

PERSONAL STATUS OF WAR RELATED MIGRANTS: JURISDICTION AND APPLICABLE LAW

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AGENDA

- Notion of personal status
- International jurisdiction regarding personal status issues
- Law, applicable to personal status issues
- Migration statuses that can be acquired by persons fleeing war
- Does migration status affect the determination of jurisdiction and the law applicable to the matters covered by the personal statute?

PERSONAL STATUS

- This term is used both in some international conventions and national private international law
- Distinction between “personal status” and “personal law”
- Models of the scope of the personal status

INTERNATIONAL JURISDICTION REGARDING PERSONAL STATUS ISSUES

- May be determined by:
- international treaties (e.g. Art. 22 of the Treaty on Legal Assistance between Ukraine and the Republic of Poland on Legal Assistance and Legal Relations in Civil and Criminal Matters of 24 May 1993);
- the EU law (in the case of the jurisdiction of the EU courts) (e.g. Art. 5 et seq. of the EU Regulation 2016/1103 on Matrimonial Property Regimes);
- national private international law (e.g. Section 107 of Hungarian Act XXVIII of 2017 on Private International Law)

LAW, APPLICABLE TO PERSONAL STATUS ISSUES

- May be determined by:
- international treaties (e.g. Art. 12 of the 1951 Refugee Convention);
- the EU law (in the case of the jurisdiction of the EU courts) (e.g. Art. 8 of Rome III Regulation on the Law Applicable to Divorce and the Legal Separation);
- national private international law (e.g. Article 18 of the Law of Ukraine "On Private International Law" of June 23, 2003).

MIGRATION STATUSES THAT CAN BE ACQUIRED BY PERSONS FLEEING WAR

- Refugees
- Persons under subsidiary protection
- Persons under temporary protection

DOES MIGRATION STATUS AFFECT THE DETERMINATION OF JURISDICTION AND THE LAW APPLICABLE TO THE MATTERS COVERED BY THE PERSONAL STATUTE?

- If a person is recognized as a refugee, the law applicable to his or her personal status will be determined on the basis of Article 12 of the Refugee Convention. In other words, in this case, the migration status will affect the determination of the applicable law. The migration status of persons under subsidiary and temporary protection alone cannot influence the determination of the applicable law. It can only be taken into account together with other factors. The rules that determine international jurisdiction over cases involving personal status issues should be applied in such a way that migrants war related migrants do not lose the access to justice.