Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 4/2026: Abstracts

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

L. Schwannecke: **Challenging the European Certificate of Succession: Prerequisites and consequences after the CJEU decision in Albausy** [German]

According to Art. 67 of the EU Succession Regulation, a European Certificate of Succession shall not be issued if the elements to be certified are being challenged. In Germany, it was disputed whether the provision included challenges presented during the process for issuing the Certificate itself, or whether it referred solely to challenges pending in other proceedings. In its decision in *Albausy*, the CJEU addressed this question and clarified that all challenges must prevent the competent authority from issuing a European Certificate of Succession. While this has been implemented in the German literature and jurisprudence, the Higher Regional Courts as competent courts for the redress procedure governed by Art. 72 continue to differ on whether they are allowed to decide on the merits of said challenges during the redress procedures. This article provides an overview of the discussion in the German academic literature prior to *Albausy* and the subsequent treatment and implementation of the CJEU’s decision in the German jurisprudence. It places a particular focus on the scope of competence of the higher regional courts in dealing with redress procedures under Art. 72 EU Succession Regulation.

A. Masser/Y. Chatard: **Anti (anti) suit injunctions of German courts?** [German]

Anti-suit injunctions carry the potential to produce effects that ripple across

jurisdictions, to constrain the authority of foreign courts and to operate at the intersection of law and geopolitics. While neither the remedy nor its implications are novel, the recent wave of anti-arbitration injunctions issued by Russian *Arbitrazh* courts, arguably aimed at shielding Russian companies, has thrust anti-suit injunctions back into the spotlight. German procedural law does not recognize anti-suit injunctions as a remedy, yet substantive claims for injunctive relief may serve as their functional equivalent. This article examines the viability of such substantive claims as a response to the ongoing surge of Russian anti-arbitration injunctions.

W. Wurmnest: **The economic unit doctrine and multiple defendants under Art. 8 Brussels I (Recast) Regulation** [German]

In *Athenian Brewery*, the CJEU clarified that a parent company that was not directly involved in an antitrust law infringement of its subsidiary can serve as anchor defendant, so that the courts at the seat of the parent company have international jurisdiction for damages claims against both companies (Art. 8 (1) Brussels I (Recast) Regulation), even if the parent company was not the addressee of a prior decision of a competition authority. Basing jurisdiction on Article 8 (1) Brussels I (Recast) Regulation requires, however, that the two companies form an economic unit which can be assessed by applying the control presumption known from public enforcement. The convincing judgment strengthens the possibilities for plaintiffs to engage in forum shopping.

J. Richter: **The limits of Article 8(3) Brussels Ibis: No application by analogy to non-EU defendants** [German]

After several German courts had declined jurisdiction in a cross-border dispute (between Germany and Liechtenstein), the Bavarian Highest Regional Court *(BayObLG)* had to determine jurisdiction. The ruling on local jurisdiction – which lay at the heart of the conflict due to an exclusive choice of court agreement – was in line with established case law and was therefore hardly surprising. Of broader general interest and significance was the issue (only briefly addressed by the ruling) whether Article 8(3) of the Brussels Ibis Regulation, concerning jurisdiction on counter-claims, applies to Non-EU Defendants. With regard to this

contentious question the *BayObLG* has now articulated a rejecting position.

R. de Barros Fritz: **The localization of the place of injury regarding claims to recover losses incurred in connection with participation in online games of chance under the Rome II Regulation and the application of the doctrine of double-relevant facts ("Lehre von den doppelrelevanten Tatsachen") under the Brussels Ibis Regulation** [German]

In *Wunner*, the CJEU had its first opportunity to rule on the law applicable to a claim to recover losses incurred in connection with participation in online games of chance offered by a Maltese gambling company not holding a gambling licence. The questions referred to the Court addressed the substantive scope of the Rome II Regulation and its general conflict-of-laws rule on torts. The importance of the preliminary ruling procedure in *Wunner* goes, however, well beyond the interpretation of Articles 1 and 4 of the Rome II Regulation. An analysis of the procedural history leading to the request for a preliminary ruling provides an opportunity to address one of the general principles of international civil procedure, namely the "Lehre von den doppelrelevanten Tatsachen".

