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Practical issues regarding the change of statute

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1. Introduction

In a significant part of the facts of private international law, the so-called temporal connecting factors (for example habitual place of residence, location of a movable object) have been codified. In this case, the connecting rule links the relevant time for determining the applicable law to a changing circumstance, in other words, the connecting rule is based on a moving connecting principle.[1]

The legal institution of the change of statute *(conflict mobile)* deals with this issue; that is, it regulates the relationship between the individual applicable laws and the legal institutions present and valid in the applicable law, taking into account the connecting principles that change over time.
In other words, the change of statute must also be taken into account in the enforcement of certain legal institutions of the applicable law; for example: if the parties' usual place of domicile, place of residence or location of movable property changes.

It increases the significance of the statute change, according to which both the relevant EU legal sources and the internal (domestic) legal source, the Nmjtv.[2] also on an ever-wider scale, (i.e. in more and more areas of law and already tacitly) enable the parties to choose the law. Indeed, the choice of law appears as a special time-varying linking principle, which makes it special precisely because this linking principle changes – as a main rule – based on the consensus[3] of the parties.

In view of this, it is appropriate to conduct research on the extent to which the system of switching principles (the choice of law in particular) affects the system of rules for changing statutes, and where, following the change of certain switching principles, it is justified to ensure that the rights acquired in based on the previous switching principle are protected.

It should be emphasised that the change in the connecting principle – as the circumstances determining the applicable law – results in a change of statute, so the

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[1] Ferenc MÁDL – Lajos VÉKÁS: *Nemzetközi magánjog és nemzetközi gazdasági kapcsolatok joga.* ELTE Eötvös Kiadó, Budapest, 2012. 98.
[2] Act XXVIII of 2017 on Private International Law.
[3] There is also a well-known example where the choice of law is based on a unilateral act. So, for example, cases where there is no adverse party (right to name), but it can also include legal disputes where there is a contradiction (for example, a violation of personality rights). – In detail: Csongor István NAGY: Jogválasztás az új nemzetközi magánjogi törvényben. *Jogtudományi Közlöny* 2019/5. 195.

change of statute is a factual phenomenon. The legal effect of the change of statute must be distinguished from this, which is the Nmjtv. related to its general part, which only became codified as of January 1, 2018.

My twin aims of this study are, on the one hand, to give a holistic picture of the legal institution of the change of statute (especially the importance of the principle of protection of acquired rights) and, on the other hand, by examining the specific part of the provisions (conflict of law), to identify where a change of statute may arise and, in this context, what role the protection of acquired rights plays in principle [Section 14]. In doing so, I necessarily analyse the possible practical – mainly procedural – problems, trying to give them a well-founded answer. Of course, it is not only the Nmjtv. but I also present the related EU legislation (primarily the Rome I Regulation[4] and the Succession Regulation[5]) in the necessary scope.

2. Change of statute is regulated by the Nmjtv. in the general part

Referring to what was written earlier, Section 14 of the Nmjtv. does not regulate the change of statute, but its legal effect, namely that the change in the circumstances determining the applicable law only has an effect on the legal relationships validly established according to the applicable law prior to the change if this law expressly provides for it.

The provision is also relevant because, in the former Nmjtvr.,[6] the legal effect of the change of statute was not codified as a general partial rule, but only a special part of the legislation contained special rules for this.
At the same time, the general rule of the legal effect of the change of statute laid down in the Nmjtv. covers the previously stated special provisions with similar content, so having these as a separate rule in the Nmjtv. in particular is not necessary.[7] In other words, in the special part, the norm regulating the legal consequences of a change of statute was only exceptionally codified, such as in sections 28(4), S 41 and 50(3) of the Nmjtv.

The essence of the statute change is the existence of time-varying connection principles. In other words, there are known connecting principles that are linked to a specific time in such a way that it cannot be changed later, such as the habitual place of residence of the testator at the time of their death [Succession Regulation Article 21(1)], or the validity of the adoption by both the adopter and the adoptee; both are decided by the personal

[4] REGULATION (EC) No 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 June 2008 on the law applicable to contractual obligations (Rome I)
[5] 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
[6] Law-Decree No. 13 of 1979 on International Private Law.
[7] T/14237. Bill on private international law (Proposal) 46.

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rights of the person who wishes to adopt at the time of adoption [Nmjtv. Section 33(1)]. In essence, time appears as a significant factor behind the change in these connection principles.[8] The conclusion can be drawn from all this that either the national or the EU legislator can rule out the possibility of changing the statute by not only fixing the connection principle in the given conflict of laws rule, but also the date relevant to the application of the connection principle, i.e. defining it in a way that cannot be changed by the parties.

On the other hand, countless connecting principles have been codified that change and may change over time, such as place of domicile, place of habitual residence, registered address, etc. The question of a change of statute actually arises only in the case of these connecting principles, namely "when the circumstance made relevant in the connecting principle [...] ceases to have a connection with a given country, and the connection already exists with another state: i.e. due to the change, the *lex causae* will be different for the same legal relationship, as before, it will fall under the 'statute' of another state."[9]

As I mentioned in the introduction, the change of statute also includes the choice of law, as a subjective connecting principle.
The Nmjtv. regulates the choice of law, on the one hand, in the general part [Section 9], on the other hand, it occurs in the special part. Section 9 of the Nmjtv. is an exception compared to Section 14, in that the parties may deviate from the principle of protection of acquired rights by choosing the law; that is, the right stipulated by the choice of law may affect the legal relationships validly established according to the law applicable prior to the choice of law. This interpretation is consistent with the legislative objective that the Nmjtv. broadly ensures that the parties may choose their legal relationship to deviate from the law otherwise applicable under the Act. At the same time, the autonomy of the parties cannot lead to the impairment of the rights of third parties.[10] That is why it is laid down in Section 9(2) that the choice of law may not infringe the acquired rights of third parties.

Section 14 of the Nmjtv. establishes the principle of the protection of acquired rights (prohibition of retroactive effect); that is, it reasonably tries to limit its effect if the legal relationship comes under a new legal system, (i.e. a new statute), as a result of the change of statute, and this would necessarily have an impact on the existing legal relationship as well.[11] In my opinion, the rule is extremely important, especially with the following in mind

[8] J.-G. CASTEL: *Canadian Bar Review*. Volume 39, Number 4 (1961), 608.
[9] Gábor PALÁSTI: Statútumváltás, területközi kollízió. Magyarázat a nemzetközi magánjogról. In Zoltán CSEHI (ed.), Wolters Kluwer, Budapest, 2020. 122.
[10] Proposal 44.
[11] Miklós KIRÁLY: Statútumváltás. In *A nemzetközi magánjogról szóló törvény kommentárja.* (szerk.): Lajos VÉKÁS – Zoltán NEMESSÁNYI – András OSZTOVITS, HVG-ORAC, Budapest, 2021. 129.

