

Second Issue of 2015's Rivista di diritto internazionale privato e processuale

(I am grateful to Prof. Francesca Villata – University of Milan – for the following presentation of the latest issue of the RDIPP)

✖ The second issue of 2015 of the Rivista di diritto internazionale privato e processuale (RDIPP, published by CEDAM) was just released. It features one article and two comments.

In her article *Costanza Honorati*, Professor at the University of Milano-Bicocca, examines the issue of child abduction under the Brussels IIa Regulation in “**La prassi italiana sul ritorno del minore sottratto ai sensi dell’art. 11 par. 8 del regolamento Bruxelles II-bis**” (Italian Practice on the Return of the Abducted Child Pursuant to Art. 11(8) of the Brussels IIa Regulation; in Italian).

The vast majority of return applications filed with the Italian Central Authority under the 1980 Hague Convention on the civil aspects of international child abduction concern children who are habitually resident in Italy and have been wrongfully removed to a foreign State (so-called “outgoing cases”). Therefore, it is not surprising that some of the foreign decisions refusing to return a child on the grounds of Article 13(1)b of the Convention were challenged before Italian courts with the special procedure provided under Article 11(8) of the Brussels IIa Regulation. Indeed, Italy stands out as one of the very few EU States that provide some case law on Article 11(8) of the Brussels IIa Regulation. However, it does come as a surprise that in most of these cases Italian courts, after a thorough analysis of the facts, including what was produced in the foreign proceedings, have confirmed the foreign non-return order and dismissed the request for return. In fact, only in a small number of cases the court has found the foreign decision to be ill-founded and has adopted a «trumping» return order. The present article aims at reviewing and analysing both groups of decisions, showing, on one side, how the time factor is often crucial and rightly kept into consideration by the court of habitual residence when deciding for non-return. On the other side, time is of the essence also in cases where the

court of habitual residence orders for the children to be returned. When such order is not complied with or enforced in a very short time, it is here assumed that best interest of the child would call for a subsequent review of the decision rendered by the court of the place of the child's habitual residence.

In addition to the foregoing, the following comments are also featured:

*Elisabetta Bergamini, Associate Professor at the University of Udine, discusses status of children in a private international law perspective in “**Problemi di diritto internazionale privato collegati alla riforma dello status di figlio e questioni aperte**” (Questions of Private International Law Related to the Status of Children and Open Issues; in Italian).*

This paper examines the Italian law reforming the status of children (Law No 219/2012), which finally abolished all discriminations between children born in and out of wedlock, and the consequences such abolishment entails at a private international law level. The first part of the paper analyses the reform, its principles and the problems related to the definition of the rules on the unity of the status of the child as “overriding mandatory provisions”. The second part tackles some of the most relevant unsolved problems related to children status, such as the establishment of the parental link in case of medically assisted reproduction, the regime applicable to surrogate motherhood, and the legal vacuums affecting children of same-sex couples. In this regard, particular attention is paid to the Italian case-law, as well as its relationship with the ECtHR and the EU case-law, and to the possible solutions to the non-recognition of the personal status acquired in a foreign country.

*Silvia Marino, Researcher at the University of Insubria, tackles choice-of-court agreements in parental responsibility matters in “**La portata della proroga del foro nelle controversie sulla responsabilità genitoriale**” (The Scope of Choice-of-Court Agreements in Disputes over Parental Responsibility; in Italian).*

This article examines two recent judgments of the European Court of Justice concerning choice of forum in matters related to parental responsibility. These decisions offer the opportunity to reflect on the pre-conditions for the validity of the choice of forum clause, i.e. the agreement, the proximity, the interest of the child and the connection with another proceeding, and the relationships

between different bases of jurisdiction (habitual residence and forum non conveniens). Analysing the peculiar facts of the cases and the clarifications provided by the ECJ, the article tackles those pre-conditions from a practical and concrete standpoint with a view to understanding when and how the different bases of jurisdiction can be used. Some final considerations are devoted to the concrete range of the choice of the parties.

Indexes and archives of RDIPP since its establishment (1965) are available on the website of the Rivista di diritto internazionale privato e processuale. This issue is available for download on the publisher's website.

