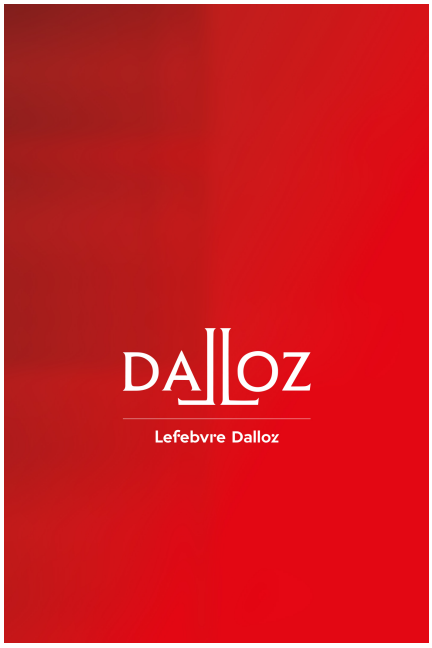
Third Issue of 2013's Revue Critique Droit International Privé

The last issue of the *Revue critique de droit international privé* is out. It contains three articles and several casenotes.



In the first article, Eric Agostini (University of Bordeaux) revisits the doctrine of *renvoi* (*Le mécanisme du renvoi*). The English abstract reads:

> *The mechanism known as renvoi supposes, as a prerequisite, that the forum's choice of law rule, which refers to a foreign law with a different view on the determination of the applicable law, takes such a view into account for one reason or another. It then rests upon a debatable assumption that the diverging choice of law rules which are called upon to fit together are of a similar nature and that each one targets the totality of the conflict.*

In the second article, Léna Gannage (Paris II University) comments on two judgments of the French supreme court which declared adoption by homosexuals contrary to French public policy and which might have lost their relevance when France adopted a law allowing gay marriage a few months later (*Deux arrêts mort-nés. A propos des décisions rendues par la première chambre civile le 7 juin 2012*)

Finally, in the last article, Horatia Muir Watt (Sciences Po Law School) discusses the *Kiobel* decision of the US Supreme Court (*L'A*lien Tort Statute *devant la Cour*

Suprême des Etats-Unis. Territorialité, diplomatie judiciaire ou économie politique ?)

CJEU rules on Art. 15 (1) lit. c) Brussels I-Regulation

On 17 October 2013 the Court of Justice of the European Union (CJEU) has handed down its long-awaited decision in *Lokman Emrek ./. Vlado Sabranovic*. The court held that consumers may sue professionals before their home courts according to Art. 15 (1) lit. c), 16 (1) Regulation 44/2000 (Brussels I) even if there is no causal link between the means used to direct the commercial or professional activity to the consumers' member state and the conclusion of the contract.

The facts of the case were as followed: Vlado Sabranovic, a resident of France, ran a used car business close to the German border. On his business website he listed several French telephone numbers and a German mobile phone number together with the respective international codes. Lokman Emrek, a resident of Saarbrücken in Germany, learnt about Mr. Sabranovic's business through friends. He, therefore, went to Mr. Sabranovic and bought a used car. Subsequently, he filed a claim against Mr. Sabranovic in Germany under the warranty agreement. He argued that German courts were competent according to Art. 15 (1) lit. c) 16 (1) of the Brussels I-Regulation because Mr. Sabranovic had targeted his activities through his website to Germany. Mr. Sabranovic, in contrast, argued that Art. 15 (1) lit. c), 16 (1) of the Brussels I-Regulation did not apply. Even though he had targeted his activity towards Germany the contract had not been the result of this activity. Mr. Emrek had never seen his website prior to conclusion of the contract.

In its decision the CJEU argues that the actual wording of Art. 15 (1) lit. c) does not expressly require the existence of a causal link between the targeted activity and the conclusion of the contract. In addition, it argues that there is no need to

read an “unwritten condition” into the provision because Art. 15 (1) lit. c) is meant to protect the consumer as a weaker party. Introducing an additional requirement of causality, however, would require consumers to prove that they actually visited a website prior to the conclusion of the contract. This, in turn, could prevent consumers from bringing a suit – and, thus, weaken consumer protection.