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In many cases, the reason for the change of statute is that one of the parties can influence the objective connection principle; for example, they may change their usual place of residence, or they can even use the option of choosing the law by unilateral act [cf. Nmjtv. Section 23(2) related to the violation of personal rights].

This in turn can also result in a kind of conflict-of-law forum-shopping being applied through the behaviour or unilateral choice of law of one of the parties; in other words, not on the basis of jurisdiction, but specifically with the help of the applicable substantive legal norms to influence the assessment of its existing or future legal dispute in its favour. This may also be liable to mean that, although from a procedural law perspective – in the absence of suitable jurisdictional grounds – it is not able to choose the forum, it might influence the applicable law.

From a practical point of view, in the event of a violation of personal rights, the person whose personal rights are violated may choose the Nmjtv, even after the submission of the defendant's written objection, until the conclusion of the trial, a right specified in Section 23(2). If the principle set out in Section 14 were not to apply, this could also result in the loss of one of the defendant's rights (substantive legal objection) if a defence (counterclaim) were to be submitted under Section 23(1) of the Nmjtv. It is for this reason that the codification of this norm was of fundamental importance.

It may be worth investigating whether the role of Section 14 of the Nmjtv. changes in the case of a bilateral choice of law or not. The in case. The answer is definitely yes, precisely because of the consensus of the parties. The appropriate regulation is the content of Section 50(3).

The significance of Section 14 is suitably demonstrated by István Nagy Csongor's example, according to which the section applies the legal congestion solution when the applicable law changes. For example, if an English husband and his Italian wife have been living in Hungary since January 31, 2018, since they do not have common personal rights, the Nmjtv. applies to their personal and property relations. Based on Section 27(2), Hungarian law applies. However, if, on 1 January 2019, the Italian wife acquired English citizenship and renounced her Italian citizenship, the applicable law. pursuant to Section 27(1) is English law. Even then, however, the prohibition of retroactive effect applies: Hungarian law applies to the legal effects of property rights created between January 31, 2018 and January 1, 2019; in this case, the Hungarian court must apply Hungarian and English law (separated in time).[12]

Based on the protection of acquired rights declared in Section 14, the question may arise of whether the rights acquired on the basis of previously applied law can be reviewed, even in the case of a reference to public order [Section 12], even on the basis of a

[12] István Csongor NAGY: *Nemzetközi magánjog.* HVG-ORAC, Budapest, 2017. 57. 115. paragraph

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reference to Section 13, which contains the rules requiring unconditional application. According to the point of view of the legal literature, the answer is clearly no, because the change of statute does not involve the application of foreign legislation (as in the case of Sections 12 and 13 of the Nmjtv.), but rather the enforcement and recognition of legal consequences based on foreign legislation.[13] The question may arise: why does the Nmjtv. not deal with the application of foreign legislation within the scope of Section 14? My understanding is that this is not an independent conflict of law norm; in other words, it does not decide which state's law is applicable – that is determined by a provision of the special part – but it states how it affects the legal relationships established on the basis of previously applied law if the applicable law is changed in view of a change in the connecting principles.

Based on the above, the conclusion can be drawn that a change in the applicable law cannot be considered a change of statute if it can be traced back to changes in the substantive law of the *lex causae*.[14] This follows from the dynamics of the legal system called for by the connecting principles. That is why, in my opinion, the essence of a change of statute is that the connecting principle changes as a result of the behaviour of the parties (or one of the parties) or, exceptionally, the situation of the object of the legal relationship *in rem* changes (the concept of change of statute in a narrower sense).

All this makes it possible to draw two conclusions:

– it does not belong to the concept of a change of statute in the narrower sense of the many applicable law designation norms formulated in the special part of private international law, which stipulates for the court – as a quasi-auxiliary connecting rule – that, in the absence of other connecting principles or in the case of a closer connection, Hungarian law must be applied [Nmjtv. Section 25(6)]. At that time, the circumstances determining the applicable law did not change [cf Section 14], but they may or may not be established, or the court evaluates them differently from the point of view declared by law;

– it also does not belong to the classic concept of change of statute if the court applies another law based on the general exclusion clause. All this confirms that, according to Section 10(1), this clause may also be applied based on the pre-existing circumstances of the case, not as a result of a change in circumstances. Recording all of this is also important because the principle of the protection of acquired rights laid down in Section 14 – which is one of the central issues of the statute change – only applies if the circumstances determining the applicable law – such as connecting principles – change, i.e. if the court assesses the existing circumstances differently, it not covered by Section 14 of the Nmjtv.

[13] KIRÁLY: Statútumváltás. 131.
[14] PALÁSTI: Statútumváltás, területközi kollízió. 123.

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Exceptionally, an EU legal act also contains provisions on the conditions for a change of statute; for example, according to the first sentence of Article 8(2) of the Rome I Regulation, if the law applicable to an individual employment contract has not been chosen by the parties, the contract is governed by the law of the country where or – in the absence of this – from where the employee usually performs their work to fulfil their contract. By itself, this provision would mean that a change in the place of work within the same employment relationship would result in a change of statute, which would also affect the entire regulation of the employment relationship due to the change in the applicable law. The use of the conditional method is justified because, based on the second sentence of Article 8(2) of the Rome I Regulation, the country of the place of regular work does not change if the employee is temporarily employed in another country. Hence, the place of regular work does not change as a result of the employee being temporarily employed in another country, i.e. no change of statute occurs.[15]

3. Change of statute in the Nmjtv. in a special part

In this chapter, within the framework of the Nmjtv.'s conflict of laws rules, I examine, on the one hand, the connecting principles according to which a change of statute is possible, and, on the other hand, what role and what role the principle of the protection of acquired rights enshrined in Section 14 of the Nmjtv. plays in the case of a change of statute

3.1. Persons

In connection with Section 15(2), I should highlight the concept of personal law, which is linked to a person's citizenship
At the same time, citizenship is a connecting principle that changes over time, so it cannot be excluded that a change of status will take place based on personal law. However, in the field of personal law, citizenship is only a general connecting principle; in many cases auxiliary connecting principles apply in addition to this general connecting principle so, in the case of multiple citizenships (if one of them is Hungarian) the closer relationship [Nmjtv. Section 15(3)], in the case of multiple citizenships (if none is Hungarian) the closest relationship [Section 15(4)], while in the absence of both of these, in the absence of ascertainable citizenship and in the case of stateless persons, the usual place of residence is decisive [Section 15(5)]. (It should be noted that personal law is influenced by connection principles that change over time, hence a change of statute may take place in this area.