Gedächtnisschrift for Hannes Unberath

The publishing house C.H. Beck has recently released the "Gedächtnisschrift für Hannes Unberath". Edited by Stefan Arnold and Stephan Lorenz the volume contains, among others, four German language contributions relating to private international law and international civil procedure:

- *Frank Bauer*, Art. 59 EuErbVO: Verfahrensrechtliche Kollisionsnorm zur Sicherung des freien Verkehrs öffentlicher Urkunden (pp. 19 ff.)
- *Wolfgang Hau*, Zivilsachen mit grenzüberschreitendem Bezug (pp. 139 ff.)
- *Peter Kindler*, Der europäische Vertragsgerichtsstand beim Warenkauf im Lichte der Rechtsprechung des Europäischen Gerichtshofes (pp. 253 ff.)
- *Gerald Mäsch*, Patrick Battistons Jackettkronen und das Kollisionsrecht, oder: Das Deliktsstatut bei Verletzungen im Rahmen von internationalen Sportgroßveranstaltungen (pp. 303 ff.)

For more information see the publisher's website.

It's Taken 15 Years...

...For the Spanish lawmaker to fulfill the promise, made in 2000, of a *Ley de cooperación juridical internacional en material civil*.

The new Act can be downloaded [here](#). It will come into force in twenty days.

Many thanks to Dr. Cristian Oró for the hint.

Out now: The Counterclaim in the Civil Procedural Law of the European Union and its Member States



Dr. *Agnieszka Okonska*, LL.M. (Leipzig), has just published a monumental comparative study on “The Counterclaim in the Civil Procedural Law of the European Union and its Member States” (Die Widerklage im Zivilprozessrecht der Europäischen Union und ihrer Mitgliedstaaten, Mohr Siebeck, Tübingen, 2015, XLVI, 672 pages; Veröffentlichungen zum Verfahrensrecht Vol. 118, € 99.00). The laws on civil procedure of all European Union member states and the contracting states of the Lugano Convention are familiar with the counterclaim. *Agnieszka Okonska* examines meticulously the interaction between national provisions and

those contained in the EU Regulations on counterclaims (the Brussels *Ibis* Regulation, Small Claims Regulation and the Maintenance Regulation). The author identifies pervasive conflicts and offers solutions to them. Her analysis is based on a thorough comparative analysis of various European legal orders, in particular Germany, Austria, France, England and Poland. The author also looks at the counterclaim in public international and ecclesiastical law. Her study was accepted by the law faculty of the University of Trier as a doctoral dissertation “summa cum laude” under the supervision of Professor Dr. *Jan von Hein* (now University of Freiburg/Germany). For further information, see [here](#).

General Principles of Law: European and Comparative Perspectives - Celebrating 20 Years of the Institute of European and Comparative Law at the University of Oxford

The Institute of European and Comparative Law at the University of Oxford is organising a conference on “General Principles of Law: European and Comparative Perspectives” that will be held at St Anne’s College Oxford and the Mathematical Institute, University of Oxford, on 25-26 September 2015.

The description of the conference on the Institute’s website reads as follows:

” ‘General principles of law’ are one of the most visible areas of intersection between EU law and comparative law: as long as they are understood as ‘the general principles common to the laws of the Member States’ (Art 340(2) TFEU) their fleshing out requires careful comparative preparatory work. True, more often than not, the general principles of EU law were not developed on the basis

of thorough and textbook style analysis. This does not make it less interesting to look at the interaction of EU law and comparative law in this particular field. Those working together in elaborating general principles of EU law tend to be responsive to input from national laws, and the laws of the Member States have no choice but to be responsive to the general principles developed at EU level.

It is the purpose of this conference to look at this particular interaction from the perspectives of EU law and comparative law alike. Leading scholars and practitioners from both fields will come together to discuss the most recent developments in the field.

The conference will be held on the occasion of the twentieth anniversary of the Oxford Institute. It will bring together current and former members, visitors and friends of the Institute, as well as those who might belong to one of these categories in the future. Celebration will be an essential part of the proceedings!"

Further information, including the full programme and registration details can be found [here](#).

Update: International Conference at the Academy of European Law: "How to handle international commercial cases - Hands-on experience and current trends"

It has already been announced on this blog that the Academy of European Law (ERA) will host an international, English-language conference on recent experience and current trends in international commercial litigation, with a special focus on European private international law (see our earlier post [here](#)). The event will take place in Trier (Germany), on 8-9 October 2015. A slightly

revised programme has now been put online and is available [here](#). Registration is still possible [here](#) – so don't miss the early bird rebate (before 8 September 2015)!

