

Latest Issue of “Praxis des Internationalen Privat- und Verfahrensrechts”

Recently, the March issue of “Praxis des Internationalen Privat- und Verfahrensrechts” (**IPRax**) was released.

It contains the following **articles/case notes (including the reviewed decisions)**:

- **R. Wagner/B. Timm** on the German ministerial draft bill on the law applicable to companies, juristic persons and associations (“Der Referentenentwurf eines Gesetzes zum Internationalen Privatrecht der Gesellschaften, Vereine und juristischen Personen”). The English abstract reads as follows:

Companies that operate across borders need clarity with regard to which respective national law applies to them. There are some decisions of the European Court of Justice on the right of settlement according to the Treaty which touch this matter. However, no uniform picture has yet emerged in the European Union. A uniform European regulation would be desirable, but the EU-Commission has not taken up this question yet. In order to promote legal certainty, the German Federal Ministry of Justice has therefore presented a ministerial draft bill on the law applicable to companies, juristic persons and associations. The bill might later on serve as the basis for work on a European regulation. As a general rule, the ministerial draft bill provides for the “law of establishment”, i.e. the law at the place of registration, as the law applicable to companies, legal persons and associations. For non-registered companies, legal persons and associations, the applicable law is to be that under which they are organised. Furthermore, the proposed bill clarifies the scope of “the law of establishment” and contains regulations regarding the law applicable to cross-border reorganisations, the change of applicable law and other aspects of cross-border cases.

- **J. Fingerhuth/J. Rumpf** on the consequences of the German MoMiG for cross-border relocations of German entities (“MoMiG und die grenzüberschreitende Sitzverlegung – Die Sitztheorie ein (lebendes) Fossil?”). Here is the English abstract:

The German government rendered a top-to-bottom reform of the German Law on Limited Liability Companies (‘GmbHG’) with the governmental draft of the MoMiG dated 23 May 2007. The reform also covers the German law on Stock Corporations (‘AktG’) and general corporate law matters. It is intended by the reform to abandon the required concurrence of statutory seat and seat of the head office of a company and, therefore, to allow German GmbHs and AGs to move their head office to another country (cross-border relocation). Both GmbH and AG will have the same opportunities as entities from countries, where the incorporation theory is applicable. The article discusses the consequences of the MoMiG for cross-border relocations of German entities. In particular, by using the example of the GmbH & Co KG, the authors illustrate problems arising from the intentions of the MoMiG and the ‘real seat’ theory as it is currently applied in Germany. Furthermore, the authors discuss the need for German entities to completely apply the incorporation theory in Germany. The article comes to the conclusion that the ‘real seat’ theory will be entirely abandoned by the MoMiG becoming effective. The authors finally encourage the legislator to express this consequence literally within the reasoning of the MoMiG.

- **A.-K. Bitter** on the interpretative connection between the Brussels I Regulation and the (future) Rome I Regulation (“Auslegungszusammenhang zwischen der Brüssel I-Verordnung und der künftigen Rom I-Verordnung”)
- **A. Kampf** on the implications of the European directive on services on PIL (“EU-Dienstleistungsrichtlinie und Kollisionsrecht”). The abstract reads:

On 28 December 2006, after a period of almost three years of debate and political manoeuvring, the European directive on services (2006/123/EC) came into force. It will have to be implemented by the Member States by 28 December 2009 at the latest. The directive applies to a wide range of service activities based upon the case law of the European Court of Justice relating to

the freedom of establishment and the free movement of services. In order to make it easier for businesses to set up in other Member States or to provide services across-border on a temporary basis, each Member State shall set up Points of Single Contact. These shall ensure that providers have access to all necessary information and can complete the formalities necessary for doing business in other Member States. Moreover regulatory and authorization bodies across the EU are meant to cooperate more effectively. The directive is expected to engender consumer confidence in cross-border services through access to information. Restrictive legislation and practices shall be abolished after having been screened. A rather neglected aspect in public discussion are the directive's implications on private international law. Nevertheless they should be examined for both practical and systematic reasons.

- **A. Fuchs** on the question of international jurisdiction for direct actions against the insurer in the courts of the Member State where the injured party is domiciled (“Internationale Zuständigkeit für Direktklagen”), (ECJ, 13.12.2007, C-463/06 (*FBTO Schadeverzekeringen N.V. v. Jack Odenbreit*); Higher Regional Court Karlsruhe, 7.9.2007 – 14 W 31/07; Local Court Bremen, 6.2.2007 – 4 C 251/06). This is the English abstract:

The injured party may bring an action directly against the insurer in the courts of the place in a Member State where the injured party is domiciled, provided that such a direct action is permitted and the insurer is domiciled in a Member State. This follows, according to the judgment of the ECJ, from the reference in Article 11 (2) of the Brussels I Regulation to Article 9 (1) (b). The previous judgment of the first instance court in Bremen was based on the same argument. However, according to a judgment of the court of appeal in Karlsruhe, courts at the place of domicile of the injured party lack international jurisdiction under the Lugano Convention. Fuchs argues that neither the wording nor the historic interpretation support the assumption of jurisdiction of the courts in the state where the injured party is domiciled. This situation has not been altered in the course of the transfer of the Brussels Convention into a regulation. The main argument in favour of admitting direct claims before the courts of the injured party's domicile can be drawn from the systematic interpretation. However, this additional place of jurisdiction will have undesirable consequences such as forum shopping and race to the court. In case of Article 11 (3), it will lead to unforeseeable results for the policyholder or

the insured. Furthermore, it may have a negative economic impact for drivers in relatively poor Member States. The author criticizes the European legislator for not having discussed these issues openly in the context of the Brussels I Regulation.

