The enforcement of judgments imposing a penalty payment in case of breach of rights of access to children

This post has been written by Ester di Napoli.

In a judgment of 9 September 2015 (*Christophe Bohez* v. *Ingrid Wiertz*, Case C-4/14), the European Court of Justice (ECJ) clarified the interpretation of Article 1(2) and Article 49 of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matter (Brussels I), corresponding to Articles 1(2) and 55 of Regulation No 1215/2012 (Brussels I*a*), as well as the interpretation of Article 47(1) of Regulation No 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II*a*). The questions referred to the Court concerned the enforcement of a penalty payment (*astreinte*) issued to ensure compliance with the rights of access to children granted to one of the parents.

While Article 49 of the Brussels I Regulation states that judgments ordering "a periodic payment by way of a penalty" are enforceable in a different Member State "only if the amount of the payment has been finally determined by the courts of the Member State of origin", no equivalent provision may be found in the Brussels IIa Regulation. The latter merely specifies, in Article 47(1), that the enforcement procedure is governed by the law of the Member State of enforcement.

The case from which the judgment originated may be summarised as follows.

Mr Bohez and Ms Wiertz married in Belgium in 1997 and had two children. When they divorced, in 2005, Ms Wiertz moved to Finland. In 2007, a Belgian court rendered a decision on the responsibility over the children. As a means to ensure compliance with the rights of access granted to the father, the court set at a periodic amount per child to be paid to Mr Bohez for every day of the child's non-appearance, and fixed a maximum amount that the defaulting parent could be

requested to pay under the *astreinte*.

The mother failed to comply with the Belgian decision, so the father sought enforcement of the Belgian order in Finland relying on Article 49 of Brussels I Regulation. The Finnish authorities observed that the amount of the payment had not been determined in the Member State of origin, and added that, in any event, the request did not fall within the scope of the Brussels I Regulation but rather within the scope of the Brussels II*a* Regulation.

The ECJ, seised by the Finnish Supreme Court, pointed out that the scope of Brussels I Regulation is limited to "civil and commercial matters", and that the inclusion of interim measures is determined "not by their own nature but by the nature of the rights that they serve to protect". Thus, since the Brussels I Regulation expressly excludes from its scope "the status of natural persons" (notion "which encompasses the exercise of parental responsibility over the person of the child"), the Court held that Article 1 of Brussels I Regulation must be interpreted as meaning that it does not apply to the enforcement of a penalty payment imposed in a judgment concerning matters of parental responsibility.

The ECJ then moved on to consider the interpretation of the Brussels II*a* Regulation.

It recalled that mutual recognition of judgments concerning rights of access is "a priority within the judicial area of the European Union" and observed that, although the Regulation does not contain any provision on penalties, a penalty payment imposed in a judgment concerning rights of access "cannot be considered in isolation as a self-standing obligation, but must be considered together with the rights of access which it serve to protect and from which it cannot be dissociated". Accordingly, its recovery forms part "of the same scheme of enforcement as the judgment concerning the rights of access that the penalty safeguards and the latter must therefore be declared enforceable in accordance with the rules laid down by Regulation No 2201/2003".

The Court stressed that, in order to seek enforcement of the decision ordering a penalty payment, the amount must have been finally determined by the courts of the Member State of origin. Where the penalty payment has not been determined, "a requirement, in the context of Regulation No 2201/2003, for quantification of a periodic penalty payment prior to its enforcement is consistent with the sensitive

nature of rights of access".

No Independent Jurisdiction Requirement for Proceeding to Enforce a Foreign Judgment in Canada

The Supreme Court of Canada has released its decision in *Chevron Corp v Yaiguaje* (available here). The issue before the court was whether the Ontario courts have jurisdiction to recognize and enforce an Ecuadorian judgment (for over $US 18 billion) where the foreign judgment debtor Chevron Corporation ("Chevron") claims to have no connection with the province, whether through assets or otherwise. On one view, because the process for enforcing a foreign judgment is to commence a new domestic proceeding and thereby sue on the foreign judgment, the enforcement proceeding must have its own independent analysis of jurisdiction. Put another way, there cannot be a proceeding in respect of which the court does not have to have jurisdiction. On a different view, because the analysis of the claim on the foreign judgment considers, among other things, the sufficiency of the rendering court's jurisdiction (Chevron defended on the merits in Ecuador), that is the only required analysis of jurisdiction and there is no need for a separate consideration of the enforcing court's jurisdiction. The Supreme Court of Canada, agreeing with the Court of Appeal for Ontario, has held that the latter view is correct.