The court’s decision is problematic for (at least) two reasons. First of all, while it is correct that Art. 15 (1) lit. c) of the Brussels I-Regulation does not expressly require a causal link between the targeted activity and the conclusion of the contract, the provision requires that the “contract falls within the scope of such activities”. This phrase, however, is usually understood to require the kind of causal link that the court refuses to read into Art. 15 (1) lit. c) as an “unwritten condition”. The court, therefore, does injustice to the wording of Art. 15 (1) lit. c) and ignores the pertaining literature. In addition, it also ignores Recital 25 of the Rome I-Regulation. Recital 25 elaborates on Art. 6 of the Rome I-Regulation and, thus, the provision that was expressly modeled on Art. 15 (1) lit. c). It explains that consumers should be protected if the professional directs his activities towards the consumer’s habitual residence “*and the contract is concluded as a result of such activities*.” Recital 25, thus, makes clear that Art. 6 (1) of the Rome I-Regulation requires a causal connection between targeted activity and conclusion of the contract. Since Art. 6 of the Rome I-Regulation and Art. 15 of the Brussels I-Regulation have to be interpreted in a coherent and consistent fashion there is little doubt that Recital 25 should also inform the interpretation of Art. 15 (1) lit. c).

Second, the CJEU decision runs counter to the rationale of Art. 15 (1) lit. c) of the Brussels I-Regulation. While it is true that Art. 15 (1) lit. c) Brussels I is meant to protect consumers it does not set out to protect all consumers in all cases. Rather it draws a line between consumers who deserve protection and those who don’t. Consumers who actively go abroad to purchase goods and services without having been motivated by professionals to do so can hardly ever be regarded as being in need of protection. They leave their home country and, therefore, must expect to be subject to the jurisdiction and the laws of a foreign country. The mere fact that their contracting partner – without the consumers’ knowledge – tried to attract foreign consumers is no reason to allow these consumers to rely on Art. 15 (1) lit. c). The CJEU, therefore, pushes the boundaries of consumer protection beyond

what the European legislator had in mind – and beyond what is needed.

The full text of the decision is available here, the press release can be downloaded here.

Applying Foreign Punitive Damage Laws in Louisiana: The Experience of a Mixed Jurisdiction

F.X. Licari (Université de Lorraine) and B. West Janke (Baker, Donelson, Bearman, Caldwell & Berkowitz, PC), have posted this article on SSRN. Here is the abstract:

> There is perhaps no better laboratory to scrutinize punitive damages than Louisiana. As a civil law island surrounded by common law jurisdictions, it shares some compensation principles that are decidedly civilian, and others that are clearly influenced by its American neighbors. Likewise, Louisiana's geography has given rise to a sophisticated, and well-exercised, system for addressing conflicts of laws. Here, the intersection of divergent principles of compensation provokes an inquiry into the validity of the "full compensation" theory. The conflicts analysis in the context of delicts and quasi-delicts, and especially in the context of punitive damages, is complex and involves a plurality of norms of the Louisiana Civil Code (La. Civ. Code). The general inquiry under Louisiana's conflicts analysis is the determination of the state whose policies would be most seriously impaired if its law were not applied to that issue. The central provision is La. Civ. Code art. 3515, which states :
>
> Except as otherwise provided in this Book, an issue in a case having contacts with other states is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue. That state is determined by evaluating the strength and pertinence of the relevant policies of all involved states in the light of: (1) the relationship of each state to the

parties and the dispute; and (2) the policies and needs of the interstate and international systems, including the policies of upholding the justified expectations of parties and of minimizing the adverse consequences that might follow from subjecting a party to the law of more than one state.

Analyzing this article with other Code articles and Louisiana case-law, the authors conclude that the likelihood that a Louisiana court will enforce a foreign punitive damage law is low, given that the conflicts analysis weighs heavily in favor of a determination that the tortfeasor has more contacts with Louisiana than elsewhere. The general policy prohibiting punitive damages greatly influences every factor of the conflicts analysis except for those factors that clearly weigh in favor of applying the law of another state. So long as Louisiana holds on to the belief that punitive damages are per se incompatible with the theory of full compensation, the conflicts analysis for punitive damages will seldom result in the imposition of the law of another state.

Ps: this contribution was first presented in a workshop held at the University of Metz on 24 May 2013 under the direction of F.X. Licari and Prof. O. Cachard. All the presentations have been collected in the *Revue Lamy Droit des Affaires* (nº 85, sept. 2013).

Two academic events in Ferrara concerning the Succession Regulation

On 8 November 2013 the Department of Law of the University of Ferrara, in cooperation with the Council of Notaries of Ferrara, will host a workshop (in English) and a roundtable (in Italian) on issues relating to Regulation No 650/2012 on successions.

