

First Meeting of the Young Private International Law Research Network

Maximilian Schulze, an assistant of Dr. Susanne Gössl, LL.M. (Tulane), University of Bonn, has kindly provided us with the following report.

On 5 April 2019, the first meeting of the newly established research network “Young Private International Law in Europe” took place at the University of Würzburg, Germany. The network intends to create a Europe-wide exchange at ‘junior faculty’ level (predoc/postdoc) in the context of various comparative Private International Law (PIL) projects. The first research project and meeting in Würzburg deal with the “Recognition/Acceptance of Legal Situations”. This topic was selected in view of the recent series of decisions by the CJEU regarding international name law (see, e.g. CJEU C-148/02 - *Garcia Avello*) and, most recently, same-sex marriage (CJEU C-673/16 - *Coman*) and a parallel discussion which evolved in the context of the case law of the ECtHR, in particular regarding the recognition of adoptions, same-sex marriages and surrogacy. In order to contribute to a pan-European understanding of ‘acceptance’ of legal situations related to a person’s status in a cross-border context to enhance the free movement of EU citizens and protect their fundamental rights regarding private and family life, the aforementioned first project of the research network compares the reception and implementation of the CJEU and ECtHR case law in 16 EU Member States (Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Poland, Romania, Spain, and Sweden).

The meeting, organised by *Susanne Lilian Gössl*, Bonn, and *Martina Melcher*, Graz, comprised a public and a workshop session. The meeting was kindly supported by the German Research Foundation (Deutsche Forschungsgemeinschaft - DFG) as well as by the prior meeting of the German “Conference for Young PIL scholars” at the University of Würzburg.

The public session

Martina Melcher and *Susanne Lilian Gössl* opened the public session with an

overview of the project and outlined the results of the comparative study. Martina Melcher highlighted the aim of the project as an “academic offspring” for young scholars to facilitate their comparative law and PIL research interests by setting up a network for young scholars. Methodologically, the network selects a specific topic - in this project/meeting the “Recognition/Acceptance of Legal Situations” - on which participants first submitted national reports, which then led to a comprehensive comparative report and analysis, which will be finalized and published in 2020. Susanne Gössl further specified the network’s approach on how the individual reports are to be composed. This is to take CJEU and ECtHR case law in all fields of the law where member states’ awareness is high (e.g. name law, surrogacy and same-sex marriage) as a starting point and then look at the individual states’ implementations, including in particular the recognition by judgments and by rules of PIL. As the network is not limited to international family law, future meetings and comparative reports will also deal with commercial law topics.

Marion Ho-Dac, Valenciennes, then set out the methodological approaches to recognition. She highlighted the increasing importance of cross-border continuity of status in view of the circulation of people and recent refugee movements. When looking at the Member States’ approaches, she stressed two considerations one has to bear in mind: the legal technique of recognition and the underlying legal policy thereof. She then set out the three different approaches: traditional PIL methods, procedural recognition and alternative methods (e.g. uniform law on supranational level or a mutual recognition system at EU level). However, she concluded that none of these were perfect methods. In his response, *Tamás Szabados*, Budapest, doubted that legislators always have a clear methodology in mind. He exemplified this by the Hungarian PIL Act, in effect since 2018, in which no general theory of recognition is followed, although the responsible committee was aware of the recognition questions discussed.

Sarah den Haese, Gent, then referred to a 2014 academic proposal on the recognition of names that was not acted upon by the Commission and analysed its weaknesses which need addressing for a future proposal to be successful. Firstly, any proposal would require a harmonisation of conflict of laws rules. Secondly, she proposed recognition without a conflict of laws test and no control of the substantive law subject to a very narrow public policy exception only. *Tena Hoško*, Zagreb, responded by setting out the conflict rules implemented in

Croatia. Although academic proposals had been submitted, the Croatian legislator did not follow them but rather opted to copy the German conflicts rule (Art. 10 EGBGB). Although she exemplified certain weaknesses in this newly implemented approach (i.e. the issues of dual citizenship and renvoi), she concluded that the new rules are a huge step forward.

The workshop session

The public session was followed by a workshop session in which the preliminary results of the draft comparative report on “Recognition/Acceptance of Legal Situations” were discussed among the project participants and a few other interested parties. The workshop contained four parts, each initiated by a short introduction summarising the major findings and followed by an in-depth discussion among the participants.

In the first part, the general awareness was addressed. In her introduction, *Giulia Vallar*, Milan, pointed out an academic awareness in many Member States that a comprehensive overhaul of the rules of PIL is required. This awareness is also registered by the legislator, however mostly by countries that were involved in CJEU cases. She went on to set out the areas of law in which awareness for recognition is high (e.g. name law and same-sex marriages or partnerships). She concluded that based on their awareness of the issue, the analysed Member States can be subdivided into those involved in CJEU cases, those indirectly influenced by CJEU case law and those influenced by the ECtHR.

The second part, focusing to the legal methodology employed for recognition, was introduced by *Katarzyna Miksza*, Vilnius. She pointed out and illustrated the huge variety of methods of recognition detected by the draft comparative report by reference to national laws. In the subsequent discussion it was pointed out that it would be rather difficult to reconcile the different kinds of approaches to recognition.

Thirdly, the substantive requirements for recognition were discussed. In their presentation, *María Asunción Cebrián Salvat* and *Isabel Lorente Martínez*, Murcia, highlighted the (general) prohibition of a *revision au fond* as a starting point before outlining three hotspots of the public policy exception (surrogacy, same sex marriages or civil partnerships, and name law) and further challenges for recognition, in particular *fraus legis* and the legitimate expectations of the

parties, in the various countries. In the subsequent discussion it was pointed out that the comparative report also shows that the public policy exception does not only function as a bar to recognition, but can, as well as human rights, require and facilitate recognition.

Finally, the formal requirements for recognition were discussed. *Florian Heindler*, Vienna, initially drew attention to the difficulty of distinguishing between formal and substantive requirements and stated the definition of the comparative report of the former as requirements relating to form (i.e. of documents) as well as procedural requirements (regarding certain additional procedural steps). Also in the subsequent discussion the challenging identification and categorisation of requirements was brought up.

In the final discussion, it was immediately agreed that the project was until now only able to scratch the surface of the issues and further work and discussions were required and promising. Therefore, a continuation of the project was agreed on and a further meeting is already being planned.