German Book on European Ordre Public

A German monograph on the evolving concept of the public policy exception from a national level into a European perspective has been recently published by Mohr Siebeck. It has been written by ***Ioanna Thoma*** (Brunel University, London): **Die Europäisierung und die Vergemeinschaftung des nationalen ordre public (The Europeanization and Communitarization of National Public Policy)**.

The English presentation reads as follows (a longer version is available in German on the publisher's website):

> *Ioanna Thoma deals with the influence of the ECHR and EU law on the public policy exception in private international law. In spite of the harmonization of substantive laws in many areas, especially within the context of the EU, there is still room for the application of the public policy exception. She portrays the way in which the content of national public policy is gradually changing under the normative effect of the ECHR and EU law. By referring to seminal decisions of the European and national courts, Ioanna Thoma proves that the public policy exception is no longer purely national.*

Ioanna Thoma, Die Europäisierung und die Vergemeinschaftung des nationalen ordre public, 2007. XX, 288 pages (*Studien zum ausländischen und internationalen Privatrecht 182*). ISBN 978-3-16-149351-5. Available from Mohr Siebeck.

BIICL Seminar on West Tankers Case

Here's a seminar announcement from the British Institute of International & Comparative Law:

As you will undoubtedly know, the House of Lords has referred the case of *West Tankers Inc v. RAS Riunione Adriatica di Sicurta SpA & Others [2007] UKHL 4* to the European Court of Justice for a preliminary ruling.

The question raised is **whether Regulation 44/2001 permits anti-suit injunctions to protect an arbitration agreement**. On **11 July (5-7pm)**, the Institute has planned a seminar where the case and its potential implications will be discussed.

Chair: – **Rt Hon Lord Justice Lawrence Collins**.

Speakers:

– **Audley Sheppard**, Clifford Chance LLP

– **Clare Ambrose**, 20 Essex Street

– **Dr Christian Heinze**, Max Planck Institute for Comparative and International Private Law

Participants can download a discussion note. The note introduces the case and further provides an overview of relevant findings of the 2007 Report of the Heidelberg Institute for Private International Law prepared for the European Commission on the application of Regulation 44/2001.

The event will be followed by a reception for all those attending. To register, please visit the Institute's website by clicking here.

First Issue of 2007's Journal du Droit International

The last issue of the French *Journal du Droit International* was released a few weeks ago. It contains two articles, written in French, which deal with conflict issues.

The first is authored by Belgian Professor Nicolas Angelet and Belgian Attorney Alexandra Weerts. Its title is "*Les immunités des organisations internationales face à l'article 6 de la Convention européenne des droits de l'homme – La jurisprudence strasbourgeoise et sa prise en compte par les juridictions nationales*" (International Organisations Immunities and Article 6 of the European Convention on Human Rights – Strasbourg Case Law and How it is Taken into Account by National Courts).

The English abstract reads:

> *Many authors, as well as a number of domestic court decisions, consider that the jurisdictional immunity of international organisations is compatible with article 6 ECHR upon the condition that an alternative means, or even an alternative remedy before a fair and impartial tribunal within the meaning of article 6, is available to individuals to protect their rights. When this requirement is not met, immunity is sometimes denied in favour of the right of access to court. Yet, in its Waite and Kennedy and Beer and Regan judgements of 18 February 1999 the European Court did not refer to a remedy but rather to a reasonable alternative means, and described it as a material factor but not as a prerequisite for the observance of article 6. The subsequent case law of the European Court confirms this approach and identifies a series of other criteria relevant for the aprpeciation of the proportionality of a restriction imposed on the right to access to court. As for the consequences of a possible conflict, the incompatibility between an international immunity and the right to access to court does not allow to set immunity aside. Rather, domestic courts face a conflict between contradictory international obligations, unsolved by international law. Insofar as the courts cannot require the executive branch to make a political choice of which obligation to comply with to the detriment of the other, litigants may seek to bring the forum State in the proceedings to make it face responsability for the conflict. Above all, domestic courts should seek to prevent the conflict between international obligations, by adopting the balanced approach of the European Court, rather than turning the existence of an alternative remedy into a prerequisite for the observance of article 6.*

The second article is authored by Etienne Cornut, who lectures in the French University of New Caledonia. Its title is "*Forum shopping et abus du choix du for en droit international privé*" (Forum Shopping and Abuse of the Choice of Venue

in International Private Law).

