Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 5/2026: Abstracts

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

B. Steinrötter: **The UNIDROIT Conflict-of-Laws Rule on the Law of Crypto-Assets. A contribution to the classification of Principle 5 of the UNIDROIT Principles on Digital Assets and Private Law**

With Principle 5 of the DAPL, UNIDROIT has set out an early general conflict-of-laws rule for digital assets in relation to “proprietary issues”. However, the connecting factor cascade in Principle 5(1) of the DAPL primarily serves substantive-law interests. Neither choice of law nor objective connecting factors are typical of private international law: The *lex causae* cannot generally be determined by the parties to the transaction, but only by those who create crypto-assets or administer DLT systems, as the choice of law must be specified within the crypto-asset itself or within the system. Nor does the objective connecting factor first and foremost serve the closest connection. Overall, an international law of crypto-asset proprietary rights understood in this way could add a further dimension to the debate on the materialisation of private international law.

M.F. Müller-Berg: **On the third-party effects of international jurisdiction in European civil procedure law**

The third-party effects of international jurisdiction are only sporadically regulated in European civil procedure law. Against this backdrop, the ECJ has, over the past four decades, established rules governing such third-party effects in a multitude of judgments which cannot always be reconciled. These rules are, in principle, autonomous within the EU legal order, but cannot be applied without recourse to national substantive law, the scope of which, however, remains unclear in specific

cases. Four recent judgments add to the existing picture: In the *AirHelp* case, the ECJ convincingly recognizes a procedural succession to the contractual forum in the event of assignment. Similarly, in the *E.B.* case, the Court recognizes procedural succession to the beneficial effect of a choice of court agreement in the event of assignment, but makes the procedural succession under EU law dependent not only on the substantive succession but also on the procedural succession under national law, which is itself subject to EU law restrictions. However convincing the decision may be in its outcome, its line of reasoning is equally unconvincing. The German Federal Court of Justice (*BGH*) arguably leaves open a procedural extension of the beneficial effect of a choice of court agreement in the event of accession to a debt, whilst the French *Cour de Cassation* convincingly affirms a procedural extension of the onerous effect of a choice of court agreement in case of a contract for the benefit of a third party. Taken as a whole, an increasingly uniform picture emerges. However, the recourse to national law in the *E.B.* case not only to substantive succession but also to procedural succession appears inconsistent.

M. Lieberknecht: **Demarcating the Scopes of Art. 25 Brussels Regulation and National Law with Regard to the Substantive Validity of Jurisdiction Agreements**

Regarding the substantive validity of jurisdiction agreements, Art. 25(1) Brussels I Regulation generally refers to the *lex fori prorogati*. However, the provision also provides an autonomous standard which governs certain questions of validity and, to that extent, supersedes national law. Given that the CJEU is only incrementally developing these pertinent (unwritten) standards, the precise scope of the ostensibly straightforward referral in Art. 25(1) Brussels I Regulation remains somewhat unclear. The *Pome* judgment further illustrates the CJEU's understanding of how the domains of national and EU law are demarcated in this context. Specifically, the decision deals with a provision in the Estonian Code of Civil Procedure which limits the permissibility of jurisdiction agreements to disputes connected to the economic or professional activity of the parties. The CJEU held that such a provision is subordinate to the Art. 25 Brussels I Regulation and therefore has no bearing on the validity of a jurisdiction agreement that falls within the ambit of the Brussels regime – a conclusion that proves both correct and, in light of the Court's recent *obiter dictum* in the *Lastre*

case, all but inevitable.

W. Hau: **The treatment of foreign decisions alleged to be contrary to EU law under EU recognition rules**

It is not uncommon for a party seeking to prevent the recognition and enforcement of a foreign judgment to invoke public policy, claiming that the foreign court has infringed a provision of EU law. However, although it may seem paradoxical, the ECJ emphasises that it is precisely EU law that may prohibit the review of the compatibility of a decision from another Member State with EU law. The implications of this are discussed here using a case from the Higher Regional Court of Schleswig-Holstein, which confirmed the enforceability of a Belgian judgment in Germany under the Brussels I Regulation, even though the Belgian court may have disregarded provisions of European competition law.

