# Belgium ratified the Child Protection Convention of 1996

Belgium has ratified the Hague Child Protection Convention of 1996. Readers might remember that the ratification by the EU Member States of this instrument was delayed due to a diplomatic issue. Once this was resolved, the Commission's objective was that all Member States should ratify the Convention by 2010 (see the Council Decision of 5 June 2008). Some were late. Belgium, as the second last Member State to ratify, has now done so.  Of the EU Member States only Italy's ratification remains outstanding.

The Convention will enter into force in Belgium on 1 September 2014.

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# New publication on Matrimonial Property Proposal

Jaqueline Gray and Pablo Quinzá Redondo published "Stress-Testing the EU Proposal on Matrimonial Property Regimes: Co-operation between EU private international law instruments on family matters and succession" in Family&Law, an open-source Belgian-Dutch Journal. The publication is available here.

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# Prize Question: Who Gets Carried

# Away by Europe?

- Europe attracts and divides. It makes us dream, but it also has a reality with boundaries that shape our lives.

What are the dynamics of integration? Whom does Europe sweep off their feet? Does European integration create community or does it lead to exclusion?

By asking this prize question, the Young Academies of several European countries are seeking insights into the motions of Europe, its destinies and processes, and the people affected by them. Answers can take all imaginable forms, from academic or literary to artistic, audiovisual, and musical submissions, provided they are accompanied by an explanatory text.

The prize question is open to everyone. Contributions are welcome in Danish, Dutch, English, French, German, Italian, Polish, Spanish, or Swedish.

The deadline for submission is December 1, 2014.

More information is available at www.aquestionforeurope.eu and here:

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# Vogel on Choice of Law relating to Personality Rights

- As a result of the global spread of media content, cross-border infringements of personality rights have increased significantly over recent years. However, the question of which law applies in these instances remains largely answered (see, for example, our online symposium as well as various posts). A recently published monograph, "Das Medienpersönlichkeitsrecht im Internationalen Privatrecht", takes up the long-running debate about a Europe-wide harmonisation of national conflict of law rules relating to personality rights. The author Benedikt Vogel, engages in a comparative analysis of media-related

infringements in substantive and conflict of laws in Germany, France and the UK. The author develops a new proposal for a conflict of law rule for personality rights infringements. In doing so he takes into account the (failed) negotiations preceding the adoption of the Rome II Regulation which brought again to light the need for flexibility and compromise in all member states. The proposal aims to satisfy all conflicting interests: those of the plaintiff and the media, those of the courts in view of practicability and efficiency and, last not least, the public's interest in protecting the freedom of expression and information in Europe.

The book has been published by Nomos and is written in German. Further information (in German) is available here.

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# Conference on "Minimum Standards in European Civil Procedure Law

On November 14 and 15, 2014 Matthias Weller, EBS Law School, and Christoph Althammer, University of Freiburg, will host a conference on "Minimum Standards in European Civil Procedure Law" at the Research Center for Transnational Commercial Dispute Resolution at the EBS Law School in Wiesbaden, Germany. The conference will be held in German. More information is available of the Center's homepage. Registration is online.

The programme reads as follows:

## Friday, November 14, 2014

- **Anmeldung**
- **Begrüßung**
  *Prof. Dr. Matthias Weller,* EBS Law School, Wiesbaden

**Teil 1 – Perspektive der Mitgliedstaaten**

- **Mindeststandards und zentrale Verfahrensgrundsätze im deutschen Recht: EMRK/Verfassungsrecht/einfaches Recht**,
  *Prof. Dr. Christoph Althammer,* Albert Ludwigs University Freiburg
- **Mindeststandards und zentrale Verfahrensgrundsätze im französischen Recht: EMRK/Verfassungsrecht/einfaches Recht**
  *Prof. Dr. Frédérique Ferrand,* Université Jean Moulin Lyon
- **Mindeststandards und zentrale Verfahrensgrundsätze im englischen Recht: EMRK/einfaches Recht**
  *Prof. Dr. Matthias Weller,* EBS Law School, Wiesbaden
- **Transnationale Synthese: ALI/UNIDROIT Principles of Civil Procedure**
  *Prof. Dr. Thomas Pfeiffer,* Ruprecht Karls University Heidelberg
- **Diskussion**

