Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 3/2025: Abstracts

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

M. F. Müller-Berg: **The effects of the new product liability directive on international product liability**

The concepts of damage, marketing and the person sustaining the damage in Article 5 Rome II Regulation must be interpreted exclusively according to conflict of laws. Corresponding changes to the Product Liability Directive 2024 therefore have no effect on conflict of laws. However, an interpretative connection between Article 5 Rome II Regulation and Product Liability Directive 2024 must be recognized for the product and the person claimed to be liable. The partial expansion of the product concept into the area of digital services and information leads to an expansion of the subject matter of Article 5 Rome II Regulation at the expense of Article 4 Rome II Regulation. The associated expansion of the scope of the definition of (partial) manufacturer as well as the extension to authorised representatives of a manufacturer, “quasi-importers” and “quasi-dealers” of e-commerce affects conflict of laws likewise. Depending on the starting point adopted in Article 5 Rome II Regulation, this will only lead to a further loss of the Member State’s discretion for qualification of the subject matter in Article 5 Rome II Regulation or, more broadly, to a further immediate shift in the subject matter at the expense of Article 4 Rome II Regulation.

N. C. Kranzhöfer: **Third-party effect of a jurisdiction clause in a bill of lading by virtue of the consignee’s succession into the rights and obligations of the carrier**

The ECJ had to decide whether a jurisdiction clause included in a bill of lading

may be invoked against the consignee of the goods who has, pursuant to the applicable national law, succeeded in the carrier's rights and obligations upon reception of the bill of lading. The Court drew on its case law beginning with the Tilly Russ case but was also required to answer questions that had been raised by inconsistencies in its more recent case law, in particular its judgment in the DelayFix case. The Court now rejects the choice-of-law rule formulated in the operative part of the DelayFix judgment pursuant to which the succession of the third party into the substantive rights and obligations of the original party to the jurisdiction clause is governed by the lex fori prorogati. Instead, the ECJ reaffirms its previous case law according to which the applicable law is to be determined pursuant to the private international law of the forum state. Moreover, the Court declares that national legal provisions are contrary to EU law if they make the third-party effect of a jurisdiction clause included in a bill of lading dependent on further conditions beyond the recipient's full succession into the carrier's substantive rights and obligations.

R. A. Schütze: **Security for costs under the HCCH for Singapore residents in German courts**

The Regional Court of Appeal (Oberlandesgericht) Köln has decided that a claimant residing in Singapore is obliged to provide security for cost under sec. 110 German Code of Civil Procedure (ZPO) despite the fact that the Hague Convention on Choice of Court Agreements is already in force between Germany and Singapore. The Court thus dissented from an earlier decision of the Austrian Supreme Court (OGH). The Regional Court of Appeal Cologne erroneously did not apply the Hague Convention on Choice of Court Agreements because it interpreted terms of the convention from the point of view of German Civil Procedure instead of applying an autonomous interpretation.

F. Hess: **No anti-suit injunction to prevent enforcement of an ICSID award in third States**

Investors cannot enforce intra-EU-investment treaty awards within the European Union. Against this background, investors seek to enforce awards abroad. To prevent an investor from enforcing an arbitral award issued by an ICSID tribunal

in the United States or in other countries, Spain applied for an anti-enforcement injunction. The Regional Court of Essen refused to grant the injunction. It held that the claim was inadmissible because such an order would violate state sovereignty and was therefore incompatible with German and EU law. The article examines the interface between the Brussels Ibis Regulation and arbitration, noting that anti-arbitration and anti-enforcement injunction proceedings fall within the scope of the Regulation. It then argues that anti-suit and anti-enforcement injunctions are in principle incompatible with German law and that, unlike in disputes over standard essential patents where German courts have granted anti-anti-suit injunctions, there is no reason for an exception to this principle.

A. Schulz: **One-year time limit and settling in under the Hague Child Abduction Convention**

The Higher Regional Court of Stuttgart ruled that if a child is first wrongfully retained in one state and then taken to several other states without the consent of the left-behind parent, the first wrongful act – in this case the retention – remains decisive for the start of the one-year period under Art. 12 para. 2 Hague Child Abduction Convention, also in the state in which the child is present at the end. However, in line with a more recent opinion in legal literature, the Higher Regional Court of Stuttgart affirmed its discretion to order the child's return even if the one-year period has expired and the child has settled in their current state of residence. It based this on an argumentum a fortiori in comparison with Art. 13 para. 1 lit. b) of the Convention and on the behaviour of the abducting mother, who had already ignored a Romanian return decision and declared that she would not allow the courts to dictate her country of residence and that of the child.

C. Uhlmann: **The untraceable plaintiff in International Civil Litigation – possibilities and limitations of European Union law**

In Credit Agricole Bank Polska, the ECJ decided upon the question which law governs international jurisdiction in a potential cross border case if defendant's current residence cannot be localized: the Brussels Ia Regulation or national procedural law. The ECJ came to the conclusion that even in cases where the

defendant is a national of a third state and a consumer, international jurisdiction under Art. 18(2) Brussels Ia Regulation is to be determined at the defendant's last known residence as long as there is no firm evidence that the defendant's residence is in another Member State or a third country. In „Toplofikatsia Sofia" EAD, the ECJ dealt with national legislation with respect to Member State's own nationals aiming to ensure a permanent domestic residence. Holding such national legislation contrary to EU law, the ECJ further articulated that international jurisdiction is governed exclusively by the Brussels Ia Regulation as soon as there are reasonable grounds for believing that the defendant resides in another Member State. The author agrees with the ECJ with respect to the result, but criticizes that its reasoning is not always conclusive.

J. Samtleben: **International Procedure Law in the National Civil and Family Procedure Code of Mexico.**

On 7 June 2023, a uniform Civil and Family Procedure Code for the entire Mexican state was promulgated in the Mexican Official Gazette. The legislatures of the federal area and the individual states have until 1 April 2027 to enact the Code and replace the corresponding procedural laws. In its Tenth Book, the Code contains a detailed catalogue of international procedural law that is partly based on traditional regulations, but which creates a new and detailed legal basis for many areas. For the first time, it expressly regulates the international jurisdiction of Mexican courts. The application of foreign law has also been regulated in detail. Among the provisions on international procedural cooperation, the enforcement of foreign protective measures and the use of videoconferencing are particularly noteworthy. As before, the enforcement of foreign judgments requires a request for legal assistance from the foreign court.