

The 2nd Dialogue on International Family Law

On 10 and 11 May 2019, the 2nd Dialogue on International Family Law took place at the University of Marburg (Germany). The dialogue serves as a forum for the exchange between high-level practitioners and academics active in the field of international family law; it is organised on an annual basis by Professors *Christine Budzikiewicz* (Marburg) and *Bettina Heiderhoff* (Münster), Dr. *Frank Klinkhammer*, a judge at the German Federal Supreme Court and an honorary professor in Marburg, and Dr. *Kerstin Niethammer-Jürgens*, a renowned family lawyer in Potsdam/Berlin. This year's meeting focused on the well-being of the child in international family law, the pending revision of the Brussels IIbis Regulation and conflict of laws with regard to matrimonial property.

The conference was opened by Professor *Rüdiger Ernst*, a judge at the Kammergericht (Court of Appeals of Berlin), who described and analysed the various standards regarding the procedure to hear a child in international cases, with a special focus on the current state of play concerning the Brussels IIbis Regulation. The second presentation on the well-being of the child in the procedural law of the EU (the Brussels IIbis and the Maintenance Regulation) was given by *Bettina Heiderhoff*, who, in light of an intense scrutiny of the case-law, posed the critical question as to whether judges actually give weight to the well-being of the child in determining jurisdiction or whether they merely pay lip-service to this overarching goal. In particular, *Heiderhoff* focused on the question to which degree concerns for the well-being of children had an influence on determining their habitual residence. The second panel was started by Professor *Anatol Dutta* (University of Munich), who dealt with issues of *lis pendens* and annex jurisdiction in international family procedures – apparently, this is another area where more coherence between the various European regulations would be highly desirable. Then, Dr. *Andrea Schulz* (European Commission) analysed the new system of enforcement of judgments in the framework of the revised Brussels IIbis Regulation, which, by abolishing *exequatur*, shows a discernible influence of the paradigm shift already achieved by Brussels Ibis. At the moment, the English text is being finalised; it is to be expected that the revised version will be adopted by the Council of Ministers at the end of June 2019.

On the second day of the conference, Professor *Dirk Looschelders* (University of Düsseldorf) gave a presentation on the substantive scope of the Matrimonial Property Regulation (and the Regulation on Property Aspects of Registered Partnerships). The fact that there is no common European definition of the concept of “marriage” leads to numerous difficulties of characterisation; moreover, European courts will have to develop autonomous criteria to draw the line between matrimonial property regimes and adjacent legal areas (contracts, partnerships) not governed by the Regulation. Subsequently, Dr. *Jens Scherpe* (University of Cambridge) talked about forum shopping before English courts in matrimonial property cases. He focused on determining jurisdiction, calculating alimony and maintenance under English law and the thorny issue of under which circumstances English courts will accept matrimonial contracts as binding. Finally, *Frank Klinkhammer* gave a survey on recent case-law of the Federal Supreme Court in cases involving international agreements on surrogacy, in particular regarding the Ukraine. In a recent decision of 20 March 2019 (XII ZB 530/17), the Court had decided that a child who, after being born by a Ukrainian surrogate mother, was then brought to Germany as planned by all parties did not have its first habitual residence in the Ukraine, but in Germany, which, in effect, leads to consequence that the German designated mother has no other option but to adopt the child if she wishes to establish a family relationship. This led to an intense discussion about the principle of recognition and the determination of habitual residence (again). The conference proceedings will be published by Nomos. The next dialogue will take place on 24-25 April 2020 in Münster.