

First Issue of 2018's Revue Critique de Droit International Privé

The last issue of the "Revue critique de droit international privé" will shortly be released. It contains several casenotes and three articles.

The first one is authored by Gilles Cuniberti and Sara Migliorini. It discusses the issues of private international law raised by the European Account Preservation Order procedure established by Regulation (EU) no 655/2014. After presenting the scope of the Regulation, it addresses the issues of jurisdiction, choice of law, and enforcement of judgments arising under the new instrument.

The second article is authored by Gerald Goldstein. It deals with the « legal certainty exception » under Dutch law.

Born out of a deep internationalist perspective, section 9 of Book 10 of the Civil code of the Netherlands codified a new general exception to the application of a conflict rule. Under this « legal certainty exception », a court may apply a law applicable under the private international law of a foreign State involved, in contravention to the law designated by the Dutch private international law, whenever doing otherwise would constitute an unacceptable violation of the legitimate expectations of the parties or of legal certainty.

The legal certainty exception's function is to avoid a serious lack of foreseeability possibly leading to a limping situation, stemming from the application of the law normally applicable under the conflict of law rule of the forum. Such a general and exceptional rule based on conflict justice aims to coordinate conflicting systems of private international law by allowing a measure of flexibility into the conflict of law resolution. Taking globalization into consideration, this rule gives a broader role to private parties. Its effect is to allow a court a discretionary power to put the conflict rule into perspective while upsetting the usual hierarchy of private international law principles. Unlike the escape clause, the legal certainty exception will give predominance to foreseeability over proximity. It will designate a law which is not necessarily the law having objectively the closest connection to the situation but the law applicable under the subjective

expectations of the parties or the law whose effectivity should not be altered.

In order to limit the disturbing impact of the legal certainty exception due to the discretionary nature of its intervention, cumulative conditions are required. The parties to the relationship must have erroneously, albeit legitimately, believed that a law applied under the private international law of a foreign State involved in such relationship. In addition, to ignore this state of fact would constitute an unacceptable violation of the legitimate expectations of the parties or of legal certainty.

A comparative analysis between the legal certainty exception and other already known notions allows to state that while presenting some similarities with some of them (among them, the conflict of systems theory, the recognition method and a subsidiary unilateral system of conflict of laws) the legal certainty exception keeps its singularity.

The third article is authored by Christian Kohler. It discusses the new German legislation on marriage and private international law.

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