„El clásico“ of Recognition and Enforcement – A Manifest Breach of Freedom of Expression as a Public Policy Violation: Thoughts on AG Szpunar 8.2.2024 – Opinion C-633/22, ECLI:EU:C:2024:127 – Real Madrid Club de Fútbol

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Introduction

On 8 February 2024, Advocate General (AG) *Szpunar* delivered his Opinion on C-633/22 (AG Opinion), submitting that disproportionate damages for reputational harm may go against the freedom of expression as enshrined in Art. 11 Charter of Fundamental Rights of the European Union (CFR). The enforcement of these damages therefore may (and at times *will*) constitute a violation of public policy in the enforcing state within the meaning of Art. 34 Nr. 1 Brussels I Regulation. The AG places particular emphasis on the severe deterring effect these sums of damages may have – not only on the defendant newspaper and journalist in the case at hand but other media outlets in general (AG Opinion, paras. 161-171). The decision of the Court of Justice of the European Union (CJEU) will be of particular topical interest not least in light of the EU's efforts to combat so-called "Strategic Lawsuits Against Public Participation" (SLAPPs) within the EU in which typically financially potent plaintiffs initiate unfounded claims for excessive sums of damages against public watchdogs (see COM(2022) 177 final).

The Facts of the Case and Procedural History

Soccer clubs *Real Madrid* and *FC Barcelona*, two unlikely friends, suffered the same fate when both became the targets of negative reporting: The French

newspaper *Le Monde* in a piece titled "Doping: First cycling, now soccer" had covered a story alleging that the soccer clubs had retained the services of a doctor linked to a blood-doping ring. Many Spanish media outlets subsequently shared the article. *Le Monde* later published *Real Madrid's* letter of denial without further comment. *Real Madrid* then brought actions before Spanish courts for reputational damage against the newspaper company and the journalist who authored the article. The Spanish courts ordered the defendants to pay 390.000 euros in damages to *Real Madrid*, and 33.000 euros to the member of the club's medical team. When the creditors sought enforcement in France, the competent authorities were disputed as to whether the orders were compatible with French international public policy due to their potentially interfering with freedom of expression.

The *Cour de Cassation* referred the question to the CJEU with a request for a preliminary ruling under Art. 267 TFEU, submitting no less than seven questions. Conveniently, the AG summarized these questions into just one, namely essentially: whether Art. 45(1) read in conjunction with Arts. 34 Nr. 1 and 45(2) Brussels I Regulation and Art. 11 CFR are to be interpreted as meaning that a Member State may refuse to enforce another Member State's judgment against a newspaper company and a journalist based on the grounds that it would lead to a manifest infringement of the freedom of expression as guaranteed by Art. 11 CFR.

Discussion

The case raises a considerable diversity of issues, ranging from the relationship between the European Convention on Human Rights (ECHR), the CFR, and the Brussels I Regulation, to public policy, and the prohibition of *révision au fond*. I will focus on whether and if so, under what circumstances, a breach of freedom of expression under Art. 11 CFR may lead to a public policy violation in the enforcing state if damages against a newspaper company and a journalist are sought.

Due to the Regulation's objective to enable free circulation of judgments, recognition and enforcement can only be refused based on limited grounds – public policy being one of them. Against this high standard (see as held recently in C-590/21 *Charles Taylor Adjusting*, ECLI:EU:C:2023:633 para. 32), AG *Szpunar* submits first (while slightly circular in reasoning) that in light of the importance

of the press in a democracy, the freedom of the press as guaranteed by Art. 11 CFR constitutes a fundamental principle in the EU legal order worthy of protection by way of public policy (AG Opinion, para. 113). The AG rests this conclusion on the methodological observation that Art. 11(2)CFR covers the freedom and plurality of the press to the same extent as Art. 10 ECHR (ECtHR, Appl. No. 38433/09 – *Centro Europa and Di Stefano/Italy*, para. 129).

Under the principle of mutual trust, the Regulation contains a prohibition of *révision au fond*, Art. 45(2) Brussels I Regulation, i.e., prevents the enforcing court from reviewing the decision as to its substance. Since the assessment of balancing the interests between the enforcement creditors and the enforcement debtors had already been carried out by the Spanish court, the AG argues that the balancing required in terms of public policy is limited to the freedom of the press against the interest in enforcing the judgment.

Since the Spanish court had ordered the defendants to pay a sum for damages it deemed to be *compensatory* in nature, in light of Art. 45(2) Brussels I Regulation, the enforcing court could not come to the opposing view that the damages were in fact *punitive*. With respect to punitive damages, the law on enforcement is more permitting in that non-compensatory damages may potentially be at variance, in particular, with the legal order of continental states (*cf.* Recital 32 of the Rome II Regulation). In a laudable overview of current trends in conflict of laws, taking into account Art. 10(1) of the 2019 Hague Judgments Convention, the Résolution de L'Institut de Droit International (IDI) on infringements of personality rights via the internet (which refers to the Judgments Convention), and the case law of the CJEU and the ECtHR (AG Opinion, paras. 142-158), AG *Szpunar* concludes that, while generally bound by the compensatory nature these damages are deemed to have, the enforcing court may only resort to public policy as regards compensatory damages in exceptional cases if further reasons in the public policy of the enforcing Member State so require.

The crux of this case lies in the fact that the damages in question could potentially have a deterring effect on the defendants and ultimately prevent them from investigating or reporting on an issue of public interest, thus hindering them from carrying out their essential work in a functioning democracy. Yet, while frequently referred to by scholars, the CJEU (see e.g., in C-590/21 *Charles Taylor Adjusting*, ECLI:EU:C:2023:633 para. 27), and e.g., in the preparatory work for the Anti-SLAPP Directive (see the explanatory memorandum, COM(2022) 177

final; see also Recital 11 of the Anti-SLAPP Recommendation, C(2022) 2428 final), it is unclear what a deterring effect actually consists of. Indeed, the terms "deterring effect" and "chilling effect" have been used interchangeably (AG Opinion, para. 163-166). In order to arrive at a more tangible definition, the AG makes use of the ECtHR's case law on the deterring effect in relation to a topic of public interest. In doing so, the deterring effect is convincingly characterized both by its *direct effect* on the defendant newspaper company and the journalist, and the *indirect effect* on the freedom of information on society in the enforcing state as a whole (AG Opinion, para. 170). Furthermore, in the opinion of the AG it suffices if the enforcement is likely to have a deterring effect on press freedom in the enforcing Member State (AG Opinion, para. 170: "*susceptible d'engendrer un effet dissuasif*").

As to the appropriateness of the amount of damages which could lead to a manifest breach of the freedom of the press, there is a need to differentiate: The newspaper company would be subject to a severe (and therefore disproportionate) deterring effect, if the amount of damages could jeopardize its economic basis. For natural persons like the journalist, damages would be disproportionate if the person would have to labor for years based on his or her or an average salary in order to pay the damages in full. It is convincing that the AG referred to the ECtHR's case law and therefore applied a gradual assessment of the proportionality, depending on the financial circumstances of the company or the natural person. As a result, in case of a thus defined deterring effect on both the defendants and other media outlets, enforcing the decision would be at variance with public policy and the enforcing state would have to refuse enforcement in light of the manifest breach of Art. 11 CFR (AG Opinion, para. 191).

