

# Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)

## 3/2026: Abstracts

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

**B. Heiderhoff/C. Rüsing: Dealing with parallel proceedings in Third Countries - from Germany via Brussels to The Hague?** [German]

The extent to which civil proceedings pending in a third country preclude proceedings before domestic courts varies considerably across jurisdictions. Autonomous German law with its quite strict first-seized rule accords substantial deference to proceedings initiated earlier in third countries. Other legal systems have adopted a more cautious approach, most notably common law jurisdictions, which rely on the doctrine of *forum non conveniens*. Article 33 of the Brussels Ibis Regulation reacts to these differences. At least for some grounds of jurisdiction, it allows the Member State courts to exercise discretion and suspend proceedings if a foreign court has been seized earlier. Ultimately, both autonomous German law and European law attach great importance to priority and to international jurisdiction.

Against this background, the Hague Conference on Private International Law has published a draft convention on parallel proceedings. It seeks to combine jurisdiction- and priority-based approaches with elements of the *forum non conveniens* doctrine. This article therefore reconsiders, at a more fundamental level, the appropriate response to parallel proceedings. It first compares the German and European approaches and demonstrates why, *de lege lata*, Article 33 of the Brussels Ibis Regulation cannot be applied by analogy under autonomous German law. On this basis, the article evaluates the draft Hague Convention and critically assesses its underlying orientation.

***L. d'Avout: Trojan following Coman, Pancharevo and Mirin: Another step forward or an editorial misstep?*** [German]

According to *Trojan*, under EU law and despite constitutional prohibitions, a Member State is obliged to directly recognise a same-sex marriage validly concluded in another Member State, without any restrictions on the purposes and scope of direct recognition (free enjoyment of EU citizens' rights). Here, the CJEU appears to be going one step further. The motivation behind the recognition order is innovative; however, in reality, the court ruling acts as a mere echo of the ECtHR's case law on defective national personal and family law. *Omnis interpretatio sub lege europae periculosa est.*

***K. A. Prinz von Sachsen Gessaphe: No jurisdiction of German courts to determine the heirs of Pope Benedict XVI.*** [German]

In this decision, the Munich Court of Appeal ("OLG München") deals with the international jurisdiction for the appointment of a curator of the estate for the purpose of determining unknown heirs of *Pope Emeritus Benedict XIV*, who died in 2022. Since he had his habitual residence in the Vatican City State, where he also died, at least since his election as Pope in 2005, the jurisdiction of German courts under Art. 4 EU Succession Regulation was ruled out. The *OLG* also denied subsidiary jurisdiction pursuant to Art. 10 EU Succession Regulation, as none of the deceased's estate assets were located in Germany. It also considered that the requirements for emergency jurisdiction pursuant to Art. 11 EU Succession Regulation were not met, as neither the impossibility nor the unreasonableness of initiating or conducting proceedings before the courts of the Vatican City State could be assumed. The court did not, however, address the obvious question of whether the measure could be based on Art. 19 EU Succession Regulation. Ultimately, the *OLG* can be agreed with, even though the reasoning should have been more detailed in some respects; in particular, it should have addressed the jurisdiction under Art. 19 EU Succession Regulation, which was, however, also to be rejected here because there is no genuine link between the requested measure and the territorial jurisdiction of German courts.

***M. Gebauer: Renvoi under the European Succession Regulation and its***

**consequences: characterisation in foreign choice-of-law rules; substitution; preliminary questions; adaptation; parallel proceedings**  
[German]

The underlying constellation of the decision proves to be a prototype for the more complex follow-up questions that arise after a *renvoi* under the European Succession Regulation. These include the characterisation of the third state's choice-of-law rules according to its own criteria; partial *renvoi*; the secondary characterisation of the substantive rules of the *lex fori*, to which the third state's choice-of-law rules refer; preliminary questions of matrimonial property law within the substantive succession rules; substitution and adaptation. A typical procedural challenge arises when the deceased had the last habitual residence in a third state because the extensive subsidiary jurisdiction of the courts of the Member States according to the European Succession Regulation often leads to parallel proceedings in the respective third states.

**B. Heiderhoff: Change of applicable law and adjustment of an Islamic mahr to German post-marital claims** [German]

The OLG Düsseldorf decided that the agreed amount of an Islamic mahr (dower) may be reduced if the basis of the transaction ceases to exist as a consequence of a change of the applicable law. While the contract was originally concluded under Iranian Law, the court held that due to the acquisition of German citizenship German law became applicable. The court applied section 313 of the German Civil Code (*BGB*) ("Interference with the basis of the transaction") because - unlike under Iranian law - the wife can claim division of pension rights under German law. The author first shows that under the Matrimonial Property Regulation (Council Regulation (EU) 2016/1103) the law applicable to the mahr will no longer change when Iranian citizens are naturalised in Germany. However, even if one followed the court in assuming a change of the applicable law, section 313 of the *BGB* cannot be applied as easily as the OLG Düsseldorf held.

**F. Berner: Cross-border favours** [German]

The decision of the Munich Court of Appeal (OLG München) deals with a cross-

border favour. Although the OLG correctly concludes that German substantive law applies in the individual case, the decision raises the question of how claims arising from the breach of a duty of care in the context of favours should actually be characterised. For example, it is not entirely clear whether substantive tortious claims in this context always fall under the Rome II Regulation or whether they do not fall - at least partially - under the Rome I Regulation. Equally problematic is the characterisation of the "relationship of favour" ("Gefälligkeitsverhältnis") - a category between contract and tort. Finally, the decision is also of interest because of its treatment of a comparative law argument within substantive law.

