Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts" (3/2014)

Recently, the May/June issue of the German law journal "Praxis des Internationalen Privat- und Verfahrensrechts" (**IPRax)** was published.

- ***Rolf Wagner***: "15 years of judicial cooperation in civil matters"

With the Treaty of Amsterdam entering into force on 1 May 1999 the European Union has obtained the legislative competence concerning the judicial cooperation in civil matters. This event's 15th anniversary gives ample reason to pause for a moment to briefly appreciate the achievements and to look ahead.

- ***Marc-Philippe Weller:*** "Habitual residence as new connecting factor in International Family Law – Counterbalancing changes in the applicable law by the local and moral data approach"

In International Family Law, the traditional connecting factor of nationality is more and more substituted by habitual residence. E.g., according to Article 8 Rome III-Regulation divorce and legal separation shall be subject to the law of the State where the spouses are habitually resident at the time the court is seized. The connecting factor of habitual residence reflects the greater mobility in the 21st century's open societies. However, it affects the permanence of the law applicable in family matters and causes a change in the applicable law with every cross border-transfer of the spouses' habitual residence. This volatility of substantive family law conflicts with the principle of predictability and interferes with the cultural identity of the individual. It therefore requires counterbalance by means of substantial law. One method of counterbalancing changes in the applicable law is the local and moral data-approach, advocated by Albert A. Ehrenzweig and pursued by my great academic mentor Erik Jayme, whom this article is dedicated to. It discusses the local and moral data-approach and shows its limits of application, especially in the area of ordre public.

- ***Alfred Escher/Nina Keller-Kemmerer***: "On the way to the American Rule? The unconstitutionality of recent German Federal Court's (BGH) decisions on limiting foreign correspondence lawyers' reimbursement claims for litigation costs"

German procedural law is guided by the so called Unterliegenshaftung. According to this principle, which is nearly equal to the English Rule, the unsuccessful party is obliged to pay the costs of the proceedings and the extrajudicial costs necessarily incurred by the applicant in taking the appropriate legal action (lawyers' fees and expenses). In accordance to this guiding principle of German procedural law, the determination of the amount of fees for foreign correspondence lawyers had been based on the relevant foreign law and was not limited to the amount of German correspondence lawyers. In 2005 however, the German Federal Court (BGH) changed this lawful and prevailing jurisprudence and limited the fees for foreign correspondence lawyers to the regulations of the German Rechtsanwaltsvergütungsgesetz (Act on the Remuneration of Lawyers). This article takes the BGH's recent decision of 2012 concerning this question of law as a reason to stress especially two important aspects which only received little attention in the discussions in 2005: That the German Federal Court's decision is not only inconsistent with fundamental principles of German procedural law, but also incompatible with the Constitution.

- ***Chris Thomale***: "Brussel I and the eastern EU enlargement – defining the scope ratione temporis of Reg (EC) 44/2001"

The European Court of Justice recently held that for the Brussels I-Regulation to be applicable for the purpose of the recognition and enforcement of a judgment, it is necessary that at the time of delivery of that judgment the regulation was in force both in the Member State of origin and in the Member State addressed. This decision raises general questions on the spatial and temporal scope of the Brussels I-Regulation as well as the normative relationship between its Art. 2 et seqq. and Art. 32 et seqq., which are discussed in this article.

- ***Moritz Brinkmann***: "International jurisdiction with respect to avoidance claims in the context of insolvency proceedings regarding

credit institutions”

At the centre of the case, that is an ancillary proceeding to the insolvency proceedings regarding the Lehman Brothers Bankhaus AG, are intricate issues regarding the international jurisdiction with respect to avoidance claims: The most pertinent is the question whether the doctrine developed in Deko Marty is also applicable in the context of the Directives 2001/24/EC on the reorganisation and winding up of credit institutions and 2001/17/EC on the reorganisation and winding-up of insurance undertakings. If this was answered in the affirmative, one has to ask whether national legislation that implements the directives into the law of a Member State can be interpreted in conformity with the Directive, even though the legislation does not explicitly deal with ancillary proceedings and the autonomous law of that Member State does not follow the approach taken in Deko Marty. In this sense, the case is also about the limits of the duty of the national courts to interpret national legislation in conformity with European law insofar as it implements directives.