Regarding the change of statute, the following conclusions can be drawn: in all cases, the prohibition of retroactivity prescribed in Section 14 is relevant, however, with different intensity for each connecting principles, since it is the least significant in the case of the

[15] PALÁSTI: Statútumváltás, területközi kollízió. 125–126.

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general connecting principle (citizenship), because citizenship – as the public law relationship with the state – is the most difficult to change, while the place of habitual residence can be applied with the greatest intensity; after all, this can be changed the most, especially considering that the usual place of residence may be relevant in the context of a closer and the closest relationship. Thus, changing one's habitual residence may affect the ability to establish a closer or the closest relationship.

In my view, the change of statute that takes place in the course of personal law is particularly relevant, since, in many conflict-of-law rules, the connecting principle is determined by personal law, the content of which is determined in Section 15, for example, or Section 26(1), or Section 43(1).

In terms of naming, according to Section 16(1), personal law [cf. Section 15(2)-(5)] or, at the request of the data subject, Hungarian law shall apply. It is relevant that although Section 16(1) allows for a choice of law, the choice of law does not take place in adversarial proceedings, but in a unilateral application (*ex parte*), so no separate time limit has been formulated. However, due to the possibility of choice of law, the statute change rule and the principle of protection of acquired rights established in Section 14 should also be highlighted in connection with this rule, although specifically in connection with naming, it is believed that the person concerned is likely to choose the choice of law option as it contains regulations that are more favourable to them.

It can be clearly established that a change of statute may also apply in connection with the naming of spouses, as the main rule is Section 27 of the Nmjtv., that the law of the state of which both spouses are nationals at the time of the assessment applies to the personal legal relations of the spouses, including naming. At the same time, the spouses can also use a choice of law: at the joint request of the parties, the law according to the nationality of either spouse or Hungarian law must be applied [Section 16(3)].

On the other hand, in the event of a divorce or declaration of invalidity, the law of the state on the basis of which the married name was created must be applied to naming [Section 16(4)]. Considering that the switching principle cannot change in this round, no change of statute can therefore take place either.
According to Section18(1), the conditions, creation, modification or termination of guardianship or other protective measures that do not affect the adult's capacity to act, their legal effects and the resulting legal relationships shall be governed by the law of the state where the person concerned has his or her habitual residence at the time of making a decision the underlying.
In the context of this provision – in my opinion – a change of statute is excluded, since the legislator makes the determination of the applicable law subject to a permanent, static date: at the time of ruling on the underlying facts where the person concerned's habitual residence was located. In other words, only the usual place of residence at the time of making a ruling is decisive.

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In view of what is written in chapter II, I do not consider the rule set out in Section 18(2) to be a statute change in the narrow sense, so I will refrain from analysing it.

Section 18 applies to persons placed under guardianship or affected by other protective measures that do not affect the adult's legal capacity to act, while Section 19 specifies the applicable law in the event of any future limitation of the adult's capacity to act or the lack of ability to protect their interests for any reason. Accordingly, while according to Section 18, the habitual place of residence was the one at the time of ruling on the underlying facts, Section 19 applies the law of the state of the habitual place of residence at the time of making the legal declaration. From the point of view of statute change, however, it is important that while Section 18 does not provide for a choice of law, Section 19 however does, specifically in accordance with citizenship, former habitual residence, or the location of the asset. Due to the choice of law, Section 14 clearly has a decisive role, since the protection of acquired rights regulated by it is of special significance, specifically due to the personal scope of Section 19.

Section 21 contains a conflict of law rule regarding the declaration of death and the establishment of the fact of death but a change of statute cannot be interpreted in this context.

For legal persons, Section 22(1) makes the personal right subject to registration in accordance with the principle of incorporation, accompanied by the fact that Section 22(2-3) contains auxiliary rules in the event of non- registration. Following the logic of the regulation, a change of statute is only possible if there are auxiliary connecting principles (registered office, place of central administration), since a change of either the seat or the place of central administration is not excluded. It is noteworthy that Section 22(4) specifies in detail, but not exhaustively, the scope of the applicable law; that is, it also gives an appropriate sense of those legal issues in which a change of statute may play a role. Hence, even legal capacity [Section 22(4) a)] and legal and organisational representation [Section 22(4) c) are issues that may justify placing the legal person under a different statute but, at the same time, the principle of protecting acquired rights may be of fundamental importance, for example from the point of view of the protection of minors. In cases of violating personal rights, the victim's habitual place of residence is, as a general rule, decisive [Section 23(1)]. However, Section 23(2) of the Nmjtv. provides the victim with a broad and unilateral choice of law. In my opinion, this choice of law illustrates very well the role of protecting acquired rights, and the fact that, in an adversarial relationship, Section 14 serves to protect not only the victim, but also the person who committed the violation.

Thus, if the injured party, in order to place their legal relationship with the perpetrator of the injury under a substantive legal system containing a catalogue of personal law that is more favourable to them, pursuant to Section 23(2), they make a choice of law. In the absence of Section 14, it would not only be possible to increase the system of rights

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attached to the person, or the legal consequences applicable at that time, but also to take away the rights and means of defence that can be exercised by the perpetrator of the injury. Since the plaintiff, as the victim, can still make a choice of law during the trial process, i.e. after the presentation of the defendant's written counterclaim, it is not excluded that, knowing the defendant's defence, they will switch to the application of a chosen law where the defendant's defence cannot stand.

3.2. Family law

Section 25 governs the possibility of applying a law more favourable to the child in all family law situations; however, referring to what is written in point 2, I do not consider this rule to be a change of statute in a narrow sense.

With regarding to marriage, the Nmjtv. distinguishes between the validity of the marriage (existence and non-existence) and the personal and property legal relations between the spouses.
The validity of the marriage [Section 26] cannot be interpreted as a change of statute, as it always adjusts the applicable law to the marriage contract, which cannot change over time [section 26(1)-(2)].

