Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts" (1/2014)

Recently, the January/February issue of the German law journal "Praxis des Internationalen Privat- und Verfahrensrechts" (**IPRax)** was published.

- ***Heinz-Peter Mansel/Karsten Thorn/Rolf Wagner***: "European conflict of laws 2013: Respite from the status quo"

The article provides an overview of developments in Brussels in the field of judicial cooperation in civil and commercial matters from November 2012 until November 2013. It summarizes current projects and new instruments that are presently making their way through the EU legislative process. It also refers to the laws enacted at the national level in Germany as a result of new European instru-ments. Furthermore, the authors look at areas of law where the EU has made use of its external competence. They discuss both important decisions and pending cases before the ECJ as well as important decisions from German courts pertaining to the subject matter of the article. In addition, the article also looks at current projects and the latest developments at the Hague Conference of Private International Law.

- ***Christoph Schoppe***: "The intertemporal provisions regarding choice-of-law clauses under Europeanised inheritance law"

This article examines the practical implications of the intertemporal provisions of the new European Regulation No. 650/2012 on succession and wills in private international law. Its emphasis lies on those rules regarding choice-of-law clauses. Although hardly noticed yet, such provisions can have a significant impact on a testator's estate planning, especially during a transitional period until 15 th August 2015. Thus, firstly, the article analyses risks and opportunities for testators who seek to have the law of their nationality applied. Secondly, it addresses those testators who prefer to apply another law, which will be unavailable to them under the European Regulation after the transitional period has lapsed. As a common ground underlying all practical

issues, it is advocated that only a broad interpretation of any intertemporal provision under the Regulation protects the reasonable reliance-interest of testators regarding their estate planning. Thirdly, some practical points are addressed that might prove difficult when the testator did not choose the law applicable to his estate.

- ***Anatol Dutta***: "The liability of American credit rating agencies in Europe"

The question whether credit rating agencies are liable for flawed ratings is mainly discussed in substantive law. Yet, from a European perspective, the liability of credit rating agencies also raises issues of private international law as the rating market is dominated by the three American agencies Standard & Poor's, Moody's and Fitch Ratings. Hence, it is not necessarily the case that a European liability regime – be it at the Member State level or at the European Union level such as the recently introduced Art. 35a of the European Regulation on Credit Rating Agencies – will adequately encompass the American agencies and their ratings, a question which shall be addressed in the present paper.

- ***Giesela Rühl***: "Causal Link between Targeted Activity and Conclusion of the Contract: On the Scope of Application of Art. 15 et seq. Brussels I – Comment on the Judgment of the Court of Justice of the European Union of 17 October 2013 (Lokman Emrek ./. Vlado Sabranovic)"

On 17 October 2013 the Court of Justice of the European Union (CJEU) handed down its long-awaited decision in Lokman Emrek ./. Vlado Sabranovic. The court held that consumers may sue professionals before their home courts according to Art. 15 (1) lit. c), 16 (1) Brussels I even if there is no causal link between the means used to direct the commercial or professional activity to the consumers' member state and the conclusion of the contract. The case note comments on the judgment and criticizes the CJEU both in view of the reasoning applied and the results reached. It argues that the highest European court disregards the wording of Art. 15 (1) lit. c) Brussels I, the pertaining majority view in the literature as well as the requirement of uniform interpretation of European Union law. More specifically, it argues that the court ignores recital 25 Rome I that makes clear that Art. 6 (1) Rome I – and thus, Art. 15 (1) lit. c) Brussels I – requires a causal connection between targeted

activity and conclusion of the contract. The case comment goes on to show that the CJEU also disregards the rationale of Art. 15 (1) lit. c) Brussels I: it allows consumers to sue at home even if they actively – and without motivation by their contracting partner – go abroad to purchase goods and services. The CJEU, thus, pushes the boundaries of consumer protection beyond what the European legislator had in mind – and beyond what is needed.

- ***Georgia Koutsoukou***: "Einspruch gegen den Europäischen Zahlungsbefehl als rügelose Einlassung?" – the English abstract reads as follows:

In the case Goldbet Sportwetten ./. Massimo Sperindeo, the CJEU had to decide on the applicability of Art. 24 of the Brussels I Regulation to Regulation (EC) No 1896/2006 creating a European order for payment procedure. In its decision, the CJEU ruled that a statement of opposition to a European order for payment does not amount to entering an appearance within the meaning of Article 24 of the Brussels I Regulation. In the Court's view, this rule applies to both a reasoned and an unreasoned statement of opposition. The Court's decision adheres to the main principles of the European order for payment procedure. In this paper, the author illustrates and evaluates the legal reasoning of the decision and concludes that the Court should have elaborated the relationship between the European order for payment procedure and the ordinary civil proceeding in a less abstruse manner.

- ***Herbert Roth***: "Mahnverfahren im System des Art. 34 Nr. 2 EuGVVO" – the English abstract reads as follows:

The judgement of the Oberlandesgericht (Higher Regional Court) Düsseldorf confers the requirements concerning the possibility of the defendent to lodge a legal remedy stated in Art. 34 No 2 of the European Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters to decisions in foreign order for payment procedures. Therefore the defendant's pure knowledge of the existence of the payment order in not sufficient. Essential is the knowledge of the content of the payment order as being officially served. However some exceptions are necessary, because the payment order gives no reasons and is issued on the base of a prima facie examination of the merits of

the claim. The defendant is not obliged to contest the claim, if it is not clearly identified in the payment order. The refusal of enforcement can be avoided by paying attention to the requirements of § 10 para 1 of the German AVAG (Gesetz zur Ausführung zwischenstaatlicher Verträge und zur Durchführung von Verordnungen und Abkommen der Europäischen Gemeinschaft auf dem Gebiet der Anerkennung und Vollstreckung in Zivil- und Handelssachen).