- ***Peter Mankowski***: “Die internationale Zuständigkeit nach Art. 3 EuUnterhVO und der Regress öffentlicher Einrichtungen”

If public bodies enforce claims for maintenance subrogated by them, jurisdiction is vested in the court of the place where the original creditor is habitually resident, by virtue of Art. 3 (b) Maintenance Regulation. Art. 3 Maintenance Regulation establishes a system of general jurisdiction and does not retain the relation which was previously prevailing between Arts. 2 and 5 (2) Brussels I Regulation. Else an unwilling or defaultive debtor would indirectly benefit from the subrogation and the transfer of the claim to the public body. This would generate quite some unwelcome and counterproductive incentives. Conversely, to vest jurisdiction in the court for the place where the original creditor is habitually resident, proves to be advantageous in many regards.

- ***Christoph Thole:*** “Member States may take cross-border evidence without recourse to the methods of the Evidence Regulation”

The Council Regulation (EC) No 1206/2001 has no conclusive character. This was recently ruled by the ECJ. The decision confirms the Court’s earlier ruling

in Lippens and finally settles a long lasting dispute about the scope of the Regulation. While the ECJ's arguments, which are primarily based on teleological grounds, are convincing and the ruling to be welcomed, it is questionable though, what effect the decision will have on the factual application of the Regulation. The comment analyses the decision and its consequences.

- ***Björn Laukemann***: "Public policy control in European insolvency proceedings in the light of fraudulent recourse to the court's competence and subreption of discharging residual debts: a creditors' perspective"

Bankruptcy tourism within the European internal market is legion. Especially uninformed and involuntary creditors suffer from cross-border COMIshifts of the insolvent debtor undertaken with fraudulent intention. In this context, it is hardly surprising – as demonstrated by a new decision of the Local court of Göttingen – that the public policy exception comes into play. The article will shed light on the question if the interpretation of Art. 26 of the European Insolvency Regulation has to distinguish between objections concerning the international jurisdiction of the insolvency court (Art. 3 EIR) and alleged violations of the creditors' right to participate effectively in foreign proceedings. The author will point out that infringements against the latter may, under specific conditions, trigger the application of Art. 26 EIR. In this regard, the adequate balance between the creditors' need for a prior legal defence, on the one hand, and their obligation to (constantly) inform about the insolvency of their debtor, on the other, is of peculiar importance. The outcome of the current reform of the Insolvency Regulation will show to what extent it will meet the necessity to strengthen the procedural position of foreign creditors – beyond Art. 26 EIR.

- ***Bettina Heiderhoff***: "The "mirror principle" and the violation of international public policy in German recognition procedures"

For the recognition of divorce decrees from non EU member states, the German courts must determine whether the decision was within the jurisdiction of the foreign court (§ 109 para. 2, nr. 1 FamFG). In order to do so, the German rules on jurisdiction are applied to the foreign case in a "mirrored" fashion (the

socalled "mirror principle"). In some special cases, it is debatable, but also decisive, as to whether the German judge must mirror § 98 FamFG or Art 3 et seq Brussels IIbis regulation. This counts, in particular, where one or both of the divorcees may have given up their former nationality of the State of origin. The article indicates that the German court must always mirror § 98 FamFG. The Brussels IIbis regulation can only justify additional competences. In particular, the exclusive competence of art. 6 Brussels IIbis is not applicable in this context. Furthermore, the article points out that each party can refer to a violation of the international public policy during the recognition procedure, even if he hasn't made use of a possible appeal before the foreign court. It is a question for the individual case if the right to appeal before the court of origin has to be considered by the German court.