- **A. Staudinger** on a decision of the German Federal Supreme Court on the scope of the head of jurisdiction of Art. 15 (2) Brussels I Regulation (“Reichweite des Verbrauchergerichtsstandes nach Art. 15 Abs. 2 EuGVVO”), (Federal Supreme Court, 12.6.2007 – XI ZR 290/06)
- **E. Eichenhofer** on a decision of the Higher Labour Court Frankfurt (Main) dealing with the question of international jurisdiction regarding contribution claims of German social security benefits offices against employers having their seat in another EU Member State (“Internationale Zuständigkeit für Beitragsforderungen deutscher tariflicher Sozialkassen gegen Arbeitgeber mit Sitz in anderen EU-Staaten”), (Higher Labour Court Frankfurt (Main), 12.2.2007 – 16 Sa 1366/06)
- **J. von Hein** on the concentration of jurisdiction regarding appeals in cross-border cases according to § 119 (1) No. 1 lit. b GVG (“Die Zuständigkeitskonzentration für die Berufung in Auslandssachen nach § 119 Abs. 1 Nr. 1 lit. b GVG – ein gescheitertes Experiment?”), (Federal Supreme Court, 19.6.2007 – VI ZB 3/07 and 27.6.2007 – XII ZB 114/06)
- **D. Henrich** on the question of renvoi in PIL of names occurring due to a different qualification by foreign law (“Rückverweisung aufgrund abweichender Qualifikation im internationalen Namensrecht”), (Federal Supreme Court, 20.6.2007 – XII ZB 17/04)
- **B. König** on the requirements of due information as well as the scope of application of the Regulation creating a European Enforcement Order for uncontested claims (“EuVTVO: Belehrungserfordernisse und Anwendungsbereich”), (Regional Court Wels, 5.6.2006 – 1 Cg 159/06m, Higher Regional Court Linz, 4.7.2007 – 1 R 124/07x)
- **A. Laptew/S. Kopylov** on the requirement of reciprocity with regard to the enforcement of foreign judgments between the Russian Federation and Germany (Yukos Oil Company) (“Zum Erfordernis der Gegenseitigkeit

bei der Vollstreckung ausländischer Urteile zwischen der Russischen Föderation und der Bundesrepublik Deutschland (Fall Yukos Oil Company)”), (Federal Commercial District Court Moscow, 2.3.2006 – KG-A40/698-06P)

- **H. Krüger** on the recognition and enforcement of foreign titles in Cameroon (“Zur Anerkennung und Vollstreckung ausländischer Titel in Kamerun”)
- **A. Jahn** on PIL questions in the context of withdrawals of wills due to marriage in anglo-american legal systems (“Kollisionsrechtliche Fragen des Widerrufs eines Testamentes durch Heirat in anglo-amerikanischen Rechtsordnungen”)
- **C. Jessel-Holst** on the Statute of Private International Law of the Republic of Macedonia (“Zum Gesetzbuch über internationales Privatrecht der Republik Mazedonien”)

Further, this issue contains the following **materials**:

- Statute of Private International Law of the Republic of Macedonia of 4 July 2007 (“Gesetz über internationales Privatrecht – Gesetz der Republik Mazedonien vom 4.7.2007”)
- Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock – signed in Luxembourg on 23 February 2007 (“Protokoll von Luxemburg zum Übereinkommen über internationale Sicherungsrechte an beweglicher Ausrüstung betreffend Besonderheiten des rollenden Eisenbahnmaterials – unterzeichnet in Luxemburg am 23.2.2007”)

As well as the following **information**:

- **H.-G. Bollweg/K. Kreuzer** on the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock (“Das Luxemburger Eisenbahnprotokoll – „Protokoll zum Übereinkommen über internationale Sicherungsrechte an beweglicher Ausrüstung betreffend Besonderheiten des rollenden Eisenbahnmaterials“ vom 23. 2. 2007”)

- **E. Jayme** on the (critical) debate in France about the Community's competence in PIL which was made public by French PIL professors by means of open letters on this issue ("Frankreich: Professorenstreit zum Europäischen IPR - einige Betrachtungen")
- **E. Jayme** on the convention of the Ludwig-Boltzmann-Institutes in Vienna ("Kodifikation des IPR, des grenzüberschreitenden Zivilrechts und Zivilverfahrensrechts in der Europäischen Union - Tagung der Ludwig-Boltzmann-Institute in Wien")
- **C. Gross:** report on the 40th UNCITRAL session ("Bericht über die 40. Sitzung der Kommission der Vereinten Nationen zum internationalen Handelsrecht (UNCITRAL)")

For recent information on PIL see also the website of the Institute for Private International Law, Cologne.

(Many thanks to Prof. Dr. Heinz-Peter Mansel, editor of the journal (University of Cologne) for providing the English abstracts.)