- ***Thomas Rauscher***: "Erbstatutswahl im deutsch-italienischen Rechtsverkehr"- the English abstract reads as follows:

From a German court's perspective a choice of the applicable succession law made by an Italian citizen under art. 46 (2) of the Italian Law on Conflicts may only be valid as a result of a renvoi issued by Italian conflict law. An additional choice of law under art. 25 (2) of the German Introductory Law, concerning only real property situated in Germany, makes sense, as the validity of an "Italian" choice of law clause depends on the "de cuius" residence at the time of death. The following article explains which law applies to formal and material problems concerning a choice of law under art. 25 (2). As a result such choice of law is valid, if it complies with German law; formal validity may in addition be governed by any other law applicable under art. 1 Hague Convention of October 5, 1961.

- ***Urs Peter Gruber***: "Die konkludente Rechtswahl im Familienrecht"- the English abstract reads as follows:

Art. 14 EGBGB (general effects of marriage) and Art. 15 EGBGB (matrimonial property regime) grant a limited freedom to choose the applicable law. As a basic rule, the choice of law must be notarially certified. However, if the agreement on the applicable law is not concluded in Germany, it is sufficient if the formal requirements of a marriage contract under the law chosen or of the place of the choice of law are observed.

In recent years, German courts had to deal with cases in which Muslim spouses, who were domiciled in Germany, had married abroad in their country of origin and concluded a marital contract based on Islamic laws. In these circumstances, it was doubtful whether there had been an implicit choice of law

leading to a derogation of the otherwise applicable German law and the application of the law of the state in which the marriage had been celebrated.

In most decisions, the courts denied the existence of an implicit choice of law, arguing that the spouses had not been aware of the possibility and/or need to derogate from the German law. They reasoned that merely acting under the "wrong" law did not amount to an agreement on the applicable law. In a recent decision, the Kammergericht Berlin followed this line of arguments. However, in the author's opinion, the court should have scrutinized the facts of the case much more closely – especially as in the matter at hand, as stipulated by § 26 FamFG, the court had to ascertain the relevant facts ex officio.

- ***Claudia Mayer***: "Inappropriate differentiations in international surrogacy cases"

Determining legal parentage is one of the most urgent questions arising in international surrogacy cases, especially in countries like Germany, where surrogacy is illegal. Infertile couples, who avail themselves of surrogacy abroad, face severe difficulties when trying to have their legal parenthood of the child recognized by German courts or by public authorities, especially when the surrogate mother is married. Recent German court decisions have made apparent the discrepancy in German case law as well as the inconsistency of the current filiation law with higher-ranking principles. In the opinion of the author, allowing for different results with regard to accepting the legal parentage of the intended parents depending on the marital status of the surrogate mother, or depending on whether the status of the intended father or the intended mother (resp. the registered parent) is concerned, is inappropriate and unjustifiable. When the German legal system accepts that the intended father may assume the legal position as father by acknowledgement where the surrogate mother is single despite the fact of an underlying surrogacy arrangement, approving the legal parental status of the intended parents cannot be contrary to the German ordre public, only because the surrogate mother is married or the legal status of the intended mother (or registered partner) is concerned. The author argues that the German prohibition of surrogacy may not be regarded as part of the ordre public. This applies irrespective of whether a procedural recognition of foreign decisions on legal parentage or the application of foreign substantive law, designated by the

German conflict of law rules, is at issue. The German ordre public rather demands the approval of the legal parentage of the intended parents, namely in the interest of the welfare of the child.

- ***Sabine Corneloup***: "Recognition of Russian decisions under French Law"

The judgment of the Cour de cassation deals with two Russian decisions which ordered a guarantor domiciled in France to pay to a Russian bank a debt of over six million euros after insolvency proceedings had been opened in Russia against the Russian principal debtor. Both decisions have been declared enforceable in France and the Cour de cassation confirms that all conditions for their recognition under French Law were fulfilled: international jurisdiction of the Russian court, no violation of substantial or procedural public policy and absence of fraud. The Cour de cassation thus reiterates the in 2007 newly defined conditions for the recognition of foreign decisions. Their application to the present case demonstrates the liberal orientation of French Law.

- ***Baiba Rudevska***: "Recognition and Enforcement of an English Default Judgment in Latvia"

This article deals with the question of recognition and enforcement of an English default judgment in Latvia. On 6 September 2012 the European Court of Justice gave a preliminary ruling in the case of Trade Agency, replying to questions asked by the Senate (Cassation Division) of the Supreme Court of Latvia concerning the interpretation of Article 34, paras. 1 and 2 of the Brussels I Regulation. According to the Latvian civil procedure rules, all the judgments in civil matters must give a reasoning. In this precise case the default judgment of the High Court of Justice of England contained no reasoning at all. Therefore the Senate doubted whether such a judgment could be enforced in Latvia in the first place. Finally, on 13 February 2013 the Senate recognised the English default judgment. However, the order of the Senate contains legal lacunae as to the recognition and enforcement proceedings in this case. Specifically, the Senate had not checked all the relevant circumstances before recognising and enforcing the aforementioned default judgment in Latvia. These relevant circumstances have been analysed at length in this article. The abovementioned error of the Senate might in principle lead to a complaint and a further

litigation before the European Court of Human Rights.

- ***Heinz-Peter Mansel***: “Vereinheitlichung des Kollisionsrechts als Hauptaufgabe”
- ***Erik Jayme***: “Mehrstaater im Europäischen Kollisionsrecht”