Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 4/2025: Abstracts

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

H.-P. Mansel: **70 Years of the German Council for Private International Law (1953-2023)**

On the occasion of the seventieth anniversary of the founding of the German Council for Private International Law, a conference of the Council was held in Cologne at the invitation of the author as President of the Council, organized by the Institute for Private International and Foreign Law at the University of Cologne. The topic of the conference was “Global Private International Law and 25 Years of Judicial Cooperation in the European Union”. The German Council for Private International Law is an academic institution that advises the Federal Ministry of Justice on German and European legislative projects. Professor Zoltan Csehi, ECJ, gave the opening lecture.

Z. Csehi: **The approach of the Court of Justice of the European Union to private international law**

This article examines the reasons why some scholars, while considering the CJEU’s interpretation of private international law to be correct as to its result, disagree with the CJEU’s reasoning. An analysis of the CJEU’s methodology in this area shows that the approach adopted is not primarily based on the classic principles of private international law. Rather, the focus is on the applicable primary and secondary EU law, in particular the numerous regulations in the area of European judicial cooperation. These instruments are interpreted according to the CJEU’s usual methods, namely by way of autonomous interpretation. Therefore, due account should be taken of this “systemic change” that

international civil procedure and conflict of laws rules have undergone as a result of the Europeanization of this area of law.

R. Wagner: **25 years of judicial cooperation in civil matters**

With the Treaty of Amsterdam entering into force on 1 May 1999, the European Union obtained the legislative competence concerning the judicial cooperation in civil and commercial matters. This event's 25th anniversary gives ample reason to pause for a moment to briefly appreciate the achievements and to look ahead. This article follows the contributions of the author to this journal in regard to the 15th and the 20th anniversary of the entry into force of the Treaty of Amsterdam (IPRax 2014, 217 and IPRax 2019, 185).

C. Budzikiewicz: **European international matrimonial law and third countries**

The article examines the question of how relations with third countries affect international divorce law, international matrimonial property law and international maintenance law. In the European conflict of laws, the principle of lois uniformes applies. This means that conflict-of-law rules have been established that apply to both EU-related and third-country-related cases. Accordingly, the EU rules on jurisdiction also cover third-country-related cases in principle. Nevertheless, friction and tensions may arise in relation to third countries. This applies, for example, with regard to the primacy of international treaties. But it also covers the creation of limping marriages, the ordre public reservation and conflict-of-law rules relating to form requirements. The fact that both the Rome III Regulation and the European Matrimonial Property Regulation were adopted only by way of enhanced cooperation creates additional conflict potential, as the non-participating Member States are thus third countries, just like the non-EU states. The article deals with the resulting tensions and seeks solutions to overcome them.

D. Coester-Waltjen: **European International Law on Parent and Child in**

Relation to Third States

This article aims to analyse problems of determining international jurisdiction and applicable law in matters of parental responsibility as well as recognition of decisions in these matters under European law in connection with third countries. Special focus will be put on EU-Regulation 2019/1111, the 1996 Hague Child Protection Convention and the 1980 Hague Abduction Convention. Whereas those rules of the EU-Regulation 2019/1111 and the 1996 Hague Child Protection Convention, which form lois uniformes, allow a relatively clear and easy determination of international jurisdiction and applicable law even in cases in which the habitual residence of the child – the decisive factor – changed lawfully, the issues become more complicated in cases of child abduction. The EU-Regulation provides some specific rules for that situation concerning jurisdiction, proceedings and enforcement. However, these rules are only applicable if the child had its habitual residence before the abduction in a Member State that is bound by the Regulation and is presumably abducted to another Member State bound by the Regulation. The specific rules do not provide for abduction to or from a third state. For these cases redress should be had to the provisions of the 1996 Hague Convention, the 1980 European Convention on Recognition of Custody Decisions, the 1980 Hague Abduction Convention or the internal national law – possibly intertwined with other rules of the Regulation. Thus, it is complicated to determine the applicable mechanism – even though the concerns – mainly the well-being of the child – are the same in all abduction cases. As time is an issue the complications are counterproductive and may produce inconsistencies.