In summarizing its conclusion (para 3) the court stated "In an action to recognize and enforce a foreign judgment where the foreign court validly assumed jurisdiction, there is no need to prove that a real and substantial connection exists between the enforcing forum and either the judgment debtor or the dispute. It makes little sense to compel such a connection when, owing to the nature of the action itself, it will frequently be lacking. Nor is it necessary, in order for the

action to proceed, that the foreign debtor contemporaneously possess assets in the enforcing forum. Jurisdiction to recognize and enforce a foreign judgment within Ontario exists by virtue of the debtor being served on the basis of the outstanding debt resulting from the judgment."

While the court does not say that NO jurisdictional basis is required, it states that the basis is found simply and wholly in the defendant being served with process (see para 27). This runs counter to the court's foundational decision in *Morguard Investments Ltd v De Savoye*, [1990] 3 SCR 1077 which separated the issue of service of process – a pure procedural requirement – from the issue of jurisdiction. To say the service itself founds jurisdiction is arguably to have no jurisdictional requirement at all.

Interestingly, a recent paper (subsequent to the argument before the court) by Professor Linda Silberman and Research Fellow Aaron Simowitz of New York University (available here) considers the same issue in American law and concludes that the dominant view of courts there remains that an action to enforce a foreign judgment requires a "jurisdictional nexus" with the enforcing forum. They note that only a minority of countries allow enforcement of a foreign judgment without any jurisdictional threshold for the enforcement proceedings. They argue that the New York decisions which subsequently are relied on by the Supreme Court of Canada (para 61) are the outliers.

Had the Supreme Court of Canada required a showing of jurisdiction in respect of the enforcement proceeding, it would have had to address how that requirement would be met. Of course, in most cases it would be easily met by the defendant having assets in the jurisdiction. The plaintiff would not have to prove that such assets were present: a good arguable case to that effect would ground jurisdiction. Evidence that assets might, in the future, be brought into the jurisdiction could also suffice.

While the court is correct to note that the considerations in defending the underlying substantive claims are different from those involved in defending enforcement proceedings (para 48), the latter nonetheless allow reasonable scope for defences to be raised, such as fraud, denial of natural justice or contravention of public policy. With no threshold jurisdiction requirement, judgment debtor defendants will now be required to advance and establish those defences in a forum that may have no connection at all with them or the judgment.

The enforcement proceedings were also brought against Chevron Canada, an indirect subsidiary of Chevron that does have a presence in Ontario, although it is not a named defendant in the Ecuadorian judgment. The Supreme Court of Canada held that the Ontario court had jurisdiction over Chevron Canada based on its presence, with no need to consider any other possible basis for jurisdiction. The decision is thus important for confirming the ongoing validity of presence-based jurisdiction (see paras 81-87).

On a pragmatic level, eliminating an analysis of the enforcing court's jurisdiction may simplify the overall analysis, but hardly by much. The court notes (para 77) that " Establishing jurisdiction merely means that the alleged debt merits the assistance and attention of the Ontario courts. Once the parties move past the jurisdictional phase, it may still be open to the defendant to argue any or all of the following, whether by way of preliminary motions or at trial: that the proper use of Ontario judicial resources justifies a stay under the circumstances; that the Ontario courts should decline to exercise jurisdiction on the basis of *forum non conveniens*; that any one of the available defences to recognition and enforcement (i.e. fraud, denial of natural justice, or public policy) should be accepted in the circumstances; or that a motion under either Rule 20 (summary judgment) or Rule 21 (determination of an issue before trial) of the Rules should be granted." And in respect of Chevron Canada (para 95), the "conclusion that the Ontario courts have jurisdiction in this case should not be understood to prejudice future arguments with respect to the distinct corporate personalities of Chevron and Chevron Canada. [We] take no position on whether Chevron Canada can properly be considered a judgment-debtor to the Ecuadorian judgment. Similarly, should the judgment be recognized and enforced against Chevron, it does not automatically follow that Chevron Canada's shares or assets will be available to satisfy Chevron's debt."