# Saturday, November 15, 2014

**Teil 2 – Unionsrechtliche Perspektive**

- **Mindeststandards und Verfahrensgrundsätze im Strafverfahren unter europäischem Einfluss**
  *Prof. Dr. Michael Kubiciel,* University of Cologne
- **Mindeststandards und Verfahrensgrundsätze im Verwaltungsverfahren unter europäischem Einfluss**
  *Prof. Dr. Andreas Glaser,* University of Zurich
- **Mindeststandards und Verfahrensgrundsätze im behördlichen und privaten Kartellverfahren unter europäischem Einfluss**
  *Prof. Dr. Friedemann Kainer,* University of Mannheim
- **Mindeststandards und Verfahrensgrundsätze im Recht des Geistigen Eigentums unter europäischem Einfluss,**
  *Prof. Dr. Mary-Rose McGuire*, University of Mannheim
- **Unionsrechtliche Synthese: Mindeststandards und Verfahrensgrundsätze im acquis communautaire/Schlussfolgerungen für European Principles of Civil Procedure,** *Prof. Dr. Burkhard Hess,* Director of the Max Planck Institute for International, European and Regulatory Procedural Law, Luxembourg

- **Diskussion**

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# Article on special jurisdiction in IP matters, including a comment on Coty

The previously reported CJEU decision in *Coty Germany GmbH v. First Note Perfumes NV*, concerning the infringement of the rights in the 3D Community trade mark, unlawful comparative advertising and unfair imitation, is the subject of a comment by Prof. Annette Kur, in her article **Durchsetzung gemeinschaftsweiter Schutz-rechte: Internationale Zuständigkeit und anwendbares Recht**, fortcomming in GRUR Int., Issue 7/8, 2014.

Her criticism is primarily addressing the answer to the first question in which the CJEU reiterated that jurisdiction under Article 93(5) of CTM Regulation may be established solely in favour of CTM courts in the MS in which the defendant committed the alleged unlawful act. This is because she finds an interpretation of the provision contrary to the principle of territoriality of intellectual property rights, both national and unitary. She explains that the effect of this principle is absence of any possibility that there might be a single infringement of an intellectual property right with the event causing damage in one country, and the damage occurring in another. In such a situation there would be two distinct acts of infringement, one in each of the countries. Kur qualifies the CJEU reasoning as a fundamental misunderstanding of the structural features of the intellectual property law that distinguish it from other areas of tort law.

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# Job Vacancy at the University of Bonn

Professor Dr. Matthias Lehmann, currently University of Halle-Wittenberg, is looking for a research assistant at his new Chair at the University of Bonn as of October 1, 2014. The candidate is required to speak and write English at the level of a native speaker and have knowledge in Private International Law and/or Banking and Financial Law

The position will be half-time (50%) and will be paid at around 1.700 Euro (approx. 1.200 Euro net) per month. The contract will start on 1 October 2014. It will run for two years, with an option to renew. Your tasks include the support in research and teaching, as well as to teach your own classes (2 hours per week), in particular in the areas of private law and private international law and/or banking and financial law.

**You need:**

- knowledge of English at the level of a native speaker, at least basic knowledge of the German language
- a University degree in law equivalent to the First German State Exam with an above-average result
- knowledge in private and/or business law
- computer literacy (at least MS-Office)

**We offer:**

- the possibility to obtain a doctorate (provided that the Faculty's rules are fulfilled)
- a stimulating working environment
- payment as a German civil servant
- possibility to buy cheap public transport ticket

The University is committed to a policy of equal opportunity. Candidates with disabilities will be preferred in cases where they have the same qualifications as others.

If you are interested in this position, please send an application (consisting of

your cv, bachelor's degree, an overview of your performance during your law studies as well as your diploma for the law degree and any other titles you may hold) by August 2, 2014 to:

Institut für Internationales Privatrecht und Rechtsvergleichung, c/o Ms Fabricius, Adenauerallee 24-42, 53113 Bonn, Germany, reference no. 28/14/3.13.

For further enquiries, please contact Professor Dr. Lehmann: matthias.lehmann@gmail.com

**Only applications sent per post will be considered. Applications made by email will unfortunately not be accepted. If you wish to have your documents returned after the recruitment process, please include a self-addressed envelope with your application.**

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# Cross-Border Effects of Banking Resolution

As part of the overhaul of the financial system, the EU has recently enacted two texts that will profoundly change the way in which banking crises will be dealt with. Those texts are the Bank Recovery and Resolution Directive (BRRD) and the Regulation on a Single Resolution Mechanism (SRM). Under them, supervisory authorities will have the power to order the transfer of assets, rights and liabilities of a bank to a purchaser or to a bridge institution. They may also prescribe the mandatory bail-in of creditors by conversion of their claims into equity or by a write down to zero. These measures may affect assets situated in other countries or rights and liabilities governed by foreign law. This raises serious conflict of laws issues. These and related topics will be dealt with during a conference on Thursday, 10 July 2014, at the British Institute of International and Comparative Law (BIICL) in London. The conference will be chaired by Professor Dr Rosa Lastra (Queen Mary). Speakers are Dr Anna Gardella (EBA), Professor Dr

Matthias Lehmann (University of Halle-Wittenberg), Dr Philipp Paech (LSE) and Dr Peter Werner (ISDA). Further details can be found here.