Conclusion

The case will bring more clarity on public policy in relation to freedom of expression and the press. It is worth highlighting that the AG relies heavily on principles as established by the ECtHR. This exhibits a desirable level of cooperation between the courts, while showing sufficient deference to the ECtHR's competence when needed (see e.g., AG Opinion, para. 173). These joint efforts to elaborate on criteria such as "public participation" or issues of "public interest" – which will soon become more relevant if the Anti-SLAPP Directive employs these terms –, will help bring legal certainty when interpreting these

(otherwise partially ambiguous) terms. It remains to be seen whether the CJEU will adopt the AG's position. This is recommended in view of the deterrent effect of the claims for damages in dispute – not only on the defendants, but society at large.

Book review: Research Handbook on International Abortion Law (Cheltenham: Edward Elgar Publishing, 2023)

RESEARCH HANDBOOK ON International Abortion Law

Edited by
Mary Ziegler

RESEARCH HANDBOOKS IN LAW AND SOCIETY

Written by Mayela Celis

Undoubtedly, Abortion is a hot topic. It is discussed in the news media and is the subject of heated political debate. Indeed, just when one thinks the matter is settled, it comes up again. In 2023, Elgar published the book entitled "**Research Handbook on International Abortion Law**", ed. Mary Ziegler (Cheltenham: Edward Elgar Publishing Limited, 2023). For more information, click here. Although under a somewhat misleading name as it refers to *international* abortion law, this book provides a wonderful comparative overview of national abortion laws as regulated by States from all the four corners of the world and internal practices, as well as an analysis of human rights law.

This book does not deal with the conflict of laws that may arise under this topic. For a more detailed discussion, please refer to the post Singer on Conflict of Abortion Laws (in the U.S.) published on the blog of the European Association of Private International Law.

In this book review, I will briefly summarise 6 parts of this book (excluding the introduction) and will provide my views at the end.

This book is divided into 7 parts:

Part I – Introduction

Part II – Histories of liberalization

Part III – The promise and limits of decriminalization

Part IV – Abortion in popular politics

Part V – Movements against abortion

Part VI – Race, sex and religion

Part VII – The role of international human rights

Part II – Histories of Liberalization

Part II begins with a historical journey of the abortion reform in Sweden in the

1930s and 1940s. It highlights the limited legalization of abortion in Sweden in 1938 and the revised abortion law in 1946 introducing a "socialmedical" indication. In particular, it underscores how the voices of women were absent from the process.

It then moves on to a comparative study of the history of abortion in the USA and Canada from 1800 to 1970, that is before Roe (USA) and Morgentaler (Canada). It analyses the distinct approaches of Canada and the USA when dealing with abortion (legislative vs. court-based). Furthermore, it provides a very interesting historical account on how the right of abortion came about in both countries – it sets the stage for Roe v. Wade (pp. 50-52).

Finally, Part II examines the situation in South Africa by calling it "unfinished business". In South Africa, Abortion is a right codified in law: The Choice on Termination of Pregnancy Act 92 of 1996. However, this article argues that the legislative response is not enough. Factors such as lack of enough health facilities that perform abortions, gender inequality etc. are an obstacle to making safe abortion a reality.

Part III – The promise and limits of decriminalization

This Part analyses several laws regarding abortion. First, it explores Malawi's 160-year-old law that criminalises abortion based on a UK law, as well as the failed tentative attempt to adopt a new law in 2020. Interestingly, this article analyses CEDAW resolutions against the UK, which promptly complied with the resolution (pp. 92-93).

Secondly, it studies the recently adopted law in Thailand on 7 February 2021 that makes abortion available up to 12 weeks' gestation period. However, this article criticises that the law creates a loophole as the abortion must be performed by a physician or a registered medical facility and in compliance with the law, greatly medicalizing abortion.

Finally, this Part examines Australian laws and policy over the past 20 years and while acknowledging the significant advances in reproductive rights, it notes that a number of barriers to abortion still remain. This chapter is better read in conjunction with Chapter 10, also about Australia.

Part IV – Abortion in popular politics

This Part begins with an excellent comparative public policy study between France and the United States. In particular, it discusses the weaknesses of Roe v. Wade, underlining the role and analysis of the late justice Ruth Bader Ginsburg. It also puts into context the superiority of the French approach regarding abortion, which is proven with the reversal of Roe.

It then analyses abortion law in China, a State that has the most lenient abortion policies in the world. It discusses the Chinese one-child policy, which then changed to two and even three children-policy, as well as sex-selective abortions.

Subsequently, it recounts how South Australia became the last Australian jurisdiction to modernise its abortion laws and underlines the fact that laws in Australian jurisdictions on this topic are uneven and no two laws are the same.

Finally, it examines abortion history in Israel noting that apart from health reasons, abortions on no specific grounds are mainly intended for out-of-wedlock pregnancies. As a result, abortion is restricted to married women unless they claim adultery, a ground that must be reviewed by a Committee. Apparently, this leads married women to lie to get an abortion and go through the shameful process of getting approval by a Committee.

Part V – Movements against abortion

This Part begins with abortion politics in Brazil and the backlash that occurred with the government of former president Bolsonaro who, as is well known, is against abortion. It recounts a case where a priest filed an habeas corpus in favour of a foetus who had a severe birth defect. Although the case arrived at the Federal Supreme Court, it was not decided as the child died 7 minutes after being born (p. 232).

Secondly, a history scholar recounts the pro-life movement across continents and analyses what drives them (*i.e.* gender and religion).

Finally, it deals with abortion law in Poland and Hungary and the impact of illiberal courts. In particular, it discusses the trends against abortion and goes on to explain an interesting concept of “illiberal constitutionalism”. The authors argue that they do not see Poland and Hungary as authoritarian systems but as illiberal States, an undoubtedly interesting concept.

Part VI – Race, sex and religion

This Part begins examining the sex-selective abortions in India. In particular, the authors recommend an equality-based approach instead of anti-discriminatory approach in order to avoid recognising personhood to the foetus.

It then continues with an analysis of abortion law in the Arab world. The authors note that there is scant but emerging literature and that abortion laws in this region are – unsurprisingly – punitive or very restrictive. Interestingly, the position of Tunisia differs from other Arab States.

Finally, it discusses the struggles in Ecuador where a decision of the constitutional court of 2021 decriminalising abortion in cases of rape. It declared unconstitutional an article of the Ecuadorian Criminal Code, and in 2022 the legislature approved a bill based on this ruling. It also refers to teenage pregnancy and violence.

Part VII – The role of international human rights

For those interested in international human rights, this will be the most fascinating Part of the book. Part VII calls for the decriminalization of abortion in *all circumstances* and it supports this argument by making reference to several human rights documents such as those issued by the Human Rights Committee (in particular, General Comment No 36 – Article 6: Right to life) and the Committee on the Elimination of Discrimination against Women (referring to a myriad of general comments and concluding observations).

Subsequently, this Part challenges the classification of European abortion law as *fairly liberal* and provides some convincing arguments (including the setbacks in Poland in this regard and other procedural or legal barriers to access abortion in more liberal States) and some surprising facts such as the practice in the Netherlands (see footnote 60). The authors -fortunately- dared to say that this chapter is drafted from a feminist perspective as opposed to the current "male norm" in legal doctrinal scholarship.

Finally, this Part explains the history of abortion laws including the fascinating recent developments in Argentina and Ireland (referred to as "small island"!) and the influence (or the lack thereof) of international human rights law. In particular, it makes reference to the Argentinian Law 27,610 of 2020 (now unfortunately in

peril with the new government) and the repealing by referendum of the 8th Amendment in Ireland in 2018.