Deren on Expropriation in Private

International Law

Deniz Halil Deren has authored a book (in German) on expropriation in private international law ("Internationales Enteignungsrecht – Kollisionsrechtliche Grundlagen und Investitionsschutzfragen"). Published by Mohr Siebeck the book looks at issues of choice of law and investor protection.

The official abstract reads as follows:

> *Since the 20th century, states have extensively been exercising their right to expropriate private property. These expropriations have involved goods (such as works of art, means of production or natural resources) as well as shares, claims and intellectual property rights. Yet under what conditions does German law recognise expropriations performed by other states and what role does investment protection law play in this context?*

Further information is available on the publisher's website.

The first request for a preliminary ruling concerning the Rome III Regulation

The *Oberlandesgericht* of Munich has recently lodged a request for a preliminary ruling concerning the interpretation of Regulation No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, *ie* the Rome III Regulation (Case C-281/15, *Soha Sahyouni* v *Raja Mamisch*).

The request provides the ECJ with the opportunity of delivering, in due course, its first judgment relating specifically to the Rome III Regulation.

To begin with, the referring court asks the ECJ to provide a clarification as to the scope of the uniform conflict-of-laws regime set forth by the Regulation. In particular, the German court wonders whether the Regulation also applies to 'private divorces', namely divorces pronounced before a religious court in Syria on the basis of Sharia.

If the answer is in the affirmative, the referring court asks whether, in the case of an examination as to whether such a divorce is eligible for recognition in the forum, Article 10 of the Regulation must also be applied. According to the latter provision, where the law specified by the Regulation to govern the divorce or the legal separation "does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex", the *lex fori* applies instead.

Should the latter question, too, be answered in the affirmative, the referring court wishes to know which of the following interpretive options should be followed in respect of Article 10: (1) is account to be taken in the abstract of a comparison showing that, while the law of the forum grants access to divorce to the other spouse too, that divorce is, on account of the other spouse's sex, subject to different procedural and substantive conditions than access for the first spouse? (2) or, does the applicability of Article 10 depend on whether the application of the foreign law, which is discriminatory in the abstract, also discriminates in the particular case in question?

Finally, were the ECJ to assert that the second of these options is the correct one, the *Oberlandesgericht* of Munich seeks to know whether the fact that the spouse discriminated against has consented to the divorce — including by duly accepting compensation — constitutes itself a ground for not applying Article 10.

Duden on Surrogate Motherhood in Private International Law and

the Law of International Civil Procedure

Konrad Duden from the Max Planck Institute in Hamburg has authored a book (in German) on surrogate motherhood in private international law and the law of international civil procedure ("Leihmutterschaft im Internationalen Privat- und Verfahrensrecht. Abstammung und ordre public im Spiegel des Verfassungs-, Völker- und Europarechts"). Published by Mohr Siebeck, the book looks at filiation and public policy in the light of constitutional, international and European law. The official abstract reads as follows:

> *More and more Germans seek out foreign surrogate mothers to bear children which they will then raise as their own. But does a child legally belong to these parents once they return to Germany? Surrogate motherhood raises questions, regardless of the fact that the fundamental and human rights of the child often prescribe clear answers.*

Further information is available on the publisher's website.

Reminder: Academy of European Law – "How to handle international commercial cases – Hands-on experience and current trends"

This post is meant to remind our readers that the Academy of European Law (ERA) will host an international conference on recent experience and current trends in international commercial litigation, with a special focus on European

private international law. The event will take place in Trier (Germany), on 8-9 October 2015. While registration will still be possible after 8 September 2015, this date marks the deadline for the „early bird“ rebate. Even after this deadline, however, discounts will be available for young lawyers and academics.

This conference will bring together top experts in international commercial litigation who will report on their experiences in this field including litigation strategy and tactics. An updated conference programme is available here.

Key topics will be:

- Recent case law of the CJEU on business litigation in light of the changes brought by the recent recast of the **Brussels I Regulation**
- Forthcoming changes after the entry into force of the new **Hague Choice of Court Convention** in June 2015
- The **recast of the Insolvency Regulation** in summer 2015
- The **revision of the Small Claims Procedure** in 2015
- The Regulation establishing a **European Account Preservation Order**

The conference language will be English. The event is organized by Dr Angelika Fuchs, ERA, in cooperation with Professor Jan von Hein, University of Freiburg (Germany). The speakers are

