

Latest Issue of “Praxis des Internationalen Privat- und Verfahrensrechts” (6/2008)

Recently, the November/December issue of the German legal journal “Praxis des Internationalen Privat- und Verfahrensrechts” (**IPRax**) was released.

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

- **B. Hess:** “Rechtspolitische Überlegungen zur Umsetzung von Art. 15 der Europäischen Zustellungsverordnung – VO (EG) Nr. 1393/2007” – the English abstract reads as follows:

The article deals with article 15 EC Regulation on Service of Documents as revised by Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. The author recommends to extend the application of cross border direct service of documents within the EU under German law and in this context makes a concrete proposal for the implementation of article 15 into a revised article 1071 German Code of Civil Procedure.

- **C. Heinze:** “Beweissicherung im europäischen Zivilprozessrecht” – the English abstract reads as follows:

Measures to preserve evidence for judicial proceedings are of vital importance for any claimant trying to prove facts which are outside his own sphere of influence. The procedural laws in Europe differ in their approach to such measures: while some regard them as a form of provisional relief, others consider these measures to be part of the evidentiary proceedings before the court. In European law, evidence measures lie at the intersection of three different enactments of the Community, namely Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and

commercial matters and (in intellectual property disputes) Art. 7 of Directive 2004/48/EC on the enforcement of intellectual property rights. As a result of the European Court of Justice's judgment in Case C-104/03, *St. Paul Dairy Industries v. Unibel Exser BVBA*, most commentators believe that evidence measures fall exclusively under the evidence regulation (EC) No 1206/2001 and not under the more general Brussels I Regulation (EC) No 44/2001. Taking into consideration the ECJ's decision in *St. Paul* and the opinion of Advocate General Kokott in Case C-175/06, *Alessandro Tedesco v. Tomasoni Fittings Srl and RWO Marine Equipment Ltd.* (removed from register before judgment), the following article discusses the application of both regulations on measures to preserve evidence. It comes to the conclusion that measures to secure evidence fall under the evidence Regulation No 1206/2001 if they involve an act of judicial cognizance in taking evidence in another Member State which is directly relevant for the decision of the case (no fishing expedition). The article further proposes a supplementary application of the Brussels I Regulation (EC) No 44/2001 for those matters which are not covered by the evidence regulation.

Such matters firstly include the jurisdiction of the court requesting to take evidence, secondly the jurisdiction of the court where the evidence is located to secure this evidence if a party directly applies to that court without making use of the cross-border procedures of the evidence regulation, as well as the cross-border enforcement of substantive information rights without any act of judicial cognizance in the other Member State.

In those situations, it seems convincing to regard evidence measures which at least partially aim at securing evidence as a sub-category of provisional and protective measures and therefore apply the twofold system for provisional measures laid down in the *van Uden* judgment of the Luxembourg court (Case C-391/95, *van Uden Maritime BV v. Kommanditgesellschaft in Firma Deco-Line and Another*).

- **U. Weinbörner:** "Die Neustrukturierung und Aktualisierung des Länderteils der Rechtshilfeordnung für Zivilsachen (ZRHÖ)" - the English abstract reads as follows:

A statute has transferred matters of international judicial assistance in civil law to the Federal Office of Justice (BfJ) in Bonn. The BfJ is now also responsible for

processing individual cases of reciprocal mutual assistance with other countries in civil, commercial and administrative matters. Accordingly, since January 1, 2007, the BfJ is also in charge of editing the foreign country section of the Civil Judicial Assistance Ordinance (ZRHO). This section is an administrative directive. It governs how reciprocity in mutual assistance proceedings takes place. The working directives of the ZRHO, which appear in a loose-leaf collection and are only updated once a year, are no longer up-to-date in many parts.

A Working Group (made up of representatives of the federal government and the German states) was established on the basis of a resolution by the 2007 Conference of Civil Representatives in Hamburg. Under the leadership of the BfJ, it has drawn up a new standardised structure for the foreign country section, which is intended to guide the user in a clear and easily understandable way and provides additional information in the explanations of the individual requests.

With the set-up of a procedure for permanent online updating, including the IR-online database of the Ministry of Justice of North Rhine-Westphalia, the backlog in updates can be dealt with and new information can be published quickly. The online offer portrayed below is produced by the BfJ and the Ministry of Justice of North Rhine-Westphalia. It reflects the agreement already achieved between the federal government and the German states concerning the instructions for specific countries. It can be used as a basis for the administrative orders of the foreign country section as a whole. The complete update will take at least another two years. That is due to two factors: the amount of work needed for the regular update of the information, and the restructuring of the foreign country section.

- **U. P. Gruber:** “Die Brüssel IIa-VO und öffentlich-rechtliche Schutzmaßnahmen”
- **A. Staudinger:** “Gemeinschaftsrechtlicher Erfüllungsortgerichtsstand bei grenzüberschreitender Luftbeförderung”
- **P. Schlosser:** “Nichtanerkennung eines Schiedsspruchs mangels gültiger Schiedsvereinbarung”
- **R. Geimer:** “Enge Auslegung der Ausnahmeklausel des Art. 34 Nr. 2 EuGVVO – Der EuGH marginalisiert den ‘Federstrich’ des

Reformgesetzgebers”

- **H. Roth:** “Zur verbleibenden Bedeutung der ordnungsgemäßen Zustellung bei Art. 34 Nr. 2 EuGVVO”
- **E. Jayme/C. F. Nordmeier:** “Multimodaler Transport: Zur Anknüpfung an den hypothetischen Teilstreckenvertrag im Internationalen Transportrecht – Ist § 452a HGB Kollisions- oder Sachnorm?”
- **T. Domej:** “Negative Feststellungsklagen im Deliktsgerichtsstand”
- **P. Oberhammer/M. Slonina:** “Konnexität durch Kompensation?”
- **T. Struycken/B. Sujecki:** “Das niederländische Gesetz zur Regelung des internationalen Sachenrechts” – the English abstract reads as follows:

On 1 May 2008, the new Dutch Act on Conflict of Laws in cases of Property (Wet Conflictenrecht Goederenrecht) came into force. This Act is the latest one in a series of legislative measures in the field of Private International Law in the Netherlands. In this Act the Dutch legislator incorporated the most important Dutch case law in the field of international property law. Additionally, some principle provisions were introduced which affect the classical topics in the field of international property law. This article will give a short overview of the key issues of this new Act.

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

- **Niederlande:** Gesetz vom 25.2.2008 über die Regelung des Kollisionsrechts der sachenrechtlichen Verhältnisse von Sachen, Forderung, Aktien sowie den Effektengiroverkehr (Gesetz über das Kollisionsrecht des Sachenrechts) Staatsblad 2008, Nr. 70

As well as the following **information**:

- **M. Tamm:** “Tagungsbericht zum Symposium anlässlich des 65. Geburtstags von Prof. Dr. Harald Koch – Thema: `Nationale und internationale Perspektiven für ein soziales Privat- und Prozessrecht`”
- **H. Krüger:** “Syrien: Neues Schiedsrecht”