Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 6/2026: Abstracts

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

J. Richter: **Expansion and Restriction of the Co-Defendant Jurisdiction under Article 8(1) of the Brussels Ibis Regulation**

The forthcoming revision of the Brussels Ibis Regulation will need to consider whether certain provisions should be extended to defendants domiciled in third countries. Many commentators particularly advocate extending the co-defendant jurisdiction under Article 8(1), especially as this is seen as a welcome opportunity to establish a single forum for cases of supply-chain liability relating to human-rights abuses or environmental damage. Whether such an extension would be appropriate and beneficial is to be critically examined. In this context, it is essential to assess how the necessary restriction of this jurisdiction can be achieved, placing greater emphasis on the criterion of “expediency” than has been the case to date.

B. Dany: **Filing of Claims and the Statute of Limitations in Cross-Border Insolvency Proceedings**

It is generally accepted that, when a claim is filed in insolvency proceedings, time stops running for limitation purposes. However, in cross-border insolvency proceedings, the question arises as to which law governs the effect of the filing (or of insolvency proceedings in general) on the running of limitation periods. The article explores this conflict-of-laws question in light of the recent *CEVA* case in which the General Court and the ECJ held that, contrary to the prevailing view in legal literature, the applicable law is the *lex fori concursus*.

M. Michel: **Continuance of the Civil Supply Chain Liability Under the CSDDD After Omnibus I and an Analysis of its Synergy with the Common Law Tort of Negligence**

The article first interprets the amendments to Art. 29 CSDDD introduced by the Omnibus I-Directive (2026/470), concluding that the EU legislator continues to impose an obligation on Member States to ensure an effective civil liability regime for human rights violations in supply chains caused by breaches of the due diligence obligations. This follows from the legislative materials, the recitals, the systematics of the Directive, its wording, and Primary EU Law. These national liability regimes must also apply in cases of damage occurring in non-member states, which means they can only be implemented using a unilateral conflict-of-laws-rule (working like overriding mandatory provisions) or as genuine overriding mandatory provisions in the sense of Art. 16 Rome II-Regulation. Subsequently, the two principal options for implementation, as a "partial overriding mandatory provision" (minimal harmonisation) or as an "absolute overriding mandatory provision" (excessive harmonisation), are analysed for their compatibility with English tort law. English law is used exemplarily, as it builds the basis of many tort law systems in common law countries of the so-called Global South, which are particularly affected by human rights violations in supply chains. The analysis shows that implementation as a "partial overriding mandatory provision" may give rise to significant systematic problems, whereas implementation as an "absolute overriding mandatory provision" would avoid such issues.

S. Meyers: **Admissibility of Choice-of-Law and Jurisdiction Clauses in Distribution Contracts Outside the Scope of the Commercial Agents Directive: Limits of the ECJ's Ingmar Decision**

Around 25 years ago, the ECJ's *Ingmar* decision established that the commercial agent's indemnity claim provided for in the Commercial Agents Directive (86/653/EEC) cannot be waived by a choice-of-law clause. This raised the question of whether the same applies to other types of distribution contracts that fall outside the Directive's scope. The Directive is limited to commercial agents who negotiate or conclude the sale or purchase of goods on behalf of and in the name

of the principal. German commercial agency law, on the other hand, has a broader scope of application and may also apply to other types of distribution contracts. In a decision dated 1 July 2025, the Berlin Higher Regional Court *(Kammergericht)* held that outside the Commercial Agents Directive's scope, the German provisions on commercial agents, particularly the indemnity under Section 89b German Commercial Code *(HGB)*, do not constitute overriding mandatory provisions. The court thereby confirmed the admissibility of choice-of-law and jurisdiction clauses in distribution contracts falling outside the scope of the Commercial Agents Directive.

M. Barth: No Security for Costs from Russian Parties – German Federal Court of Justice Chooses Judicial Avoidance When Dealing with International Law – Loose Lips Sink Ships?

In its decision of 15 January 2026, the German Federal Court of Justice dismissed a German petitioner's application for security for costs from a Russian party. The Court denied the application because Russian nationals were exempt from depositing security for costs in Germany according to a literal understanding of sec. 110(2) No. 1 German Code on Civil Procedure *(ZPO)* and Art. 17(1) Hague Convention on Civil Procedure (1954). Furthermore, the Court held that the no claims clause of Art. 11(1) Regulation (EU) No. 833/2014 did not apply to the present case. This note provides an overview of the decision and criticizes the Court's reasoning. Considering Russia's war of aggression against Ukraine, it is argued that a teleological reduction of sec. 110(2) ZPO is warranted and justified by the public international law concepts of *exceptio non adimpleti contractus* and countermeasures. The decision of the Court is characterized as an instance of judicial avoidance that impedes the development of public international law and undermines the protection of legitimate party interests.

