Issue 2014.4 Nederlands Internationaal Privaatrecht – Recognition and enforcement

The fourth issue of 2014 of the Dutch journal on Private International Law, ***Nederlands Internationaal Privaatrecht***, is dedicated to the Recognition and enforcement of foreign judgments, and focuses on gaps and flaws in the current framework and new pathways. It includes the following contributions:

Paulien van der Grinten, 'Recognition and enforcement in the European Union: are we on the right track?', p. 529-531 (Editiorial)

Paul Beaumont, 'The revived Judgments Project in The Hague', p. 532-539.

> *This article examines the Hague Judgments Project in three phases. First, the initial ambitious plans for a double convention or a mixed convention (combining direct rules of jurisdiction with rules on conflicts of jurisdiction, exorbitant fora and recognition and enforcement of judgments) that began in 1992 and ultimately failed in 2001. Second, the triumph of rescuing a Choice of Court Agreements Convention from the ashes of the failed mixed convention between 2002 and 2005. Third, the attempt since 2010 to revive the Judgments Project with the aim of securing at least a robust single convention on recognition and enforcement of judgments (possibly with indirect rules of jurisdiction) and with the possibility that at least some States will agree to go further and agree some rules on some or all of the following: conflicts of jurisdiction, declining jurisdiction, outlawing exorbitant fora and some direct rules of jurisdiction. In doing so the article examines the forthcoming adoption of the Hague Choice of Court Agreements Convention by the EU including its declaration excluding certain insurance contracts. Consideration will also be given to the possible ways of establishing in a new single convention what constitutes a sufficient connection between the case and the country which gave the judgment in that case to justify the judgment being recognised and enforced in Contracting States to the convention.*

Patrick Kinsch, 'Enforcement as a fundamental right', p. 540-544. The

abstract reads:

> *There is, under the case law of the European Court of Human Rights, a right to the enforcement of judgments obtained abroad. The nature of that right can be substantive and founded on the right to recognition of the underlying situation. It can also be procedural and derive from the fair trial guarantee of Article 6 of the Convention which includes a right to the effectiveness of judgments rendered by 'any court', a concept considered – without, in the author's opinion, a cogent justification in the present jurisprudence of the Court – as including foreign courts. Once there is a right to enforcement, there can be no interferences by national law with that right (and the national authorities can even have a 'positive obligation' to see to its effectiveness), unless the interference or the refusal to take positive measures is justified, in line with the principle of proportionality.*

Ian Curry-Sumner, 'Rules on the recognition of parental responsibility decisions: A view from the Netherlands', p. 545-558.

> *Parental responsibility decisions are increasingly international in nature; international contact arrangements, determinations that the main place of residence will be abroad and the cross-border placement of children are nowadays commonplace instead of seldom. Unfortunately, the story oftentimes does not end after the judge has issued the decision. In many cases, cross-border recognition and/or enforcement of the judgment will be required. This article is devoted to providing an overview of those rules, focussing on the various international regimes currently in operation in Europe, as well as domestic rules applicable in the Netherlands. In doing so, a number of problem areas will be identified with respect to the current rules and their application.*

Anatol Dutta and Walter Pintens, 'The mutual recognition of names in the European Union de lege ferenda', p. 559-562.

> *How could the harmony of decision regarding names be attained within the European Union – a harmony of decision which has been demanded by the European Court of Justice in a number of cases? The following contribution presents the results of a working group which has made a proposal for a European Regulation on the law applicable to the names of persons*

harmonising the conflict rules of the Member States. This classic approach is, however, supplemented by a second element, which shall be the focus in this special issue on recognition and enforcement. The proposal establishes a principle of mutual recognition of names guaranteeing that every person has one name throughout Europe.

Mirjam Freudenthal, 'Dutch national rules on the recognition and enforcement of foreign judgments, Article 431 CCP', p. 563-572.

This paper discusses Article 431 CCP. Article 431 CCP states that no decision rendered by a foreign court can be enforced within the Netherlands unless international conventions or the law provides otherwise. According to Article 431 paragraph 2 CCP the matter of substance has to be dealt with and settled de novo by a Dutch court. As from its enactment in 1838 Article 431 CCP has been subject to critical discussions and was restricted by case law from the beginning of the 20th century. Since then recognition will be granted if the foreign judgment will meet a set of conditions. But, the enforcement of condemnatory judgments remained impossible. More recently, case law has introduced the pseudo-enforcement procedure, meaning that if the foreign condemnatory judgment meets the conditions for recognition a hearing on the substance according to Article 431 paragraph 2 CCP is not required. However, the disadvantage of this pseudo-enforcement procedure is the lack of legal certainty. A revision of the actual Dutch statutory rules on recognition and enforcement is very much needed.

