# Out now: Zeitschrift für Vergleichende Rechtswissenschaft vol. 121 (2022) no. 2

The most recent issue of the German Journal of Comparative Law (Zeitschrift für Vergleichende Rechtswissenschaft) has just been published. The editors mourn the loss of Professor Peter Mankowski (1966–2022), who served as an editor of the ZVglRWiss from 2009 to his untimely death. This issue contains an obituary written by his academic pupil, Professor Oliver L. Knöfel (Viadrina). In addition, this issue offers several presentations made at the conference "Access – Lessons from Africa" that was held at the University of Bayreuth as well as articles on international tort and corporate law. Here are the abstracts:

*Eghosa O. Ekhator:* **Multinational Corporations, Accountability and Environmental Justice: The move towards subregional litigation in Africa**

In the absence of an explicit international framework on the regulation of the crossborder activities of multinational corporations (MNCs), coupled with the barriers to accessing environmental justice through litigation in domestic courts, many victims of environmental injustice now institute cases in foreign jurisdictions especially the home states of the MNCs because they believe they will get justice in those courts. On the other hand, there is plethora of sub-regional institutions that have been relied upon by victims of environmental injustices arising from activities of MNCs in Africa. This article focuses on the reliance on sub-regional judiciaries in Africa by different stakeholders including oil producing communities, individuals, and other relevant stakeholders amongst others. The Economic Community of West African States (ECOWAS) Court of Justice (ECCJ) is used as the case-study in this article. Nongovernmental organisations (NGOs) in Nigeria have also relied on the Economic Community of West African States (ECOWAS) Court of Justice (ECCJ) to seek redress for victims of environmental injustice in Nigeria.

*Claudia Maria Hofmann:* **Linkages between access to information and access to health care**

Information plays a crucial role when it comes to health care. This article elaborates its enabling function with regard to strengthening the position of patients. To this end, reference is made to the human right to health, which is widely acknowledged in both international and regional human rights instruments. In this article, the interpretation provided by the United Nations Committee on Economic, Social and Cultural Rights in its general comment no. 14 on the right to the highest attainable standard of health serves as a basis for identifying the key elements state and non-state actors should take into account when providing health-related information to the public.

*Victoria Miyandazi:* **Inequality and Access to Justice: A Focus on the Adjudication of Socio-Economic Rights in Kenya**

Kenya's 2010 Constitution establishes the necessary legal framework for tackling inequalities in the country. The multiple provisions on equality, non-discrimination and socio-economic rights create the impetus for rights-based litigation. Now society wants to claim these rights but there are still many hurdles to do so. Many special interest groups do not have access to lawyers nor the skills to access courts on their own. The growing concern is, therefore, that despite the progressive nature of constitutional provisions that seek to tackle inequalities in the country, they are not by themselves the panacea to the problem of access to justice in the country. Aside from the prohibitive cost of legal representation being a major concern, there are other access to justice challenges that inhibit the poor and marginalised in Kenya from instituting claims in court, and which also affect their chances of succeeding in their claims. This article discusses how an equality-sensitive approach to adjudicating socio-economic rights can help avoid reinforcing inequality and promote equality. It argues that failure to apply such an approach can exacerbate the inequality and access to justice challenges that vulnerable groups already face, especially in times of a crisis like the COVID-19 pandemic.

*Justin Monsenepwo:* **Decolonial Comparative Law and Legal Transplants in**

**Africa**

On the occasion of a communication made in the aftermath of independence, many African scholars wondered whether African law would continue to be influenced by French law. More than five decades after, the mark of the considerable influence European law has in African former colonies is still perceptible. Yet, in a decolonized context, it should not be implied that European nations rank higher than African nations and that the laws of the former colonizers provide better solutions to African problems. To decolonize legal thinking in Africa, this contribution suggests improving the training of African lawyers and rediscovering customary law to take it into account in the development of legal rules in Africa. This would offer several practical benefits; however, the chief benefit is that it would remarkably boost the ability of lawyers and lawmakers in Africa to innovate.

*Aron Johanson, Andreas Rapp and Anna Vatter:* **Mosaiktheorie ad absurdum – Örtliche Zuständigkeit im Rahmen des Art. 7 Nr. 2 EuGVVO bei Persönlichkeitsrechtsverletzungen**

The article deals with the case law developed by the ECJ on the question of jurisdiction according to article 7(2) of the Brussels Ia Regulation in cases of infringement of personality rights. In particular, the so-called “mosaic approach“ is examined, which the ECJ has consistently applied to solve the problem of such multiple locality cases. The article pays particular attention to the hitherto little-discussed problem of local jurisdiction. It is first shown that the predominant German legal practice in this regard is regularly incompatible with article 7(2) of the Brussels Ia Regulation. At the same time, the consistent application of the mosaic approach in the area of local jurisdiction also leads to completely absurd and thus equally unacceptable results. Therefore, the article is rounded off with brief considerations on how local jurisdiction can be determined sensibly and in conformity with European law.

*Luca Della Tommasina*: **Genossenschaften und nachrangige Mitgliederdarlehen**

The essay deals with Italian cooperative companies and the possibility to extend some sort of *equitable subordination rule* to the loans granted by their members. The article 2467 of the Italian civil code provides that the loans granted to limited liability companies (*società a responsabilità limitata* – „S.r.l.") by any member shall be subordinated to the other creditors of the company if at the time the loan is advanced: (i) there is an excessive imbalance between the company's indebtedness and the net assets; (ii) or the company's financial situation would require an equity contribution instead of a loan. In the cooperative companies' field the problem arises from the convergence of two circumstances. On the one hand the argument that article 2467 is compatible with cooperative firms has been rejected in the Italian case law. On the other hand, in 2017 a reform of cooperative law has excluded the subordination (and more precisely the *subordination according to the article 2467*) for the amounts that a cooperative company receives from its members as "*prestito sociale*". The essay is intended to demonstrate that: (i) the (equitable) subordination is consistent with cooperative firms; (ii) the 2017 reform must therefore be interpreted in a restrictive way. The need to find balanced solutions to the problem seems to be confirmed by the recent developments of the German legal framework.

The *Zeitschrift für Vergleichende Rechtswissenschaft* was founded in 1878 and is Germany's oldest continuously published periodical on comparative and private international law. Its current editor-in-chief is Professor Dörte Poelzig, M.jur. (Oxon), University of Hamburg. Content is available online either through the website of the Deutscher Fachverlag or via beck online.