D. Coester-Waltjen: **The duty to hear the child – when is it indispensable?**

The ECHR and the German Federal Constitutional Court (FCC) both concentrate on the question whether the failure to hear the child in child proceedings constitutes a violation of the European Human Rights Convention (EHRC) and the German Constitution, respectively. The courts arrive at different results: Whereas the German FCC holds that in this case the failure to hear the child is irrelevant, the ECHR stresses that the hearing of the child is the key issue of child proceedings and that courts must justify duly if they refrain from hearing the child.

The facts of both cases differ considerably as do the legal implications. However, it seems worthwhile to look closely at the reasoning of both decisions. Despite the different context, the question arises whether and to which extent the arguments of the ECHR might have implications also for those situations the German FCC had to deal with. Despite the multiplicity of proceedings in both cases and the variety of arguments brought forward the following lines will concentrate on child hearing exclusively.

M. Gebauer: **German law of parenthood and Italian public policy**

The Italian Court of Cassation has ruled that a German decision establishing the paternity of the deceased can be recognised, even if the heirs were not involved in the German proceedings. This is also in line with German law, whereas in Italian parenthood proceedings an application for a declaratory judgment following the death of the alleged parent must be made against the heirs because their legal position depends on the preliminary question of parenthood. These differences raise issues of public policy at the recognition stage, particularly when the right to a fair hearing is at stake. The Court of Cassation convincingly reasons that these differences are primarily due to substantive law and the interests deemed relevant by the respective legislator. The decision highlights the intra-European relevance of matters of parenthood on the one hand, but also the limits of unifying conflict of laws when it is not designed to overcome differences in parenthood legislation between Member States.

M. Stürner/I. Riva: **Post-mortem paternity determination and Italian public policy**

The Italian Court of Cassation has ruled that a German judgment establishing post-mortem paternity does not violate Italian public policy merely because the brother of the deceased (an Italian national), his wife and her son were not parties to the German proceedings. The decision is also based on the argument that the German judgment to be recognised originates from a highly reliable legal system, which serves as a point of reference for Italian civil procedure doctrine and is a key player in the European legal area; however, this rationale is hardly convincing in light of the postulate of the equivalence of legal systems.

S. Deuring: **Choice of Law for Unjust Enrichment – regarding Cour de Cassation, Judgment of 26.11.2025 – Nr. 24-10.781**

In the present case, the French Court of Cassation had to address a wide range of legal issues relating to the choice of law regarding unjust enrichment. The professional liability insurance of a German notary demanded repayment of the amount paid to the aggrieved bank, which is headquartered in France. Ultimately,

the Court of Cassation concluded that German law on unjust enrichment should apply, a conclusion that is sound in substance but not in its reasoning. On more than one occasion, it had the opportunity to have the European Court of Justice clarify contentious questions of interpretation regarding Article 10 of the Rome II Regulation. Instead, the court developed its own guidelines with varying degrees of elaboration: In cases involving multiple parties, Article 10(1) of the Rome II Regulation providing for a primary connection to an existing relationship cannot be applied. The connecting rule of Article 10(3) of the Rome II Regulation refers to the law of the place where the enrichment occurred. Through the escape clause in Article 10(4) of the Rome II Regulation, the state with which the closest connection exists must be determined by weighing the overall circumstances. How the individual circumstances are to be weighed is left to the lower courts.

D. Tarikanov: **Regulations governing various issues in the General and Special Parts of Private International Law under the PIL-Rulings of the Russian Supreme Court**

This article analyses the Russian Supreme Court's Regulation No. 24 of 9 July 2019, on the application of Private International Law. It examines the following issues: the legal nature of the Judicial Application Rulings in Russia; the triad of the foreign elements (the foreign subject, the foreign object, and the foreign juridical fact); the economic or legal connection of the domestic contract with the international contract as a foreign element; severance (*dépeçage*) of the contract statute and the personal statute in cases of absolute or relative invalidity of legal transactions for reasons relating to the person; the possibility of freedom of choice of law in international property law; and the transfer of title to movable property shifting from the sphere governed by the separation principle to that governed by the consensual principle.