Issue 2014.4 Nederlands Internationaal Privaatrecht – Recognition and enforcement

The fourth issue of 2014 of the Dutch journal on Private International Law, ***Nederlands Internationaal Privaatrecht***, is dedicated to the Recognition and enforcement of foreign judgments, and focuses on gaps and flaws in the current framework and new pathways. It includes the following contributions:

Paulien van der Grinten, 'Recognition and enforcement in the European Union: are we on the right track?', p. 529-531 (Editiorial)

Paul Beaumont, 'The revived Judgments Project in The Hague', p. 532-539.

> *This article examines the Hague Judgments Project in three phases. First, the initial ambitious plans for a double convention or a mixed convention (combining direct rules of jurisdiction with rules on conflicts of jurisdiction, exorbitant fora and recognition and enforcement of judgments) that began in 1992 and ultimately failed in 2001. Second, the triumph of rescuing a Choice of Court Agreements Convention from the ashes of the failed mixed convention between 2002 and 2005. Third, the attempt since 2010 to revive the Judgments Project with the aim of securing at least a robust single convention on recognition and enforcement of judgments (possibly with indirect rules of jurisdiction) and with the possibility that at least some States will agree to go further and agree some rules on some or all of the following: conflicts of jurisdiction, declining jurisdiction, outlawing exorbitant fora and some direct rules of jurisdiction. In doing so the article examines the forthcoming adoption of the Hague Choice of Court Agreements Convention by the EU including its declaration excluding certain insurance contracts. Consideration will also be given to the possible ways of establishing in a new single convention what constitutes a sufficient connection between the case and the country which gave the judgment in that case to justify the judgment being recognised and enforced in Contracting States to the convention.*

Patrick Kinsch, 'Enforcement as a fundamental right', p. 540-544. The

abstract reads:

> *There is, under the case law of the European Court of Human Rights, a right to the enforcement of judgments obtained abroad. The nature of that right can be substantive and founded on the right to recognition of the underlying situation. It can also be procedural and derive from the fair trial guarantee of Article 6 of the Convention which includes a right to the effectiveness of judgments rendered by 'any court', a concept considered – without, in the author's opinion, a cogent justification in the present jurisprudence of the Court – as including foreign courts. Once there is a right to enforcement, there can be no interferences by national law with that right (and the national authorities can even have a 'positive obligation' to see to its effectiveness), unless the interference or the refusal to take positive measures is justified, in line with the principle of proportionality.*

Ian Curry-Sumner, 'Rules on the recognition of parental responsibility decisions: A view from the Netherlands', p. 545-558.

> *Parental responsibility decisions are increasingly international in nature; international contact arrangements, determinations that the main place of residence will be abroad and the cross-border placement of children are nowadays commonplace instead of seldom. Unfortunately, the story oftentimes does not end after the judge has issued the decision. In many cases, cross-border recognition and/or enforcement of the judgment will be required. This article is devoted to providing an overview of those rules, focussing on the various international regimes currently in operation in Europe, as well as domestic rules applicable in the Netherlands. In doing so, a number of problem areas will be identified with respect to the current rules and their application.*

Anatol Dutta and Walter Pintens, 'The mutual recognition of names in the European Union de lege ferenda', p. 559-562.

> *How could the harmony of decision regarding names be attained within the European Union – a harmony of decision which has been demanded by the European Court of Justice in a number of cases? The following contribution presents the results of a working group which has made a proposal for a European Regulation on the law applicable to the names of persons*

harmonising the conflict rules of the Member States. This classic approach is, however, supplemented by a second element, which shall be the focus in this special issue on recognition and enforcement. The proposal establishes a principle of mutual recognition of names guaranteeing that every person has one name throughout Europe.

Mirjam Freudenthal, 'Dutch national rules on the recognition and enforcement of foreign judgments, Article 431 CCP', p. 563-572.

This paper discusses Article 431 CCP. Article 431 CCP states that no decision rendered by a foreign court can be enforced within the Netherlands unless international conventions or the law provides otherwise. According to Article 431 paragraph 2 CCP the matter of substance has to be dealt with and settled de novo by a Dutch court. As from its enactment in 1838 Article 431 CCP has been subject to critical discussions and was restricted by case law from the beginning of the 20th century. Since then recognition will be granted if the foreign judgment will meet a set of conditions. But, the enforcement of condemnatory judgments remained impossible. More recently, case law has introduced the pseudo-enforcement procedure, meaning that if the foreign condemnatory judgment meets the conditions for recognition a hearing on the substance according to Article 431 paragraph 2 CCP is not required. However, the disadvantage of this pseudo-enforcement procedure is the lack of legal certainty. A revision of the actual Dutch statutory rules on recognition and enforcement is very much needed.

Elsemiek Apers, 'Recognition and enforcement of foreign judicial decisions: Belgium's codification explored', p. 573-580.

Belgium's codification of private international law has led to a comprehensive Code containing a detailed set of rules and procedure for the recognition and enforcement of foreign judicial decisions and authentic acts. Increased transparency, the clarity of private international law concepts and harmonisation in a more globalised world with changing values were the main reasons for such a codification. Most of the rules on recognition and enforcement are inspired by the Brussels Convention (now Brussels I Regulation), providing for an almost automatic recognition of foreign judicial decisions and a simplified exequatur procedure. Even though the Code provides

a clear framework, in practice difficulties still arise, especially for the recognition of authentic instruments. This article explores the reasons behind Belgium's codification, describes the procedure for recognition and enforcement and provides a brief practical insight.