On the other hand, the regulations regarding the personal and property legal relations of the spouses are already more precise, since the law according to the nationality of both spouses is to be applied at the time of the assessment [Section 27(1)]. Common citizenship is interpreted in Section 24. However, what does the phrase "judgment date" mean? The date of submitting the statement of claim (petition initiating proceedings) or the date of the decision (typically judgment) taken on the merits of the case?
The Nmjtv. and the Statement of Reasons in the Proposal clearly do not answer this question. Therefore, the only interpretive aid is placed among the procedural provisions, as Section 90(3), which regulates jurisdiction in the context of the adjudication of the claim. That is, on the basis of this provision it can be concluded that the term "judgment date" means the day of the decision taken on the merits of the case.

In the absence of what is written in Section 27(1), the joint habitual residence of the spouses (while in the absence of this, the last joint habitual residence) designates the applicable law [section 27(2)]. As a last resort, the *lex fori* applies [Section 27(3)). At the same time, it should be emphasised that Section 27 can only prevail in the absence of a choice of law; in other words, the choice of law primarily determines the law applicable to the personal and property legal relations of the spouses. However, if there is no choice of law, a change of statute is not excluded within the scope of Section 27(2) – i.e.(last) joint habitual residence – precisely because of the mobility of the habitual residence, and this also means that Section 14 is of substantive importance.

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It is important to point out that the choice of law can only apply to property relations and, in the case of personal relationships, only Section 27 applies.
Section 28 of the Nmjtv. provides the possibility of choice of law for spouses and newlyweds only in the context of property relations [Section 28(2)] The choice of law is also a change of statute. However, according to Section 28(4), unless the spouses agree otherwise, the choice of law applicable to the property relations of the spouses has legal effect only for the future. As previously explained, the choice of law – as a subjective connecting principle – can form the basis of a change of statute. In this context too, the principle of the protection of acquired rights set out in Section 14 must be taken into account; however, Section 28(4) provides as *lex specialis* the possibility that the choice of law can also have *ex tunc*, i.e. retroactive, effect.[16] In practice, this means that the choice of law has no effect on the legal relationships established on the basis of the law applicable before the change, i.e. the provision in Section 14 of the Nmjtv. applies in this context.

The parties may avail of this right when proceedings commence, within the deadline set by the court [Nmjtv. Section 28(3)].
However, the choice of law must also pay attention to the fact that matrimonial property law is a special system of legal relations: on the one hand, an internal legal relationship between the spouses, and on the other hand, an external legal relationship between the spouses and third parties. That is why, due to the internal legal relationship between the spouses, the legislator ensures the possibility that the choice of law has retroactive effect, i.e. that the principle of the protection of acquired rights in Section 14 of the Nmjtv. does not apply. This does not cause any problems regarding the internal legal relationship between the spouses, as they can decide for themselves the content of the matrimonial property law contract based on the principle of freedom of contract. However, the external aspect of the matrimonial property regime must also be taken into account, i.e. the rights of third parties who have been in contact with the spouses must also be protected. This purpose is served by one of the guarantee rules on the choice of law, namely that. the choice of law cannot infringe the acquired rights of third parties [Nmjtv. Section 9(2)], since the autonomy of the parties must not lead to the impairment of the rights of third parties. The Nmjtv. therefore provides, among the common rules, that the parties may not infringe the already existing rights of third parties through an *ex-post* choice of law.[17] According to János Bóka, Section 9(2) has a general nature, so it does not cover the full range of legal effects of the choice of law regarding matrimonial property relations vis-a-vis third parties. It will therefore be the task of the legislator to prevent any abusive exercise of rights.[18]

[16] Mónika CSÖNDES: A házastársak személyi és vagyoni jogviszonyaira irányadó új kollíziós szabályok. In Katalin RAFFAI – Sarolta SZABÓ (szerk.): *Honeste benefacere Pro scientia, Ünnepi kötet Burián László 65. születésnapja alkalmából.* Pázmány Press, Budapest, 2019. 120.
[17] Proposal 44.
[18] János BÓKA: Családjog és öröklési jog az új nemzetközi magánjogi törvényben. *Jogtudományi Közlöny* 2019/3. 96. 24. footnote.

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I agree with Bóka's conclusion, and the principle-level provision in Section 9(2) may also help the legislator.

As a general rule, there is no possibility of change of statute in the area of family statutes, since the personal rights of the child at the time of birth must be applied in the matter of establishing paternity or maternity, as well as rebutting the presumption of paternity [Nmjtv. Section 31(1)]. Considering that the child's birth has been codified as a static date, a change of status is not possible in this round. Again, I point out that Section 32 – the principle of a closer connection with the case – does not constitute a change of statute in a narrow sense.

In relation to adoption, a change of statute is also excluded, since the validity of the adoption is linked to the time of the adoption – as an unchangeable circumstance – the applicable law is linked to the personal rights of both the adopter and adoptee at the time of adoption [Nmjtv. Section 33(1)]. As regards the legal effects of adoption, the personal law of the adopter at the time of the fact (legal fact) causing the given legal effect, while the personal right existing at the time of terminating the adoption and its legal effects must be applied to the termination of the adoption [Nmjtv. Section 33(2)].

The *lex fori* applies to the legal relationship between parent and child, as well as guardianship [Nmjtv. Section 34(1)]. In my opinion, a change of statute is not possible in this context either, since both Section 34(2) and Section 25 cannot be classified as a classic change of statute [cf. point 2].

3.3. Life partners, registered partners

Section 35 of the Nmjtv. governs the conflict-of-law rules related to cohabitation. Thus, the law of the state of common citizenship of the partners applies to the creation, termination and legal effects of the partnership relationship, with the exception that Section 24 of the Nmjtv. applies to common citizenship and Section 35(4). regulates the applicable law regarding civil partnerships based on the conflict of law regulations applicable to marriage, with the essential difference that, while in the case of spouses, Section 27 specifically regulates the personal relations of spouses, in the case of partners, the creation, termination and legal effects of the civil partnership are regulated in addition to the property relationship.
Among the legal effects of a civil partnership, the legislator highlighted property relations, where it expressly allows for a choice of law, referring to the norms governing spouses [Section 36], so I will not repeat all the statements written there.
Given that the connecting factors for life partners are partly citizenship and partly habitual residence, a change of statute is therefore possible. This also results in the importance of Section 14, especially in the context of the legal effects of the partnership.

