The end of fostering outdated injustice to children born outside marriage through reparation of Nazi-expatriation acts: Ruling of the German Constitutional Court of 20 May 2020 (2 BvR 2628/18)

Marie-Luisa Loheide is a doctoral candidate at the University of Freiburg who writes her dissertation about the relationship between the status of natural persons in public and private international law. She has kindly provided us with her thoughts on a recent ruling by the German Constitutional Court.

According to Article 116 para. 2 of the German Basic Law *(Grundgesetz – GG)*, every descendant of former German citizens of Jewish faith who have been forcibly displaced and expatriated in a discriminatory manner by the Nazi-regime is entitled to attain German citizenship upon request. This rule has been incorporated in the Basic Law since 1949 as part of its confrontation with the systematic violations of human rights by the Nazi-regime and is therefore meant to provide reparation by restoring the *status quo ante*.

Descendants *("Abkömmlinge")* as referred to in Article 116 para. 2 are children, grandchildren and all future generations without any temporal constraint. Regardless of their parents' choice of citizenship, they have a personal right to naturalisation which is exercised upon request by reactivation of the acquisition of citizenship *iure sanguinis*. This very wide scope is legitimated by the striking injustice done by the Nazi-regime. Yet, according to the settled case law of the Federal Administrative Court, it had been limited by a strict "but-for" test: in order to solely encompass those people affected by this specific injustice. This meant that the descendant must hypothetically have possessed German citizenship according to the applicable citizenship law at the time of its acquisition which is usually the person's birth. To put it more clearly, one had to ask the following hypothetical question: Would the descendant be a German

citizen if his or her ancestor had not been expatriated by the Nazis?

Exactly this limiting prerequisite was the crucial point of the matter decided upon by the German Constitutional Court on 20 May 2020. In the underlying case, the hypothetical question described above would have had to be answered in the negative: Until its revocation in 1993, German citizenship law stated that children of an unmarried German father and a mother of other citizenship did not acquire the German citizenship of their father but only that of their mother, contrary to today's principle of *ius sanguinis*-acquisition. As *in casu* the daughter of a forcibly displaced and expatriated former German emigrant of Jewish faith and a US-American mother was born outside marriage in 1967, she was denied the acquisition of the German citizenship. Whereas this was not criticised by the administrative courts seised, the German Constitutional Court in its ruling classified the denial as an obvious violation of the principle of equal treatment of children born within and outside marriage underlying Article 6 para. 5 GG as well as the principle of equal treatment of women and men according to Article 3 para. 2 GG, as alleged by the plaintiff. In its reasoning, the Court emphasised that an exception from the principle of equal treatment of children born outside marriage could only be made if absolutely necessary. This corresponds to the case-law of the European Court of Human Rights on Article 14 of the ECHR that a difference in treatment requires "very weighty reasons". The former non-recognition of the family relationship between an unmarried father and his child, however, did obviously contradict the stated constitutional notion without being justified by opposing constitutional law. Out of two possible interpretations of "descendant" as referred to in Article 116 para. 2 GG the court must have chosen the one that consorts best with the constitution. According to the Constitutional Court, the more generous interpretation of descendant also prevents a perpetuation of the outdated notion of inferiority of children born outside marriage through Article 116 para 2 GG and corresponds to its purpose of reparation.

As the notion of inferiority of children born outside marriage has fortunately vanished, a clarifying judgment was highly overdue and is therefore most welcome. It is not acceptable that outdated notions are carried to the present through a provision of the Basic Law that is meant to provide reparation of Nazi crimes. Especially in post-Brexit times, the question dealt with has become more and more urgent with respect to people reclaiming their German citizenship in order to maintain their Union citizenship and the rights pertaining to it (see here).

In regard to conflicts law, this clarification of a key question of citizenship law is relevant to the determination as a preliminary issue (incidental question or *Vorfrage)* when nationality is used as a connecting factor. The judgment is likely to lead to more cases of dual citizenship that are subject to the ambiguous conflicts rule of Art. 5 para. 1 sentence 2 EGBGB.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 4/2020: Abstracts

The latest issue of the „Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)“ features the following articles:

E. Schollmeyer: **The effect of the entry in the domestic register is governed by foreign law: Will the new rules on cross-border divisions work?**

One of the most inventive conflict-of-law rules that secondary law of the European Union has come up with, can be discovered at a hidden place in the new Mobility Directive. Article 160q of the Directive assigns the determination of the effective date of a cross-border division to the law of the departure Member State. The provision appears as an attempted clearance of the complicated brushwood of the registration steps of a cross-border division of a company. This article explores whether the clearance has been successful.