- ***Jens Adolphsen/Johannes Bachmann***: "The Certification of orders to perform concurrently ("Zug-um-Zug") as European Enforcement Orders"

The reviewed judgment of the Regional High Court of Karlsruhe, Germany is dealing with the certification of an order to perform concurrently ("Zug-um-Zug") as a European Enforcement Order. In contrast to the court, a majority in German literature and jurisprudence denies the possibility of certification in such cases. But "Zug-um-Zug" claims can still be issued as European Enforcement Orders. The following article describes the academic discussion and names the necessary requirements for certification.

- ***Rolf A. Schütze***: "Zur cautio iudicatum solvi juristischer Personen"

German law practices the principle of residence in determining the obligation of cautio iudicatum solvi. It is contested whether legal entities have their usual residence at the place of incorporation or at the place of administration. Contrary to the prevailing opinion in case law and legal writing the OLG Schleswig – in the commented decision – sees the usual residence at the place of incorporation. The author contests that and favours the place of administration as decisive in application of sect. 110 German Code of Civil Procedure.

- ***Stefan Pürner:*** "The reciprocity (concerning the recognition of civil

judgments) in the relation between Bosnia and Herzegovina and Germany"

The article describes the development of the German court practice related to the reciprocity concerning the recognition of civil judgments in the relation between Bosnia and Herzegovina and Germany. There are contra dictionary judgments in Germany related to this question. In the midst of the 90s the Higher regional Court Cologne ruled that, due to the war situation in Bosnia and Herzegovina, there would be no reciprocity. The author holds that this judgment was wrong already in the time it was brought. In any case it is overtaken by the legal development in the meantime which convinced also the newer German court practice to affirm the existence of the reciprocity in the said relation. However, even in the present German legal literature authors deny that the reciprocity exists in mentioned relation. From this, the author draws the conclusion that in cases with foreign elements country- specific knowledge is essential. In addition to that, past former findings of courts should not be just carried forward. Moreover he emphasizes that, in particular in relation to states with a very agile legal development (e.g. the transformation states) the legal situation concerning questions like the reciprocity may be answered only on the basis of laws, judgments and legal literature of the respective states (or by legal opinions of experts or institutions which are specialized in the law of the respective country) as primary source whilst judgments of German (and all other foreign courts) are only secondary sources of information.

- ***Tobias Lutzi***: "France's New Conflict-of-Laws Rule Regarding Same-Sex Marriage and the French ordre public international"

In a lawsuit that attracted huge media attention, the French Cour d'appel de Chambéry has confirmed France's first lower court decision concerning the relation between the new Art. 202-1 § 2 of the Code civil (which provides that same-sex marriage is allowed if only the law of the nationality or the law of the residence of one of the spouses allows it) and bilateral treaties that provide exclusively for the application of the law of the nationality of each spouse. Although the court recognized the superiority of these treaties to the provisions of the Code civil under Art. 55 of the French Constitution, it ruled that the Franco-Moroccan Agreement of 10 August 1981 does not apply to the marriage

of a Franco-Moroccan same-sex couple as the prohibition of same-sex marriages contradicts French international public policy.

Bamberski's Trial to Start this Week

The trial of André Bamberski will be held in Mulhouse on Thursday and Friday (French style: no need to spend several months on that).

Mr Bamberski is accused of ordering the kidnapping of Dr Dieter Krombach in Germany for delivering him to French authorities so that he could be tried, again, for the murder of Kalinka Bamberski in 1982.

A German court confirmed the decision of German prosecutors not to prosecute Dr Krombach in 1987. He was then sentenced in abstentia by a French court to 15 years of prison in 1995. As he could not be represented by a lawyer under the French criminal procedure of the time, he could successfully sue France before the European Court of Human Rights, and get the Court of Justice of the European Communities to agree that the civil ruling of the French criminal court should be denied recognition in Germany on that ground.