Below are a few personal thoughts and conclusions that particularly struck me from the book:

Starting from the beginning: the title of the book and the definitions.

In my view, and as I previously mentioned, the title of the book is somewhat misleading. Strictly speaking, there is no such thing as "international" abortion law but rather abortion prompts a discussion of international human rights, such as women's rights and the right to life, and whether or not national laws are compliant with these rights or are coherent within their own national legal framework. This is in contrast to international child abduction / adoption laws where international treaties regulate those very topics.

While perhaps counterintuitive, the definition of a "woman" has been controversial; see for example the Australian versus the Thai approaches. The Australian approach deals with gender identification and the fact that persons who do not identify as a woman can become pregnant (p. 124, footnote 1). While the Thai approach defines a woman as those capable of bearing children (p. 112). Needless to say, the definition of a woman is essential when legislating on abortion and unavoidably reflects the cultural and political complexities of a particular society. A brief reference is made to men and gender non-conforming people and their access to abortion (p. 374, footnote 2).

A surprising fact is the pervasive sex-selective abortion in some countries (sadly against female foetuses), such as India and China, and which arguments are invoked by scholars to avoid them, without falling into the "trap" of recognising personhood to the foetus.

More importantly, this book shows that the abortion discussion is much more than the polarised "pro-life" and "pro-choice" movements. The history of abortion is complicated, full of intricacies. And what is frustrating to some, this area is rapidly evolving sometimes at the whim of political parties.

Most authors seem to agree that a legislative approach to abortion is more

recommended than a court-based approach. Indeed, there is a preference for democratically elected lawmakers when it comes to dealing with abortion. This is evident from the recent setbacks that occurred in the USA.

Having said that, those expecting an in-depth analysis of the landmark US decision Dobbs v. Jackson Women's Health Organization 597 U.S. 215 (2022), which overturned Roe v. Wade, will be disappointed (only referred to very briefly in the introduction and Chapters 8, 11 and 13). Instead, however, you will be able to immerse yourself into a multidisciplinary study of abortion law, including topics such as politics, sociology, constitutional law, health law and policy, history, etc. In addition, you will read unexpected facts such as the role of Pierre Trudeau (former Prime Minister (PM) of Canada and father of current Canadian PM, Justin Trudeau – p. 56 *et seq.*) in abortion law in Canada or the delivering of abortion pills via drones (p. 393).

Because of all the foregoing, and whatever one's standpoint on abortion is, I fully recommend this book. But perhaps a cautionary note: people in favour of reproductive rights will be able to enjoy the book more fully.

I would like to end this book review with the words of the French writer and philosopher Simone de Beauvoir, which appear in her book entitled the Second Sex and which are also included in chapter 8 (p. 159) of this book:

"*Never forget that a political, economic or religious crisis would suffice to call women's rights into question*"

Full citation:

"*Rien n'est jamais définitivement acquis. Il suffira d'une crise politique, économique ou religieuse pour que les droits des femmes soient remis en question. Votre vie durant, vous devrez rester vigilantes.*"

New Private International Law Article published in the Journal of the History of International Law

Yesterday, a new private international law open access article was published online in the *Journal of the History of International Law*. It is titled: León Castellanos-Jankiewicz, "A New History for Human Rights: Conflict of Laws as Adjacent Possibility." The abstract reads as follows:

The pivotal contributions of private international law to the conceptual emergence of international human rights law have been largely ignored. Using the idea of adjacent possibility as a theoretical metaphor, this article shows that conflict of laws analysis and technique enabled the articulation of human rights universalism. The nineteenth-century epistemic practice of private international law was a key arena where the claims of individuals were incrementally cast as being spatially independent from their state of nationality before rights universalism became mainstream. Conflict of laws was thus a vital combinatorial ingredient contributing to the dislocation of rights from territory that underwrites international human rights today.

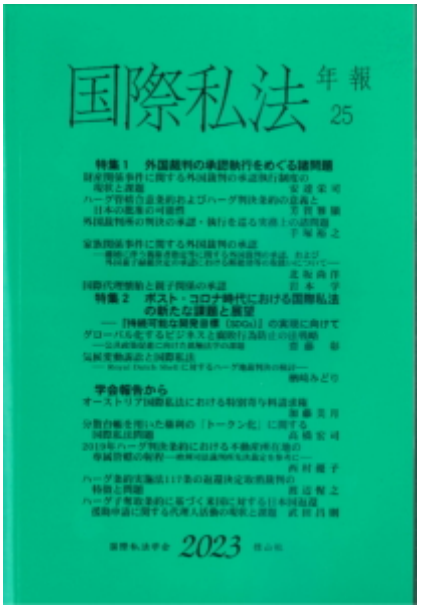
It is worth noting that the author states that in the acknowledgement that: "An earlier version of this article was awarded the inaugural David D. Caron Prize by the American Society of International Law during its 2019 Annual Meeting held in Washington D.C."

25th Volume of the Japanese Yearbook of Private International Law (2023)

The Japanese Yearbook of Private International Law (*kokusai shiho nenpo*) (hereinafter "JYPIL") is an annual publication of the Private International Law Association of Japan (*kokusai shiho Gakkai*) (hereinafter "PILAJ"). The PILAJ was founded in 1949 as an academic organization. Its main objective is to promote the study of private international law and encourage cooperation with similar academic institutions abroad, as well as coordination among private international law scholars. Since its inception, the PILAJ has organized conferences on a semi-annual basis and, since 2012, on an annual basis (see records of recent past conferences here).

Since 1999, PILAJ has been publishing its JYPIL (The contents of all volumes are available here. The contents of volumes 1 (1999) to 19 (2017) are freely available. English abstracts of the papers published in Japanese are also available from volume 18 (2016)). JYPIL is a peer-reviewed journal that presents trends in academic research in the field of private international law in Japan, with high-quality discussion of the most important issues in the field from both Japanese and comparative law perspectives.

Recently, the 25th Volume (2023) of JYPIL has been published. It contains the following papers (abstracts are condensed summaries of the English summary provided by the authors):



1. **Eiji ADACHI, Current Status and Problems of the System of the Recognition and Enforcement of foreign Judgments in Property Matters in Japan**

Abstract: This paper provides an overview of the current status and upcoming challenges in Japan regarding the recognition and enforcement of foreign judgments. It outlines trends, legislative changes, and Supreme Court precedents since 1996, with a focus on judgments involving the United States and China. Despite a trend toward increased recognition, challenges remain, particularly highlighted by the 2019 Hondaya *Judgment I, which raised questions about the service of foreign judgments on defendants consistent with Japanese public policy. The paper critiques the Supreme Court's understanding of procedural* ordre public*, suggesting that it needs to be reformulated based on insights from European debates to address unnecessary and excessive scrutiny.*

2. **Masaaki HAGA, The Significance of the Hague Convention on Choice of Court Agreement and the Hague Convention on Recognition and Enforcement of Foreign judgments in Civil and Commercial Matters and the Possibility of Japanese Ratification**

Abstract: The paper examines the potential benefits for Japan in ratifying the Convention on the Recognition and Enforcement of Foreign Judgments (2019) and

the Convention on Choice of Court Agreement (2005). It discusses various aspects of these conventions, such as mutual applicability, jurisdictional issues, recognition of foreign judgments, and reciprocity. The paper suggests positive consideration for ratification, highlighting the importance of enhancing Japan's role in international civil dispute resolution and ensuring predictability in such cases. It also explores potential solutions to reconcile differences between the conventions and Japanese law through declarations limiting recognition and enforcement.

