Dutch Journal of PIL (NIPR) – issue 2024/4

The latest issue of the Dutch Journal on Private International Law (NIPR) has been published.

EDITORIAL

M.H. ten Wolde / p. 626-628

ARTICLES

A. Mens, De kwalificatie en de rechtsgevolgen van de erkenning van een kafala op grond van het Nederlandse internationaal privaatrecht/ p. 628-649

Abstract

This article focuses on the qualification and legal consequences of recognising a kafala under Dutch private international law. A kafala is a child protection measure under Islamic law, which entails an obligation to care for, protect, raise, and support a child, but without any implications for lineage or inheritance rights. The main conclusion is that a kafala generally constitutes both a guardianship and a maintenance decision. Consequently, the recognition of a foreign kafala in the Netherlands essentially entails the recognition of both the guardian's (kafil) authority over the child (makful) and the recognition of the guardian's maintenance obligation towards the child.

B. van Houtert, The Anti-SLAPP Directive in the context of EU and Dutch

private international law: improvements and (remaining) challenges to protect SLAPP targets / p. 651-673

Abstract

While the scope of the Anti-SLAPP Directive is broad, this paper argues that the criteria of 'manifestly unfounded claims' and the 'main purpose of deterrence of public participation' may challenge the protection of SLAPP targets. The Real Madrid ruling should nonetheless play an important guiding role in all Member States; the legal certainty and protection for SLAPP targets will increase by applying by analogy the factors of the Real Madrid ruling established by the CJEU to assess whether there is a manifest breach of the right to freedom of expression. Although the Anti-SLAPP Directive provides various procedural safeguards for SLAPP victims, it does not prevent SLAPP targets from being abusively sued in multiple Member States on the basis of online infringements of personality rights or copyrights. The recast of the Brussels Ibis and Rome II should alleviate this negative effect of the mosaic approach by adopting the 'directed activities' approach.
While the public policy exception in Dutch PIL already has a great deal of potential to refuse the recognition and enforcement of third-country judgments involving a SLAPP, the grounds in Article 16 Anti-SLAPP Directive provide legal certainty, and likely have a deterrent effect on claimants outside the EU. As EU and Dutch PIL generally do not provide a venue for SLAPP targets to seek compensation for the damage and costs incurred regarding the third-country proceedings initiated by the SLAPP claimant domiciled outside the EU, the venue provided by Article 17(1) Anti-SLAPP Directive improves the access to Member State courts for SLAPP targets domiciled in the EU. However, although Articles 15 and 17 Anti-SLAPP Directive aim to facilitate redress for SLAPP victims, the re-sulting Member State judgments may not be effective in case these are not recognised and enforced by third states. Hence, international cooperation is important to combat SLAPPs worldwide.

V. Van Den Eeckhout, Rechtspraak van het Hof van Justitie van de Europese Unie inzake internationaal privaatrecht anno 2024. Enkele beschouwingen over de aanwezigheid, de relevantie en de positie van internationaal privaatrecht in de rechtspraak van het Hof. Een proces van inpassing? Over de gangmakersfunctie van het ipr / p. 675-693

Abstract

With the increase in the number of European regulations on Private International Law, increasing attention has been paid by scholars to issues of consistency between different private international law regimes. The foregoing also includes attention to the position of the Court of Justice of the European Union with regard to (un)harmonised interpretation when answering preliminary questions on the interpretation of those regimes.
This contribution examines a number of current developments concerning the 'PIL case law' of the Court, viewed from the perspective of consistency, albeit in a broad sense: it examines aspects of judgments of the Court that lend themselves to highlighting various facets and dimensions of consistency. As a matter of fact, current case law and developments invite those who wish to pay attention to issues of consistency regarding the Court's PIL case law to adopt a broad perspective and, while discussing aspects of consistency, to highlight points of attention regarding the presence, the relevance and the position of PIL in the Court's case law, going along with issues of 'fitting in' of case law.
The paper includes a discussion of aspects of, i.a., C-267/19 and C-323/19 (joined cases Parking and Interplastics), C-774/22 (FTI Touristik), C-230/21 (X v. Belgische Staat, Refugiee mineure mariee), C-600/23 (Royal Football Club Seraing), C-347/18 (Salvoni) and C-568/20 (H Limited).

M.H. ten Wolde, Oude Nederlandse partiële rechtskeuzes en het overgangsrecht van artikel 83(2) Erfrechtverordening / p. 695-702

Abstract

On 9 September 2021, the ECJ ruled in case C-277/20 (UM) that Article 83(2) of the Regulation on succession does not apply to a choice of law made in an agreement as to succession in respect of a particular asset of the estate. Such a choice of law does not concern the succession in the estate as a whole and therefore falls outside the scope of the said provision, the Court stated. The question arises whether such partial choices of law made before 17 August 2015 have been voided with the CJEU's ruling now that they likewise concern only certain assets and not the estate as a whole.

CASE NOTE

B. Schmitz, Artikel 6 lid 2 Rome I-Verordening en het Duitse

Bundesgerichtshof. Bundesgerichtshof 15 mei 2024 – VIII ZR 226/22 (Teakbomen) / p. 703-709

Abstract

The German Federal Court of Justice (BGH) has ruled in its recent decision that Article 6(2) Rome I Regulation contains the preferential law approach. In its reasoning, the court specifically refers to three recent CJEU judgements to support this view. However, this case note argues that these CJEU judgements are not a valid basis for such reasoning. Instead, the BGH should have turned to Article 8 Rome I Regulation and its case law to apply the Gruber Logistics ruling by analogy.

LATEST PHDS

B. Schmitz, Rethinking the consumer conflict rule – Article 6(2) Rome I Regulation and party autonomy in light of principles, efficiency, and harmonisation (dissertation, University of Groningen, 2024) (Summary) / p. 711-714

BOOK ANNOUNCEMENT

M.H. ten Wolde, book announcement: Chr. von Bar, O.L. Knöfel, U. Magnus, H.-P. Mansel and A. Wudarski (eds.), Gedächtnisschrift für Peter Mankowski [A Commemorative Volume for Peter Mankowski], Tübingen: Mohr-Siebeck 2024, XIV + 1208 p. / p. 715-717