- **Robert Bray**, Head of Unit, Secretariat, Committee on Legal Affairs, DG Internal Policies, European Parliament, Strasbourg/Brussels
- **Professor Gilles Cuniberti**, University of Luxembourg
- **Raquel Ferreira Correia**, Counsellor, Lisbon
- **Emilia Fronczak**, Loyens & Loeff, Luxembourg
- **Sarah Garvey**, Counsel and Head of KnowHow in the Litigation Department, Allen & Overy LLP, London
- **Jens Haubold**, Partner, Thümmel, Schütze & Partner, Stuttgart
- **Professor Jan von Hein**, Director of the Institute for Foreign and International Private Law, Dept. III, University of Freiburg
- **Brian Hutchinson**, Arbitrator, Mediator, Barrister, GBH Dispute Resolution Consultancy; Senior Lecturer, University College Dublin
- **Professor Xandra Kramer**, Erasmus University Rotterdam; Deputy Judge of the District Court of Rotterdam
- **Alexander Layton QC**, Barrister, Arbitrator, 20 Essex Street, London.

For further information and registration, please click here.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 5/2015: Abstracts

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

Christoph Benicke, **Die Anknüpfung der Adoption durch Lebenspartner in Art. 22 Abs. 1 S. 3 EGBGB**
In Germany, step child adoption by the partner of a same sex civil union (registered partnership) has been legal since 2004, but was restricted to the other partner's biological child. 2014, following a landmark ruling by the German Constitutional Court the German Parliament has enacted legislation that rescinded this restriction and allowed thereby partners of registered same-sex couples to legally adopt the other partner's adoptive child. Not mandated by the Constitutional Court's ruling the legislator stopped short of totally putting same sex registered partnerships on equal footing with traditional marriages. The joint adoption by both partners is still reserved to the spouses of a heterosexual marriage.
On the occasion of this new legislation, a special choice of law rule for the adoption by same sex partners has been enacted. The general choice of law rule (Art. 22 par. 1 s. 2 EGBGB) calls for the national law of the adoptive parent. In the case of the adoption by one or both spouses of a heterosexual marriage the law applicable to the general effects of the marriage (Art. 14 EGBGB) is to be applied. This holds true for the joint adoption by both spouses or for the single (step parent) adoption by only one spouse. The new rule for same sex partners (Art. 22 par. 1 s. 3 EGBGB) follows the example of the rule for married couples, in that it calls for the application of the law that governs the general effects of the registered partnership, i.e. the law of the registering state (Art. 17b par. 1

EGBGB). However, the new rule for same sex partners limits itself to the case of the adoption by only one partner, leaving unregulated the choice of law question of a joint adoption by both partners. The single and only reason for this limitation is the ban on joint adoption by same sex partners in German internal adoption law, not taking into account, that the laws of other countries allow the joint adoption by same sex partners. As there is no valid reason for this limitation in regard to the choice of law question this same rule must be extended to cover the joint application for the adoption by both partners. The general choice of law rule would lead to a quite preposterous result as it would call for the joint application of the national laws of both partners, whereas in the case of the adoption by only one partner the law that governs the effects the same sex partnership would apply.

The new legislation also casts new light on the discussion of the ramifications of Art. 17b par. 4 EGBGB. This rule limits the effects of a same sex partnership that was registered in another country and therefore is governed by this other country's laws. The legal effects cannot exceed the effects of a registered same sex partnership under German internal law. Under the previous law the majority opinion was that Art. 17b par. 4 EGBGB bans same sex partners from adopting jointly in Germany even if the joint adoption was legal under the applicable foreign adoption law. In granting the unrestricted step child adoption German law effectively allows partners to adopt a child jointly, just in two immediately consecutive proceedings. Therefore, there are no real differences left in regard to the legal effects of a registered partnership under a foreign law that allows the simultaneous joint adoption by same sex partners in one and only proceeding.

Christoph Thole, **The differentiation between Brussels I and EIR in annex proceedings and the relation to art. 31 CMR**

On the occasion of the ECJ ruling (4.9.2014 – C-157/13), the author discusses the precedence of special conventions (CMR) according to art. 71 (1) Brussels I-reg. and the question of the criteria necessary for the application of art. 3 EIR. With respect to art. 3 EIR, the ECJ rightly concludes that an action for the payment of a debt based on the provision of carriage services taken by the insolvency administrator of an insolvent undertaking in the course of insolvency proceedings is covered not by the EIR, but is a civil matter within the Brussels I-reg. However, once again, the Court has failed to further elaborate on the criteria necessary for the classification of an action as an insolvency-related action within the meaning of art. 3 EIR and art. 1 para. 2 lit. b Brussels I-reg.