Elsemiek Apers, 'Recognition and enforcement of foreign judicial decisions: Belgium's codification explored', p. 573-580.

Belgium's codification of private international law has led to a comprehensive Code containing a detailed set of rules and procedure for the recognition and enforcement of foreign judicial decisions and authentic acts. Increased transparency, the clarity of private international law concepts and harmonisation in a more globalised world with changing values were the main reasons for such a codification. Most of the rules on recognition and enforcement are inspired by the Brussels Convention (now Brussels I Regulation), providing for an almost automatic recognition of foreign judicial decisions and a simplified exequatur procedure. Even though the Code provides

a clear framework, in practice difficulties still arise, especially for the recognition of authentic instruments. This article explores the reasons behind Belgium's codification, describes the procedure for recognition and enforcement and provides a brief practical insight.

Regulation 1215/2012, Reminder

Art. 81: This Regulation shall apply from 10 January 2015.

See also the transitional provisions:

Art. 66

1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015.

2. Notwithstanding Article 80, Regulation (EC) No 44/2001 shall continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 which fall within the scope of that Regulation.

Reshaping the Investor-State Dispute Settlement System: Journeys for the 21st Century

On Thursday, February 26, 2015, the Wilson Center will host a panel to examine

practical suggestions for reform of the current system of resolving international investment treaty disputes. The increase in cases against States and their challenge to public policy measures has generated a strong debate, usually framed by complaints about a perceived lack of legitimacy, consistency and predictability. While some ideas have been proposed for improvement, there has never before been a book systematically focusing on constructive paths forward. The new volume launched with this panel discussion features 38 chapters by almost 50 leading contributors, all offering concrete proposals to improve the ISDS system for the 21st century.

Date & Venue:
Thursday, February 26, 2015
8:30 am-9:00 am Registration and Coffee Reception
9:00 am-10:30 am Panel Discussion
6th floor Flom Auditorium
Wilson Center, Washington, DC

REEI, December 2014

The last issue of the Spanish *Revista Electronica de Estudios Internacionales* (REEI), published by the Asociación Española de Profesores de Derecho Internacional y Relaciones Internacionales, has been released. Contents are fully downloadable as pdf files.

Click here to see the ToC and for further access to all sections of the journal.

New Dutch treatise on PIL (Asser/Kramer & Verhagen)

The last volume of three books dedicated to private international law within the leading Asser-series in the Netherlands has just been published.

Asser/Kramer & Verhagen, 10-III International vermogensrecht, Deventer: Kluwer 2015 (827 pages). It is authored by Xandra Kramer (Erasmus University Rotterdam) and Rick Verhagen (Radboud University Nijmegen/Clifford Chance), in collaboration with Sanne van Dongen and Paul Vonken (Radboud University Nijmegen). The book discusses Private International Law aspects of company law, agency, property law, trusts, contractual and non-contractual obligations from a Dutch, European and international perspective. More information is available here. A seminar dedicated to the publication of this book will take place at Clifford Chance in Amsterdam on 29 January 2015 (14-18 hrs), registration information is available here.

It follows the publication of the first volume dedicated to general aspects of PIL: **Asser/Vonken, 10-I Algemeen deel**, Deventer: Kluwer 2013, authored by Paul Vonken, in collaboration with Rick Verhagen, Xandra Kramer and Sanne van Dongen and part two on international family and succession law: **Asser/Vonken, 10-II Internationaal personen-, familie- en erfrecht**, Deventer: Kluwer 2012, authored by Paul Vonken, in collaboration with Freek Schols (Radboud University Nijmegen).