R.A. Schütze: Si tacuisses – German Federal Supreme Court on security for costs for Russian company

The German Federal Supreme Court *(BGH)* has denied an obligation of a Russian plaintiff to give security for cost under sec. 110 German Code of Civil Procedure applying Art. 17 of the Hague Convention on Civil Procedure. The *BGH* ruled that

sanctions against Russia in connection with the Russia-Ukraine war had no importance on the application of Art. 17 of the Hague Convention on Civil Procedure.

A.S. Zimmermann: **Immunity from enforcement for state-owned real property – On the burden of pleading and the abuse-of-rights threshold regarding an asserted intention to use property for governmental purposes**

Civil proceedings against foreign states pose a challenge to international procedural law. Courts are obligated to grant claimants access to justice while at the same time safeguarding foreign states' sovereignty and immunity from jurisdiction. State immunity affects not only jurisdiction but also enforcement. In the decision discussed here, the Federal Court of Justice had to decide whether a plot of land may be subject to enforcement even where the debtor state declares its intention to use it as an office for technical cooperation. In the present case, the debtor state did not decide to use the plot of land for this purpose until after the judgment creditor had already applied for enforcement. This article critically assesses the decision. It suggests that the court's line of reasoning does not provide sufficient protection against abuse of state immunity.

C. Reibetanz: **Religious Law before Civil Courts: What limits on freedom of contract follow from Article 3 Rome I Regulation?**

In February 2026, the French *Cour de cassation* made a landmark decision concerning the application of religious law by French civil courts. The decision has been subject to harsh criticism in French doctrine. The dispute concerned two Jewish co-owners of a property in Normandy, who had been parties to arbitration proceedings before a rabbinical court in 2010, which ended in an award subjecting the dissolution of the co-ownership to a rule of Talmudic law. Some years later, one of the co-owners seized the French civil courts in order to dissolve the co-ownership. Referring to Article 3 Rome I Regulation, the *Cour de cassation* decided that the Talmudic rule could not be applied by French national courts and that, instead, the dissolution should be governed by the French Code civil. The article argues that the reasoning of the *Cour de cassation* is

unconvincing. The court passes over relevant questions: whether the res judicata effect of the earlier arbitral award bars a fresh decision, and whether the parties have made any choice of law at all capable of triggering Article 3 Rome I Regulation. The *Cour de cassation* derives from Article 3 a blanket bar on applying religious law, limiting freedom of contract – a reading unsupported by the wording and telos of the Regulation. Finally, the article highlights the decision's disruptive potential. By unsettling the contractual incorporation of religious standards, accepted since the 1978 *Cours Sainte Marthe* ruling, and by suggesting, *a minore ad maius*, that non-State law is generally non-justiciable, it generates considerable legal uncertainty. Read alongside a comparably doubtful German decision of 2023 on the same provision, it confirms that Article 3 Rome I Regulation continues to trouble the courts on both sides of the Rhine.

J. Rapp: **The Holocaust Expropriated Art Recovery [HEAR] Act 2025**

The HEAR Act 2025, effective 13.4.2026, is a federal US law addressing restitution claims of Nazi-looted art. It indefinitely extends claim periods, bars procedural defences including laches and the act of state doctrine, and overrules the US Supreme Court's judgment in *Philipp* v. *Germany* to restore jurisdiction over foreign states and institutions. The legislation forces courts to decide art disputes always on the merits, establishing the US as the epicentre for restitution

litigation with significant implications for American and European museums and the international art market.

O.L. Knöfel: **Taking Evidence by Video-Link under the European Evidence Regulation and Austrian Civil Procedure – Do witnesses have to be present in a courtroom?**

The article reviews a decision of the Supreme Court of the Republic of Austria (Case 2 Ob 60/25z). The Court held that an Austrian court seeking to obtain evidence by video link technology from a witness residing in another EU Member State must make sure that the witness appears in a courtroom equipped with video-conferencing facilities. According to the Court, transmission must not be made to and from a room other than a courtroom, because the Austrian law of

civil procedure requires witnesses to appear in court. The Court's decision does not comply with the European Evidence Regulation of 2020.

M. Castendiek: **Cross-border liability for medical malpractice in medical tourism**

An English patient underwent breast augmentation and thigh liposuction in Poland. She developed severe sepsis and was in a life-threatening condition upon her return. Her successful medical malpractice claim, filed before the English High Court of Justice in 2018, raises characteristic issues of medical tourism in private international law and international civil procedure. Moreover, the case provides an opportunity to consider the legal consequences of Brexit.

The author argues that the consumer jurisdiction rules in Articles 17 (1) (c) and 18 (1) of the Brussels Ibis Regulation often provide medical tourists with access to a domestic court, whose jurisdiction in medical treatment cases also extends to tort claims. In addition, a direct action against liability insurers may also be brought pursuant to Articles 13 (2) and 11 (1) (b) of the Brussels Ibis Regulation. Regarding conflict of laws in medical tourism, Article 6 (4) (a) of the Rome I Regulation regularly provides an exception to the consumer contract regime. Concurrent tort claims are determined in accordance with the law governing the contract pursuant to Article 4 (3), second sentence, of the Rome II Regulation. The relevant medical standard is not necessarily determined by the place of treatment but by the governing law.