Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts" (3/2008)

Recently, the May/June issue of the German legal journal "Praxis des Internationalen Privat- und Verfahrensrechts" (**IPRax)** was released.

It contains the following **articles/case notes (including the reviewed decisions)**:

- ***M. Stürner:*** "Staatenimmunität und Brüssel I-Verordnung – Die zivilprozessuale Behandlung von Entschädigungsklagen wegen Kriegsverbrechen im Europäischen Justizraum" – The English abstract reads as follows:

> *The article examines the impact of the law of State immunity on the scope of international jurisdiction under the Brussels I Regulation. Recently the appellate court of Florence, Italy, has granted enforceability to a judgment in which the Greek Supreme Court, the Areios Pagos, had awarded damages to descendants of victims of a massacre committed in 1944 by German SS militia in the village of Dístomo, Greece. Both Greek and Italian courts have based their jurisdiction on an exception to State immunity which was held to exist in cases of grave human rights violations. This standpoint, however, does not reflect the present state of public international law, nor does it take into account the intertemporal dimension of public international law rules. Neither under the Brussels I regime, nor under domestic Italian law a judgment which was rendered in violation of customary State immunity rules can be recognized or enforced. The Brussels Regulation has a limited scope of application. It is designed to respect public international law rules of State immunity, not to trump them. The Regulation therefore does not apply in*

cases where the defendant enjoys immunity from civil jurisdiction.

- ***L. de Lima Pinheiro***: "Competition between legal systems in the European Union and private international law"
  The author discusses the idea of competition between national legal systems and focuses on two aspects: Competition between legal systems and juridical pluralism and competition between legal systems and freedom of choice. Further, the author outlines the mission of private international law in the existing framework of legal pluralism within the EU by emphasising the importance of private international law in a world characterised by globalisation and legal pluralism which should, in the author's view, be reflected in an essential place of private international law in the teaching of law.

- ***P. Scholz:***"Die Internationalisierung des deutschen ordre public und ihre Grenzen am Beispiel islamisch geprägten Rechts"
  The author examines the internationalisation of the German public policy clause and argues that human rights guaranteed in European and international law have to be taken into account within the framework of German public policy. Further there is, according to the author, no room for a relativization of the German public policy clause in case of internationally guaranteed human rights. Concerns which are expressed towards a supremacy of German values disregarding foreign legal systems are rebutted by the author in reference to the, for several reasons, only limited application of internationally guaranteed human rights.

- ***M. Heckel:*** "Die fiktive Inlandszustellung auf dem Rückzug – Rückwirkungen des europäischen Zustellungsrechts auf das nationale Recht"

The author examines the impact of the European provisions of service on national law and argues that internal fictional service is, as a consequence of European law, at the retreat in Europe. Nevertheless, internal fictional service is – according to the author – in principle compatible with European law. It was only the statement of claim which had to be served effectively. In case of a fictional service of a statement of claim, a subsequent judgment in default could neither be recognised nor declared enforceable. In view of the right to be heard, internal fictional service was only admissible if the defendant could take notice of the judicial document.

- ***R. Geimer:*** "Los Desastres de la Guerra und das Brüssel I-System" (ECJ – 15.02.2007 – C-292/05 – *Lechouritou*)
  The author reviews the ECJ's judgment in "Lechouritou" which concerned an action for compensation brought against Germany by Greek successors of victims of war massacres and agrees with the Court that actions brought for compensation in respect of acts perpetrated by armed forces in the course of warfare do not constitute "civil matters" in terms of Brussels I. Thus, the author concludes that consequences of war and occupation can only be dealt with at the level of international law.

- ***C. Althammer:*** "Die Auslegung der Europäischen Streitgenossenzuständigkeit durch den EuGH – Quelle nationaler Fehlinterpretation?" (ECJ – 11.10.2007 – C-98/06 – *Freeport*) – The English abstract reads as follows:

In the case Freeport/Arnoldsson the European Court of Justice has not rewarded the anticipatory obedience that national courts have paid to the judgement Réunion Européenne. Two claims in one action directed against different defendants and based in one instance on contractual liability and in the

other on liability in tort or delict can be regarded as connected (Art. 6 (1), Council Regulation (EC) No 44/2001). In this respect the decision Freeport/Arnoldsson seems correct, although it is criticisable that the ECJ changes his course in such an oblique way. There is no favour done to legal certainty that way. An interpretation of the connection orientated towards the specific case which takes into account the national characteristics is advisable in order to avoid the risk of irreconcilable judgments resulting from separate proceedings. There is no risk of irreconcilable judgments if the proceeding against the anchor defendant is inadmissible. Moreover, the plaintiff must have a conclusive cause of action. Some chance of success seems to be necessary. The possibility of abuse requires an objective handling of the connection. In addition, subjective elements like malice are difficult to prove.

- ***A. Borrás:*** "Exclusive" and "Residual" Grounds of Jurisdiction on Divorce in the Brussels II bis Regulation (ECJ – 29.11.2007 – C-68/07 – *Sundelind Lopez*)
  In the reviewed case, the ECJ has held that Artt. 6 and 7 Brussels II *bis* have to be interpreted as meaning that where in divorce proceedings, a responsent is not habitually resident in a Member State and is not a national of a Member State, the courts of a Member State cannot base their jurisdiction on their national law if the courts of another Member State have jurisdiction under Art. 3 Brussels II *bis*. The author agrees with the ECJ regarding the final ruling, but is nevertheless critical with regard to the arguments brought forward by the Court and submits that the fact that there was no opinion by an Advocate General had a negative effect on the case. In this respect, the author regrets that this will happen more often in the future since the recent amendments of the Protocol on the Statute of the Court

of Justice and of the rules of procedure of the Court provide “for an expedited or accelerated procedure and, for references for a preliminary ruling relating to the area of freedom, security and justice, an urgent procedure”.

