

25th Meeting of the GEDIP, Luxembourg 18-20 September 2015

Last weekend the GEDIP (Group européen de droit international privé / European Group for Private International Law) met in Luxembourg. The GEDIP defines itself as “a closed forum composed of about 30 experts of the relations between private international law and European law, mainly academics from about 18 European States and also members of international organizations”. Nevertheless, as the meeting was hosted by the MPI -together with the Faculty of Law of Luxembourg- I had the privilege of being invited to the deliberations.

The history and purpose of the Group are well known: founded in 1991 (which means that it has just celebrated its 25th anniversary), the Group has since then met once a year as an academic and scientific think tank in the field of European Private International Law. During the meetings the most recent developments in the area are presented and discussed, together with proposals for improving the European PIL legal setting. Actually, while the latter activity is at the core of the GEDIP gatherings, the combination with the former results in a well-balanced program. At the same time it shows the openness and awareness of the Group to what’s happening in other fora (and vice versa): the Commission -K. Vandekerckhove joined as observer and to inform on on-going activities-; the Hague Conference -represented this time by M. Pertegás, who updated us on the work of the Conference-, or the ECtHR -Prof. Kinsch summarized the most relevant decisions of the Strasbourg Court since the last GEDIP meeting.

In Luxembourg we enjoyed as *hors d’oeuvre* a presentation by Prof. C. Kohler on the CJEU Opinion 2/13, Opinion of the Court (Full Court) of 18 December 2014, on the Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedom. Prof. Kohler started recalling the principle of mutual trust as backbone of the Opinion. From this he moved on to focus on the potential impact of the Opinion on PIL issues, in particular on the public policy clause in the framework of the recognition and enforcement of judgements in civil and commercial matters (here he recalled the recently published decision on C-681/13, where the Opinion is expressly quoted);

and on cases of child abduction involving Member States, where the abolition of exequatur may elicit a doubt on the compliance with the ECHR obligations (see ad.ex. the ECtHR decision on the application no. 3890/11, *Povse v. Austria*). A second presentation, this time by Prof. T. Hartley, addressed the very much disputed issue of antisuit injunctions and the Brussels system in light of the *Gazprom* decision, case C-536/13. Prof. Hartley expressed his views on the case and explained new strategies developed under English law to protect the effects of choice of court agreements, like the one shown in *AMT Futures Limited v. Marzillier*, where the latter is sued for having induced the clients of the former to issue proceedings in Germany and to advance causes of action under German law, and thereby to breach the terms of the applicable exclusive jurisdiction and choice of law clauses. AMT claims damages against Marzillier for their having done so, its claim being a claim in tort for inducement of breach of contract

The heart of the meeting was the discussion on two GEDIP on-going projects: a proposal for a regulation on the law applicable to companies, and another on the jurisdiction, the applicable law, the recognition and enforcement of decisions and the cooperation in divorce matters. The first one is at its very final stage, while the second has barely started. From an outsiders point of view such a divergence is really interesting: it's like assisting to the decoration of a baked cake (companies project), or to the preparation of the pastry (divorce project). Indeed, in terms of the intensity and quality of the debate it does not make much difference: but the fine-tuning of an almost-finished legal text is an amazing *encaje de bolillos* task, a hard exercise of concentration and deploy of expertise to manage and conciliate a bunch of imperative requisites, starting with internal consistency and consistency with other existing instruments. I am not going to reproduce here the details of the argument: a *compte-rendu* will be published in the GEDIP website in due time. I'd rather limit myself to highlight how impressive and strenuous is the work of finalizing a legal document, making sure that the policy objectives represented by one provision are not belied by another (the moment this happens the risk is high that the whole project, the underlying basics of it, is unconsciously being challenged), checking the wording to the last adverb, conjunction and preposition, deciding on what should be part of the text and what should rather be taken up in a recital, and so on. By way of example, let me mention the lively discussion on Sunday on the scope and drafting of art. 10 of the proposal on the law applicable to companies, concerning the overriding mandatory rules: I am really eager to see what the final outcome is after the

heated debate on how to frame them in the context of a project where party autonomy is the overarching principle, at a time when companies are required to engage in the so-called corporate social responsibility whether they want it or not. Only this point has remained open and has been reported to the next meeting of the GEDIP next year.

I wouldn't like to end this post without referring to the commitment of the GEDIP and its members with the civil society concerns. On Saturday Prof. Van Loon presented a document drafted in light of the plight of migrants, refugees, and asylum seekers in Europe. The text, addressed to the Member States and Institutions of the EU, aims to raise awareness of the immediate needs of these groups in terms of civil status and of measures to protect the most vulnerable persons within them. Reworked to take up the comments of the members of the GEDIP, a second draft was submitted on Sunday which resumes the problematic and insists on the role of PIL instruments in that context.

All in all, this has been an invaluable experience, for which I would like to thank the GEDIP and in particular the organizers of the event here, Prof. Christian Kohler and Prof. Patrick Kinsch.

The proceedings of the working sessions and the statements of the Group will soon be posted on its Website and published in various law reviews.