Workshop on General Principles of European Private International Law in Munich

Professor Dr. *Stefan Arnold* (University of Graz, Austria) is organising a workshop on general principles of European private international law in Munich on 18 September 2015. Renowned speakers will deal with pervasive problems such as the notion of a family in PIL, the applicability of religious law, general principles of attachment, party autonomy, renvoi and public policy. The programme may be downloaded [here](#). The conference will be held in German at the Bavarian Academy of Sciences. Participation is free of charge, but prior registration is required [here](#).

One Name throughout Europe: A Conference in Marburg (Germany) on a Draft for a European Regulation on the Law Applicable

to Names

Professors *Anatol Dutta* (University of Regensburg), *Tobias Helms* (University of Marburg) and *Walter Pintens* (University of Leuven) are organising a conference on a draft for a European regulation on the law applicable to names in Marburg (Germany) on Friday, 27 November 2015; for the programme, further information and registration, see [here](#). The background of this event lies in the fact that, in spite of the far-reaching Europeanization of private international law, common conflicts rules on this matter are currently lacking. As a consequence, natural persons moving from one Member State to another may suffer from a non-recognition of a name that they have acquired abroad. In order to cure those “limping” legal relationships, a Working Group was convened by the Federal Association of German Civil Status Registrars in order to elaborate a proposal for a European Regulation. The resulting proposal has been published in English in the *Yearbook of Private International Law* XV (2013/14), pp. 31-37 and in French in the *Revue critique de droit international privé* 2014, pp. 733 et seq. The aim of the upcoming conference is to present and analyse the Working Group’s proposal and to trigger further academic discussion on the subject. The conference language will be German. Participation is free of charge, but registration is required before or on 31 October 2015 at the latest.

Beaumont and Trimmings on Human Rights and Cross-Border Surrogacy

Paul Beaumont and *Katarina Trimmings* (Director and Deputy Director of the Centre for Private International Law, University of Aberdeen, respectively) have just published a highly interesting paper on “Recent jurisprudence of the European Court of Human Rights in the area of cross-border surrogacy: is there still a need for global regulation of surrogacy?”. The article is the second paper in

the Working Paper Series of the Centre for Private International Law (University of Aberdeen) and is now available on the Centre's website [here](#).

The first part of their paper examines the recent decisions of Chambers of the European Court of Human Rights in cases of *Mennesson v. France* (on this case, see the earlier post by *Marta Requejo*), *Labassee v. France* (cf. the earlier post by *F. Mailhé*), and *Paradiso and Campanelli v. Italy*. It then makes some suggestions as to how the Grand Chamber should deal with the *Paradiso and Campanelli* case before analysing the likely consequences of the *Mennesson* and *Labassee* judgments for national authorities in the context of surrogacy. The article then explores whether, following these decisions, there is still a need for an international Convention regulating cross-border surrogacy.

For those interested in recent developments in German case law on cross-border surrogacy, I also recommend an earlier post by *Dina Reis*.

Surveys on European Order for Payment and Small Claims Procedures

PhD Researcher Elena Alina Ontanu (supervised by Prof. Xandra Kramer) from Erasmus University Rotterdam is conducting an empirical and comparative research on the functioning of the European Order for Payment and the European Small Claims Procedure in **England and Wales, France, Italy and Romania**. Practitioners from these jurisdictions having experience with (one of) these procedures are warmly invited to fill in the surveys by clicking the links below. The collected data aim to gain a better insight into the use and functioning of these procedures in the selected Member States.

England and Wales

- European Order for Payment
- European Small Claims Procedure

France

- Injonction de payer européenne
- Règlement européen des petits litiges

Italy

- Ingiunzione europea di pagamento
- Procedimento europeo per le controversie di modesta entità

Romania

- Somatia europeana de plata
- Procedura europeana privind cererile cu valoare redusa

The surveys are divided in several sections regarding various aspects of the procedures. Please note that some questions might not be relevant for all legal professions. The time necessary for filling in a survey ranges between fifteen to thirty minutes, and participation will remain anonymous. Multi-session access to the surveys is possible from the same computer. The survey will remain open until **30 September 2015**.

We thank you for sharing your invaluable experience and views.