Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 2/2025: Abstracts

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

C. Budzikiewicz/H.-P. Mansel/K. Thorn/R. Wagner: **European Conflict of Law 2024: Business as usual?**

This article provides an overview of developments in Brussels in the field of judicial cooperation in civil and commercial matters from January 2024 until December 2024. It presents newly adopted legal instruments and summarises current projects that are 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. The authors discuss both important decisions and pending cases before the CJEU as well as important decisions from German courts pertaining to the subject matter of the article. In addition, the article also looks at current projects and the latest developments at the Hague Conference of Private International Law.

Th. Klink: **The Proceedings in Cross-Border Disputes before the Commercial Court**

By establishing the Commercial Courts and the Commercial Chambers, the Legal Venue Strengthening Act, which will enter into force on 1 April 2025, aims to enable innovative proceedings before state courts in important areas of commercial law (B2B cases, M&A cases and cases of D&O liability). State jurisdiction is to become more attractive, especially for cross-border disputes. Based on a litigation agreement pursuant to Sections 119b (2), 184a (3) of the German Courts Constitution Act on the first instance jurisdiction of the Commercial Court and on the conduct of proceedings in English, the article

analyses details of the newly created procedural instruments and their implementation in practice. The focus is on trial proceedings. In addition, the special features of appeal proceedings and cross-border enforcement of judgments are also presented.

A. S. Zimmermann: **Passportisation – Nationality between Public and Private International Law in Times of Forced Naturalisations by the Russian Federation**

In the course of its aggression against Ukraine, Russia employs its nationality as a strategic tool: It naturalises Ukrainian citizens living in occupied territories in large quantities, making them dual nationals. Their cooperation is often ensured by substantial pressure. This article aims to investigate the Private International Law consequences of this strategy, taking into account the Public International Law rules on naturalisations. The article thereby intends to provide a foundation for a common Public and Private International Law discourse on the subject.

G. Kulov: **The justification and conflict of laws problems of liability of domestic companies by piercing the corporate veil in the light of the Corporate Sustainability Due Diligence Directive**

The Corporate Sustainability Due Diligence Directive (EU) No. 2024/ 1760 sets out certain due diligence obligations, negligent non-compliance with which can lead to civil liability. The Directive applies not only to companies in Member States, but also to companies in third countries that exceed certain turnover thresholds. However, civil liability cannot always be enforced against such third-country companies, as Regulation (EU) No. 1215/2012 does not foresee the jurisdiction of European courts for such claims. This provides an opportunity for companies in Member States to avoid civil liability under the Directive through intra-group restructuring. The exploitation of these enforcement deficiencies of the Directive to avoid civil liability may justify the cross-border liability of European companies by piercing the corporate veil, especially when they were originally intended to be covered by the Directive. Such liability may be applied as an overriding mandatory rule irrespective of the lex causae where the foreign company law is applicable. However, in the absence of a corresponding provision

in the Directive, the establishment of such liability by case law inevitably leads to an impairment of legal certainty. Consideration should therefore be given to establishing such liability by amending the Directive.

S. L. Gössl: **Ukrainian declaratory judgements in surrogacy cases – filiation link to the intended parents ex tunc or ex nunc?**

Since the BGH ruling that a Ukrainian birth registration does not constitute a recognisable decision, practice in Ukrainian surrogacy cases has changed. In order to obtain a recognisable filiation decision in favour of the intended parents, a (declaratory) court decision is sought in Ukraine after the child's birth. Such a court decision can be recognised in Germany under procedural law. Dogmatically, it is convincing to recognise such an allocation of parents with ex tunc effect if this is the content of the court decision. The problem of protection of the child's right to know its own origins in cross-border surrogacy cases – which would be better protected by an ex nunc effect – remains unresolved. A corresponding register should be introduced.

J. Kondring: **The European Service Regulation and the service of documents on a domestic representative**

In a recent preliminary ruling by the ECJ, the ECJ had to rule on the question of whether, within the geographical scope of application of the European Service Regulation, an action for damages under antitrust law can be served on the domestic subsidiary of a foreign cartelist under the "unity of undertakings" doctrine which was developed in the field of antitrust law. According to the ECJ, such a possibility does not arise from the European Service Regulation itself. However, the European Service Regulation is not applicable to the service of a document in the forum Member State on a representative authorised by the person to be served. Such an authorisation for service can also be based on statutory law including the lex fori of the forum state. To such extent, the forum state can permit, under certain conditions, in its autonomous law even domestic service to the domestic subsidiary of a foreign parent, as is the case in the law of some US states for so-called "involuntary agents". If service is made on an inadequately authorised person in the forum state, it is not possible to remedy the

service error. However, this only applies to documents instituting proceedings as the European Service Regulation does not claim exclusivity for the service of documents that do not institute proceedings. This can be concluded from the materials on the 2020 version of the European Service Regulation as well as from its Article 22 which is silent on documents that do not institute proceedings.

