Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 1/2025: Abstracts

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

W. Hau: **Third countries and the revision of the Brussels Ibis Regulation: jurisdiction, parallel proceedings, recognition and enforceability (German)**

The question of whether the provisions of the Brussels Ibis Regulation on international jurisdiction should be extended to defendants not domiciled in a Member State is to be considered in the upcoming round of revision (as expressly stated in Article 79). This paper discusses this question, but also whether the already existing provisions on the relevance of parallel proceedings in third countries have proven effective and whether the recognition and enforcement of third-country judgments should finally be put on the Brussels agenda.

Ch. Thomale: **Ipso facto clauses in cross-border cases (German)**

Ipso facto clauses or *bankruptcy clauses* present a controversial problem to both contract law and insolvency law. After a comparative overview of international substantive solutions to the problem, the article addresses associated conflict of laws issues, notably of characterisation. Special attention is given to *“anticipatory” ipso facto clauses*, cancelling the contract before the opening of insolvency proceedings.

A. Engel/R. Müller: **Limits to the freedom of choice of law in the context of player agent services (German)**

The article deals with a decision of the Rechtbank Limburg (Netherlands) (31 January 2024 – C/03/313729 / HA ZA 23–42, ECLI:NL:RBLIM:2024:524) concerning limits to the freedom of choice of law, in the context of player agent services in international football. The decision hinged upon the application of Section 297 No. 4 of the German Social Security Code III (SGB III). The relevant contract between the parties contained a clause according to which the claimant was exclusively authorised to represent the player during the term of the contract. The German provision would render the clause invalid.

While the parties had chosen Dutch law to be applicable to the contract, the court held that the German provision was applicable in view of Art. 3 para. 3 of the Rome I Regulation, which stipulates the application of mandatory provisions of the state in which the facts of the case are exclusively located if the law of another state is chosen. The article analyses this limit to party autonomy in the context of other limitations which could have been applied: Art. 9 Rome I, regarding overriding mandatory provisions, and Art. 6 Rome I, regarding the protection of consumers. The article pays heed in particular to the requirements of the domestic connections of the case.

J. M. Blaschczok: **The assessment of arbitration agreements in competition law (German)**

In recent years, arbitration agreements have come under the repeated scrutiny of competition law enforcers. By analysing a recent judgment of the CJEU, the Article finds that arbitration agreements are generally still regarded as harmless to competition in EU law. The Article subsequently discusses the exceptional cases in which arbitration agreements have been found to violate competition law. These cases include arbitration agreements which serve to cover-up other infringements of competition law as well as arbitration agreements by which a dominant undertaking imposes an unfair dispute resolution mechanism on a structurally disadvantaged party. The Article concludes that neither EU competition law nor other EU law require the place of arbitration to be located within the single market.

D. Fischer: **§ 40 KGSG as an overriding mandatory provision (German)**

Erik Jayme stated incidentally in a conference report in 2018 that sec. 40 (1)–(4) *Kulturgutschutzgesetz* (KGSG) is an overriding mandatory provision. *Haimo Schack* makes the same qualification. This finding can be confirmed for sec. 40 (1) and (2) KGSG. This article concentrates on the nature of these two paragraphs of sec. 40 KGSG as overriding mandatory provisions.

B. Kasolowsky/C. Wendler: **German Courts confirm Anti-Suit Remedy against Sanctioned Russian Parties breaching Arbitration Agreements pursuant to Section 1032(2) GCPR (English)**

Following last year's landmark decision recognising the availability of declaratory anti-suit relief, the Berlin Higher Regional Court has again applied Section 1032(2) GCPR and broadened its scope of application. In its new decision, the court reiterated that sanctioned Russian parties remain bound to previously concluded arbitration agreements. In addition, the court offered even more hands-on protection for parties trying to serve proceedings in Russia.

L. M. Kahl: **Security for legal costs before the Unified Patent Court compared to German and Austrian law (on UPC, Central Division Munich of 30 October 2023, UPC_CFI_252/2023) (German)**

The article takes a decision of the Unified Patent Court (UPC) as an opportunity to examine the discretionary provision on security for costs, Art. 69 (4) UPCA, in more detail. According to this provision, both enforcement difficulties against third countries and the insolvency risk of the plaintiff can be considered. Among other things, the article deals with the effects of the attribution of UPC acts to the contracting member states pursuant to Art. 23 UPCA on the ordering of a security, how a so-called decision by default is to be interpreted when the claimant fails to provide a security and traces the line of previous case law. This can be seen as part of a general trend towards better protection of defendants.

J. Gibbons: **Acceptance of English Notary Public Certificate of corporate representation without requirement of being a scrivener notary: recent**

decision of Regional Higher Court of Cologne (English)

The purpose of this article is to explain the professional standing, qualification, legal competence, regulatory equivalence, authority and evidential value of the acts of notaries public and scrivener notaries in England and Wales. This is considered necessary, as a number of German courts have, in recent years, rejected certificates of corporate representation issued by a notary public in England for use in Germany and elsewhere on the ground that they are not issued by a scrivener notary.

Ch. Thomale: **Inheritance of limited partnership interests in cross-border cases (German)**

The case note discusses a judgment rendered by the Higher Regional Court of Hamm, concerning the inheritance of limited partnership interest in a German partnership while the inheritance succession is governed by Austrian law. The note focuses on the company and partnership law exceptions according to Art. 1 para. 2 lit. h) and i) Regulation (EU) 659/2012 and places these in the overall context of EU conflict of laws.

S. L. Gössl: **Birth registrations and (no) procedural recognition in Ukrainian surrogacy cases (German)**

In two cases, the BGH dealt with the attribution of parenthood to a child born to a surrogate mother in Ukraine. Under Ukrainian law, the German intended parents would have been the legal parents. The BGH refused to recognise this allocation under both procedural law and conflict of laws. From a dogmatic point of view, her statements are well justifiable. The distinction between a ‘decision’ and other administrative acts in the sense of procedural recognition could have been explored further.

M. Andrae: **Correction of the date of birth under civil status and social law based on foreign court decisions and public documents (German)**

A person‘s identity includes their date of birth. In the area of social law, a person’s rights and obligations are partly dependent on their age. The date of birth is part of the social insurance number. If the person in question was born abroad, it is often the case that only the year of birth is given and, if necessary, proven. This has corresponding consequences for civil status certification and social law. The registration under civil status law is then limited to stating the year of birth. In the area of social law, July 1st of the year in question is fictitiously assumed. The insurance number contains blank spaces in this regard. Later, a specific date of birth is claimed and a foreign decision or documents are presented as proof. In other cases, a date of birth with a different year of birth is claimed in this way. The article discusses under which conditions the original civil status entry must be corrected and a different date of birth must be assumed for social law purposes.

N. C. Elsner: **Review of OGH, order of 2.11.2023 – 5 Nc 22/23i: Enforcement of a British decision in Austria (German)**

L. M. Kahl: **Review of OGH, order of 31.1.2024 – 3 Ob 6/24i: Judicial conflict: Inadmissible non-application of the Hague Convention on Civil Procedure by Russian courts due to a Russian presidential decree (German)**

A. Anthimos: **UK Third Party Costs Orders Enforceable in Greece (German)**

A UK third-party costs order (TPCO) is a totally unknown procedural concept in Greece. In the course of exequatur proceedings, the Piraeus first instance court and the Piraeus court of appeal were called to examine the issue for the first time in Greece, both declaring that no obstacles, especially those intertwined with procedural public policy, are barricading the path towards the declaration of enforcement of a TPCO issued by a judge in the UK.