The workshop (the third, this year, in a series of workshops on topics in the area of private international law: see this post for previous seminars) will feature

Anatol Dutta (Max-Planck-Institut fur ausländisches und internationales Privatrecht. Hamburg), as main speaker, and Antonio Leandro (University of Bari) as discussant, with Luigi Fumagalli (University of Milan) presenting some concluding remarks. The topic of the workshop is "The European Certificate of Successions – A didactic play on the challenges to forge integrated private international law regimes".

The roundtable will focus on the relevance of the new rules on cross-border successions to the planning of intergenerational passage in family businesses ("Passaggio generazionale nell'impresa e successione transfrontaliera – Problemi e prospettive alla luce del Regolamento (UE) n. 650/2012"). Speakers include Francesco Salerno (University of Ferrara), Paolo Pasqualis (Italian Council of Notaries), Fabrizio Vismara (University of Insubria) and Lorenzo Schiano di Pepe (University of Genova).

The roundtable will provide the opportunity to present a recently published collection of essays on Regulation No 650/2012 (see this post).

For more information: *pilworkshops@unife.it*.

The Instrumentalisation of PIL (article on SSRN)

Veerle Van Den Eeckhout (Leiden University and University of Antwerp) has published a short, updated version of "The Instrumentalisation of Private International Law: Quo Vadis?" on ssrn (click here).

The abstract reads as follows:

"Private International Law is known as a very abstract, legal-technical and inaccessible discipline. Yet it is striking that PIL issues are conspiciously often interwoven with a number of heated, topical socio-legal debates, see for example the debate on transnational corporate social responsibility, the debate on posting

of employees from Eastern to Western Europe, the debate on residency and social-security entitlements of foreigners based on family relationships. Both where it concerns situations governed by European PIL rules and national PIL rules, the question arises what position PIL should take in the forces at play and to what extent PIL can or should still adopt a *neutral* position."

The author would also like to share her ppt presentation on "Choice and Regulatory Competition – Rules on Choice of Law and Forum", which will be shown as part of the programme of the Maastrich Conference "The Citizen in European Private Law: Norm-setting, Enforcement and Choice", next Friday (click here).

Niedermaier on Arbitration and Arbitration Agreements Between Parties of Unequal Bargaining Power

Tilman Niedermaier, LL.M. (University of Chicago) has authored a book on "Arbitration Agreements and Agreements on Arbitral Procedure Between Parties of Unequal Bargaining Power. A Comparison of German and U.S. Law With Consideration of Further Legal Systems." (Originial German title: "Schieds- und Schiedsverfahrensvereinbarungen in strukturellen Ungleichgewichtslagen. Ein deutsch-U.S.-amerikanischer Rechtsvergleich mit Schlaglichtern auf weitere Rechtsordnungen").

The book is in German. The official English abstract reads as follows:

> *The German Arbitration Law of 1998 is particularly intended to meet the requirements of international commerce. One characteristic of international commercial disputes is a balance of power between the parties. However, structural imbalances between parties do occur not only in domestic and non-*

commercial disputes. In the recent years, issues raised by such imbalances in arbitration have received increasing attention in case law and legal scholarship in the United States.

Tilman Niedermaier compares the law in Germany and the United States. Taking into account recent developments in EU law, he assesses to what extent the interests of parties with unequal bargaining power in arbitration can be safeguarded under German law.

More information is available on the publishers website.

Second Issue of 2013's Rivista di diritto internazionale privato e processuale

(I am grateful to Prof. Francesca Villata – University of Milan – for the following presentation of the latest issue of the RDIPP)

The second issue of 2013 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released. It features three articles and two comments.

In her article *Nerina Boschiero*, Professor of International Law at the University of Milan, addresses the issue of "Corporate Responsibility in Transnational Human Rights Cases. The U.S. Supreme Court Decision in *Kiobel v. Royal Dutch Petroleum*" (in English).

