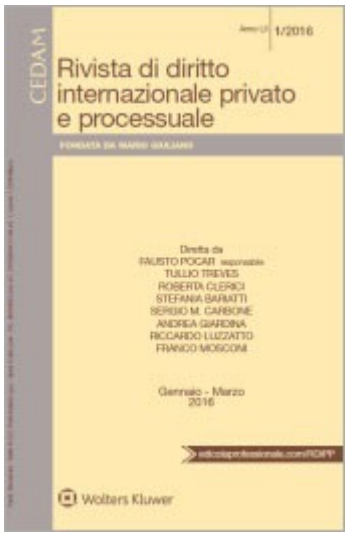
# Rivista di diritto internazionale privato e processuale (RDIPP) No 2/2019: Abstracts




The second issue of 2019 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released and it features:

*Adrian Briggs*, Professor at Oxford University, **Brexit and Private International Law: An English Perspective** (in English)

The effect of Brexit on private international law in England will depend on the precise terms on which the separation is made. However, if no comprehensive withdrawal agreement is concluded and adopted, the result will be that private international law in the United Kingdom will revert to its original common law structure. This will make the law and practice of dispute resolution more effective in some respects, and more problematic in others. While it is regrettable that so much time and labour has to be spent on planning for a future which the politicians are incapable of defining, it does allow the distinctions between common law legal thinking, and European legal principles, in the field of private international law to be compared and understood more clearly than they have been for many years.

*Burkhard Hess,* Director of the Max Planck Institute Luxembourg for Procedural Law, **Protecting Privacy by Cross-Border Injunction** (in English)

Injunctive relief is of paramount importance in the protection of privacy, especially in the context of the Internet. In the cross-border setting, injunctions entail specific problems: on the one hand, jurisdiction may lie with many courts – often worldwide due to the ubiquity of the Internet. On the other hand, injunctions operate with an extraterritorial effect, ordering or prohibiting conduct outside of the State where the court issuing the order is located. Cross-border injunctive relief does not only raise issues of jurisdiction and territorial scope: in fact, additional problems relate to its enforcement. Furthermore, the need may arise to adapt the injunction to an equivalent measure in the State of enforcement. This paper addresses the problems of cross-border injunctive relief from the perspectives of jurisdiction and territorial scope, as well as of recognition and enforcement. While actions for damages and for injunctive relief are regulated in similar ways, the Author of this paper demonstrates that the specific circumstances and necessities that characterize injunctive relief warrant additional and specific solutions.

*Chiara E. Tuo,* Associate Professor at the University of Genoa, **The Consequences of Brexit for Recognition and Enforcement of Judgments in Civil and Commercial Matters: Some Remarks** (in English)

This article aims at addressing some questions regarding the impact of Brexit on recognition and enforcement of judgments in civil and commercial matters with a view to investigating the rules applicable, first, in the case that Brexit occurs without any withdrawal agreement ("hard Brexit") and, second, regardless of whether such an agreement will be actually entered into, in the context of a future and renewed judicial cooperation relationship between the EU and UK. To this end

and in relation to the first part of the analysis, the relevant passages of both the EU Commission's guidelines and UK statutory instruments dealing with the issue of recognition and enforcement of judgments are taken into exam and compared the ones with the others in order to assess the different extent to which they provide for the continuous post-Brexit application of the existing EU instruments. On the other hand, and in relation to the second part of the article, the options currently available for a future EU-UK cooperation are considered with the purpose of shedding some light on their respective main advantages and disadvantages.

In addition to the foregoing, the following comments are featured:

*Cinzia Peraro,* Post-Doctoral Fellow at the University of Verona, **L'istituto della *kafala* quale presupposto per il ricongiungimento familiar con il cittadino europeo: la sentenza della Corte di giustizia nel caso *S.M. c. Entry Clearance Officer*** (*Kafala* as a Prerequisite for Family Reunification with a European Citizen: The Judgment of the Court of Justice in *S.M. v. Entry Clearance Officer*; in Italian)

The family reunification of a European citizen and a foreign minor entrusted to him by kafala has been addressed by a recent judgment of the Grand Chamber of the Court of Justice on the notion of direct descendant pursuant to Directive 2004/38 concerning the free movement of Union citizens and their family members. The Italian judges have also dealt with the issue of the recognition of this institute, widespread in most Islamic countries, in a variety of situations, where the best interests of the child and the European courts' decisions have been considered. Domestic jurisprudence appears to be in line with the interpretation given by the judges of Luxembourg, which nevertheless leaves the question of the unequal treatment between Italian citizens and third country nationals unresolved.

*Mariangela La Manna,* Post-Doctoral Fellow at the Università Cattolica del Sacro Cuore, **The ECHR Grand Chamber's Judgment in the *Naït-Liman* Case: An Unnecessary Clarification of the Reach of *Forum Necessitatis* Juridsdiction?** (in English)

The Grand Chamber judgment in the *Naït-Liman v. Switzerland* case is certainly a much anticipated one. Its outcome had, however, long been foreshadowed by commentators and practitioners alike. The decision confirmed the 2016 Chamber's judgment by holding that the Swiss Federal Tribunal's decline of jurisdiction in a civil case involving reparation for torture committed outside the territory of Switzerland by foreign authorities against a foreign national did not amount to a violation of Article 6(1) ECHR. However, the Court's reasoning in the case under review is susceptible of being criticized in more than one respect. The compatibility of the conduct of the Swiss judiciary with Article 6(1) ECHR is dubious to say the least, even more so since the Federal Tribunal's restrictive interpretation of the requirements for the application of forum necessitatis jurisdiction, and especially of the "sufficient connection" requirement, managed to produce a fully-fledged denial of justice. Should such a trend gain consistency, the effectiveness of the right of access to a court may be put at risk.