Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 2/2020: Abstracts

The latest issue of the „Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)“ features the following articles:

H.-P. Mansel/K. Thorn/R. Wagner: **European Conflict of Law 2019: Consolidation and multilateralisation**

This article provides an overview of developments in Brussels in the field of judicial cooperation in civil and commercial matters from January/February 2019 until November 2019. It provides an overview of newly adopted legal instruments and summarizes current projects 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 instruments. Furthermore, the authors look at areas of law where the EU has made use of its external competence. They discuss important decisions of the CJEU. In addition, the article looks at current projects and the latest developments at the Hague Conference of Private International Law.

B. Hess: **The Abysmal Depths of the German and European Law of the Service of Documents**

The article discusses a judgment of the Higher Regional Court Frankfurt on the plaintiff’s obligations under the European Service Regulation in order to bring about the suspension of the statute of limitations under § 167 of the German Code of Civil Procedure (ZPO). The court held that the plaintiff should first have arranged for service of the German statement of claim in France pursuant to Art. 5 Service Regulation because, pursuant to Art. 8(1) Service Regulation, a translation is not required. However, the article argues that, in order to comply with § 167 ZPO, the translation must not be omitted regularly. The service of the translated lawsuit shall guarantee the defendant’s rights of defense in case he or she does not understand the language of the proceedings.

H. Roth: **The international jurisdiction for enforcement concerning the**

right of access between Art. 8 et seq. Brussel IIbis and §§ 88 et. seq., 99 FamFG

According to § 99 para. 1 s. 1 No. 1 German Act on Procedure in Family Matters and Non-Contentious Matters (FamFG), German courts have international jurisdiction for the enforcement of a German decision on the right of access concerning a German child even if the child's place of habitual residence lies in another Member State of the Regulation (EC) No. 2201/2003 (EuEheVO) (in this case: Ireland). Regulation (EC) No. 2201/2003 does not take priority according to § 97 para. 1 s. 2 FamFG because it does not regulate the international jurisdiction for enforcement. This applies equivalently to the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (KSÜ).

J. Rapp: **Attachment of a share in a Limited Liability Partnership (LLP) by German courts**

Attachment of a share in a Limited Liability Partnership (LLP) by German courts: Despite Brexit, the LLP still enjoys great popularity in Germany, especially among international law and consulting firms. Besides its high acceptance in international business transactions, it is also a preferred legal structure due to the (alleged) flexibility of English company law. In a recent judgement, the Federal Court of Justice (Bundesgerichtshof) had the opportunity to examine the LLP's legal nature in connection with the attachment of a share in a Limited Liability Partnership. The court decided that German courts have jurisdiction for an attachment order if the company has a branch and its members have a residence in Germany. By applying § 859 Code of Civil Procedure, it furthermore ruled that not the membership as such but the share of a partner in the company's assets is liable to attachment.

U. Spellenberg: **How to ascertain foreign law – Unaccompanied minors from Guinea**

The Federal Court's decision of 20 December 2017 is the first of four practically identical ones on the age of majority in Guinean law. It is contested between several Courts of Appeal whether that is 18 or 21 years. As of now, there are nine published decisions by the Court of Appeal at Hamm/Westf. and five by other

Courts of Appeal. For some years now, young men from Guinea have been arriving in considerable numbers unaccompanied by parents or relatives. On arrival, these young men are assigned guardians ex officio until they come of age. In the cases mentioned above, the guardians or young men themselves seized the court to ascertain that the age of majority had not yet been reached. The Federal Court follows its unlucky theory that it must not state the foreign law itself but may verify the methods and ways by which the inferior courts ascertained what the foreign law is. Thus, the Federal court quashed the decisions of the CA Hamm inter alia for not having ordered an expert opinion on the Guinean law. The CA justified, especially in later judgments, that an expert would not have had access to more information. With regards to the rest of the judgment, the Federal Court's arguments concerning German jurisdiction are not satisfying. However, one may approve its arguments and criticism of the CA on the questions of choice of law.

D. Martiny: **Information and right to information in German-Austrian reimbursement proceedings concerning maintenance obligations of children towards their parents**

A German public entity sought information regarding the income of the Austrian son-in-law of a woman living in a German home for the elderly, the entity having initially made a claim for information against the woman's daughter under German family law (§ 1605 Civil Code; § 94 para. 1 Social Security Act [Sozialgesetzbuch] XII). German law was applicable to the reimbursement claim pursuant to Article 10 of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations. Pursuant to § 102 of the Austrian Act on Non-Contentious Proceedings (Außerstreitverfahrensgesetz), and in accord with the inquisitorial principle, third persons like a son-in-law are also obligated to give information. The court applied this procedural rule and declared possible restrictions under Austrian or German substantive law inapplicable.

In the reverse case of an Austrian recovery claim filed in Germany, the outcome would be doubtful. While true that under German law an adjustment (Anpassung) might allow the establishment of an otherwise non-existing duty to inform, restrictions on the duty to disclose information pursuant to Austrian and German law make it difficult to justify such a claim.

M. Gernert: **Effects of the Helms-Burton Act and the EU Blocking Regulation on European proceedings**

For more than 20 years, each US president had made use of the possibility of suspending the application of the extraterritorial sanctions of the Helms-Burton Act, thus preventing American plaintiffs from bringing actions against foreigners before American courts for the „trafficking“ of property expropriated to Cuba. This changed as President Trump tightened economic sanctions against the Caribbean state. The first effects of this decision are instantly noticeable, but it also has an indirect influence on European court proceedings. In this article, the first proceeding of this kind will be presented, focusing on international aspects in relation to the Helms-Burton Act and the EU-Blocking-Regulation.

K. Thorn/M. Cremer: **Recourse actions among third-party vehicle insurance companies and limited liability in cases of joint and several liability from a conflict of laws perspective**

In two recent cases, the OGH had to engage in a conflict of laws analysis regarding recourse actions among third-party vehicle insurance companies concerning harm suffered in traffic accidents which involved multiple parties from different countries. The ECJ addressed this problem in its ERGO decision in 2016, but the solution remains far from clear. The situation is further complicated because Austria, like many European states, has ratified the Hague Convention on the Law Applicable to Traffic Accidents. This causes considerable differences in how the law applicable to civil non-contractual liability arising from traffic accidents is determined.

In the first decision discussed, the OGH endorsed the decision of the ECJ without presenting its own reasoning. The authors criticizes this lack of reasoning and outline the basic conflict of laws principles for the recourse actions among third-party vehicle insurance companies. The second decision discussed provides a rare example for limited liability in the case of joint and several liability. However, given that the accident in question occurred almost 20 years ago, the OGH was able to solve the problem applying merely the Convention and autonomous Austrian conflict of laws rules. The authors examine how the problem would have been solved under the Rome II Regulation.

A. Hiller: **Reform of exequatur in the United Arab Emirates**

In the United Arab Emirates, an extensive reform of the Code of Civil Procedure entered into force on 2 February 2019. The reform covers half of the Code’s

provisions, among them the law regulating the enforcement of foreign judgments, arbitral awards and official deeds. This article provides an overview of the amendments made on the enforcement of foreign decisions and puts them into the context of the existing law. The article also sheds light on the procedure applying to appeals against decisions on the enforcement. The reform does away with the requirement of an action to declare the foreign decision enforceable. Instead, a simple ex parte application is sufficient, putting the creditor at a strategic advantage. However, with a view to arbitral awards in particular, important issues remain unadressed due to the somewhat inconsistent application of the New York Convention by Emirati courts.