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The establishment and validity of the registered partnership, as well as its legal effects, excluding naming, shall be governed by the special rules applicable to marriage and subject to the exceptional rules in Section37. Thus, for example, the law in force at the place and time of establishment *(lex loci celebrationis)* governs formal validity. Given that, with the exception of naming, the Nmjtv. refers back to norms codified in the context of marriage, I consider the provisions established there also to be authoritative in the context of Section 37. However, it is important to note that the legislator codified a separate legal situation regarding the termination of a registered partnership [Section 38], which, however, links the applicable connection principle to the submission of the claim or the application as an unchangeable date, so a change of statute and related questions cannot arise.

3.4. In the field of property law

The right in rem statutes regulate the rights relating to a given place and time and their creation, modification or termination, as well as which rights in rem can be exercised after the change. Considering that a right in rem is related to a specific time and place, the question arose of how and in what way should previously acquired rights be taken into account.[19]

According to Section 39(1), the applicable law is determined by the place of the thing, governed by the law of the state on whose territory the thing is located at the time when the event giving rise to legal effects occurs [Nmjtv. Section 39(2)]. At first sight, the conclusion could be drawn that a change of statute is not possible for in rem rights, since the law binds the determination of the governing law to the time when the legal trigger of the effect was actually created.

However, in the area of property rights in rem, it must be borne in mind that the location of movable things can change; as such, although Section 39(2) sets a fixed date in the authority governing the location of the thing (the creation of the fact that triggers the legal effect), the connecting principle used to determine the date is dynamic.

Hence, the Nmjtv. expressly regulates the issue of change of statute in the case of movable things in Section 41, as it contains a special provision related to Section 14. The regulation is basically justified by the fact that, after the change of law, the movable thing may be transferred to the territory of another state, where other rules on rights in rem may apply;[20] for example, other property rights are known (cf. the principle of the privacy of property rights), or rights in rem have been codified with a different content.

[19] Zoltán Csehi: A dologi jog új kollíziós szabályai. *Jogtudományi Közlöny* 2019/1. 15.
[20] Zoltán Csehi: Dologi jog. In *A nemzetközi magánjogról szóló törvény kommentárja.* 270.

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Therefore, if the movable thing is transferred from one state to another, the change in the location of the thing in the meantime may result in, a different order of property in the state where the thing is now located.[21]

Along these lines, according to Section 41(1), if the movable thing is permanently transferred to the territory of another state after the change in property law, the previously acquired rights can be recognised according to the law of the thing's new location.

Based on the above provision, it can be concluded that Section 41(1) of the Nmjtv. refers to the so-called completed,[22] closed events while paragraph (2) regulates so-called open events.[23]

A classic example of a completed event is when the thing is transferred to the territory of another state after the right of ownership has been acquired. In other words, the legal effects in rem are already established in the territory of the state where the thing was previously located, and then the movable thing is physically and permanently transferred to the territory of the other state. If the change of law is recognised and accepted by the law of the state that is the new location of the thing, the change of law is considered to have taken place; however, if the legal effect in rem cannot be interpreted in this new state, no change of law occurs. The change of location of the movable thing also changes the content of the right in rem (i.e. the right acquired based on the law of the state of the previous location of the thing only continues to exist based on the law of the state of the new location of the thing). For many rights, such as property rights, this does not cause problems, but it means the loss of those rights that are not recognised in the law of the state where the thing is now located.[24]

All this means that, according to the main rule of protection of acquired rights in Section 14, none of this should affect the acquisition of property based on the law of the former state. However, precisely because of the special nature of property rights (that individual rights in rem and their content differ from state to state, and property law rules are not dispositive in the majority of states), the principle of the protection of acquired rights does not fully apply in three cases:

a) Right in rem is not recognised in the law of the new location of the thing. In this case, it is possible that the right in rem created previously must be recognised according to the law of the new location of the thing; in other words, functional equivalence must be

[21] Proposal 63.
[22] Proposal 63.
[23] Proposal 63.
[24] Proposal 63.

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sought. Article 31 of the Succession Regulation and related jurisprudence and case-law can be helpful.

b) Right in rem is recognised in the law of the new location, but with different content. In this case, the content of the right in rem is determined by the law of the new location.

c) After the thing has been moved to another state, it is returned to the state where the change of law occurred. However, this does not actually affect the material legal change that occurred.[25]

Noting that Section 41(1) regulates the example in point a), I therefore analyse it in more detail. In my opinion, establishing the functional equivalence between the substantive law systems of each state and the content of individual rights in rem is not always a simple and clear task and, in the course of equivalence, the goals and interests of the original right in rem, as well as the related legal effects, must also be evaluated.
This approach is also taken in Article 31 of the Succession Regulation, in connection with which the Hungarian legislature adopted an independent law on compliance.[26] This law regulates non-litigious procedure within the jurisdiction of the court related to Article 31 of the Succession Regulation.

In my opinion, since the Act does not contain any further detailed rules related to Section 41, it simply states that the right in rem can be recognised according to the law of the new location of the thing, it would be worth considering a separate non-litigious procedure similar to the Act on the Recognition of Rights in Rem to regulate the recognition of property rights and their alignment. The essence of such a procedure would be that the Member State of the place of establishment would at least be obliged to attempt to make the relevant property right correspond to one of its own rights in rem institutions (simultaneously taking into account the rules governing registration in the relevant register) (cf. the detailed explanatory memorandum to Sections 1-9 of the Provision Compliance Act).
With regard to Section 41(1) of the Nmjtv., the case law[27] can serve as a basis for correspondence, according to which Article 31 of the Succession Regulation does not apply to the methods of transfer of property rights – which may include, *inter alia*, in rem or law of obligation traditional inheritance – but only refers to respecting the content of rights in rem governed by the law applicable to succession *(lex causae)* and their incorporation into the legal system of the Member State where those rights are invoked *(lex rei sitae).* In other words, the legal practitioner must always pay attention to the

[25] CSEHI: Dologi jog. 271.
[26] Act LXXI of 2015 on the compliance non-litigation procedure pursuant to Article 31 of Regulation 650/2012/EU of the European Parliament and of the Council, as well as on certain judicial amendments. Act (Compliance Act).
[27] C-218/16 *Aleksandra Kubicka kontra Przemysława Bac,* ECLI:EU:C:2017:755

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content of the property right concerned and the method of acquiring the right *(modus)* when making the correspondence.