With a decision based upon the consideration that all the significant conduct occurred outside the territory of the United States, in Kiobel the U.S. Supreme Court unanimously ruled that the presumption against extraterritoriality applies to claims under the Alien Tort Statute, and that nothing in the statute refutes that presumption. However, in its decision the Supreme Court did not directly

address the issue whether a corporation can be a proper defendant in a lawsuit under the ATS. In this article, the Author begins by providing a substantial "pre-Kiobel" analysis of the business-human rights relationship. Furthermore, in addressing – with reference to the Kiobel case – the issues of corporate liability and extraterritorial jurisdiction over abuses committed abroad, the Author provides a detailed description of the governments' positions on universal civil jurisdiction, also providing a critical evaluation of the arguments put forth by the EU Member States on the extraterritorial application of ATS. As the Author illustrates, this decision is far more complex and problematic than it may appear: it in fact leaves a number of questions open on what exactly remains of the ATS, as well as various uncertainties due to the substantive differences between the majority opinion and the different concurring opinions, difficult to be reconciled and harmonized, especially from an European standpoint.

In his article *Andrea Bonomi*, Professor of Comparative Law and Private international Law at the University of Lausanne, provides an assessment of the new EU Regulation on succession matters in "Il regolamento europeo sulle successioni" (The EU Regulation in Matters of Successions; in Italian).

The European Regulation on Succession Matters, adopted on 4 July 2012, will be applicable from 17 August 2015 to the succession of persons who die on or after this date. The final text reflects in its main features the Commission proposal of 2010, albeit with several amendments. Among the most important novelties, we will mention the restructuring of the jurisdictional scheme, the introduction of an exception clause and of some specific provisions concerning wills and the formal validity of mortis causa provisions, as well as the admission of renvoi. Several useful clarifications have also been included, sometimes in the text of the Regulation and sometimes in the preamble, inter alia with respect to the definition of "court", the determination of the last habitual residence of the deceased, the "acceptance" of evidentiary effects of authentic instruments, and the purpose and effects of the European Certificate of Succession. Overall, the Regulation is a very detailed and well-balanced instrument. In the majority of cases, the adoption of the habitual residence as the main criteria for the allocation of jurisdiction and the determination of the applicable law will allow national courts in the Member States to regulate the succession according to their domestic law. Derogations from this approach

result in particular from the admission of party autonomy, and are mainly provided for estate planning purposes. The unification of the conflict of law rules in the Member States as well as the extension of the principle of mutual recognition to decisions and authentic instruments to succession law matters will also significantly contribute to legal certainty, and further estate planning. Last but not least, the European Certificate of Succession will greatly facilitate the transnational administration of estates by heirs and representatives. On the other hand, the main weaknesses of the new instruments concern the relationships with non-Member States, and with those Member States who are not subject to the Regulation (Denmark, Ireland, and the United Kingdom); potential conflicts with the courts of those States, due to the wide reach of the Regulation's jurisdictional rules, cannot be avoided through lis pendens and recognition mechanisms. It is therefore to be hoped that the efforts of harmonization in the area of international succession will continue under the auspices of the Hague Convention at a global level.

In her article *Francesca C. Villata*, Professor of International Law at the University of Milan, addresses the reorganisation of the Greek sovereign debt in "Remarks on the 2012 Greek Sovereign Debt Restructuring: Between Choice-Of-Law Agreements and New EU Rules on Derivative Instruments" (in English).

The paper analyses – from a choice-of-law perspective – the restructuring mechanism implemented for the Greek sovereign debt bonds in 2012. In this respect, on one hand, the role played by parties' autonomy in determining the law applicable both to contractual and to non-contractual matters is emphasised; on the other hand, an analysis of the relevant EU Regulations on CDSs and derivative instruments, as wells as of the Mi-FID II and MiFIR proposals is conducted mainly through the lens of unilateral mandatory rules following the lex mercatus approach. The paper concludes with an auspice for the adoption of uniform rules on the insolvency or pre-insolvency of states, providing for agreed-upon restructuring processes.

In addition to the foregoing, the following comments are also featured:

Olivia Lopes Pegna, Researcher of International Law at the University of Florence, "L'interesse superiore del minore nel regolamento n. 2201/2003" (The Superior Interest of the Child in Regulation No 2201/2003; in Italian).

The European Union is increasingly concerned with private international law instruments regarding, directly or indirectly, children. The UN Convention on the rights of the child (Art. 3) and the European Charter of Fundamental Rights (Art. 24) require that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests be a primary consideration. It is therefore mandatory for EU Institutions, and for national judges, to construe and apply EU legislative instruments in compliance with this principle. The present work concerns rules on jurisdiction and enforcement of foreign judgments that expressly refer to the best interests of the child in order to operate, and in particular the rules set in Regulation No 2201/2003 (Brussels II-bis) concerning decisions on parental responsibility. It tries to show how, and to what extent, "the best interests of the child" principle introduce flexibility, or even derogate, to the traditional private international law methods. The case-law of the European Court of Justice on the Brussels II-bis Regulation is examined, together with the main decisions of the Italian courts, in order to evaluate to what extent effectiveness to the aforementioned principle is guaranteed in the application of the Regulation's provisions. It is also suggested that the Regulation shall be construed in a way that permits, in some circumstances, the participation of the child to the proceedings for recognition and enforcement of foreign decisions.