Bamberski did not give up on the idea of seeing Krombach in jail and had him eventually kidnapped in Germany in 2009, and delivered to French authorities. Germany protested, but Krombach was tried again, and sentenced, again, to 15 years.

Appeal to the French Supreme Court

Dr Krombach's last appeal to the French *Cour de cassation* was dismissed on 2

April 2014.

But, wait, how could a French court tolerate that criminals be delivered by kidnappers in the middle of the night? That´s all right, the Court ruled, as long as Krombach could get legal representation and the kidnappers were not French (special) officials. Real bad guys only please!

That was an easy one. Harder now: what about mutual trust? Answer: no mutual trust unless you are really obliged to trust the legal system of other Member states, and, well, there is such obligation only when a special provision of European law mandates so. Article 82 of the Treaty on the Functioning of the EU is not enough for this purpose.

Dr Krombach´s lawyer announced his intention to bring the matter before the Court of Justice of the European Union, because "le juge français dicte sa loi à l'Europe". But it seems he had only requested a referrence to the CJUE before the lower court, which rejected it.

And Now

Mr Bamberski´s own trial will now take place. Bamberski has already said that he has no regrets.

A movie on the life of Bamberski seems to be in the making, with Daniel Auteuil in the lead role.

UPDATE: Bamberski got a one year suspended sentence.

Second Issue of 2014's Journal du Droit International

The second issue of French *Journal du droit international* (*Clunet*) for 2014 was just released. It contains three articles focusing on issues of private international law and several casenotes. A full table of content is available here.

Vincent Chetail (Institute of Graduate Studies, Geneva), *Les relations entre droit international privé et droit international des réfugiés : histoire d'une brève rencontre*

> *Although the interaction between private international law and international refugee law has received scant attention from the doctrine, the relationship between the two branches of law highlights both their convergence and specificity. Their mutual influence oscillates between two contradictory trends : interdependence and particularism. On the one hand, private international law constitutes a substantial source of inspiration for elucidating the whole structure of the refugee status. On the other hand, international refugee law paradoxically emancipates from private international law on issues directly pertaining to this last discipline.*

Eric Fongaro (Bordeaux University), *L'anticipation successorale à l'épreuve du « règlement successions »*

> *The Regulation (EU) N° 650/2012, known as « Regulation Succession » will bring important innovations, when it will come into force, for the settlement of successions which will open as from August 17th, 2015 and which will present elements of foreign origin. However, right now, some revolutionary provisions of the European text have authority to apply to anticipate the future settlements of succession. In this respect, the Regulation contains provisions particularly welcome for fixing the law applicable to provisions on death. However, if the succession treatment of these liberalities is called to raise the succession law, the regulation, by the new criteria of attachments that pose, also authorizes the establishment of new succession anticipation strategies for changing times the law of succession. It facilitates this way, not only the anticipation under the control of the law of succession strategies, but also strategies to directly control the inheritance law itself.*

Hugues Fulchiron (Lyon University), *La lutte contre le tourisme procréatif : vers un instrument de coopération internationale ?*

> *For several years a global market of procreation is developing, carried by the rising desire to have a child, among heterosexual couples as among gay couples, and the division of States on subjects as sensitive as medically assisted*

procreation and surrogacy. Beyond the ethical questions raised by the procreative tourism, the issue of the situation of persons involved in the process : intended parents, surrogates, and especially children. Only international cooperation on the model of the Hague Convention regarding international adoption, could help to find a balance between the principles defended by the States and the protection of people, especially children.

UK Supreme Court Rules on Concept of Rights of Custody under Brussels IIa Regulation

On 15 May 2014, the Supreme Court of the United Kingdom delivered its judgment in In the matter of K (A Child) (Northern Ireland).

The Court issued the following press summary.