Section 41(2) of the Nmjtv. regulates the case where the legal effect of the acquisition of rights in rem has not been established in the former location of the thing and the movable thing has been permanently transferred to another state, in which case the law of the latter state applies to the acquisition of rights.
This also means that the situation is open until all the factual elements necessary to give rise to the egal effect in rem are established.[28] For these facts, the date of termination of the legal effect in rem is decisive, and the law of the state in which the thing is located at the time determines whether a change of statute has occurred or not. (According to the example mentioned by the legislator, if a pledge has been established on a movable property and it is transferred to Hungary in the meantime, the pledge contract does not in itself create the right of pledge, but Hungarian law recognises its antecedents and the pledge can also be created by possession or registration.)[29]
In this case, the specific question of the change of statute actually arises, since the applicable law is determined in the opposite way to that in relation to completed facts. It should be stressed that only a permanent change of residence can be the basis for applying Section 41(2) of the Nmjtv.: it does not apply to a temporary change of place of residence.[30]

There is an important difference in terminology between Sections 41(1) and (2): while paragraph (1) regulates "change of statute", paragraph (2) regulates the "legal effect of the acquisition of a right in rem". The difference is justified: paragraph (1) refers to the completed situation, where the legal change has already taken place, ,whereas paragraph (2) regulates the open situation: at that time, the legal change had not yet occurred; in other words, the "legal effect of the acquisition rights in rem" and the "acquisition" itself can only take place later, based on the law of the new location of the thing.

Section 41(3) also highlights one aspect of the system of rights in rem: the expropriation of the movable thing, when it stipulates that the law of the state in the territory of which the thing was at expiry of the expropriation period applies to the expropriation of movable property. (Hungarian legislation thus fits into the system according to which the norms regarding the change of statute arise most often in connection with expropriation.[31])

[28] CSEHI: Dologi jog. 272.
[29] Proposal 63.
[30] CSEHI: Dologi jog. 272. and Zoltán CSEHI: Dologi jog és értékpapírjog. In *Magyarázat a nemzetközi magánjogról.* 619-620.
[31] Zoltán CSEHI: A nemzetközi magánjog dologi jogokra vonatkozó kollíziós szabályainak vizsgálata és javaslatok a jelenlegi magyar szabályok módosítására. In *Az új nemzetközi magánjogi törvény alapjai – Kodifikációs előtanulmányok.* (szerk.): Barna BERKE – Zoltán NEMESSÁNYI, HVG-ORAC, Budapest, 2016. 153.

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Of course, this means that the conditions for dispossession of the thing may be more favourable or even burdensome for the dispossessor, as well as for the owner, as well as for the conditions for possession (for example, the question of the dispossessor's good faith or the use of the dispossessed property as his own). Thus, for example, while Hungarian law does not require good faith as a condition for dispossession, it is a condition for dispossession in other laws. Therefore, if the thing is transferred from Hungary to a state where good faith is one of the conditions for possession, then dispossession does not take place, or takes place only later. By definition, this provision does not exclude the abuse of the right, i.e. that the dispossessor specifically changes the location of the movable thing because of the more favourable possession rules. A general escape clause can be used to prevent this situation, since, if it is obvious according to the circumstances of the case that the case is more closely related in substance to another right than the right governing the case under this Act, another law can be applied exceptionally [Nmjtv., Section 10(1)].[32]

It should be mentioned that, in view of the fact that a choice of law cannot be interpreted in the case of transferring movable property, the choice of law cannot rule out the application of the general exclusion clause either [cf. Nmjtv. Section 10(2)]. The court seised may also decide on the application of the general exclusion clause at its own discretion, so it has the option to judge the given facts based on the law of a state with a manifestly closer connection to the case rather than the connecting rule designated by law as the main rule.[33]
That is, this legal institution may be appropriate for avoiding abuses of the right of dispossession.

According to Section 41(4), dispossession is not interrupted by a change in the location of the thing. This provision is a classic civil, substantive law rule. To put it another way, a change in the location of the thing does not constitute active conduct on the part of the owner that would be capable of interrupting the statute of limitations, [cf. Section 5:49(1) of the Civil Code (hereinafter Ptk.).[34]

In the case of a registered vessel, aircraft or railway vehicle, the Nmjtv. provides for the right to use of the flag or other insignia, as well as the right to put into service; that is, precisely because of the fixed nature of the connecting principles, a change of statute is not possible in this context [Nmjtv. Section 42(1)-(2)].

Among the special rules on property rights [Nmjtv. Sections 42-47.] from the point of view of the change of statute, the choice of law provided in the area of rights in rem is the most significant. Section 45 provides the parties with a limited choice of law with regard to the

[32] Proposal 63.
[33] Proposal 44.
[34] Act V of 2013 on the Civil Code.

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law applicable to legal effects in rem, and this choice of law is limited to movable property and is only available to the contracting parties in cases of a transfer of ownership.[35] Along these lines, in their contract for the transfer of ownership of a movable thing, the parties can choose the law of the state where the thing is located or where the thing is contractually intended to be used [Nmjtv. Section 45(1)], while in the case of a transfer of corporate (business) assets as a whole, the parties can choose the personal law of the legal predecessor for legal effects in rem – with the exception of real estate [Nmjtv. Section 45(2)].

Section 9 of the Nmjtv. also applies – as an underlying rule – in connection with this choice of law but it is more important from the point of view of the change of statute that this choice of law cannot have retroactive effect, because – in contrast to the choice of law prevailing in contractual relationships – there is no specific legal provision that would ensure an exception to the prohibition of retroactivity in Section 14. As such, in the area of rights in rem, the principle of the protection of acquired rights, as set out in Section 14 of the Nmjtv., applies in the case of a choice of law, in contrast to the regulatory model in Section 41.

3.5. Intellectual Property rights

In the field of copyright, the principle of territoriality prevails, namely the creation, content, termination and enforcement of copyright are governed by the law of the state on the territory of which protection is claimed [Nmjtv. Section 48], while, in the case of industrial property rights, the principle of registration is laid down in the law [Nmjtv. Section 49]. In the case of both norms, it is true that a change of statute is not possible due to the static nature of the connecting principles.

3.6. Law of Obligations

3.6.1. Contractual obligations

In contractual obligations, choice of law is a generally applicable connecting principle; that is, choice of law of the parties primarily governs the applicable law, and this means a change of statute.

Thus, in connection with the choice of law, Section 50(3) of the Nmjtv. provides that, without prejudice to Section 50(2), the parties may agree that, instead of the law previously applicable to the contract – under the choice of law according to this Section, or, failing that – on the basis of the provisions of this Act, another law shall apply. Any amendment of the provisions of the contract relating to the applicable law after the

[35] Proposal 65.