3. **Hiroyuki TEZUKA, Practical Issues Concerning Recognition and Enforcement of Foreign Judgments**

Abstract: The paper addresses the practical challenges of recognizing and enforcing foreign judgments in Japan, examining issues such as indirect jurisdiction, exclusive choice of court agreements, and conflicts between arbitral tribunals and domestic courts. Part 2 provides practitioner insights into Japan's potential accession to the Hague Conventions. Part 3 discusses possible legislative reforms to improve the recognition and enforcement process, drawing comparisons with the revised system for arbitral awards in Japan.

4. **Naohiro KITASAKA, Recognition of Foreign Judgments Regarding Family-Related Cases – Recognition of Judgments Ancillary to the Divorce Case and the Effects of Foreign Adoption Decree**

Abstract: This paper discusses amendments to Japan's Personal Status Litigation Act, distinguishing between the recognition of foreign judgments in personal status litigation and domestic relations cases. In particular, it examines the recognition of ancillary judgments in divorce cases, concluding that they fall under article 118 of the Code of Civil Procedure. The paper also examines the effects of foreign adoption decrees, suggesting that recognition should cover the legal parent-child relationship and the termination of the pre-existing relationship, but not parental responsibility.

5. **Manabu IWAMOTO, International Surrogacy and Recognition of Legal Parentage**

Abstract: The paper discusses the legal complexities of surrogacy, particularly the challenges posed by varying legal recognition in different countries. While Japan does not recognize surrogacy locally, recent developments in Austria and Germany show recognition of children born through surrogacy abroad. The study examines European court decisions, domestic legislation, and international projects aimed at stabilizing the legal status of such children. It suggests that Japan might consider recognizing parentage through foreign decisions. The study emphasizes the importance of international cooperation to protect children and acknowledges differing views on banning surrogacy itself.

6. **Akira SAITO, Globalised Business and Anti-Corruption Legal Strategies: Challenges for Private International Law in Promoting Public Policy**

Abstract: The paper calls for a shift in private international law to address global challenges like the SDGs and 'Business and Human Rights.' Proposing a name change to conflicts law studies, the author emphasizes the need for a broader approach. Using the prevention of bribery as an example, the paper underscores challenges in coordinating legal systems and the urgency for interdisciplinary collaboration in private international law studies to meet current demands.

7. **Midori NARAZAKI, Climate Change Litigation and Private International Law: Review of the Hague District Court's Judgment against Royal Dutch Shell**

Abstract: This paper analyzes a landmark decision by the District Court of The Hague on May 26, 2021, ordering Royal Dutch Shell to reduce its greenhouse gas emissions by 45% by 2030. The decision is the first to recognize a corporate duty to mitigate climate change under tort law. The analysis outlines four key issues: the nature of climate change damages, the attribution of responsibility for policy decisions to the parent company, the application of an unwritten standard of care based on human rights principles, and the consideration of the impact of emission

permits on civil law obligations. The paper examines the decision's significance in private international law and its consistency with climate attribution science.

8. **Mitsuki KATOH, Right to Claim Special Contribution Fee (a Statutory Care Legacy) in Austrian Private International Law**

Abstract: The paper explores Japan's unique special contribution claims system introduced in 2018 under article 1050 of the Japanese Civil Code. It compares this system to the legal frameworks of other countries, particularly the German Civil Code and Austria's Pflegevermächtnis *introduced in 2015. Both Japan and Austria aim to address challenges associated with an aging population and compensating those providing long-term care for the elderly. The legal nature of* Pflegevermächtnis *is debated, with scholars questioning whether it falls under inheritance law or unjust enrichment. Understanding these distinctions is essential for interpreting the right to claim special contribution under Japanese private international law.*

9. **Koji TAKAHASHI, Conflict-of-Law Issues Pertaining to Tokenization on Distributed Ledgers**

Abstract: *This paper discusses the legal aspects of tokenization, focusing on determining the governing law for tokenized rights. It distinguishes between a token-centered and a right-centered approach and argues in favor of the latter. The right-centered approach suggests that issues related to tokenized rights should be determined by the law applicable to the represented right, making consideration of token ownership unnecessary except in specific contexts where the ownership theory is adopted. The paper highlights the importance of this approach in the evolving landscape of crypto-assets and tokenization.*

10. **Yuko NISHIMURA, The Scope of Exclusivity in Article 6 of the 2019 Hague Judgments Convention: Analysis of the "Right *in rem*" in Immovable Property in ECJ Judgments**

Abstract: This paper examines the scope of article 6 of the 2019 Hague Judgments

Convention, which will enter into force in September 2023. The Convention, which focuses on indirect jurisdiction for recognition and enforcement, prohibits the circulation of judgments outside the location of the property. The paper analyzes the potential impact in Japan, comparing article 6 with provisions in the Japanese Code of Civil Procedure. It predicts limited impact due to existing CCP provisions, but highlights potential challenges for the circulation of Japanese judgments abroad. Drawing parallels with ECJ rulings on the Brussels Regime, the analysis narrows the interpretation of article 6 and influences Japan's ratification considerations.

11. **Satoshi WATANABE, A Study on the Petition for Revocation of the Child Return Order on Article 117 of the Japanese Implementation Act of the Hague Child Abduction Convention – The Legal Nature of the Petition and Practical Guidance for its Application**

Abstract: The paper explores article 117 of the Japanese Implementation Act of the Hague Child Abduction Convention, allowing the revocation of child return orders under changed circumstances. Examining two Supreme Court decisions from 2017 and 2020, the analysis covers grounds for revocation, the child's refusal to return, and discrepancies with EU and Anglo-American Law decisions. It criticizes the domestic focus in Japanese implementation, urging better coordination and information sharing for aligning decisions with international norms.

12. **Masanori TAKEDA, Current Status and Issues of Attorney Activities regarding Applications for Assistance in Child's Return from the United States to Japan**

Abstract: The paper addresses the challenges faced by attorneys handling child abduction cases from the United States to Japan under the Child Abduction Convention. It emphasizes the importance of utilizing State Department financial assistance and highlights the difficulties of selecting U.S. attorneys with limited budgets. Despite potentially disappointing outcomes, the continued commitment of attorneys and support for petitioners is critical. The paper calls for continued financial support from the Ministry of Foreign Affairs and recognition of such

legal efforts as pro bono by Japanese bar associations.

The full English summary of the papers is now available on the PILAJ website here.

The current and past volumes of JYPIL can be ordered from the publisher's website. (Shinzansha).

Dutch Journal of PIL (NIPR) – issue 2023/4

The latest issue of the Dutch Journal on Private International Law (NIPR) has just been published

NIPR 2023 issue 4

EDITORIAL

I. Sumner, The next stops on the European international family law train / p. 569-571

Abstract
The European legislature is not yet finished with the Europeanisation of private international family law. This editorial briefly introduces two new proposals, namely the Proposal for a European Parentage Regulation and the Proposal for a European Adult Protection Regulation.