La Ley: Unión Europea (Number 21)

Number 21 (December 2014) of the Spanish legal journal *La Ley: Unión Europea* has been released, with the following contents:

Section *Doctrina*

Patricia OREJUDO PRIETO DE LOS MOZOS, "Diez años de aplicación e interpretación del Reglamento Bruselas II bis sobre crisis matrimoniales y responsabilidad parental (Análisis de los aspectos de competencia judicial internacional)

Abstract: *Ten years have already passed since Brussels II bis Regulation entered into force. Along these years, the EU institutions, and especially the ECJ, have developed an important task in the interpretation and application of this instrument. By means of an analysis of this development, this paper is directed to contribute to the reflection on some of the issues that are currently under consideration ahead of a possible reform of the Regulation, and also to draw attention to other issues that are not being considered. For reasons of limited space, whole consideration is given to the rules on international jurisdiction.*

Ana FERNÁNDEZ PÉREZ, "La cooperación de la Unión Europea con terceros países en materia de defensa de prácticas anticompetitivas: hacia un modelo de *nueva generación*"

Abstract: *The need to implement a Defense of Competition system in all states of the WTO offers several avenues to strengthen international cooperation in the fight against anticompetitive conducts. In this sense, bilateral conventions seem to respond to this need by promoting the convergence of tools and practices of competition policy among jurisdictions and facilitate cooperation with competition authorities.*

Section *Tribuna*

Alegría BORRÁS, "La aceptación de las adhesiones al Convenio de La Haya de 1980 sobre sustracción de menores: el Dictamen del TJUE de 14 de octubre de 2014"

Abstract: *On 14 October 2014 the European Court of Justice delivered its opinion on the exclusive external competence of the European Union to accept the accession of third States to the 1980 Hague Convention on the civil aspects of international child abduction. Following strictly its opinion 1/03 the Court understands that it is necessary to maintain the uniform and consistent application of EU rules. This comment refers to this opinion in contrast with the*

view of the great majority of member States and of the Council.

The current issue contains as well a section on case law with comments on selected decisions.

German Society of International Law: 34th Biannual Conference, March 11 to 14, 2015

From 11 through 13 March 2015 the German Society of International Law will hold its 34th biannual conference at the Justus Liebig University in Gießen (Germany). The conference will address two different topics: “Freedom and Regulation in Cyberspace” and “Identifying the Law between Source and Judicial Application”.
Further details are available (in German) at the conference website.

Call for Papers, Utrecht Journal of International and European Law

The Utrecht Journal of International and European Law is issuing a Call for Papers to be published in its 81st edition on ‘General Issues’ within International and European law. The Board of Editors invites submissions addressing any aspect of International and European law. Topics may include, but are not limited to, International and European Human Rights Law, International and European Criminal Law, Transnational Justice, Family Law, Health and Medical Law, Children’s Rights, Commercial Law, Media Law, Law of Democracy, Intellectual

Property Law, Taxation, Comparative Law, Competition Law, Employment Law, Law of the Sea, Environmental Law, Indigenous Peoples, Land and Resources Law, Alternative Dispute Resolution or any other relevant topic.

Authors are invited to address questions and issues arising from the specific area of law relating to their topic. All types of manuscripts, from socio-legal to legal technical to comparative, will be considered for publication.

The Board of Editors will select articles based on quality of research and writing, diversity and relevance of topic. The novelty of the academic contribution is also an essential requirement.

Prospective articles should be submitted online via the journal website, and should conform to the journal style guide (See here for full details). Utrecht Journal has a word limit of 15,000 words including footnotes. For further information please consult the website or email us at utrechtjournal@urios.org.

Deadline for Submissions: 30 April 2015

Choice of Law in the American Courts in 2014: Twenty-Eighth Annual Survey

Prof. Symeonides latest survey on choice of law in the American Courts is available on SSRN (to be published later in the American Journal of Comparative Law, vol. 63, 2015-2). The abstract reads as follows:

“This is the Twenty-Eighth Annual Survey of American choice-of-law cases. It was written at the request of the Association of American Law Schools Section on Conflict of Laws and it is intended as a service to fellow teachers of conflicts law, both in and outside the United States.This Survey covers cases decided by American state and federal appellate courts from January 1 to December 31, 2014, and posted on Westlaw by midnight, December 31, 2014. Of the 1,204 cases

that meet these parameters, the Survey focuses on those cases that may contribute something new to the development or understanding of conflicts law — and, particularly, choice of law. The following are some of the highlights of the year:

One U.S. Supreme Court decision dealing with general jurisdiction, the second in three years, after a thirty-year silence; Seven cases deciding whether the Alien Tort Statute applies to actions filed by foreign plaintiffs against American defendants alleged to have aided and abetted the commission of international law violations outside the United States; a case involving a cross-border shooting of a Mexican boy by a U.S. Border Patrol agent; and a case arising from the imprisonment of U.S. contractor Alan Gross in Cuba;

Fifty-six court rulings striking down as unconstitutional the prohibition of same-sex marriages in 26 states, one ruling upholding the prohibition in four states, and a Texas case recognizing a California judgment that declared both male partners in a same-sex marriage to be the parents of a child conceived through artificial insemination and carried to term by a surrogate mother;