BACKGROUND TO THE APPEALS

This appeal concerns the meaning of the words 'rights of custody' in article 3 of the Hague Convention on the Civil Aspects of International Child Abduction ('the Convention'), and in the Brussels II Revised Regulation (EC) No 2201/2003 ('the Regulation') which complements and takes precedence over the Convention between most member states of the European Union. A child is wrongfully removed or retained in a country under the Convention if such removal or retention is in breach of 'rights of custody'. The issue is whether the rights of custody must already be legally recognised and enforceable, or include informal rights (termed 'inchoate rights'), the existence of which would have been legally recognised had the question arisen before the removal or retention in question.

The proceedings concern a boy ('K') born in Lithuania in March 2005. From the time of his birth until 2012 he lived with and was cared for by his maternal

grandparents. His father separated from his mother before he was born and has played no part in his life. His mother moved to Northern Ireland without K in May 2006 and has lived there ever since. A month after K's birth she authorised her mother to seek medical assistance for K and, before she left for Northern Ireland, executed a notarised consent for her mother to deal with all institutions in relation to K on her behalf. In 2007 a court order was made in Lithuania putting K under the temporary care of his grandmother. This order terminated when K's mother returned in February 2012 seeking to take K into her own care. K's mother also applied to withdraw the notarised consents. Meetings were held at the Children's Rights Division of the local authority where orders were made for her to have weekly contact with K. She was advised that legal proceedings against her mother to obtain custody of K would be costly and protracted and decided instead to seize K forcibly in the street while he was walking home from school with his grandmother on 12 March 2012, and to travel immediately back to Northern Ireland with him by car and ferry.

The grandparents were told by the Lithuanian authorities that they had no right to demand the return of K. However, in February 2013 they issued an originating summons in Northern Ireland seeking a declaration that K was being wrongfully retained in breach of their rights of custody. Maguire J refused their application, and their appeal against his decision was dismissed by the Northern Ireland Court of Appeal.

JUDGMENT

The Supreme Court by a majority (Lord Wilson dissenting) allows the appeal, finding that the grandmother did enjoy 'rights of custody' such that K's removal from Lithuania was wrongful. It orders that K should be returned to Lithuania forthwith. If K's mother wishes to apply for permission to argue at this very late stage that any of the exceptions to the court's obligation to return K found in article 13 of the Convention apply, this order will be stayed if she makes her application within 21 days. Lady Hale gives the only judgment of the majority. Lord Wilson gives a dissenting judgment.

REASONS FOR THE JUDGMENT

The courts of states parties to the Convention have on several occasions dealt with applications based on inchoate rights of custody [23-42]. In England and

Wales such rights have been recognised where the person with legal rights of custody had abandoned the child or delegated his primary care to others [44], but other countries have taken a less expansive view. The Convention is not concerned with the merits of custody rights but it will only characterise a removal of a child as wrongful if it interferes with a right of custody which gives legal content to the situation altered by the removal. Thus it is not enough that K's removal was a classic example of the sort of conduct which the Convention was designed to prevent and to remedy, given the harmful effects on K of wresting him from the person he regarded as his mother and taking him without notice to a country where he knew no-one and did not speak the language [50-51]. The rights relied on by K's grandparents must amount to 'rights of custody' for the purposes of the Convention.

The majority considered that the English courts should continue to recognise inchoate rights as rights of custody under the Convention and the Regulation, provided that the important distinction between rights of custody and rights of access was maintained, and provided that (a) the person asserting the rights was undertaking the responsibilities and enjoying the powers entailed in the primary care of the child; (b) they were not sharing them with the person with a legally recognised right to determine where the child should live and how he should be brought up; (c) that person had abandoned the child or delegated his primary care to them; (d) there was some form of legal or official recognition of their position in the country of habitual residence (to distinguish those whose care of the child is lawful and those whose care is not); and (e) there is every reason to believe that, were they to seek the protection of the courts of that country, the status quo would be preserved for the time being while the long term future of the child could be determined in those courts in accordance with his best interests [59].

