

Book Launch: Jurisdiction and Cross-Border Collective Redress - A European Private International Law Perspective

Dr. Alexia Pato (Senior Research Fellow at the University of Bonn) has authored a book on jurisdiction and cross-border collective redress (Hart Publishing). You may pre-order it online. A discount voucher is available [here](#).

Summary:

Widespread law violations, such as massive data breaches, the use of unfair terms, and financial fraud, may affect numerous victims around the globe. Those violations are on the rise, stimulated by globalisation and digitalisation. Unfortunately, the development of effective procedural vehicles enabling victims to obtain redress is comparatively slow. As a result, a private enforcement gap persists, which can be characterised by a difference between the theoretical possibilities to obtain redress drafted by the legislator and the reality experienced by victims in daily life. Collective redress represents an interesting instrument, which may have the power to fulfil that gap. The US experience regarding the class action is a telling example in that regard. On the other side of the Atlantic, European Member States have adopted collective redress mechanisms, the features of which often differ from their American homologue. As a result, issues regarding their effectiveness have arisen and legal reforms have started in an attempt to solve them.

The adoption of collective redress certainly generates complex legal issues. The present book specifically analyses the allocation of jurisdiction in cross-border collective redress cases, inasmuch as it directly impacts access to justice. To that effect, several collective redress mechanisms, including the Dutch WCAM, the test case procedure, the class action, and the representative model involving intermediaries, are studied (ch 2). Their structure, functioning and goal(s) are explained and a comparative law table containing information on more than 20 collective redress instruments summarises those elements (annex II). The book

takes full account of the US law on class actions in order to enrich the comparative law study (ch 1).

Then, difficulties in applying private international law rules on jurisdiction to selected collective redress models are highlighted and analysed. The most relevant case law is examined as well. Notably, the Shell decision issued by the Amsterdam Court of Appeal, the recent CJEU's ruling in Schrems (C-498/16), and the VW scandal are thoroughly studied. Chapter 3 of the book highlights the current mismatch between European private international law rules on jurisdiction (Bia) on the one hand, and collective redress procedures on the other. As a result, the centralisation of claims protecting either general or collective interests in a unique forum is often difficult – not to say impossible. Besides, significant obstacles, such as costs of proceedings, lack of financing, and language barriers, further deter access to justice. The unprecedented empirical study included in this book confirms that statement (annex III).

In light of this, the EU has presented several policy papers; drafted a Recommendation in 2013; and enacted Article 80 of the General Data Protection Regulation dealing with the representation of data subjects. Besides, the Directive on representative actions is in the pipeline. A comprehensive analysis of those documents is provided in chapter 2 of the book. Although those legislative efforts are welcome, this book contends that EU measures have not satisfactorily lowered barriers to access to justice. Therefore, the creation of a new head of jurisdiction for international collective redress cases is proposed, the content of which is presented in chapter 4 of the book.

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