With respect to art. 71 Brussels I-reg., it is a step forward that, in contrast to earlier verdicts, the ECJ itself decided upon the compatibility of the convention with the principles of EU law, instead of referring the matter to state courts. It would have been even more conclusive to rely on the wording of Art. 71 (1) Brussels I-reg. and omit the unwritten necessity of compatibility with EU Law entirely.

Burkhard Hess/Katharina Raffelsieper, **Debtor protection within Regulation 1896/2006: Current gaps in European procedural law**

Regulation 1896/2006 does not provide for effective debtor protection in cases when a European Order for Payment was not properly served on the debtor. As a result of the unilateral nature of the procedure for issuing the order, the order will be declared enforceable if the defendant does not challenge it within a period of 30 days. However, the service of the payment order shall safeguard the right to a defense. When the defendant has never been informed about the ongoing procedure, he should be able to easily contest the Order for Payment even after it has been declared enforceable. Yet, the text of the Regulation does not provide for a remedy in this situation. In a reference for a preliminary ruling, the Local Court Berlin-Wedding asked the European Court of Justice which remedy should apply. The referring court suggested an application by analogy of the review proceedings provided for in Article 20 of Regulation 1896/2006 in order to ensure an effective right to a defense. Regrettably, the CJEU did not endorse this solution. It declared national procedural law applicable in accordance with Article 26 of the Regulation. As a consequence, parties are sent to the fragmented remedies of national procedural laws. As the efficiency and uniform application of Regulation 1896/2006 is no longer guaranteed, the European lawmaker is called to remedy the insufficient situation. This article addresses the final decision of the Local Court which implemented the CJEU's judgment.

Peter Huber, **Investor Protection: Lugano Convention and questions of international insolvency law**

The article discusses a recent decision of the German Bundesgerichtshof which primarily deals with matters of international jurisdiction in tort claims under Article 5 No. 3 of the Lugano Convention. In doing so, the author also analyses to what extent the decision is in line with the more recent judgment of the ECJ in Kolassa v Barclays Bank. A second issue of the decision is how provisions of foreign insolvency law which modify a creditor's claim against a (not insolvent)

co-debtor of the insolvent party should be characterised under domestic German private international law.

Christoph Thole, **Porsche versus Hedgefonds: The requirements for lis pendens under Art. 32 reg. 1215/2012 (Art. 30 reg. 44/2001)**
Porsche SE, which is currently trying to fend off several actions for damages connected to the failed takeover of Volkswagen, has reached a partial success before the OLG Stuttgart. The OLG has ruled that the negative declaratory action against an institutional investor in Germany takes precedence over the action for performance filed in London. The proceedings clearly demonstrate how fiercely disputes concerning the place of jurisdiction in capital market law are fought. Specifically, the court needed to judge upon the necessary requirements for lodging the claim with the court under Art. 30 of the Brussels I-reg. (Art. 32 Reg. No. 1215/2012). The decision as well as most of the reasoning is convincing.

Peter Mankowski, **Lack of reciprocity for the recognition and enforcement of judgments between Liechtenstein and Germany**
Liechtenstein fashions a system of recognition and enforcement of foreign judgments with a strict and formal requirement of reciprocity in the Austrian tradition. In particular, judgments from Germany are not recognised in Liechtenstein. The retaliative price Liechtenstein has to pay is that judgments from Liechtenstein are not recognised in Germany, either, for lack of reciprocity. Methodologically, German courts are idealiter required to research whether reciprocity is guaranteed in a foreign country in relation to Germany. The popular lists in the leading German commentaries should only serve as a starting point.

Lars Klöhn/Philip Schwarz, **The residual company's applicable law**
The "theory of the residual company (Restgesellschaft)" deals with legal problems that may arise in the context of winding-up companies doing business in at least two countries. In Germany, the theory applies in particular to English private companies limited by shares ("Limited") with assets in Germany. If a Limited is dissolved in its home country, the residual company will come into existence and be considered as the owner of the company's "German" assets. The discussion in the literature as well as recent case law by Higher Regional Courts (Oberlandesgerichte) has focused on the question which law applies to the residual company. This paper analyzes the newest judgement on this issue by the Higher Regional Court of Hamm, which states that German law applies. The authors agree with this result while pointing out that this conclusion will be

reached regardless of whether one follows the theory of domicile (Sitztheorie) or the theory of establishment (Gründungstheorie). Furthermore, German law applies irrespective of whether the company is still doing business or has already entered into liquidation.