These conditions applied to the situation of K's grandparents. The Children's Rights Division was supervising the situation on the basis that K remained living with his grandparents while having contact with his mother. Taking K out of the country without his grandmother's consent was in breach of her rights of custody [61-62].

It followed that the court was bound under the Convention to make an order to return K to Lithuania forthwith. It may be that the grandparents would be content with legally enforceable contact arrangements and the mother now has every

incentive to agree to these. If the mother were to seek permission at this late stage to raise one of the exceptions in article 13 to the court's obligation to order the return of the child within 21 days, the order would be stayed until the hearing on the first available date in the High Court to determine whether such permission should be granted to her [66].

Lord Wilson would have dismissed the appeal. In his view the rights of custody enjoyed by K's grandmother were terminated on the mother's return [71]. Even if the courts in Lithuania might have maintained the status quo while K's future was decided, this did not amount to recognition of rights of custody in the grandparents [72]. The Convention application should therefore have been dismissed. As a result, a welfare inquiry into K's interests could then have been conducted under the Children (Northern Ireland) Order 1995, in which his grandparents might have been granted an order for contact or even residence [84].

Post Doctoral Researcher on Comparative Civil Procedure at the University of Luxembourg

The University of Luxembourg is seeking to recruit a post-doctoral researcher with a strong interest in international and comparative civil procedure.

Interested candidates should contact me by mid June at gilles.cuniberti@uni.lu.

European Account Preservation Order adopted

The European Commission issued yesterday the following Press Release.

European Account Preservation Order adopted: New EU rules will make it easier for companies to recover millions of cross-border debt

New EU rules making it easier for companies to recover claims across borders have been adopted today by EU Ministers. Member States in the General Affairs Council signed off on the agreement recently reached with the European Parliament to establish a European Account Preservation Order (MEMO/14/101) – a Regulation that will be directly applicable in the Member States (except in the UK and Denmark which have an opt-out in this area). The European Account Preservation Order is essentially a European procedure that will help businesses recover millions in cross-border debts, allowing creditors to preserve the amount owed in a debtor's bank account. The proposal had been made by the European Commission in July 2011 (IP/11/923).

"Every Euro counts: Small and medium-sized enterprises are the backbone of European economies, making up 99% of businesses in the EU. Around 1 million of them face problems with cross-border debts. In economically challenging times companies need quick solutions to recover outstanding debts. This is exactly what the European Account Preservation Order is about," said Johannes Hahn, EU Commissioner responsible for Justice during Vice-President Viviane Reding's electoral leave. "Today's adoption is good news for Europe's SMEs and the economy. Thanks to these new rules, small businesses will no longer be forced to pursue expensive and confusing lawsuits in foreign countries."

While the EU's internal market allows businesses to enter in cross-border trade and boost their earnings, today around 1 million small businesses face problems with cross-border debts. Up to €600 million a year in debt is unnecessarily written off because businesses find it too daunting to pursue expensive, confusing lawsuits in foreign countries. The European Account Preservation Order will help recovering debt across borders by preventing debtors from moving their assets to another country while procedures to obtain and enforce a judgment on the merits

are ongoing. It would thus improve the prospects of successfully recovering cross-border debt.

Next steps: After its publication in the Official Journal – the EU's Statute book , expected in June 2014, the Regulation will be directly applicable in the Member States (except in the UK and Denmark).

Background

The new European Account Preservation Order will allow creditors to preserve funds in bank accounts under the same conditions in all Member States of the EU (except the UK and Denmark where the new EU rules will not apply). Importantly, there will be no change to the national systems for preserving funds. The creditors will be able to choose this European procedure to recover claims abroad in other EU countries. The new procedure is an interim protection procedure. To actually get hold of the money, the creditor will always have to obtain a final judgment on the case in accordance with national law or by using one of the simplified European procedures, such as the European Small Claims Procedure.