- ***H. Roth:*** “Der Kostenfestsetzungsbeschluss für eine einstweilige Verfügung als Anwendungsfall des Europäischen Vollstreckungstitels für unbestrittene Forderungen” (OLG Stuttgart – 24.05.2007 – 8 W 184/07)
  The author approvingly reviews a decision of the Court of Appeal Stuttgart dealing with the question whether an order for costs for an interim injunction constitutes a “judgment” in terms of the Regulation creating a European Order for uncontested claims. The case concerned the question whether a certification of the order for costs as a European Enforcement Order had to be refused due to the fact that the underlying decision constituted an interim injunction which had not been given in adversarial proceedings. Thus, the case basically raised the question of the interdepence between the order for costs and the underlying decision. Here the court held that it was sufficient if the defendant was granted the right to be heard subsequently to the service of the decision.

- ***D. Henrich:*** “Wirksamkeit einer Auslandsadoption und Rechtsfolgen für die Staatsangehörigkeit” (OVG Hamburg – 19.10.2006 – 3 Bf 275/04)
  In the reviewed decision, the Higher Administrative Court Hamburg had to deal with the question of acquisition of German nationality by adoption and thus with the question which requirements an adoption has to comply with in order to lead to the acquisition of German nationality.

- ***M. Lamsa:*** “Allgemeinbegriffe in der Firma einer inländischen Zweigniederlassung einer EU-

Auslandsgesellschaft" (LG Aachen – 10.04.2007 – 44 T 8/07)
The author critically examines a decision of the Regional Court Aachen which has held – in view of the freedom of establishment – that the registration of a subsidiary of an English Limited could not be refused even if the trading name does not meet the requirements of German law.

- ***H. Sattler:*** "Staatsgeschenk und Urheberrechte" (BGH – 24.05.2007 – I ZR 42/04) – The English abstract reads as follows:

More than a decade after the fall of the Berlin Wall, the German Bundestag, in the course of a public ceremony in Berlin, donated to the United Nations three sections of the former Wall which had been painted by an Iranian artist without the landowner's assent. The Bundesgerichtshof dismissed the artist's claim for damages. The court found that the donation did not infringe the plaintiff's rights of distribution (§ 17 German Copyright Act), because the parts of the wall were handed over only symbolically in Berlin whereas the actual transfer took place later in New York. The court further held that the painter had no right to be named (§ 13 German Copyright Act) during the Berlin ceremony, since his work was not exhibited at that presentation and had not been signed by the artist. It can be criticized that the court explicitly refused to deal with potential copyright infringements in New York solely due to the fact that the claimant, when stating the facts of his case, had not expressly referred to the applicable US law.

- ***C. F. Nordmeier*** discusses two Portuguese decisions dealing with the question of international jurisdiction of Portuguese courts with regard to actions against German sellers directed at the selling price. ("Internationale Zuständigkeit portugiesischer Gerichte

für die Kaufpreisklage gegen deutsche Käufer: Die Bedeutung des INCOTERM für die Bestimmung des Lieferortes nach Art. 5 Nr. 1 lit. b EuGVVO") (Tribunal da Relação de Porto, 26.4.2007, Agravo n° 1617/07-3ª Sec., und Supremo Tribunal de Justiça, 23.10.2007, Agravo 07A3119)

- ***W. Sieberichs*** addresses the qualification of the German civil partnership as a marriage which is provided in a note of the Belgium minister of justice ("Qualifikation der deutschen Lebenspartnerschaft als Ehe in Belgien")
- ***C. Mindach*** reports on the development of arbitration in the Kyrgyz Republic ("Zur Entwicklung der Schiedsgerichtsbarkeit in der Kirgisischen Republik")
- ***H. Krüger/F. Nomer-Ertan*** present the new Turkish rules on private international law ("Neues internationales Privatrecht in der Türkei")

Further, this issue contains the following **materials**:

- The Turkish Statute No. 5718 of 27 November 2007 on private international law and the international law of civil procedure ("Das türkische Gesetz Nr. 5718 vom 27.11.2007 über das internationale Privat- und Zivilverfahrensrecht")
- Statute of the Kyrgyz Republic on the arbitral tribunals of the Kyrgyz Republic of 30 July 2002, Nr. 135 ("Gesetz der Kirgisischen Republik über die Schiedsgerichte in der Kirgisischen Republik – Bischkek, 30.7.2002, Nr. 135")
- Première Commission – Résolution – La substitution et l'équivalence en droit international privé – Institut de Droit International, Session de Santiago 2007 – 27 octobre 2007

As well as the following **information**:

- ***E. Jayme*** on the 73rd Session of the Institute of International Law in Santiago, Chile (“Substitution und Äquivalenz im Internationalen Privatrecht – 73. Tagung des Institut de Droit International in Santiago de Chile”)
- ***S. Kratzer*** on the annual conference of the German-Italian Lawyers’ Association (“Das neue italienische Verbrauchergesetzbuch – Kodifikation oder Kompilation und Einführung des Familienvertrages (“patto di famiglia“) im italienischen Unternehmenserbrecht – Jahrestagung der Deutsch-italienischen Juristenvereinigung in Augsburg”)