D. Looschelders: **European International Succession Law and Third States**

The EU Succession Regulation is based on the principles of universal application and unity of succession. Accordingly, it contains only a few provisions that expressly distinguish between cases with substantial connections to two or more Member States and third state situations. The most important exception is the limited relevance of the renvoi in the case of references to third-state law in accordance with Article 34 of the EU Succession Regulation. However, there are numerous other constellations in which the assessment of the succession under the European Succession Regulation in third state situations poses particular

difficulties. The article examines these constellations and identifies possible solutions. Finally, the disharmonies arising from the continued validity of bilateral treaties concluded between several Member States, including Germany, and third states are discussed.

T. Pfeiffer: **The Impact of the Rome I and II Regulations on the Private International Law of Non-Member States and the Hague Principles on Choice of Law in International Commercial Contracts**

The article analyzes the influence of the Rome I and Rome II Regs. on the private international law of third countries and on the Hague Principles on Choice of Law in International Commercial Contracts. In doing so, it distinguishes between different ways in which influence is exerted and the varying degrees of influence in individual states or regions, whereby, with regard to the Hague Principles, the exemplary function of certain provisions in the Rome I Reg. can be clearly demonstrated. From an international perspective, the advantage of the Rome Regulations can be seen in the fact that, as European legal acts, they have already passed one, i.e. the European test of international acceptance. A disadvantage of some regulations, on the other hand, is the typical European fondness for detail.

H. Kronke: **The European Union’s role and its impact on the work of the global private-law-formulating agencies (Hague Conference, UNIDROIT, UNCITRAL)**

Focusing, on the one hand, on the European Union’s constitutional competences and, on the other hand, the distinction between categories of instruments (treaties versus soft-law instruments), the author provides an overview of the Union’s participation in and the substantive impact on the negotiation processes over the past decades. While there are examples of highly satisfactory co-operation, there have also been instances of stunning obstruction or unhelpful disinterest. He underscores the role both the relevant Directorates General and individual officials in charge of a dossier may have and calls for better co-ordination of work in the Member States’ ministries and departments.

R. Michaels: **Private International Law and the Global South**

“Modern law’s episteme is inescapably colonial and racist,” says Upendra Baxi, “and private international law cannot escape the, as it were, Original Sin.” With this in mind, I scrutinise for private international law what Nicolaïdis calls EUniversalism: Europe’s claim for universality of its values, spurred by its amnesia about their contingent and colonial origins. How was European private international law shaped against a non-European other? How does private international law today, in its relation, with the Global South, perpetuate colonial hierarchies? To what extent is European private international law an inadequate model for private international law within the Global South itself?

L. d´Avout: **Explanation and scope of the “right to recognition” of a status change in the EU**

The CJEU challenges the legislation of a Member State (Romania) which does not allow the recognition and recording on the birth certificate of a change of first name and gender identity, as lawfully obtained by a citizen of this Member State in another Member State by way of exercising their freedom of movement and of residence. The consequence of this legislation is that an individual person is forced to initiate new legal proceedings with the aim to change their gender identity within this first Member State. The judgment Mirin appears to develop the jurisprudence of the CJEU by confirming the subjective right of transsexual persons to unconditional recognition of their change of civil status in one Member State of the European Union by all other Member States without a supplementary procedure. A contextualised consideration of this judgment enables its significance to be assessed more precisely.

K. Duden: **Recognition of the change of gender entry: on the home straight to a Union-wide comprehensive status recognition?**

The European principle of recognition is becoming more and more important. From company law, it has spread to the law of names, family law and the law of

the person. For an increasing number of status questions, the CJEU has established benchmarks from EU primary law for how Member States must treat certain cross-border situations. Mirin is a further step in this development: the CJEU is extending the principle of recognition to a politically highly controversial and salient area – the change of a person's legal gender entry. In doing so, the court is possibly paving the way for comprehensive status recognition and is setting limits for Member States invoking public policy. Furthermore, the ruling allows interesting insights into the procedural background of the principle of recognition and the object of recognition.

A. Dickinson: **An Act of Salvage**

The sinking of the tanker, 'The Prestige', off the Spanish coast more than two decades ago triggered not only an environmental catastrophe, but also a complex chain of legal proceedings that have not yet reached their final destination. This note considers the procedural background to, and substance of, the most recent decision of the English Court of Appeal in Kingdom of Spain v London Steam-Ship Owners' Mutual Insurance Association Limited [2024] EWCA Civ 1536, considering issues of judgment enforcement under the Brussels I regime and of remedies against a third-party victims pursuing direct actions against insurers without following the dispute resolution mechanisms in the insurance policy.