Nicolò Nisi (PhD candidate at the Bocconi University), "La giurisdizione in materia di responsabilità delle agenzie di rating alla luce del regolamento Bruxelles I" (Jurisdiction over the Liability of Rating Agencies under the Brussels I Regulation; in Italian).

A recent judgment delivered by the Italian Supreme Court decided upon the jurisdiction over damage claims brought by investors against rating agencies based in the U.S., allegedly liable for issuing inaccurate ratings capable of having a significant impact on their investment decisions. In this regard, the new Regulation (EU) No 462/2013 amending Regulation (EC) No 1060/2009 on credit rating agencies has introduced a new Article 35-bis specifically addressing the liability of rating agencies but it failed to provide some guidance with respect to private international law issues. The Italian Supreme Court declined its jurisdiction on the grounds of Article 5(3) of Regulation (EC) No 44/2001 ("Brussels I") and ruled that the "place where the harmful event occurred" is localized at the place of the initial damage, i.e. where the shares

were first purchased at an excessive price, without any reference to the seat of the depositary bank, nor to the place where the rating is issued. This judgment turned out to be very interesting since it was the first Italian judgment to deal with jurisdiction issues relating to liability of rating agencies under the Brussels I Regulation and it provided for the opportunity to make a contribution to the discussion on the interpretation of Article 5(3) in case of financial torts and purely financial losses.

Indexes and archives of the RDIPP since its establishment (1965) are available on the website of the Department of Italian and Supranational Public Law of the University of Milan.

ECJ Rules on Irreconcilable Judgments Given in the Same State of Origin

On 26 September 2013, the Court of Justice of the European Union ruled in Salzgitter Mannesmann Handel GmbH v. SC Laminorul SA (C-157/12) that Article 34(4) of the Brussels I Regulation does not apply to two irreconcilable judgments given by courts of the same of Member state of origin.

Laminorul, which is established in Romania, brought an action seeking payment for a delivery of steel products against Salzgitter, established in Germany, before the Tribunalul Braila (Braila Court of First Instance) (Romania). Salzgitter claimed that that action should have been brought against the actual party to the contract with Laminorul, Salzgitter Mannesmann Stahlhandel GmbH , rather than against Salzgitter. On that ground, the Tribunalul Braila dismissed the action brought by Laminorul by judgment of 31 January 2008 ('the first judgment'). That judgment became final.

Shortly thereafter, Laminorul initiated new proceedings against Salzgitter before

the same court for the same cause of action. That application was, however, served on Salzgitter's former legal representative, whose authority to act for the company had been limited, according to Salzgitter, to the first proceedings. No one appeared on Salzgitter's behalf at the hearing on 6 March 2008 before the Tribunalul Braila which delivered a judgment by default against Salzgitter, requiring Salzgitter to pay EUR 188 330 to Laminorul ('the second judgment'). Salzgitter later on made a number of applications in Romania to review or set aside the second judgment. They were all dismissed.

In the mean time, Maminorul was seeking enforcement of the second judgment in Germany.

The ECJ ruled:

> *36 The interpretation of Article 34(4) of Regulation No 44/2001 according to which it also covers conflicts between two judgments given in one Member State is inconsistent with the principle of mutual trust referred to in paragraph 31 above. Such an interpretation would allow the court in the Member State in which recognition is sought to substitute its own assessment of that of the court in the Member Sate of origin.*
>
> *37 Once the judgment has become final at the end of the proceedings in the Member State of origin, the non-enforcement of that judgment on the ground that it is irreconcilable with a judgment given in the same Member State amounts to reviewing the judgment sought to be enforced as to its substance which is, however, expressly excluded by Article 45(2) of Regulation No 44/2001.*
>
> *38 Such a possibility of review as to the substance would de facto constitute an additional means of redress against a judgment which has become final in the Member Sate of origin. In that regard, it is not disputed that, as the Advocate General has noted in point 31 of his Opinion, the grounds for non-enforcement provided for in Regulation No 44/2001 do not create additional remedies against national judgments which have become final.*
>
> *39 Lastly, since the list of grounds for non-enforcement is exhaustive, as is apparent from the case-law referred to in paragraph 28 above, those grounds must be interpreted strictly and may not therefore be given, contrary to what Salzgitter and the German Government claim, an interpretation by analogy*

pursuant to which judgments given in the same Member State would also be covered.