Piotr Machnikowski/Martin Margonski, **Anerkennung von punitive damages- und actual damages-Urteilen in Polen**

The case note concerns the judgment of the Polish Supreme Court of October 11, 2013 on the enforceability of US-American punitive damages and judgments on actual damages in Poland. The enforceability has been rejected in case of punitive damages which, as a rule, are contrary to Polish public policy as such. Polish civil law is governed by the principles of compensation and restitution of the damage. The damage should be repaired to the condition that would have existed had the wrong not occurred. The injured party may not be enriched as a result of the damages awarded. The compensation law in Poland does recognize some exceptions to that rule which allow to grant compensation not closely based on the value of the restored damage. Such exceptions are, however, justified under the constitutional proportionality principle. Punitive damages do not meet such requirements to the extend they peruse penal objectives. They are permissible only to the extent they perform a compensatory function and are linked to the damage suffered. In case of actual damages, such conflict with the Polish public order does not occur by nature of the legal instrument. Yet, the said proportionality principle may lead to only a partial enforceability of a US-American actual damages judgment. The crucial factor here is how closely the factual setting of the case is connected to Poland. The judgment in question addresses the general problem of partial enforceability of foreign judgments, which has been found possible in case of divisible obligations. Despite some critique on detailed aspects of the findings, the case note positively appraises the judgment.

Bernhard König, **Austrian money judgments which do not finally determine the amount of payment**

Judgments given in a Member State which are enforceable in that State are enforceable in other Member States. Difficulties could arise if a money judgment was given in a Member State which does not require a final determination of the amount of the payment in the judgment itself and has to be enforced in a Member State which national law requires the final determination of the amount of

payment already in the judgment. This paper offers a glimpse to the question if and to what extent other Member States will have to deal with Austrian judgments which have not finally determined the amount of the payment.

Miguel Gómez Jene/Chris Thomale, **Arbitrator liability in International Arbitration**
Recent decisions by Spanish courts raise questions upon the conditions as well as the extent of arbitrator liability. Authors suggest a distinction between qualified adjucative and simple managerial tasks: It is only when acting as a quasi-adjudicative agent that arbitrators should be essentially exempt from personal liability. Conversely, as far as an arbitrator's conduct of an arbitration procedure is concerned, he should assume general tort liability for negligence.

Jürgen Samtleben, **The New Panamanian Code of Private International Law – A Kaleidoscope of Conflict of Laws**
Panama is known as an important banking center and as the registered office of many internationally active corporations. Therefore, international relations between private subjects need specific regulation. Up to now, the private international law of Panama found its basis in individual provisions of the Civil Code, the Family Code and some special laws. These provisions were replaced by Law 7 of 2014, which contains in 184 articles a comprehensive regulation of nearly all conflict-of-law topics. The following article gives an overview of the new Law. As a result, it must be stated that the Law contains many flaws, due to insufficient coordination between the different parts and a lack of careful editing of the individual articles. In Panama, as well, the law has been criticized and there is a call for its thorough reform.

Beaumont and Holliday on "Habitual Residence" in Child

Abduction Cases

Paul Beaumont, Professor of European Union and Private International Law and Director of the Centre for Private International Law, University of Aberdeen (Scotland/UK), and *Jayne Holliday*, Research Assistant and Secretary of this Centre, have published an insightful and carefully researched new working paper on "Recent Developments on the Meaning of 'Habitual Residence' in Alleged Child Abduction Cases" in the series of the Aberdeen Centre for PIL (Working Paper No. 2015/3, the full content is available here). The highly recommended article is based on an overview of the recent developments within European and International Family Law that was presented by Professor Beaumont at the conference on "Private International Law in the Jurisprudence of European Courts – Family at Focus" held in Osijek, Croatia, June 2014. Drawing from that presentation, the working paper focuses on the recent developments on the meaning of habitual residence in child abduction cases from the UK Supreme Court and the Court of Justice of the European Union (CJEU). In particular, the authors analyze the move by the UK Supreme Court towards a more uniform definition of habitual residence in line with the jurisprudence of the CJEU under the Brussels II*bis* Regulation.