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# Oil Spills in Nigeria, Damages in the UK

On June 20, a United Kingdom Court delivered a judgment on preliminary issues raised in the legal action brought by about 15,000 members of a Nigerian community against Shell Petroleum Development Company of Nigeria, seeking compensation for damages caused by two oil spills in 2008 and 2009. The ruling comes as part of a civil claim brought by people from the Bodo community in the Niger Delta; the legal action was instituted at the High Court in March 2012, following the breakdown of talks over compensation and a clean- up package for the community. A full trial will commence next year.

The hearing took place in April 2014 before the President of the Technological and Construction Court, Justice Akenhead. The preliminary judgment rendered last week ruled that whilst Shell did not have an obligation to provide policing or military defence (which is the function of the state), it could be legally liable if it has failed to take other reasonable steps to protect the pipeline such as the use of appropriate technology (leak detection systems), a system of effective surveillance and reporting to the police and the provision of anti-tamper equipment. The ruling has thus opened the door for Nigerian claimants to demand compensation if oil leaks were a result of sabotage or theft – if the sabotage or theft was due to neglect on the part of the [licence] holder or his agents, servants or workmen to protect, maintain or repair any work structure or thing.

As regards PIL, several interesting issues were pointed out by the Judge: the significant jurisdictional problems that arise when claims relating to Nigerian land are brought in England rather than in the Nigerian courts that have jurisdiction in relation to such land; and the need to apply and therefore interpret Nigerian law (in particular, the Nigerian Oil Pipelines Act). Both will be analyzed

in the main trial next year.

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# Mennesson v. France, ECtHR 26.06.2014

I happened to be in France when I heard the news about the ECtHR finding against France in *Menesson v. France*, on surrogate motherhood. The Court considered established a violation of Art. 8.1 ECHR as regards the twin daughters of the couple. Here is a resumée of the case (together with a similar one, *Labassee v. France*) as presented in the Press release issued by the Registrar of the Court. The judgment itself can be found here, but only in French.

The applicants in the first case are Dominique Mennesson and Sylvie Mennesson, a husband and wife, French nationals who were born in 1955 and 1965 respectively, and Valentina Mennesson and Fiorella Mennesson, American nationals, who were born in 2000. They live in Maisons-Alfort (France). The applicants in the second case are Francis Labassee and Monique Labassee, a husband and wife, French nationals who were born in 1950 and 1951 respectively, and Juliette Labassee, an American national who was born in 2001. They live in Toulouse. The French authorities have refused to recognise the family relationship, legally established in the United States, between, on the one hand, the children Valentina Mennesson and Fiorella Mennesson, and Juliette Labassee, children who were born following surrogate pregnancy agreements, and on the other, the intended parents, the Mennesson and Labassee spouses respectively.

Mr and Mrs Mennesson had recourse to surrogate pregnancy in the United States, in which embryos created from Mr Mennesson's sperm and donated ova were implanted in the uterus of a third woman. Mr and Mrs Labassee also used this procedure. Judgments delivered respectively in California, in the first case, and Minnesota in the second, indicate that Mr and Mrs Mennesson are the parents of Valentina and Fiorella, and that Mr and Mrs Labassee are the parents of Juliette. In France, the applicants requested that the American birth

certificates be entered in the French civil status registers; Mr and Mrs Labassee further applied for a notarial deed to be entered as a marginal note. They were dismissed at final instance by the Court of Cassation on 6 April 2011 on the ground that such entries or marginal notes would give effect to an agreement on surrogate pregnancy, null and void on public-policy grounds under the French Civil Code.

The seven applicants, relying on Article 8 (right to respect for private and family life), complain about the fact that, to the detriment of the best interests of the child, they had been unable to obtain recognition in France of a family relationship legally established abroad. The applicants in the Mennesson case, relying on Article 14 (prohibition of discrimination) taken together with Article 8, allege that, on account of this refusal by the French authorities, they experience a discriminatory legal situation compared to other children in exercising their right to respect for their family lives. Further relying on Article 12 (right to marriage), they allege a violation of their right to found a family and, under Article 6 (right to a fair hearing), complain about the proceedings at the close of which the French courts refused to recognise the effects of the “American” judgment.