The English abstract reads:

> *In spite of the harmonization of the rules dealing with conflicts of laws and conflicts of jurisdictions, especially at EU level, forum shopping endures, and this convergence of standards is not a remedy by itself, but can only alleviate the problem without eradicating it. The fight against forum shopping malus can only be considered on a case by case basis, but to that end the only exceptions are not sufficient. International private law has developed several instruments to close these loopholes, yet they all focus on the concept of fraud: fraud to the law, fraud to the sentence, fraud to the jurisdiction. In international private law, the sanction by exception of evasion of law arises when the creation or the alteration of an international situation, though objectively actual, does not fit the real intention of the subject, when it is not subjectively actual. Then, when the subject can enjoy the option of international competency, most often he is already in an existing international situation. He has not devised or altered the situation which enables him to exert a choice. Hence, the theory of fraud cannot apply, since it does not make it possible to approach the situations resulting from a pre-existing international situation. Nevertheless, exercising an option of competence, though legal and non fraudulent, can be reprimanded. In that case, the exception of abuse of rights, despite its traditional antinomy with private international private law, should lead to questioning an abusive choice of jurisdiction.*

To my knowledge, these articles cannot be downloaded.

GEDIP: Working Sessions of the Sixteenth Annual Meeting (2006)

A very interesting **report of the working sessions of the 16th Annual meeting of the European Group for Private International Law (GEDIP-**

EGPIL), held in Coimbra on 22-24 September 2006, has been recently published on the new site of the Group. The summary (in French) has been compiled by *N. Ascensão Silva*, *R. Pereira Dias* and *G. Rocha Ribeiro* (University of Coimbra).

Here's a list of the matters discussed by the Group, as organized by the authors (in brackets the rapporteurs; *our translation and free adaptation from French*):

I. EC Private International Law and Third States:

1. The external competence question (*C. Kessedjan*);
2. The revision of the Lugano Convention (*A. Borrás*).

II. The Commission's "Rome III" Proposal and the Green Paper on matrimonial property regimes:

1. The Rome III Proposal (*A. Borrás*) [on the Green Paper on applicable law and jurisdiction in divorce matters, see also the report of *M. Struycken* presented at the 2005 meeting (Chania) of the Group and the draft articles on applicable law discussed at the 2003 meeting (Wien)];
2. The Green Paper on matrimonial property regimes (*K. Kreuzer*) (see also the Response of the EGPIL to the Green Paper, prepared after the meeting of Coimbra).

III. The "Rome I" Proposal [on the revision of the Rome Convention, see also a number of previous proposals and comments on the Group's site]:

1. Article 3(5) of the Rome I Proposal (Choice of the law of a Third State and mandatory rules of Community law) (*E. Jayme*);
2. The Report of the Financial Market Law Committee on «Rome I» Proposal («Legal assessment of the conversion of the Rome Convention to Community instrument and the provisions of the proposed Rome I Regulation») (*T. C. Hartley*).

IV. The mutual recognition method (*P. Lagarde*) (in particular, the ECJ cases *Standesamt Stadt Niebüll/Grunkin*, C-96/04 and C-353/06).

V. The codification of European Private International Law (*M. Fallon*).

VI. Current events:

1. Private international law and human rights – ECHR case *Eskinazi and*

Chelouche v. Turkey (application no. 14600/05) (*P. Kinsch*);
2. New developments in EC secondary legislation (*E. Jayme* and *C. Kohler*);
3. New developments in the Hague Conference (*H. van Loon*);
4. Current status of EC projects in Private International Law matters (*M. Francisco Fonseca*).

The report is available here, along with the minutes of all the previous meetings of the Group, since 1991, and a number of related documents and proposals. Highly recommended.