ARTICLES

B. van Houtert, Het Haags Vonnissenverdrag: een game changer in Nederland? Een rechtsvergelijkende analyse tussen het verdrag en het commune IPR / p. 573-596

Abstract
On 1 September 2023, the 2019 Hague Judgments Convention (HJC) entered into force in the Netherlands. This article examines whether the HJC can be considered as a game changer in the Netherlands. Therefore, a legal comparison has been made between the HJC and Dutch Private International Law (PIL) on the recognition and enforcement of non-EU judgments in civil and commercial matters. This article shows that the HJC can promote the recognition and enforcement of judgments rendered by non-EU countries in the Netherlands mainly because of the facultative nature of the grounds for refusal in Article 7 HJC. Furthermore, the complementary effect of Dutch PIL on the basis of Article 15 HJC facilitates recognition as some indirect grounds of jurisdiction are broader or less stringent, and some grounds are lacking in Article 5(1) HJC. Compared to the uncodified Dutch PIL, the HJC provides procedural advantages as well as legal certainty that is beneficial to cross-border trade, mobility and dispute resolution. Moreover, preserving the foreign judgment, instead of replacement by a Dutch judgment, serves to respect the sovereignty of states as well as international comity. Despite the limited scope of application, there is an added value of the HJC in the Netherlands because of its possible application by analogy in the Dutch courts, as a Supreme Court’s ruling shows. The Convention can also be an inspiration for the future codification of the Dutch PIL on the recognition

and enforcement of foreign judgments regarding civil matters. Furthermore, the application of the Convention by analogy will contribute to international legal harmony. Based on the aforementioned (potential) benefits and added value of the HJC, this article concludes that this Convention can be considered as a game changer in the Netherlands.

K.J. Krzeminski, Te goed van vertrouwen? Een kanttekening bij het advies van de Staatscommissie voor het Internationaal Privaatrecht tot herziening van artikel 431 Rv / p. 597-618

Abstract
In February 2023, the Dutch Standing Government Committee for Private International Law rendered its advice on the possible revision of Article 431 Dutch Code of Civil Proceedings (DCCP). This statutory provision concerns the recognition and enforcement of foreign court judgments in civil matters to which no enforcement treaty or EU regulation applies. While paragraph 1 of Article 431 DCCP prohibits the enforcement of such foreign court judgments absent an exequatur regime, paragraph 2 opens up the possibility for new proceedings before the Dutch courts. In such proceedings, the Dutch Courts are free to grant authority to the foreign court's substantive findings, provided that the foreign judgment meets four universal recognition requirements. The Standing Government Committee proposes to fundamentally alter the system under Article 431 DCCP, by inter alia introducing automatic recognition of all foreign court judgments in the Netherlands. In this article, the concept of and the justification for such an automatic recognition are critically reviewed.

B.P.B. Sequeira, The applicable law to business-related human rights torts under the Rome II Regulation / p. 619-640

Abstract
As the momentum for corporate liability for human rights abuses grows, and as corporations are being increasingly brought to justice for human rights harms that they have caused or contributed to in their global value chains through civil legal action based on the law of torts, access to a remedy remains challenging. Indeed, accountability and proper redress rarely occur, namely due to hurdles such as establishing the law that is applicable law to the proceedings. This article aims to analyse the conflict-of-laws rules provided for under the Rome II Regulation, which determines the applicable law to business and human rights

tort actions brought before EU Courts against European parent or lead corporations. In particular, we will focus on their solutions and impact on access to a remedy for victims of corporate human rights abuses, reflecting on the need to adapt these conflict rules or to come up with new solutions to ensure that European corporations are held liable for human rights harms taking place in their value chains in a third country territory.

CASE LAW

M.H. ten Wolde, Over de grenzen van de Europese Erfrechtverklaring. HvJ EU 9 maart 2023, ECLI:EU:C:2023:184, NIPR 2023-753 (R. J. R./Registr? centras V?) / p. 641-648

Abstract
A European Certificate of Succession issued in one Member State proves in another Member State that the person named therein as heir possesses that capacity and may exercise the rights and powers listed in the certificate. On the basis of the European Certificate of Succession, inter alia, foreign property can be registered in the name of the relevant heir. In the Lithuanian case C-354/21 R. J. R. v Registr? centras V?, the question arose whether the receiving country may impose additional requirements for such registration when there is only one heir. The Advocate General answered this question differently from the European Court of Justice. Which view is to be preferred?

SYMPOSIUM REPORT

K. de Bel, Verslag symposium 'Grootschalige (internationale) schadeclaims in het strafproces: beste praktijken en lessen uit het MH 17 proces' / p. 649-662

Abstract
On 17 November 2022, the District Court of The Hague delivered its final verdict in the criminal case against those involved in the downing of flight MH17 over Ukraine. This case was unique in many ways: because of its political and social implications, the large number of victims and its international aspects. The huge number and the international nature of the civil claims for damages exposed several practical bottlenecks and legal obstacles that arise when civil claims are joined to criminal proceedings. These obstacles and bottlenecks, which all process actors had to address, were the focus of the symposium 'Large-scale

(international) civil claims for damages in the criminal process: best practices and questions for the legislator based on the MH17 trial' that took place on 10 October 2023. A summary of the presentations and discussions is provided in this article.

Legal Accountability of Transnational Institutions: Special Issue of the King's Law Journal

Co-edited by Rishi Gulati and Philippa Webb, the Special Issue of the King's Law Journal, Volume 34, Issue 3 on "The Legal Accountability of Transnational Institutions: Past, Present and Future" is now out. The 9 articles in this Special Issue are authored by leading experts on the accountability of public international organisations (IOs), MNCs, as well as NGOs.

The Introduction is open access and discusses what may be learnt by comparing the legal accountability of IOs, MNCs and NGOs. In addition to the Introductory article by Rishi Gulati and Philippa Webb, the Special Issue consists of the following contributions. Assessing the Accountability Mechanism of Multilateral Development Banks Against Access to Justice: The Case of the World Bank (Edward Chukwuemeke Okeke); Holding International Organizations Accountable: Recent Developments in U.S. Immunities Law (David P. Stewart); Protecting Human Rights in UN Peacekeeping: Operationalising Due Diligence and Accountability (Nigel D. White); Nature and Scope of an International Organisation's Due Diligence Obligations Under International Environmental Law: A Case Study of the Caribbean Development Bank (S. Nicole Liverpool Jordan); Civil Liability Under Sustainability Due Diligence Legislation: A Quiet Revolution? (Youseph Farah, Valentine Kunuji & Avidan Kent); Accountability of NGOs: The Potential of Business and Human Rights Frameworks for NGO Due

Diligence (Rosana Garciandia); Arbitrating disputes with international organisations and some access to justice issues (August Reinisch); Transnational Procedural Guarantees – The Role of Domestic Courts (Dana Burchardt).

Colonialism and German PIL (1) – Colonial Structures in Traditional PIL

This post is the first of a series regarding Colonialism and the general structure of (German) Private International Law, based on a presentation I gave in spring 2023. See the introduction here.

As mentioned in the introduction, this series **does not intent to automatically pass judgment** on a norm or method influenced by colonialism **as inherently negative** (I emphasise this because my experience shows that the impression quickly arises). Instead, the aim is to reveal these influences and to initiate a first engagement with and awareness of this topic and to stimulate a discussion and reflection.

The first category, to be discussed today, relates to the (sometimes unconscious) implementation and later continuation of the colonial structure in PIL – now and then.

1. The Origins

a) Savigny's approach

One if not the core value of Private International Law is its neutrality and equality among legal systems. The main goal of German conflict of laws rules is to achieve "international justice" by associating legal matters with the most fitting law, independent of substantive legal values. These foundational principles are commonly attributed to Savigny, who shaped the basic structure of German

conflict of laws rules by associating legal matters with their "seat". Savigny supposedly treated all legal systems as equal and of the same value. The supposed neutrality of PIL might suggest that it is devoid of, or at least shows minimal traces of, colonialism due to its fundamental structures and values.

