achiron, M. (2005). *Štátna príslušnosť a osoby bez štátnej príslušnosti (Občianstvo a bezštátnosť)* [*Citizenship and persons without nationality (Citizenship and statelessness)*]. Available at: http://archive.ipu.org/PDF/publications/nationality_slk.pdf (accessed on 10.10.2025).

Bauböck, R. (2021). The Toleration of Dual Citizenship: A Global Trend and its Limits. In: Rainer Bauböck and Max Haller (eds.), *Dual Citizenship and Naturalisation: Global, Comparative and Austrian Perspectives*. Vienna: Österreichische Akademie der Wissenschaften, Sitzungsberichte der philosophisch-historischen Klasse.

Bříza, P. et al. (2014). *Zákon o mezinárodním právu soukromém* [*Private International Law Act*]. Praha: C. H. Beck.

Davrados, N.A. (2017) Nationality, domicile, and private international law revisited. In: *Essays in Honour of Nestor Courakis*. Available at: http://crime-in-crisis.com/en/wp-content/uploads/2017/06/12-DRAVRADOS-KOURAKIS-FS_Final_Draft_26.4.17.pdf (accessed on 10.05.2025).

De Vido, S. (2012). The relevance of double nationality to conflict-of-laws issues relating to divorce and legal separation in Europe. *Cuadernos de Derecho Transnacional*, *4*(1), 222-232.

Drgonec, J. (2018). Základné právo na štátne občianstvo podľa ústavného súdu Slovenskej republiky [The fundamental right to nationality according to the Constitutional Court of the Slovak Republic]. *Právník, 157*(5), 417—436.

iFLG (2023). *Habitual Residence*. Available at: https://iflg.uk.com/definition/habitual-residence (accessed on 10.05.2025).

Lysina, P., Štefanková, N., Ďuriš, M. and Števček, M. (2012). *Zákon o medzinárodnom práve súkromnom a procesnom [Act on International Private and Procedural Law]*. Praha: C. H. Beck.

Lysina, P., Haťapka, M., Burdová, K. et al. (2023). *Medzinárodné právo súkromné [International private law]* (3rd ed.). Bratislava: C. H. Beck.

Magnus, U. and Mankowski, P. (2007*). Brussels I Regulation.* Berlin, New York: European Law Publishers, https://doi.org/10.1515/9783866537040

Nagy, C. I. (2012). *Private International Law in Hungary*. Kluwer Law International.

Nagy, C. I. (2024). *Private International Law: A Hungarian Perspective.* Law in Eastern Europe (Vol. 71). Leiden: Brill.

Raiteri, M. (2014). Citizenship as a connecting factor in private international law for family matters. *Journal of Private International Law*, *10*(2), 309-334, https://doi.org/10.5235/17441048.10.2.309

Wautelet, P. (2012). L'Option de Loi et les Binationaux: Peut-On Dépasser le Conflit de Nationalités? [Choice of Law in Family Relationships and Multiple Nationalities – A Case for a New Approach?]. *Revue générale de droit civil belge/Tijdschrift voor Belgisch burgerlijk recht*, 26, 414–430.

Wilke, F. M. (2023). A German Approach: Lex Supervisionis Registri and Subordinate Connecting Factors. *Blockchain and Private International Law* (International and Comparative Business Law and Public Policy, 4, 727–753). https://doi.org/10.1163/9789004514850_026

Act No. 97/1963 Coll., on International Private and Procedural Law.

Act. No. 460/1992 Coll., Constitution of the Slovak Republic.

Convention on Certain Questions Relating to the Conflict of Nationality Law.

Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality.

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, OJ L 343, 29.12.2010, 10–16.

Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, OJ L 178, 02.07.2019, 1–115.

Czech Act No. 91/2012 Coll. on Private International Law.

European Convention on Nationality.

German Introductory Act to the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuche).

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

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, 27.07.2012, 107–134.

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, 1–32.

Treaty between the Slovak Republic and the Czech Republic on Legal Assistance Provided by Judicial Authorities and on the Regulation of Certain Legal Relations in Civil and Criminal Matters, 193/1993 Coll.

CJEU, judgment of 19 November 1998, Nilsson and Others, C-162/97, ECLI:EU:C:1998:554.

CJEU, judgment of 7 July 1992, Micheletti and Others v. Delegación del Gobierno en Cantabria, C-369/90, ECLI:EU:C:1992:295.

CJEU, judgment of 16 July 2009, Hadadi, C-168/08, ECLI:EU:C:2009:474.

CJEU, judgment of 22 December 2010, Mercredi, C-497/10, ECLI:EU:C:2010:829.

CJEU, judgment of 29 April 2025, Commission v. Malta (Citoyenneté par investissement), C-181/23, ECLI:EU:C:2025:283.

Germany, Federal Court of Justice [Bundesgerichtshof (BGH)], XII ZB 158/18 (26 August 2020).