One more xenophobic statute, the eighth in four years, banning the use of certain foreign laws;

Several tort cases involving conduct-regulation conflicts and applying the law of the state of the tort, rather than the parties' common domicile;

One state supreme court case joining the minority of courts that have rejected the doctrine of severability of choice-of-forum clauses, and several cases involving the interplay of those clauses and choice-of-law clauses;

A California Supreme Court case holding that the Federal Arbitration Act (FAA) did not preempt a California statute that prohibited waivers of "representative actions" filed by employees against employers for violating the state's labor laws, and two cases disagreeing on whether contracting parties may avoid FAA preemption by choosing the "non-federal" part of a state's law;

A New York case recognizing a foreign judgment, even though New York had no jurisdiction over the debtor or his assets; a Pennsylvania case giving full faith and credit to the New York judgment; and a D.C. case refusing to do so — and not only because New York did not have jurisdiction; and

Many other interesting conflicts cases involving products liability, other torts, contracts with and without choice-of-law clauses, insurance contracts, statutes of limitation, marriages by proxy, divorce, marital property, and successions."

Save the date: Workshop on Sovereign Debt in Cambridge

On 25 May 2015 Anne Henow, Hayk Kupelyants, Jens van 't Klooster, Kim Hecker and Marco Meyer from the University of Cambridge will host a one day workshop on "The Ideal of Democracy and the Reality of Sovereign Debt" at Gonville and Caius College in Cambridge.

Here is the call for papers:

> *In the aftermath of the 2008 bank bailouts, sovereign debt has increased to unprecedented levels. As a result, governments saw their policy room curtailed by the demand for credibility and access to international capital markets. In Greece and Italy, democratically elected officials stepped down from power with the aim of promoting creditworthiness. The Argentine litigation in the United States again brought attention to substantial sway of bondholders over sovereign states.*
>
> *As a response, economic and legal debates on sovereign debts have been wide and varied, but they have only rarely addressed the core normative issues involved in issuing, trading, and restructuring sovereign debt. Political philosophers have been slow to respond to issues raised by recent debt crises. One likely reason for the current lack of normative reflection on the increased political importance of financial dynamics is the complexity of international financial markets.*
>
> *The aim of the workshop is therefore to bring together scholars from*

philosophy, law, and the social sciences to discuss the consequences of rising sovereign debts for the normative ideals that inform existing parliamentary democracy. The workshop will feature invited contributions by keynote speakers Philip Wood (Law, Allen & Overy) and Gabriel Wollner (Philosophy, Humboldt). Drawing on these diverse perspectives, the workshop will contribute to a new framework for evaluating sovereign indebtedness.

Topics include but are certainly not limited to:

- *Financial markets and democratic sovereignty*
- *Design of sovereign debt contracts and the role of international institutions*
- *The values and dangers of sovereign debt for social welfare*
- *Sustainable public finance and investment*
- *Fair sovereign debt restructuring*
- *Dealing with sovereign debt within the Eurozone*
- *Odious debt*
- *Rights and responsibilities of bondholders*

Keynote speakers:

PHILIP WOOD is an expert in comparative and cross-border financial law and works full-time for the law firm Allen & Overy in the firm's London office. He has written around 18 books, including nine volumes in the series Law and Practice of International Finance published in He held visiting academic positions at the Universities of Cambridge, Oxford and Queen Mary.

GABRIEL WOLLNER is assistant professor in philosophy at Humboldt University Berlin. His academic interests are in political philosophy and ethics, and the application of these inquiries to various issues in public policy. His work has appeared in a number of journals, including 'The Journal of Social Philosophy', 'The Journal of Political Philosophy' and 'The Canadian Journal of Philosophy'.

Submission details and deadlines:

The workshop is a one day event for which participants are expected to read the presented papers in advance. Papers can be up 10,000 words in length and presentations will be limited to 10 minutes, followed by a 40 minute discussion.

To apply, please send a 500 – 700 word abstract to Jens van ‘t Klooster (jmv32@cam.ac.uk) before the 15th of February. Accepted presenters will be asked to circulate their paper by the first of May.

Organizers: Anne Henow, Hayk Kupelyants, Jens van ‘t Klooster, Kim Hecker and Marco Meyer.

We gratefully acknowledge support by the University of Cambridge School of Arts and Humanities, Gonville and Caius College Cambridge and the Cambridge-Groningen ‘Trusting Banks’ project.