**M. Stürner: Between *lex fori* and *lex causae*: The claim for reduction in price in the event of defective work under Italian law** [German]

The Court of Appeal Dresden had to deal with a warranty claim to which Italian law applied as the defendant contractor had its seat in Italy. The claimant's request was interpreted by the Senate as a declaration of a reduction in price by applying the *lex fori*, although, pursuant to Article 12 (1) lit. c) Rome I Regulation, the law applicable to the contractual obligation (i.e. Italian law) also determines the consequences of the (partial) non-fulfilment of the contractual obligation. Even if the diverging approaches did not produce different results in the end, it once again shows the difficulties in distinguishing between the fundamental categories of *lex fori* and *lex causae*.

**C. Thole: Judicial Review of fair trial and public policy in exequatur proceedings regarding foreign arbitral awards** [German]

The Bavarian Court of Appeal (BayObLG) had to decide upon the enforceability of a Danish arbitral award, against which the respondent, among other things, objected on the grounds of a violation of the right to be heard. The judgment is largely based on the specific circumstances of the individual case and the respondent's failure to sufficiently substantiate his objections. However, the court decision also points to still unresolved legal questions reaching beyond the case at hand.

**G. Freise/L. Vollert: Choice of court agreements and overriding mandatory provisions: Does Article 25 of the Brussels I bis Regulation allow for *lois de police*? [German]**

Several EU regulations allow for overriding mandatory provisions. The French *Cour de cassation* had to decide whether Article 25 of the Brussels I bis Regulation likewise allows for such a reservation in favour of *lois de police*. The *Cour de cassation*, however, held that Article 25 Brussels I bis Regulation does not allow the application of overriding mandatory provisions. According to the view taken here, the ruling should be seen in connection with the recent case law of the CJEU. The CJEU has, in its more recent decisions, significantly limited the scope for review of jurisdiction agreements falling under Article 25 Brussels I bis Regulation. From this perspective, the *Cour de cassation's* decision is convincing. Nevertheless, some concerns regarding the right to a fair trial remain.

**A. Spickhoff: Medical device liability in international jurisdiction and conflict of laws [German]**

Medical device liability in international jurisdiction and conflict of laws exhibits certain peculiarities due to various actors being involved on the production side. This necessitates a closer examination, particularly in private international law, of the group of parties entitled to be sued under Article 5 of the Rome II Regulation. Before this examination, however, the place of the tort establishing jurisdiction, meaning the place of injury or the place at which the tortious act occurred, must be specified in a ubiquitous manner. From the Austrian perspective, in case of a remote tort, only the place of conduct is relevant.

**S. Vuattoux-Bock: The law applicable to the last purchaser's direct action [German]**

In cross-border supply chains, defects may only become apparent after goods have been resold, giving rise to complex liability issues across multiple links in the chain. Under French law, subsequent purchasers have a direct contractual

claim (“action directe”) against all prior sellers, including the manufacturer. However, the applicable law for such claims in international chains has been uncertain. In two landmark rulings on 28 May 2025, the French *Cour de Cassation* ruled that the “action directe” is governed by the Rome II Regulation. This rejected its previous contractual classification in favour of a tort-based approach for private international law purposes. These decisions have significant implications, particularly for German manufacturers, as they greatly reduce the predictability of liability exposure in the supply chain. Ultimately, the rulings strengthen the position of French, Belgian or Luxembourgish end buyers in international supply chains, but raise substantial concerns regarding legal certainty and risk assessment for manufacturers and intermediaries. This article critically examines these rulings, highlighting the tension between EU-wide coherence and legal certainty. It also discusses possible alternative approaches, including the application of Article 4(3) of the Rome II Regulation, to better balance the foreseeability of liability for suppliers with the protection of end buyers.

#### *M. Weller: Governmental interest analysis and Nazi-looted art* [German]

The judgment to be discussed here implements the previous decision of the U.S. Supreme Court: In actions against states and their instrumentalities, e.g. for the restitution of Nazi-looted art based on the Federal Sovereign Immunities Act (“FSIA”), the conflict-of-laws rules of the state in which the federal court seised with the matter is located (here California) are to be applied, rather than federal choice of law rules. However, in accordance with this requirement, the U.S. Court of Appeals for the Ninth Circuit again applied Spanish law on acquisitive prescription under the governmental interest analysis as practiced in California and thus dismissed the action in favor of the state-owned *Museo Thyssen-Bornemisza* in Madrid, as it had done before under federal choice of law. California took this as an opportunity to enact legislation in direct response to the ruling in cases like the present one, ordering the application of California substantive law. This prompted the plaintiff to pursue his claim with further legal remedies aimed at rehearing the case, currently with a writ of certiorari to the U.S. Supreme Court. The decision on this petition is still pending. The judgment presented here illustrates the functioning and weaknesses of governmental interest analysis in an exemplary manner. At the same time, the decision is

equally exemplary in revealing that - after more than 20 years of proceedings - the processing of historical injustice before state courts under applicable law has its limits. The U.S. should follow its own international plea for “just and fair solutions” and provide alternative dispute resolution mechanisms, as Germany, for example, has been doing since 2003.

***GEDIP: The law applicable to rights in rem in corporeal assets*** [English]

***GEDIP: Guidelines on the Influence of European Union Law on Member States Law on Nationality*** [English]

***GEDIP: Guidelines on the treatment of renvoi in European Union instruments on applicable law in civil matters*** [English]

***C. Kohler: The renvoi in European conflict of laws - Meeting of the European Group of Private International Law 2025*** [German]