However, examining Savigny's "neutrality" towards potential applicable laws reveals that it is only respected from the perspective of "law" as defined by Savigny. This definition includes only legal systems that share the same "Christian" values. This, in essence, results in a devaluation of other legal systems deemed less valuable. Typically, these legal systems today would be those classified as "Western," sharing the same value system as German law.

b) Conflict of laws and internal conflicts in relation to colonial states

In determining the applicable law between colonial states and colonies, usually the rules on conflict of laws did not apply but a conflict was regarded as an internal one. German colonies, for instance, were not considered part of the German Reich, yet not treated as a separate state, but as "protectorates." Similar ambiguity existed for other colonies. This unclear legal status allowed different treatment of the colonies under conflict of laws rules, separating local laws in the colonies from the "mother system" and placing them in a hierarchical inferiority. The indigenous population was "allowed" to handle internal, especially family-related disputes through their pre-colonial customs. However, they were not allowed to determine on their own what constituted part of this legal framework or in which cases which rule applied. Colonial authorities decided which cultural elements of various groups seemed fitting as applicable. Furthermore, inter-local conflict of laws rules often only applied local laws when they did not conflict with the colonial legal system or its core values and did not involve members of the "mother system". Thus, the legal system of the colonizers took precedence in cases of doubt, and the affected individuals from these local legal orders were not involved in the decisions. Consequently, the colonial authorities decided what was classified as "local law," its scope and application, favoring their own legal system in cases of uncertainty. The decision regarding which law should prevail was unilaterally made by the colonial authorities.

c) The concept of "state"

Furthemore, an indirect colonial influence on the concept of state within conflict

laws is notable. Non-state law, particularly religious or tribal law, was not considered law, neglecting the various communities or identities of individuals in the colonies. Norms within the framework of Savigny's conflict laws referred exclusively to state law, assuming a state based on Western understanding. This reference indirectly affirmed the concept of the state attributed to Jellinek and the often arbitrarily drawn colonial state boundaries through these conflict norms. Simultaneously, by referring exclusively to state law, it marginalized or ignored other forms of legal orders since they did not represent "law" according to the references. Again, this particularly affected religious or indigenous law.

d) Citizenship as connecting factor

Citizenship serves as a core connecting point, especially for personal matters in Continental European PIL, including Germany (even though it is not based in Savigny's PIL thinking but is usually attributed to Mancini or the reception of his doctrines). This connection to citizenship has roots in colonial thinking: Granting citizenship has historically expressed and continues to express exclusive affiliations that consciously exclude others. In cross-border private law relations, PIL perpetuates this citizenship policy, reserving certain rules of German law for German citizens.

This method of connecting legal matters to citizenship had implications in the determination of applicable law in colonial contexts. For instance, in the German Reich colonies, distinctions were made between *Reichsdeutsche* (Germans from the Reich), European foreigners (foreigners but non-natives), and natives. The latter had no citizenship, thus could not fall under a conflict of laws rule referring to citizenship. Similar categorizations and unequal treatment between French citizens, indigenous colony residents, and European foreigners living in colonies were present in French colonial law concerning inter-local private law and naturalization law. The differentiation's backdrop was the idea that natives were not entitled to French citizen rights. The (non-)granting of citizenship was generally associated with the notion of preventing equal treatment with supposedly inferior cultures or denying the legal guarantees of the colonial state to natives. Comparable exclusionary thoughts existed in "white" British colonies (Canada, New Zealand, etc.) that introduced their own citizenship, consciously isolating themselves from other (non-white) British colonies (e.g., India). The connecting factor citizenship was therefore also intented to exclude.

Additionally, in common law, domicile serves as a connection point with similar intent: The establishment of a domicile was intentionally tied to the requirement of the intent to remain and not to want to return to the original domicile (*animus manendi et non revertendi*). This was to prevent individuals of English descent, residing in colonial territories for long periods, from solely accessing English law while also enabling others to access this law.

2. Current German PIL Rules

Wondering whether the outlined principles under traditional PIL persist until today, it's now generally accepted that there's fundamental neutrality towards all legal systems without formal differentiation based on Christian or "Western" values. Therefore, Savigny's approach of solely recognizing Christian or "Western" legal systems is outdated. Although, in court rhetoric, some expressions hint that certain legal systems are considered unequal or "alien" to German law, particularly in cases involving non-Christian religious law, like Islamic legal institutes. Moreover, in migration law cases where PIL relates to preliminary issues, a stricter standard seems to be applied to individuals from "Global South" countries compared to those from the "Global North". These are trends and nuances that luckily occasionally, not systematically, appear.

In modern German PIL, traces of colonialism persist methodologically in the insistence on referring to a state legal order while deciding when such an order exists. This presents challenges concerning the law of states not recognized under international law. While the prevailing opinion emphasizes that recognition by international law is not decisive, certain parts of legal practice and literature still assume this recognition as a prerequisite. Moreover, the status of non-state law, especially religious or tribal law, remains weak. Whether such laws qualify as "law" according to conflict of laws rules generally relies on territorially bounded jurisdictions and the corresponding state according to a European-Western understanding of state law. Non-state law becomes relevant within German PIL only when referred to by the state legal order, e.g. by interlocal or interpersonal conflict laws. Similarly, the acknowledgment of foreign decisions and the recognition of foreign institutions as "courts" under German International Procedural Law depend on their incorporation within the (foreign) state's legal framework.

Additionally, the use of citizenship as a basis in PIL has shifted away from the

exclusion of individuals from German rights. Nevertheless, the question of who can obtain citizenship remains politically contentious. Citizenship continues to serve as a core basis for many classical conflict of laws rules (such as capacity, names, celebration of a marriage) and is gradually being replaced by habitual residence.

3. Room for Improvement or Decolonialisation – the Treatment of Local Law

The reference to state law, which excludes other non-state law unless there is interlocal or interpersonal referral, unconsciously continues colonial thinking. It can be seen in the tradition of colonial rulers and post-colonialism, overriding indigenous law in favor of one's own legal order. However, abandoning the basic structure of conflict law that refers to a state legal system seems impractical. One could consider introducing a separate (German) conflict norm for tribal or religious law, thus bypassing the reference to the state legal order. However, if interlocal or interpersonal referral is abandoned within a state legal system, and local law is applied based on domestic principles, German PIL ignores the foreign state's decision to which legal order reference is made, applying local law only under specific circumstances or not at all. This approach would also be colonialist, as German conflict law would then presume to know better than the state how to apply its internal law.

An exception may apply if the state deciding against a referral to local law is domestically or internationally obligated to apply this law and fails to fulfill this obligation adequately.

Some national constitutions recognize and protect indiginous rights, e.g. Canada, as a North American country, South Africa and Kenya, as African countries, just to name a few. In Nigeria, the inheritance rights of the firstborn son of the Igiogbe tradition are qualified as internationally mandatory norms and are therefore always applied (critically assessed here).

An international legal basis could be the ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries from 1989. The convention includes provisions to consider and respect the customary rights of indigenous peoples (Article 8). E.g. the Inter-American Court of Human Rights, in her evolutionary interpretation of the Inter-American Human Rights Convention, elevated tribal

and customary law partly to human rights within the scope of the Inter-American Human Rights Convention (e.g. Yakye Axa vs. Paraguay, 17.6.2005; Mayagna (Sumo) Awas Tingni Community v. Nicaragua, 31.8.2001; Sawhoyamaxa Indigenous Community v. Paraguay, 29.3.2006; Xucuru Indigenous People and its members v. Brasil, 5.2.2018; Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, 24.11.2020; Moiwana Community v. Suriname, 15.6.2005). See also this article by Ochoa.