J. P. Schmidt: **Habitual residence and applicability of the Hague Convention on child abduction in cases of shared custody** [German]

In cases where, despite living in different countries, parents share the custody of their child and take turns in its exercise for extended periods of time, the determination of the child's habitual residence poses difficulties. In court practice and legal writing, three different approaches have been adopted or proposed: according to the first, the child acquires two habitual residences simultaneously; according to the second, the habitual residence alternates each time the child moves to the other parent; according to the third view, the habitual residence remains where it was before the parents separated. The decision on this matter becomes particularly relevant if the child is removed or retained by one parent in breach of the custody agreement and the return of the child is requested by the other parent under the 1980 Hague Convention on the Civil Aspects of International Child Abduction. In that situation, further disputes come to light, namely whether the Convention also applies in case of simultaneous habitual

residences and whether conflicts of the above-mentioned kind should be covered at all by the Convention. A decision of the Court of Appeal Nuremberg from 2024 highlights the danger of creating unjustified asymmetries between the parents by "locking-in" the child's habitual residence at the place where it was prior to the separation. Whereas this approach will usually lead to adequate results with regard to the law governing custody, simultaneous habitual residences should be admitted for the purposes of the 1980 Hague Convention in order to treat the parents equally.

D. Messner-Kreuzbauer: **Jurisdiction for disclosure claims against platform operators** [German]

Those affected by violations of personality rights on social media often require information from the platform operators regarding the identity of anonymous tortfeasors when pursuing their claims. The Austrian Supreme Court makes it easier for victims of online abuse to force disclosure of this information: it considers Austrian courts to be competent where claimants pursue substantive rights to information against platforms based in other EU jurisdictions, provided that the centre of interest of those seeking relief is located in Austria. The Austrian Supreme Court bases this special jurisdiction on Article 7(2) of the recast Brussels I Regulation, as interpreted by the CJEU. While the present case note criticises the Austrian Supreme Court's reasoning for classifying substantive disclosure claims as tortious, it welcomes the result and offers an alternative doctrinal argument in its defence.

F. Niggemann: **Concurring claims under the CISG and product liability – a decision of the French supreme court of 17.5.2023** [German]

The decision of the French *Cour de Cassation* of 23.5.2023 gives rise to analyse the question whether the application of the CISG excludes product liability claims. Whereas the French supreme court holds in favor of an exclusive application of the Convention and thus adopts an opinion so far only once expressed in international cases having applied the CISG, two decisions of the same court, rendered just a month earlier, come to the opposite result when applying national sales law and product liability. The exclusion of product liability claims under the

CISG leads to a critical appraisal of the currently prevailing opinion. The legal situation created by the decision of the French Supreme Court additionally entails surprising possibilities for choice of law clauses of French law.

M. Uitz: **Examining the validity of foreign forced child marriages in Austria – comparative remarks on the German and Austrian private international legal regimes** [German]

Child marriages and forced marriages present multifarious challenges to the private international legal systems of many states. A recent decision by the Austrian Supreme Court of Justice on the potential validity of the forced marriage of a fifteen-year-old Afghan girl to her twenty-year-old cousin under Austrian private international law has generated new momentum in the ongoing discourse. First, this article analyzes the consequences of this decision for the adjudication of cases of forced child marriage brought before Austrian courts enjoying international jurisdiction. Second, this investigation compares the Austrian and German provisions of private international law on forced child marriage in order to illuminate the commonalities and discrepancies between both legal systems.

K. Bälz: **Arbitration according to Sharia law?** [German]

May an arbitral tribunal render an award on basis of the principles of Islamic law (Sharia), if the parties so agree? This is the subject matter of a decision of the Regional Court of Vienna of 2 May 2025. The court approved a respective choice of law and denied a violation of public order.

M. Gebauer/W. Hau: **Statement by the Special Commission of the Second Commission of the German Council on Private International Law on the draft text of a future Hague Convention on parallel proceedings and related actions** [English]

S. Grundmann: **100. Geburtstag International Academy of Comparative**

Law: Weltkongress 2026 in Berlin im Zeichen fundamentaler Pluralität [German]