F. Fuchs: **Revolution of the International Exchange of Public Documents: the Electronic Apostille**

The Apostille is of utmost importance for the exchange of public documents among different nations. The 118 states currently having acceded to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents issue, altogether, several millions of Apostilles per year in order to certify the authenticity of public documents emanating from their

territory. Some years ago, the electronic Apostille was implemented, which allows states to issue their Apostilles as an electronic document. Interested parties may verify the authenticity of such an electronic document via electronic registers which are accessible on the internet. Whereas Germany has not yet acceded to that new system, 38 other jurisdictions already have done so.

G. Mäsch: **Third Time Lucky? The ECJ decides (again) on the place of jurisdiction for cartel damages claims**

In three decisions now the ECJ has dealt with the question of where the "place of the causal event" and the "place where the damage occurred" are to be located in order to determine, based on the ubiquity principle enshrined in Article 7(2) of the Brussels Ibis Regulation, the place of jurisdiction for antitrust damages (tort) claims. In this paper the overall picture resulting from the ECJ decisions in CDC Hydrogen Peroxides, flyLAL-Lithuanian Airlines and now Tibor-Trans is analysed. The place of the "conclusion" of a cartel favoured by the ECJ to determine the place of the causal event is not only unsuitable in the case of infringements of Art. 102 TFEU (abuse of a dominant market position), but also in cases of infringement of Art. 101 TFEU (prohibition of cartels). The same criticism applies to the ECJ's localisation of the place where the damage occurred at the place where the competition is impaired and the victim of the cartel or the abuse of the dominant market position (claimant) sustained the financial loss. In this paper it is suggested to dock the place of the causal event to the actual seat(s) of the cartel offender(s) and the place where the damage occurred exclusively to the affected market.

J. Kleinschmidt: **Jurisdiction of a German court to issue a national certificate of succession ('Erbschein') is subject to the European Succession Regulation**

The European Succession Regulation provides little guidance as to the relationship between the novel European Certificate of Succession and existing national certificates. In a case concerning a German "Erbschein", the CJEU has now clarified an important aspect of this relationship by holding that jurisdiction of a Member State court to issue a national certificate is subject to the harmonised rules contained in Art. 4 et seq. ESR. This decision deserves approval because it serves to avoid, as far as possible, the difficult problems ensuing from the existence of conflicting certificates from different Member States. It remains,

however, an open question whether the decision can be extended to national certificates issued by notaries.

K. Thorn/K. Varón Romero: **The Qualification of the Lump-Sum Compensation for Gains in the Event of Death Pursuant to Section 1371 (1) of the German Civil Code (BGB) in Accordance with the Regulation (EU) No. 650/2012**

In "Mahnkopf" the CJEU had to decide whether the material scope of application of the Regulation (EU) No. 650/2012 of the European Parliament and of the Council of 4/7/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession also covers national provisions which, like Section 1371 (1) of the German Civil Code (BGB), grant the surviving spouse a lump-sum compensation for gains after the death of the other spouse by increasing his or her inheritance. Hence, this was a question of the qualification of Section 1371 (1) BGB, which had been discussed controversially in Germany for a long time and had only been clarified on a national level in 2015. The CJEU decided in favour of a qualification under inheritance law at the level of Union law, and thus took a view which contradicts that of the Federal Court of Justice (BGH) for national conflict of laws. The authors agree with the result of the CJEU but criticise the methodical approach to the implementation of the functional qualification. The article identifies the new questions and problems that will now have to be clarified by the German courts as a result of the CJEU decision and in this context analyses two recent decisions of Higher Regional Courts. The authors note that in the context of Section 1371 (1) BGB, the question of the (temporal) scope of application of the Regulation is likely to become more important in the future, asotherwise, in their opinion, the BGH case law will still have to be considered. Accordingly, in the opinion of the authors, for future German jurisdiction much will depend on whether the BGH adapts its previous case law to that of the CJEU.

P. Mankowski: **Recognition and free circulation of names 'unlawfully' acquired in other Member States of the EU**

The PIL of names is one of the strongholds of the recognition principle. The touchstone is whether names "unlawfully" acquired in other Member States of the EU must also be recognised. A true recognition principle implies that any kind of

révision au fond is interdicted. Yet any check on the "lawfulness" or "unlawfulness" of acquiring a certain name abroad amounts to nothing else than a révision au fond.