Also, the African Commission on Human and Peoples' Rights, interpreting the African Charter on Human and Peoples' Rights, has protected indigenous law through the charter (Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya (Endorois), 4.2.2014 – 276 / 2003). However, it is disputed whether the commission's interpretation results are binding (see a discussion here).

Thus, although there may be a state obligation to respect local rights, there may have been a failure on the national side to refer to this right. For example, in judgments of the Inter-American Court of Human Rights, it can be observed that implementation into national law is only partially carried out. Also, regarding the interpretation results by the African Commission on Human and Peoples' Rights, it has been shown that states are not always willing to implement recommendations despite official commitment to it. In these cases, while the state has the obligation to apply non-state law, the referral needed by conflict law is missing. In this case, indigenous law should not be ignored by a German court.

As a result, the basic technique of PIL, referring to state law, should remain untouched. Nevertheless, courts might include foreign local law at least when the state in whose territory the affected community lives is internationally or constitutionally obligated to respect indigenous or religious law, or has obligated itself to do so. Methodologically, recourse can be made to giving "effect" or "consideration" to foreign law in substantive legal application, known particularly in institutes such as foreign mandatory law (Art. 9 para 3 Rome I or Art. 17 Rome II) but also in substitution, transposition, or adaptation. German courts usually give foreign non-applicable law effect within the application of substantive law, such as the interpretation of norms, especially general clauses (good faithc, bonos mores etc.).

A court typically has discretion on whether to "consider" non applicable foreign

law, as it is not a classic application of law. Therefore, the discretion to give effect to non-state foreign law should only be used exceptionally when the state law to which it belongs does not apply it, although there is a state obligation to apply it.

Guiding the discretion should be (in my opinion):

- whether the application of non-state law is in the party's interest (1),
- whether there is a foreign state obligation to give effect to this non-state law (2),
- the role of non-state law in the home state (3),
- and whether there is an international obligation on the German side to integrate or not integrate the law, perhaps because it may violate fundamental values of German law (4).

Particularly in the third point, it would be desirable for more anthropological-legal comparative work to be done so that integration into legal practice can work without leading to ruptures with the state from whose territory the law originally comes.

This has been a long post, the next three will be shorter. As writen in the introduction, these are some initial thoughts and I welcome (constructive) feedback from the whole international community!

Colonialism and German Private International Law – Introduction to a Post Series

In March 2023 I gave a talk at the conference of the German Society of International Law. The conference had the title "Colonial Continuities in International Law" and my presentation focused on "Continuation of colonialism in contemporary international law? – Foundations, structures, methods from the

perspective of PIL“. Thus, I was exploring those foundations, basic structures, and fundamental methods of mainly German Private International Law (PIL) and whether and how they have been influenced by colonialism.

Even though the perspective is mainly one of German PIL one, some of my thoughts might be of interest for a more global community. Therefore, in some upcoming posts I will share some of my findings that will also be published in the book to the conference (in German).

My general – not surprising – finding ist that the existing PIL, much like the broader German legal system, has been impacted by colonialism. T**he aim is to reveal these influences without automatically pass judgment on a norm or method influenced by colonialism as inherently negative**. The primary goal is to initiate an first engagement with and awareness of this topic and to stimulate a discussion and reflection.

1. State of the Discussion

“Colonialism“ I will understand broadly, referring not only to colonialism in a strict sense, but also including postcolonialism and forms of neocolonialism. Until now, the discussion regarding colonialism, coloniality, or decolonialism within German PIL remains limited. Initial discussions tend to arise within specific areas of PIL, such as migration law, cultural heritage protection law, investment protection law, occasional considerations of supply chain responsibility/human rights protection, and climate change litigation. The broader discussion around fundamental questions and structures within German PIL remains relatively sparse. Initiatives such as the project by the Max Planck Institute for Comparative and International Private Law in Hamburg drive the discourse on “decolonial comparative law” which is not the same but in practise overlapping with the PIL discourse.

2. Categories of Colonialism in the Upcoming Posts

The attempts to systematize the colonial imprints lead to different categories.

- The **first** relates to the (sometimes unconscious) implementation and later continuation of the colonial structure in PIL – now and then.
- Another **second** category deals with structures and values inherent in German or European law, implicitly resonating within the PIL and, thus,

expanding those values to people and cases from other parts of the world.
- The **third** category reveals an imagined hierarchy between the laws of the Global North and Global South.
- Finally, **fourth,** conflict of laws rules may lead to or at least contribute to exploiting actual North-South power asymmetries.

3. Intention of the Series

In the next four posts, I would like to present some thoughts on colonial imprints I found in German PIL and sometimes EU PIL. I will not focus on other country's PIL rules, but I am happy to learn about other systems and similar or very different approaches.

As aforementioned, I only want to **start a discussion** and reveal some forms of colonialism in German PIL. I do not want to abolish all norms that are influenced by colonialism or judge them as inherently "bad". Colonialism might only be one of many influences that shape the rule. Furthermore, I believe we are still at the very very beginning of the debate. Therefore, I **welcome any (objective and substantive) discussion** about the topic. I especially welcome comments, experiences and ideas from other countries and **particularly from countries that are former colonies.**

2nd Postgraduate Law Conference of the Centre for Private International Law 6 May 2024

The Centre for Private International Law (CPIL) of the University of Aberdeen is pleased to announce that it is now accepting is now accepting submissions for the 2nd Postgraduate Law Conference of the Centre for Private International Law which will take place online on 6 May 2024.