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conclusion of the contract shall not affect the validity of the contract according to the law governing formal validity.

It can be concluded that Section 50(3) is an exception to Section 14; that is, the parties may exercise the right to change the statute by agreement, given that this choice of law has retroactive (*ex tunc*) effect. This also follows from the fact that Section 50(3) also states in its wording that the previously applicable law shall prevail over the contract.
All other interpretations would lead to intertemporal collisions. As a safeguard provision in this case as well, the rule in Section 9(2) applies rights acquired by third parties.[36]
The parties may use this right during the admission process, within the time limit set by the court [Nmjtv. Section 50(2)]. Determining the applicable law is an issue to be decided when the proceedings begin, since the framework of the legal dispute (e.g. the motions for evidence) can be determined in relation to the provisions of the applicable law.[37]

This provision of the Act raises a number of questions of procedural law, especially considering that this choice of law is essentially retroactive.
Thus, as an example, the parties agree to apply Canadian law instead of the Hungarian law within the time limit set by the court when the case is brought.
This means that the Hungarian court must apply the rules of the Hungarian Code of Civil Procedure (Pp.),[38] but Canadian law applies to the substantive provisions. This is also important because, according to Section 237(2) of the Pp., if the statement of claim does not cover taking evidence regarding an essential fact or there is a dispute between the parties as to which party bears the burden of proving a fact, the court shall, in addition to following the provisions of Section 237(1), inform the parties of the consequences of failure to provide evidence or to request evidence to be taken, as well as the possible failure of evidence-taking.

It can be clearly established that fulfilling the requirements of Section 237(2) is largely determined by the applicable substantive law: that is, the evidentiary interest and the related burden of proof are determined by substantive law. Thus, if the applicable substantive law changes, this may affect the court's substantive burden of proof obligation under Section 237(2) of the Pp.

This may also include the fact that, according to Section 237(3), the court contributes to clarifying the framework of the legal dispute by informing the parties, if:
a) it interprets the legal provision to which they refer differently,
b) based on the available data, it notices a fact that must be taken into account *ex officio,* or
c) if it is not legally bound to the request,

[36] Tamás SZABADOS: Kötelmi jog. In *A nemzetközi magánjogról szóló törvény kommentárja.* 313.
[37] Proposal 69.
[38] Act CXXX of 2016 on the Code of Civil Procedure.

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and provides the parties with an opportunity to make their statements.

It is essential that the provisions of Section 237(3) also primarily rely on substantive law; in other words., as a main rule, substantive law must be taken into account, so, for example, substantive law shall decide in which case the court is not bound by the application [Section 237(3) c) of the Pp.]. According to Hungarian law, this includes the application of certain legal consequences of the invalidity of the contract [Ptk. Section 6:108(3)], and of warranty rights asserted due to defective performance Section. 6:161].

Thus, to continue the example above, under Canadian law, the court is required in justified cases, to carry out its substantive proceedings [on the basis of either Section 237(2) or Section 237(3) of the Pp.], in all cases taking, Section 9(2) of the Nmjtv. into account. It is important that the legislator also limited the choice of law to the procedural stage, because the applicable substantive law determines the law to which the court is bound [Pp. Section 342(3)]. The applicable substantive law constitutes the choice of law because it determines the subject-matter right, the enforcement of which is guaranteed by substantive law [cf. Pp. Section 7(1) point 11].
It follows directly from this that the choice of law means a change in the legal position; namely, the plaintiff asserts a different right to be enforced [Pp. Section 7(1) 12 a)], while the defendant refers to a different substantive legal objection [Pp. Section 7(1), 4 a)]. Thus, in legal terms, all of this necessarily appears as an amendment to the claim or counterclaim. However, this change in claim or counterclaim can be implemented within the framework of the more flexible rules of the *lis pendens* procedure. The court may subsequently take any necessary additional procedural steps (particularly substantive measures) subject to the change of statute.

In light of this, Article 3(2) of the Rome I Regulation raises a complicated question of interpretation, according to which the parties can agree at any time to submit the contract to the provisions of another law instead of the law previously applicable under the earlier choice of law according to this Article or other provisions of this this Regulation
This means that, in legal disputes falling within the scope of the Rome I Regulation, the parties may exercise their choice of law right even after the proceedings have started. It is questionable how the change in claim manifested in this change of statute can be channelled through the law of the case in the substantive phase of the procedure. Articles 215(1) and 216(1) set out exhaustively that, in the substantive phase of the procedure, it is only possible to amend a claim or counter-claim in a direct causal connection with a new statement of fact, or within the scope justified by the court's substantive decision following the adoption of an order to close the proceedings.

It is clear that the parties' choice of law cannot be considered as a material change by the court, but, at the same time, the change in the parties' choice of law in this case is not directly causally related to a new factual statement.

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Thus, in my opinion, no clear answer is possible as to how the parties can transition to their choice of law in the above case. In other words, although the Rome I Regulation provides for a change of statute for the parties by applying a subjective connecting factor, it is not feasible to transport this into procedural law. Nevertheless, I cannot conclude that the parties cannot exercise a right granted by EU law, as this would be contrary to Rome I: its preamble formulates the settlement of private law disputes based on the principles of fair procedure and the effective enforcement of substantive rights.

Thus, in the currently legal environment, an appropriate solution may be, with regard to the parties' choice of law, for the court to conduct a substantive hearing; in other words, in the event of the parties' assertion of law – as a declaration of commencement of proceedings [Pp. Section 183(1)]. In this way, the parties may have the opportunity to change their claims and counterclaims depending on the substantive conduct of the court. In my opinion, the legal relationship between the parties does not change with the choice of law, since the legal relationship [cf. Pp. Section 215(1)] is constituted from the relevant facts, which are not affected by the applicable substantive law, but are only evaluated differently. The latter may justify the choice of law.

However, it should be emphasised that only a clear provision in the legislation could ensure a reassuring solution in this area.

If, on the basis of the above, the claim or counterclaim has been changed, the court can repeat any additional procedural steps that may be necessary in light of the change in statute.

Of course, the Nmjtv. settles the question of applicable law in the absence of a choice of law, so that, in such a case, the law of the state to which the contract is most closely related according to the essential elements of the given legal relationship must be applied to the contract [Nmjtv. Section 51]. A change of statute is not possible due to the nature of the regulation.