The European Account Preservation Order will be available to the creditor as an alternative to procedures existing under national law. It will be of a protective nature, meaning it will only block the debtor's account but not allow money to be paid out to the creditor. The procedure will only apply to cross-border cases. It provides common rules relating to jurisdiction, conditions and procedure for issuing an order; a disclosure order relating to bank accounts; how it should be enforced by national courts and authorities; and remedies for the debtor and other elements of defendant protection.

The European Parliament's Legal Affairs Committee (JURI) voted to back the Commission's proposal (MEMO/13/481) in May 2013. Ministers discussed the proposal at the Justice Council meeting on 6 June 2013 and reached a general approach on 6 December 2013 (SPEECH/13/1029). The European Parliament issued its support for the proposal in a plenary vote in April 2014 (see MEMO/14/308).

H/T: Maarja Torga

Trimble on the Marrakesh Puzzle

Marketa Trimble (University of Nevada William S Boyd School of Law) has posted The Marrakesh Puzzle on SSRN.

> *This article analyzes the puzzle created by the 2013 Marrakesh Treaty in its provisions concerning the cross-border exchange of copies of copyrighted works made for use by persons who are "blind, visually impaired, or otherwise print disabled" (copies known as "accessible format copies"). The analysis should assist executive and legislative experts as they seek optimal methods for implementing the Treaty. The article provides an overview of the Treaty, notes its unique features, and examines in detail its provisions on the cross-border exchange of accessible format copies. The article discusses three possible sources for implementation tools – choice of law rules, the exhaustion doctrine, and labeling – and concludes that a suitable method of implementing the cross-border exchange provisions of the Treaty may consist of a combination of appropriately-selected rules for choice of applicable law and rules for labeling.*

The paper is forthcoming in the *International Review of Intellectual Property and Competition Law*.

Third PIL Workshop at Nanterre University

The University of Paris Ouest Nanterre la Defense will host its third private international law workshop on 14 May 2014 at 6:30 pm.

Christophe Lapp (ALTANA Law firm) and judge Pauline Dubarry (French Central authority) will present on the taking of evidence abroad.

Dr François de Bérard (Nanterre University) will act as a discussant.

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ELI UNIDROIT Launch Pilot Studies in Civil Procedure Project

The European Law Institute has announced that its joint project with UNIDROIT on civil procedure will move on as follows.

Background

In 2004, the ALI (American Law Institute) and UNIDROIT adopted and jointly publishedPrinciples of Transnational Civil Procedure. The aim of the work was to reduce uncertainty for parties litigating in unfamiliar surroundings and promote fairness in judicial proceedings through the development of a model universal civil procedural code. The Principles, developed from a universal perspective, were accompanied by a set of Rules of Transnational Civil Procedure, which were not formally adopted by either UNIDROIT or the ALI, but constituted the Reporters' model implementation of the Principles, providing greater detail and illustrating how they might be developed. The Rules were to be considered either for adoption or for further adaptation in various legal systems, and along with the Principles can be considered as a 'model for reform in domestic legislation'.

ELI-UNIDROIT cooperation

ELI and UNIDROIT cooperation aims at adapting the ALI-UNIDROIT Principles from a European perspective in order to develop European Rules of Civil Procedure. This work will take as its starting point the 2004 Principles and aim to develop them in the light of: i) the European Convention on Human Rights and

the Charter of Fundamental Rights of the European Union; ii) the wider acquis of binding EU law; iii) the common traditions in the European countries; iv) the Storme Commission's work; and v) other pertinent European sources.

At the first stage of the project, three working groups consisting of academics, judges and practitioners will be established. These working groups should conduct pilot studies to test the viability of the methodological approach and overall project design, whilst the ultimate outcome remains to cover, as a minimum, the full range of issues addressed in the 2004 ALI-UNIDROIT Principles.