The authors summarize their findings as follows:

"Over the past 30 years the concept of habitual residence of the child in the UK has developed from one which put weight on parental intention to a mixed model, which takes a more child centric and fact based approach. By following the jurisprudence of the CJEU, the UK Supreme Court has made a genuine and conscious attempt to provide a uniform interpretation of the 1980 Abduction Convention. This will hopefully have the effect of creating a more uniform approach to the definition of habitual residence amongst all Contracting States to the Hague Abduction Convention. […] If enough weight is given to parental intention of the custodial parent(s) of newborns then physical presence is not required to establish habitual residence. This is an easier solution to arrive at if the myth that habitual residence is a pure question of fact is abandoned. Whilst a mixed question of fact and law is the best way to analyse the 'habitual residence' of the young child, it is not appropriate to introduce into the equation a suggestion that somehow habitual residence cannot change when the custodial parent lawfully removes a child to another country just because that decision was

still subject to appeal in that country even though the appeal did not suspend the custodial parent's right to take the child out of the country lawfully. Such an appeal should not prevent the loss of the child's habitual residence in the country where the appeal is made and should not impact on the 'stability' of the child's residence in the new jurisdiction to prevent habitual residence being established there within a few months of the residence beginning."

Conference on "European Minimum Standards for Judicial Bodies", University of Regensburg on 12/13 November 2015

Matthias Weller is Professor for Civil Law, Civil Procedure and Private International Law at the EBS University for Economics and Law Wiesbaden and Director of the Research Center for Transnational Commercial Dispute Resolution (www.ebs.edu/tcdr) of the EBS Law School.

Mutual trust amongst the Member States of the European Union in other legal systems is a prerequisite for the expansion of the free movement of judgments and judicial titles within the European Judicial Area. To justify such mutual trust amongst the European Member States requires, inter alia, the definition of common minimum standards in the various judicial systems.

A joint project between the law faculties of the University of Regensburg (Prof. Dr. Christoph Althammer) and the EBS Law School in Wiesbaden (Prof. Dr. Matthias Weller, Mag.rer.publ.) has set itself the goal to search for and explore further such minimum standards in the judicial systems within the European Judicial Area. After the first conference in Wiesbaden in 2014 (see conference report earlier on this blog here), where the discussion has been initiated from a broader perspective, the project will be continued with the upcoming two-days-conference in Regensburg (conference language: German) that is dedicated to a

central issue within this field: European minimum standards for judicial bodies.

The focus will be on three main requirements (independence, efficiency, specialization) which will be presented by experts from both academia and legal practice. These topics will be complemented by a legal comparative analysis with regard to the French, Greek and Italian legal system before the discussion will conclude with a final synthesis.

We would like to cordially invite you to join the discussion! For registration and the conference flyer see here.

Now available: New edition of Volumes 10 and 11 of the „Münchener Kommentar“ on Private International Law

It has not yet been mentioned on this blog that Volumes 10 and 11 of the Munich Commentary on the German Civil Code (Münchener Kommentar zum Bürgerlichen Gesetzbuch), are now available in their sixth edition (2015). A standard German language treatise on both German and European private international law, the new edition contains a detailed article-by-article analysis of the Rome I, II and III Regulations (by Abbo Junker, Munich; Dieter Martiny, Hamburg/Frankfurt an der Oder); Ulrich Spellenberg, Bayreuth; Peter Winkler von Mohrenfels, Rostock), the Hague Protocol on Maintenance (Kurt Siehr, Hamburg/Zurich), the European Succession Regulation (Anatol Dutta, Regensburg), and the Hague Conventions on the Protection of Children and Adults (by Kurt Siehr, Hamburg/Zurich; Volker Lipp, Göttingen).

The sixth edition of Volumes 10 and 11 is the first edition that has been edited by our co-editor Jan von Hein (Freiburg/Germany) as the volume editor. Jan is the successor to Hans-Jürgen Sonnenberger (Munich) and has contributed to the

commentary himself with a completely new section on the general principles of European and German private international law.

The new edition has been well received in the German literature (translations kindly provided by the volume editor):

„A battle cruiser of private international law has been set on a new course.“ (IPRax 2015, 387)

„…a truly indispensable work.“ (Ludwig Bergschneider, FamRZ 2015, 1364)

Further information is available on the publisher’s website.