The Nmjtv. deals separately with the law applicable to arbitration agreements. Such separate treatment is justified by the principle of separability; that is the arbitration clause is considered an independent contract independent of the main contract in terms of its existence and validity.[39] In the case of an arbitration agreement, similarly to contracts, the choice of law of the parties is the decisive factor [Nmjtv. Section 52(1)]; in the absence of this, the law chosen for the basic legal relationship applies to the arbitration agreement; failing that, the law governing the basic legal relationship in the absence of a choice of law applies [Nmjtv. Section 52(2)]. That is, in the absence of a choice of law, the law specifies the law applicable to the arbitration agreement in three stages [Nmjtv. Section 52(2)-(3)]. In my opinion, in the case of the first two steps of the three-step relationship system – i.e.

[39] Proposal 69.

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the law chosen for the basic legal relationship, and, in the absence of this, the law governing the basic legal relationship in the absence of a choice of law – a change of statute is possible, hence its significance, as well as the principle of prohibition of retroactive effect set out in in Section14 of the Nmjtv. can also be assessed in the light of the law applicable to the underlying legal relationship. That is, if the law chosen for the underlying legal relationship is the applicable law, then the details presented above may apply.

3.6.2. Securities

Regarding securities, the Nmjtv. separately regulates the law applicable to the physical appearance of the security, the conditions for its validity requirements and legal effects of the disposition of the security in rem. The law of the state governing the law contained in the security applies to the physical appearance of the security and its requisites for validity [Nmjtv. Section 57(1)], i.e. the law underlying the securities obligation applies.[40]
In contrast, the legal effects of the disposal of securities on rem are governed by the rules of substantive law [Nmjtv. Section 57(2)]. Accordingly, the rules on the transfer of securities as things in rem must be assessed based on substantive legal rules, according to the law governing the place where the securities are located.[41]

A separate connecting principle has been codified for the provision of dematerialised securities in Section 57(3), according to which the law of the state that provides state supervision of the manager of the securities account applies, in the absence of which where the securities account is kept applies.

It can be noted that, according to the above, a change of statute is not possible in connection with the disposition of the securities, their physical appearance and validity – due to the non-changeable nature of the connecting principles.

At the same time, the applicable certain rights contained in the securities must be examined separately, such as the chosen law in the case of an obligation, otherwise the law applicable to the securities' place of issue, if that cannot be determined, then the personal law of the issuer [Nmjtv. Section 58(1)], the issuer's personal law applies to membership rights [Nmjtv. § 58, paragraph (2)], while the law of the state of issue applies to rights in rem [Nmjtv. Section 58(3)].

It is important that, in the case of contractual rights and membership rights, a change of statute is not excluded, since the choice of law is a classic case of a change of statute, while a change of statute is also possible in relation to personal law (see section point 3.1) and, in line with this, Section 14 of the Nmjtv. § 14 may also be relevant.

[40] Proposal 72.
[41] Proposal 72.

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3.6.3. Non-contractual obligations

Section 60 contains an objective connecting rule, namely. That the law of the state on the territory of which the legal effect of the legal act creating the obligation took place applies to legal obligations outside the contract. This rule considers the occurrence of the effect of the legal act as the relevant time, so a change of statute is not possible in this context, as this implies a static connection principle. The Nmjtv. formulates an exception to this main rule in Section 61 regarding the common habitual residence of the beneficiary and the obligee. At the same time, this rule expressly designates the habitual residence as a dynamic connecting factor; i.e. a change of statute is possible here, and the prohibition of retroactive effect found in Section 14 applies.
The Nmjtv. applies Section 62 as a special auxiliary norm. according to which, if the non-contractual legal relationship is closely related to another legal relationship that already existed between the parties at the time the non-contractual legal relationship was created, the law governing this other legal relationship also applies to the non-contractual legal relationship. In this case, however, the law applicable to the other legal relationship and the nature of the connecting principle that forms its basis determine the possibility or exclusion of the statute change.

Section 63 introduces the possibility of choosing the law even in the case of non-contractual obligations, with the possibility of choosing the law at the latest during the admission process, within the deadline set by the court [Nmjtv. Section 63(2)]. That is, if the parties make a choice of law, the change of statute takes place.

The extent to which the choice of law rules governing contractual obligations apply as an underlying rule is open to question, since, in the case of non-contractual obligations, the choice of law is only guaranted after the establishment of the legal relationship, whereas, in relation to contractual obligations, the choice of law is given, even in advance. From the point of view of the statute change, all this is important because it affects the principle of the protection of acquired rights, while, according to Section 50(3) of the Nmjtv., the parties may choose another law instead of the law applicable to the contract – i.e. the entire contract – by choosing the law, i.e. in accordance with the Nmjtv. with the authorisation provided in Section 14; the protection of acquired rights is thus excluded, and only the legal protection provided to third parties in Section 9(2) remains.
On the other hand, in non-contractual legal relationships, precisely because the choice of law is only possible after the legal relationship has been established, the prohibition of retroactive effect and the principle of the protection of acquired right as set out in Section 14 apply. It is important that although the choice of law can only be exercised after the legal relationship has been established, Section 14 has not been emptied, since, for example, in the case of delictual damage, the choice of law can even place the tortfeasor under a more stringent regime of exculpation.

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4. Summary

On the basis of examining the conflict of law rules of the Nmjtv., it can be established that, under the Nmjtv. regime, a change of statute in the narrower – classic – sense always takes place at the will of the parties (or one of them), or can exceptionally be attributed to a change in the situation of the thing that is the subject of the legal relationship in rem. That is why the change of statute can be characterised as a change of fact; that is, the change of statute occurs if the circumstances determining the applicable law change.

It is Section 14 of the Nmjtv. that regulates the legal effect of the change of statute, in other words, the principle of retroactive effect applies and thus the protection of acquired rights prevails as the main rule.
Without this rule, it could not be excluded that, due to the behaviour or unilateral choice of law of one of the parties, a kind of conflict-of-law forum shopping would take place, i.e. to influence the outcome of an existing or future legal dispute in its favour, not on the basis of jurisdiction, but specifically with the help of the applicable substantive law. This may also be a way of influencing the applicable law even if, from a procedural point of view – in the absence of suitable jurisdictional grounds – it is not able to choose the forum. This is precisely why Section 14 of the Nmjtv. has a guarantee function.

Only an express statutory provision can provide a derogation from this, partly due to choice of law [Nmjtv. Section 28(4) and Section 50(3)], and partly, because of the specific nature of the legal relationship with regard to egal relationships in rem [Nmjtv. Section 41].

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