Issues 2018.3 and 4 Dutch Journal on Private International Law (NIPR)

The Dutch Journal on Private International Law (*Nederlands Internationaal Privaatrecht)* publishes papers in Dutch and in English.

Here are the abstracts of the last two issues of 2018.

Issue 2018.3

Ian Sumner, 'Editorial: Groundbreaking decision or a tiny tremor? The Court of Justice decision in *Coman*', p. 1-3.

The third issue of 2018 of the Dutch Journal on Private International Law, Nederlands Internationaal Privaatrecht, contains contributions on the recognition of legal parentage established abroad, the recent decision rendered by the Supreme Court of the Netherlands on recognition and enforcement of annulled arbitral awards (NLMK), the main private international law aspects of the new Geo-blocking Regulation (especially with regard to cross-border consumer contracts), the most glaring contradictions and ambiguities in jurisprudence on the free movement of companies in the EU and the decision of the Court of Justice of the European Union in Bolagsupplysningen about the internet, freedom of speech and the protection of privacy.

Susan Rutten, 'Erkenning van in het buitenland gevestigde afstamming', p. 4-24.

This contribution discusses current case law on the recognition of legal parentage established abroad. The issues that are involved concern the descent from polygamous marriages, descent from invalid, void or non-existing marriages, and the recognition of children abroad by married men. With the judgment of the Dutch Supreme Court of 19 May 2017 (ECLI:NL:HR:2017:942; NJ 2017/435) on the descent of children born from polygamous marriages in mind, it will be examined which interests judges consider to be essential when assessing and deciding the foreign parentage, and whether or not the foreign parentage can be

recognized as legal parentage in the Netherlands. Th e conclusion of the article is that the principles involved in the judicial decisions, in particular the principles of family life and public policy, do not seem to be always consistently relied upon by the Supreme Court.

D.G.J. Althoff, 'Internationale arbitrage en IPR: toepassing van erkenningsvoorwaarden uit het Nederlandse commune IPR bij erkenning en tenuitvoerlegging van vernietigde buitenlandse arbitrale vonnissen onder het Verdrag van New York 1958', p. 25-43.

This article discusses the recent decision rendered by the Supreme Court of the Netherlands on recognition and enforcement of annulled arbitral awards (NLMK). The court ruled that the wording 'may be refused' in Article V(1) preamble of the New York Convention (NYC) grants the court a certain margin of discretion to recognise a foreign arbitral award and grant enforcement even if in the specific case one or more of the grounds for refusal set out in Article V(1) NYC apply. Only under special circumstances does Article V(1)(e) NYC not prevent the court from using the margin of discretion to recognise or grant enforcement of annulled foreign arbitral awards. The special circumstance focused on in this article is the one that arises if the foreign judgment that annuls the award is not eligible for recognition in the Netherlands on the basis that one or more conditions for the recognition of foreign judgments under Dutch private international law are not fulfilled. The article commences with a short description of the New York Convention and Article V(1)(e) NYC. After analysing the Yukos Capital/Rosneft-decision and the NLMK-decision within the broader discussion on recognition and enforcement of annulled arbitral awards under the New York Convention, a comparison of both decisions is made. Further, the article discusses the application of the conditions for the recognition of foreign judgments under Dutch private international law in recognition and enforcement procedures of annulled foreign arbitral awards.

María Campo Comba, 'The new Geo-blocking Regulation: general overview and private international law aspects', p. 44-57.

This contribution will focus on the main private international law aspects of the new Geo-blocking Regulation, especially with regard to cross-border consumer contracts. The Geo-blocking Regulation has recently entered into force in the EU with the objective of preventing unjustified discrimination regarding online sales.

The new Regulation is of special interest from a private international law point of view because of the possible impact on the interpretation of the EU rules on jurisdiction and applicable law concerning cross-border consumer contracts. The present contribution will analyse whether the obligations imposed by the Geo-blocking Regulation might affect the concept of 'directed activities' laid down in the Brussels I bis Regulation and Rome I Regulation and interpreted by the ECJ.

Aleksandrs Fillers, 'Contradictions and ambiguities in ECJ case-law on free movement of companies', p. 58-72.

The present article looks at some of the most glaring contradictions and ambiguities in jurisprudence on the free movement of companies in the EU. The first major case on free movement of companies was rendered by the ECJ in 1988. After this, the Court rendered a few landmark cases that step by step reshaped the freedom granted to companies in the internal market. In 2017, the ECJ rendered the Polbud case, thereby granting companies more freedom than ever before to choose the legal system they consider best for reincorporation. The road towards greater corporate mobility has been rocky and not always transparent. The ECJ does not expressly overrule its previous cases, but rather creates new distinctions and constantly re-interprets its older jurisprudence. As a result, the judgments are often not only ambiguous and mutually contradictory but even self-contradictory. The author makes an attempt at identifying these contradictions and ambiguities and analyses their causes and their relevance within the current jurisprudence.

Jan-Jaap Kuipers, 'Nieuwe ronde, nieuwe kansen? Een nieuw arrest van het HvJEU over het internet, vrijheid van meningsuiting en bescherming van de persoonlijke levenssfeer: HvJEU 17 oktober 2017, zaak C-194/16 (Bolagsupplysningen)', p. 73-80.

