New Book: “Imperativeness in Private International Law. A view from Europe” by Giovanni Zarra

Giovanni Zarra (Federico II University of Naples) has recently published a book titled ‘Imperativeness in Private International Law. A View from Europe’ (Asser – Springer, 2022).

The book is devoted to a study of the ways and forms through which imperativeness, to be intended as the sum of the various peremptory norms expressing the identity of a legal system, works today in private international law and argues that imperative norms today not only function as a bar to the application of foreign laws and free movement of decisions, but may also positively promote interests and values at the basis of any legal system. Moreover, the book carries out an in-depth analysis of how the concept of imperativeness is influenced by international and EU law, arguing that – in particular in the field of human rights – a minimum content of imperativeness, shared by EU countries, is emerging. In addition, the research, combining theoretical and practical approaches and methodologies, addresses, among others, the question concerning the extent to which the evolution of the concepts of overriding mandatory provisions and public policy has affected the traditional doctrinal views conceptualizing private international law as a neutral subject; in this regard, through the analysis of the category of imperativeness, the book demonstrates that this subject has, in realty, significant (and today not negligible) implications over individual rights. For this reason, the author highlights the crucial role of adjudicators and the importance of the employment of interpretative techniques, such as balancing of principles and rights, in the application of imperative norms.

More in detail, Chapter 1 proposes an historical analysis relating to the development of private international law during time and it focuses on how imperativeness has evolved during the various phases of the evolution of the subject, with particular attention on how and why the distinction between public policy and overriding mandatory rules emerged.

Chapter 2 addresses the various theories relating to the foundation of the distinction between public policy and *lois d'application immédiate*, exploring in particular the actual margin of discretion courts have in the identification of an overriding mandatory rule, and arrives at arguing that the category of overriding mandatory rules shall today be strictly interpreted in order to comply with the openness characterizing modern systems of private international law. *Lois d'application immediate* may, therefore, exist only in the cases where there is a clear legislative intention to overcome the functioning of the conflict of laws mechanism.

Chapter 3 tests the findings of the previous investigation in light of the regulations issued by the European Union. The analysis shows, also in light of the practice of EU organs, a tension between the necessity to reduce the recourse to imperativeness in intra-EU relationships and the States' persisting need to ensure the protection of the principles and rules expressing the identity of their legal systems.

Chapter 4 focuses on the interaction between imperativeness in private international law and substantive obligations arising from international and EU law to assess the existence of "truly international" and EU imperative norms. This Chapter also discusses the (rare) cases of conflicts between imperative norms deriving from supranational law and domestic fundamental principles and offers significant food for thought on how to manage these conflicts.