L. Liu: **Service of judicial documents in the People's Republic of China**

The service of court documents from German proceedings in China is often challenging in practice due to the differences in the legal and judicial systems, legal bases and procedures between the two countries. Numerous judgments have already addressed this issue, including public service in Germany. This article will first outline the legal basis for the service of foreign judicial documents in China, as well as the process, methods and means of service, and then analyse whether the public service in the case of the judgment by the Krefeld Regional Court on October 6, 2022 – 7 O 156/20, was defective.

F. Maultzsch: **Der Einfluss US-amerikanischer Iran-Sanktionsprogramme auf Verträge mit deutschem Vertragsstatut**

The Higher Regional Court of Frankfurt a.M. (OLG Frankfurt a.M.) had to deal with the extraterritorial effect of so-called US secondary sanctions on contracts to which German law is applicable. Especially, it had to decide to what extent the foreign sanctions might influence the application of the German provisions on breach of contract on a substantive level if the foreign rules cannot be applied as overriding mandatory provisions under Art. 9(3) Rome I Regulation. In doing so, the court also had to deal with the relevance and coverage of the EU Blocking Regulation. The following article analyses the findings of the court and argues in favour of a rather narrow role for foreign extraterritorial rules in contractual relations.

M. Fornasier: **Aligning the European Certificate of Succession with the Member States' national rules on land registration**

Article 69(5) of the European Succession Regulation (ESR) provides that the European Certificate of Succession constitutes a valid document for the recording of succession property in the registers of foreign Member States. The same provision, however, contains a reference to point l of Article 1(2) ESR, which clarifies that the Regulation does not affect the Member States' domestic rules on the recording of rights in registers. In order not to undermine the effectiveness of the Certificate, the Member States' national rules on registers and the European provisions on the issuance of the Certificate need to be aligned with each other. In the recent Registr? centras case, which came before the Court of Justice of the European Union (CJEU) more than five years after its ruling in Kubicka, the Court was faced for the second time with the task of striking a balance between the effectiveness of the Certificate and the Member States' regulatory autonomy in matters of land registration. While, in Kubicka, the CJEU had advocated a rather narrow interpretation of point l of Article 1(2) ESR, placing a strong emphasis on the effet utile of the Certificate, the Court took a different – and more formalistic – approach in Registr? centras, thus putting the effectiveness of the Certificate at risk. The following case note analyses the Court's judgment, shedding light on the legal context of the case, and assesses its implications for the national authorities responsible for issuing the European Certificate of Succession. .

M. Scherer/O. Jensen/C. Kalelio?lu: **The Law of the Arbitration Agreement Meets Russia-related Anti-Suit Injunctions: The United Kingdom Supreme Court's Decision in UniCredit Bank GmbH v RusChemAlliance LLC**

In retaliation to Western sanctions against the Russian Federation, Russia has introduced legislation that allows Russian courts to proceed with litigation involving entities affected by Western sanctions despite valid choice of foreign court or arbitration agreements. Russian courts make use of this option by assuming jurisdiction where otherwise none would exist and by issuing injunctions against parties attempting to rely on their arbitration agreements. Faced with such a scenario in UniCredit v RusChem, the UK Supreme Court strengthened the protective role of the English courts over contracts governed by English law that contain arbitration agreements. While the decision offers significant protections for contracts governed by English law, it also introduces further uncertainty to the common law test for determining the law governing arbitration agreements under English law. This case note examines the Supreme

Court’s decision from both angles. It explores the decision’s impact on contracts governed by English law that designate arbitration as the dispute resolution mechanism, as well as the current developments on the law governing arbitration agreements under English law.

S. Noyer/E. Schick: **Conference of the German Council for Private International Law on the occasion of the 70th anniversary of the Council**, September 10-11, Cologne, Germany.

J. Bruls: **“Who’s Afraid of Punitive Damages?“**, March 8-9, Augsburg, Germany