The decision of the Court of Justice of the European Union in e-Date Advertising has provoked widespread criticism in academic literature. In Bolagsupplysningen, the CJEU has taken the opportunity to confirm its earlier decision. The CJEU also clarified the right of a victim to bring proceedings before the court of its centre of interest. The CJEU however found that a person alleging that his personality rights have been infringed by the publication of incorrect information about him on the internet and the failure to remove comments relating to him cannot bring an action for rectification of that information and removal of those comments

before the courts of the individual Member States in which the information published on the internet is or was accessible. Although the CJEU does not go back on its earlier case-law, the concerns raised in legal writings appear to have been taken seriously.

Issue 2018.4

Paulien van der Grinten, '2018: A year of anniversaries in private international law, p. 1-4.

C.A. de Visser, 'The EU conflict of laws rules on the law governing the effects of an assignment against third parties: some fundamental problems of the Proposal', p. 5-18.

The EU's Proposal for conflict of laws rules on the law governing the effects of an assignment against third parties aims to provide predictability for parties involved in an assignment. This contribution concludes that, unfortunately, the Proposal's suggested conflict of laws rule, based on which the law of the assignor's habitual residence governs the third-party effects, does not provide that predictability. It also concludes that there are some other fundamental problems with the Proposal and the assumptions underlying it. Most importantly, it questions whether the Proposal's suggestion that priority between competing assignments is determined by the assignment that is valid and effective first in time has a proper legal basis. It also analyses what law governs the effects of an assignment against third parties (other than the debtor of the assigned claim) and concludes that this is the law governing the assigned claim.

Aleksandrs Fillers, 'The curious evolution of ECJ's case-law on personal names: beyond the recognition of decisions, p. 19-33.

Free movement of EU citizens has significant influence on the law of personal names in Europe. Since the ruling in the Grunkin-Paul case, the non-recognition of personal names obtained in another Member State, under certain circumstances, may be qualified as an impediment to free movement of EU citizens. The Grunkin-Paul case seemed to operate within the paradigm of recognition of decisions. The author of the article argues that the said paradigm is not a precise conceptualization of the ECJ's method. This is shown by two later rulings in the Sayn-Wittgenstein and Runevi?-Vardyn cases. The Court's reasoning in the Sayn-Wittgenstein case shows that the recognition method used by the ECJ

may expand to recognition of situations that do not validly exist in any legal order at the moment when recognition is requested. Pursuant to the Runevi?-Vardyn case, non-recognition of the spelling of the personal name may not be an impediment to free movement of EU citizens. The said cases show that the pillar of the Court's methodology is the so-called 'serious inconvenience' test. The test determines the extent to which free movement of EU citizens requires recognition of personal names. Since the ruling in the Grunkin-Paul case, the test has evolved. In the Grunkin-Paul case it functioned within the paradigm of recognition of foreign decisions. Currently, it may be used to restrict that form of recognition or to expand recognition beyond that of foreign decisions.

Georgia Antonopoulou, 'Defining international disputes – Reflections on the Netherlands Commercial Court proposal', p. 34-49.

The last decade has seen the rise of international commercial courts also known as international business courts in Europe. Apart from the use of English as court language and the adoption of distinct procedural rules, the emerging courts share the aim to solely handle international disputes. Hence, the internationality of the dispute sets the jurisdictional scope of the international commercial courts and draws the line between these and the rest of the domestic courts. This article focuses on the upcoming Netherlands Commercial Court (NCC) and discusses the provisions defining the international character of a dispute under the respective proposal. First, the NCC internationality criteria are compared to the respective criteria under the Brussels Ibis Regulation and the Hague Convention on Choice of Court Agreements. Subsequently, this article zooms in on two internationality criteria, namely the application of foreign law and the use of a foreign language in the contract. In a comparative way, the suitability of these criteria to effectively encompass disputes with an international aspect is explored. This article concludes highlighting the need for narrow internationality criteria that are aligned with the criteria used under the Brussels Ibis Regulation and the Hague Convention on Choice of Court Agreements so as to safeguard the foreseeability of the NCC's jurisdiction and square its professed aim to solely handle international disputes.

M.H. ten Wolde, '*Oberle*. De juiste balans tussen de belangen van nalatenschapsgerechtigden en het belang van rechtszekerheid? Hof van Justitie EU 21 juni 2018, C-20/17, NIPR 2018, 295 (*Oberle*)', p. 50-58.

In ECJ Case C-20/17 (Oberle) of 21 June 2018 the central question is whether international jurisdiction in respect of the issuing of national certificates of succession regarding cross-border succession cases is governed by the jurisdiction rules of Succession Regulation No. 650/2012. The ECJ answered this question in the affirmative. Its argumentation for this decision is however very weak. At the same time the decision has a huge impact on the cross-border practice of winding up estates. A swift settlement of a cross-border estate by using both a national and a European certificate of succession from different participating Member States is no longer possible. The ECJ wrongly gives priority to legal certainty over the interests of those entitled to the estate of the deceased.

J.A. Pontier, 'Boekbespreking: Kirsten Henckel, Cross-Border Transfers of Undertakings – A European Perspective; Iris A. Haanappel-van der Burg, Grensoverschrijdende overgang van onderneming vanuit rechtsvergelijkend en conflictenrechtelijk perspectief', p. 59-68.