Ruling:

Article 34(4) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not covering irreconcilable judgments given by courts of the same Member State.

Sciences Po PILAGG Series, 2013-2014

The seminars on Private International Law as Global Governance (PILAGG) at the Law School of the Paris Institute of Political Science (*Sciences Po*) will be conducted this year according to a slightly different format, as they will be run in part with the LSE.

This year' series will be beginning with an informal round-table in Paris on methodological shifts in the conflict of laws. This discussion is designed to link up with last year's reflections on the changing paradigms in (private international) legal thought.

Speakers will discuss proportionality, the impact of collective redress in individualist schemes of intelligibility, the renewal of characterization, the articulation of the conflict of laws and public policies on immigration, the access to justice paradigm, and how conceptualizing networks might be helpful in transnational settings. They were asked to focus specifically on the ways in which their area of expertise may (or not) bring methodological renewal. Participants will be Catherine Kessedjian, Samuel Lemaire, Toni Marzal, Hélène van Lith, Sabine Corneloup, Karine Parrot, Ferderico Lenzi, Diego P. Fernández Arroyo and Horatia Muir Watt.

When: 17 October from 13:00 to 16:45.

Where: 13 rue de l'Université, 75007 Paris, salle de réunion Ecole de droit 4th floor.
The language for presentation and debate will be either French or English.

Next will be the first London session (November 19) on PIL and legal theory and then events on the political economy of the law of investment arbitration and on the interface of PIL and civil procedure.

Gay Marriage: France Blacklists 11 Nationalities (Updated)

In May 2013, France adopted a law allowing gay marriage.

The statute confirmed France' traditional choice of law rule according to which the law of the nationality of each spouse applies to the substantive validity of marriage (Civil Code, Art. 202-1, para. 1). However, in order to avoid confining the new legislation to couples of nationals originating from the 14 jurisdictions or so which allow gay mariage, the statute also adopted a new rule providing that same sex marriage would still be allowed when the national law or the law of the residence of one of the spouses only allowed it (Civil Code, Art. 202-1, para. 2). I have already reported how the French Constitutional Council miraculously found this provision to be constitutional.

So, is everybody welcome to come to Paris to marry a French national? Not quite. The French ministry of justice has issued guidelines instructing French mayors not to marry couples including a national coming from a list of 11 jurisdictions. The reason why is that France concluded a bilateral treaty with each of these jurisdictions providing for the application of the law of the nationality of each spouse. As treaties are superior to statutes in France, the administration has concluded that these treaties prevail over Art. 202-1, para. 2 of the Civil Code.

> *La règle introduite par l'article 202-1 alinéa 2 ne peut toutefois s'appliquer*

> *pour les ressortissants de pays avec lesquels la France est liée par des conventions bilatérales qui prévoient que la loi applicable aux conditions de fond du mariage est la loi personnelle.*
>
> *Dans ce cas, en raison de la hiérarchie des normes, les conventions ayant une valeur supérieure à la loi, elles devront être appliquées dans le cas d'un mariage impliquant un ou deux ressortissant(s) des pays avec lesquels ces conventions ont été conclues. En l'état du droit et de la jurisprudence, la loi personnelle ne pourra être écartée pour les ressortissants de ces pays.*

Most of these treaties, however, were concluded in the 1950s and 1960s. None of them contains any express provision on same sex marriage.

The blacklisted nationalities are:

– Algeria, Tunisia and Morroco,

– the five countries which formerly constituted Yugoslavia

– Laos, Cambodia

– Poland

A French prosecutor enforced the guidelines at the beginning of September and denied the right to marry to a Franco-Morrocan couple.

UPDATE:

The decision of the prosecutor was set aside today by a first instance court of Chambery.

I could not see the judgment, but the French press has reported that the Court would have ruled that the recent French statute has modified French international public policy, and that the applicable bilateral convention should thus be avoided as it discriminates against gay people.

This would be an innovative use of the public policy exception, to avoid the law of the forum, as discussed in comments by Mr Margonski and Mr Davis.