The pilot projects will cover the following topics:

i. Service and due notice of proceedings
ii. Provisional and protective measures
iii. Access to information and evidence

On 28 February 2014 the ELI Council appointed the following persons as co-reporters for the above mentioned topics: Neil Andrews, Gilles Cuniberti, Fernando Gascon Inchausti, Astrid Stadler and Eva Storskrubb.

Issue 2014.1 Nederlands Internationaal Privaatrecht

The first issue of 2014 of the Dutch journal on Private International Law *Nederlands Internationaal Privaatrecht* includes an analysis of the Brussels I Recast and the influence on Dutch legal practice, an article on Child abduction and the ECHR, and two case notes; one on the Impacto Azul case and one on the Povse case.

- Marek Zilinsky, 'De herschikte EEX-Verordening: een overzicht en de gevolgen voor de Nederlandse rechtspraktijk', p. 3-11. The English abstract reads:

From 10 January 2015 onwards the Brussels I Recast (Regulation No. 1215/2012) shall apply. Under the new regulation which replaces the Brussels I Regulation (Regulation No. 44/2001), the exequatur is abolished and some changes are also made to provisions on jurisdiction and lis pendens. This article gives an overview of the changes effected by the Brussels I Recast compared to the proposed changes in the Proposal for a new Brussels I Regulation (COM(2010) 748 final). The consequences of the new regulation for Dutch practice are also dealt with briefly.

- Paul Vlaardingerbroek, 'Internationale kinderontvoering en het EHRM', p. 12-19. The English abstract reads:

With the Neulinger/Shuruk decision in 2009, the European Court of Human Rights caused a great deal of misunderstanding and confusion among judges and academics, because in this case the ECHR seemed to protect the abductors of children and to allow them to benefit from their misconduct. After the Neulinger case some further ECHR decisions followed that seemed to compete with the fundamental purposes of the Hague Convention on child abduction, but in this paper I will try to show that in more recent cases the European Court has mitigated the hard consequences of the Neulinger/Shuruk decision and has given a new direction in how to proceed and decide when the two conventions seem to compete.

- Stephan Rammeloo, 'Multinationaal concern – Aansprakelijkheid van moedervennootschap voor schulden van dochtervennootschap: nationaal IPR ('*scope rule*') getoetst aan Europees recht (artikel 49 VWEU)', p. 20-26. Case notes European Court of Justice 20-06-2013, Case C-186/12 (*Impacto Azul*), The English abstract reads:

In June 2013 the CJEU delivered a preliminary ruling under Article 49 TfEU with regard to the exclusion, under national law, of an EU Member State from the joint and several liability of parent companies vis-à-vis the creditors of their subsidiaries in a crossborder context. Article 49 TfEU does not prohibit any such exclusion resulting from a self-restricting unilateral scope rule under the national Private International Law of an individual EU Member State. The interpretative ruling of the Court does not, however, affect cross-border parental liability for company group members under Private International Law having regard to contractual or non-contractual (cf. tort, insolvency) liability.

- Monique Hazelhorst, 'The ECtHR's decision in *Povse*: guidance for the future of the abolition of exequatur for civil judgments in the European Union', p. 27-33. Case notes European Court of Human Rights 18 June 2013, decision on admissibility, Appl. no. 3890/11 (*Povse* v. *Austria*). The abstract reads:

The European Court of Human Rights' decision on admissibility in Povse is worthy of analysis because it sheds light on the preconditions for the abolition of exequatur for judgments in civil matters within the European Union. The abolition of this control

mechanism is intended to facilitate the free movement of judgments among Member States on the basis of the principle of mutual recognition. Concerns have however been expressed about the consequences this development may have for the protection of fundamental rights. The Human Rights Court's Povse decision provides welcome guidance on the limits imposed by the European Convention on Human Rights on the abolition of exequatur. This case note analyses the preconditions that may be inferred from the decision. It concludes that the Human Rights Court's approach leaves a gap in the protection of fundamental rights which the accession of the EU to the Convention intends to fill.