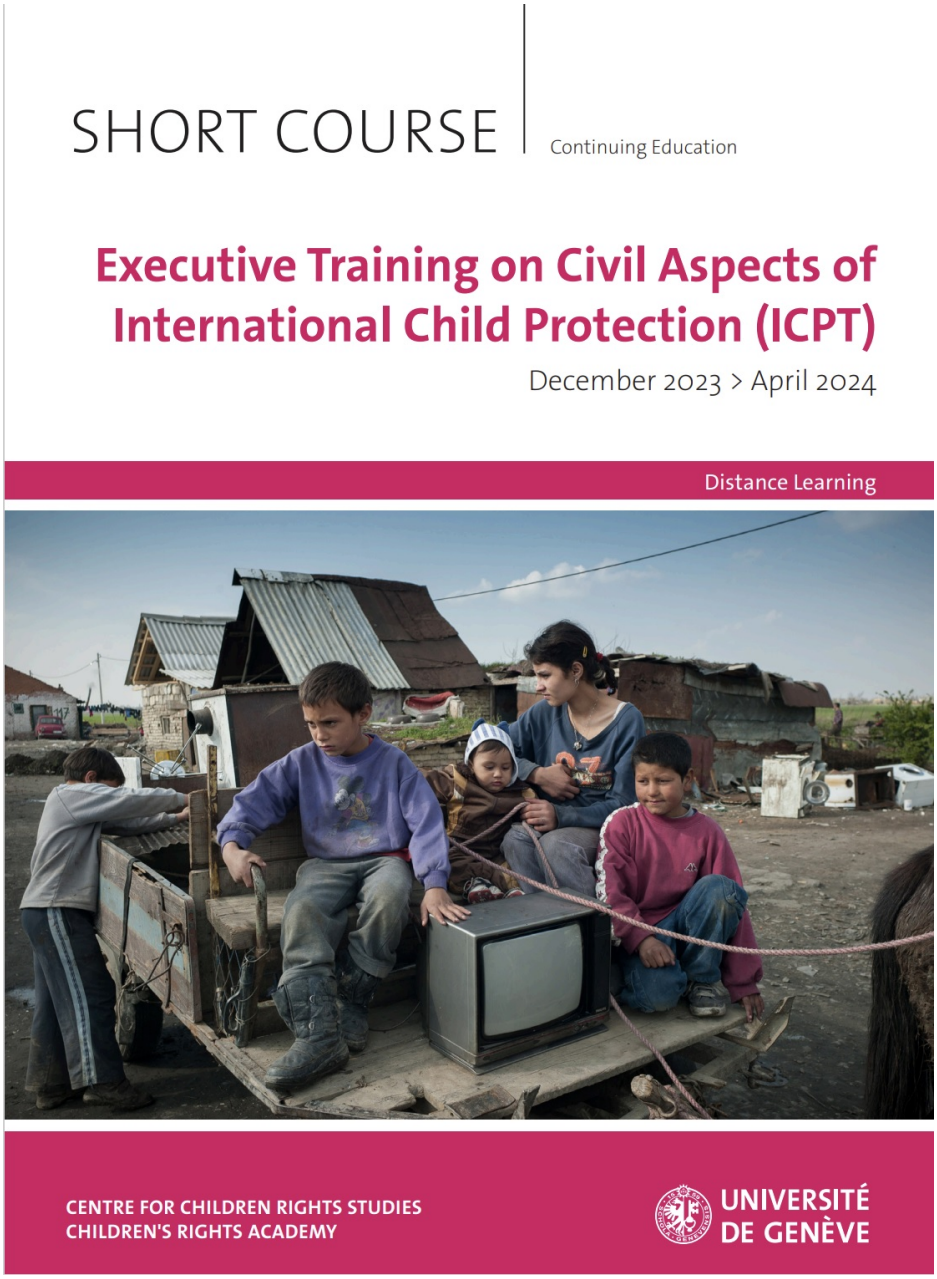
The Conference aims to provide young scholars with the opportunity to present

their research before panels with relevant expertise and receive valuable feedback for further development of their work. It will include panels on Private International Law aspects of International Family Law, International Civil and Commercial Law, AI and Cross-Border Legal Issues, Human Rights. You can read more about below.

The Centre welcomes submissions by current postgraduate law students (LLM, PhD) and recent LLM or PhD graduates who have not yet undertaken postdoctoral studies. Each panel will feature up to 4 panellists, and each panel will be allocated a combined total of 1 hour 20 minutes of presentation time and 40 minutes of Q&A.

The **deadline for submissions is 29 February 2024**. If interested in submitting an abstract, please complete the application form.

University of Geneva: Executive Training on Civil Aspects of International Child Protection (ICPT) – from December 2023 to April 2024



The Children's Rights Academy of the University of Geneva is organising an online **Executive Training on Civil Aspects of International Child Protection (ICPT)** from December 2023 to April 2024. For more information, click here.

The training is divided into four modules and is being coordinated by Dr. Vito Bumbaca. There is a registration fee (for the full programme or per module). Click here to register (registration is possible until **18 January 2024**).

See below for a description of the modules.

Module 1 – 07 December 2023, 14:15 – 18:45 (online learning)

Children's Individual Rights in Transnational Parental Relationships

This module pertains to the intersection of international child protection and children's rights. Children in need of protection hold individual rights that are impacted by parental relationships, behaviours and conduct. Such rights are enshrined in universal, regional and national legal instruments, such as the UN Convention on the Rights of the Child, the European Convention on Human Rights and national Constitutions at first. Inherently, the UN Committee on the Rights of the Child and the European Court of Human Rights, respectively as quasi-judicial and judicial bodies, have in many occasions pinpointed the undeniable legal consequences, arising from parental relationships and litigation in national and transnational contexts, on the protection of children and their fundamental rights. Particularly, but not exhaustively, civil abduction, custody, adoption, surrogacy, family reunification, migration status, children's properties have been crucial in the courts view for the determination of children as individual rights holders and subject to international protection. Lecturers will present selected topics of current research and practice, focusing on the above intersection. Discussions will follow after each intervention.

Module 2 – 18 January 2024, 14:15 – 18:45 (online learning)

International and Comparative Family Law

This module concerns the implementation of private international law rules governing international child protection, known as 'International Family Law'. The latter includes international conventions and regional instruments typically determining jurisdiction, applicable law, recognition, cooperation among governmental and other bodies. As a comparative assessment, national laws, known as domestic rules, and national case law are part of this module. Parental relationships and litigation are the subject of multiple legal instruments, of national, regional and international nature, whose knowledge and interplay are fundamental for the timely transnational enforcement of child protection policies and measures. Also, alternative dispute resolution methods (i.e. Arbitration, Mediation) are referred to in this module as a way of preventing parental litigation in court. Lecturers will present selected topics of current research and practice, raising awareness about the above implementation and related issues, with the support of actual case law and law clinic. Discussions will follow after each intervention.

Module 3 – 29 February 2024, 14:15 – 17:45 (online learning)

Vulnerable Migration

This module deals with the protection of unaccompanied minors, as well as with separated and displaced children seeking asylum. The context is the one of transnational movements whereby various vulnerable scenarios would be encountered, such as guardianship, legal representation, family reunification, civil abduction, child custody, recognition of child and family statuses. These are some of the legal situations that are envisaged by parallel family law and migration law procedures involving interconnected issues of vulnerable migration and child protection for civil purposes. Lecturers will present selected topics of current research and practice, handling this specific context in which transversal knowledge of international family law and migration law is required. Discussions will follow after each intervention.

Module 4 – 18 April 2024, 14:15 – 17:45 (online learning)

Practice of Child Protection Stakeholders: Inter-agency Co-operation in Context

This module accentuates both the legislative and practical course of transnational governance of child protection policies and civil measures, addressing the question of "who does what"? What are the potential fora in which international child protection policies are discussed, approved and enforced? Practically, when a child is a victim of international civil abduction, what actors may be involved and how do they cooperate? This module aims to clarify and assess the role of all actors possibly involved in legislating and implementing child protection civil procedures, also with respect to vulnerable migration and asylum contexts, notably civil abduction, parental responsibility, maintenance, and alternative care. Lecturers will present selected topics of current research and practice from the perspective of the stakeholders involved in international child protection policies and practices. Discussions will follow after each intervention.

Speakers

Dr. Roberta Ruggiero, CIDE, CRA, UNIGE

Prof. Olga Khazova, UNCRC (former member)

Prof. Karl Hanson, CIDE, UNIGE

Prof. Gian Paolo Romano, Law Faculty, INPRI, UNIGE,

Mr Philippe Lortie, Family Law Division, Hague Conference on Private International Law

Mr Michael Wilderspin, DG Just, European Commission

Dr. Ilaria Pretelli, Swiss Institute of Comparative Law

Prof. Vincent Chetail, International Law Department, Global Migration Centre, IHEID

Irina Todorova, Noelle Darbellay, Core Protection Unit, International Organization for Migration

Dr. Mayela Celis Aguilar, University of Maastricht

Prof. Jason Harts, Professor of Humanitarianism & Development at the University of Bath

Dr. Nicolas Nord, International Commission on Civil Status (ICCS/CIEC)

Joëlle Schickel, Federal Office of Justice, Swiss Central Authority

Jean Ayoub, International Social Service General Secretariat

A brochure with detailed information is available here.