M. Gernert: **Termination of contracts of Iranian business relations due to US sanctions and a possible violation of the EU Blocking Regulation and § 7 AWV**

US secondary sanctions are intended to subject European economic operators to the further tightened US sanctions regime against Iran. In contrast, the socalled Blocking Regulation of the European Union is intended to protect European companies from such extraterritorial regulations and prohibits to comply with certain sanctions. In view of the great importance of the US market and the intended uncertainty in the enforcement of US sanctions, many European companies react by terminating contracts with Iranian business partners in order to rule out any risk of high penalties by US authorities. This article examines if and to what extent the Blocking Regulation and § 7 AWV influence the effectiveness of such terminations.

B. Rentsch: **Cross-border enforcement of provisional measures – lex fori as a default rule**

Titles from provisional measures are automatically recognised and enforced under the Brussels I-Regulations. In consequence, different laws will apply to a title's enforceability (country of the rendering of the provisional measure) and ist actual enforcement (country where the title is supposed to take effect). This sharp divide falls short of acknowledging that questions of enforceability and the actual conditions of enforcement are closely entangled in preliminary measure proceedings, especially the enforcement deadline under Sec. 929 para. 2 of the German Code of Civil Procedure (ZPO). The European Court of Justice, in its decision C-379/17 (Societ Immobiliare Al Bosco Srl) refrained from creating a specific Conflicts Rule for preliminary measures and ruled that the deadline falls within the scope of actual enforcement. This entails new practical problems, especially with regard to calculating the deadline when foreign titles are involved.

A. Spickhoff: **"Communication torts" and jurisdiction at the place of action**

Communication torts in more recent times are mostly discussed as "internet torts". Typically, such torts will be multi-state torts. In contrast, the current case

of the Austrian Supreme Court concerns the localisation of individual communication torts. The locus delicti commissi in such cases has been concretised by the Austrian Supreme Court according to general principles of jurisdiction. The locus delicti commissi, which is characterised by a falling apart of the place of action and place of effect, is located at the place of action as well as at the place of effect. In the event of individual communication torts, the place of effect is located at the victim's place of stay during the phone call or the message arrival. The place of action has to be located at the sending location. On the other hand, in case of claims against individual third parties, the place of effect is located at the residence of the receiver. The Austrian Supreme Court remitted the case to the lower court for establishing the relevant facts for jurisdiction in respect of the denial of the plaintiff's claim. However, the court did not problematise the question of so-called "double-relevant facts". The European Court of Justice, in line with the judicial practice in Austria and Germany, has accepted a judicial review of the facts on jurisdiction only with respect to their conclusiveness.

R. Rodriguez/P. Gubler: **Recognition of a UK Solvent Scheme of Arrangement in Switzerland and under the Lugano Conventions**

In recent years, various European companies have made use of the ability to restructure their debts using a UK solvent scheme of arrangement, even those not having their seat in the UK. The conditions and applicable jurisdictional framework under which the scheme of arrangement can be recognised in jurisdictions outside the UK are controversial. In Switzerland doctrine and jurisprudence on the issue are particularly scarce. This article aims to clarify the applicable rules of international civil procedural law as well as the requirements for recognition of a scheme of arrangement in Switzerland. It is held that recognition should be generally granted, either according to the 2007 Lugano Convention or, in a possible "no-deal Brexit" scenario, according to the national rules of private international law, or possibly even the 1988 Lugano Convention.

T. Helms: **Foreign surrogate motherhood and the limits of its recognition under Art. 8 ECHR**

On request of the French Court of Cassation the Grand Chamber of the European Court of Human Rights has given an advisory opinion on the recognition of the legal parent-child relationship between a child born through a gestational

surrogacy arrangement abroad and its intended mother who is not genetically linked to the child. It held that Art. 8 ECHR requires that domestic law provides a possibility of recognition of a legal parent-child relationship with the intended mother. But it falls within states' margin of appreciation to choose the means by which to permit this recognition, the possibility to adopt the child may satisfy these requirements.

The HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil Matters between the EU and Third Countries – Conference on 25 and 26 September 2020, University of Bonn, Germany – Final Programme

Dear CoL Readers,

While we are all deeply concerned about the still growing dimensions of the coronavirus pandemic, we did not want to give up working on the programme of our conference.

Thanks to the HCCH, the Bonn PIL colleagues and our distinguished speakers, there is now a fantastic programme we would like to bring to your attention in this post (see below).

Meanwhile, we will closely follow the instructions of the University of Bonn as well as the German local and federal governments and travel restrictions in other countries to see whether the conference can take place on site. We have not yet

given up optimism in this respect. Yet, safety must be first. This is why we are setting up structures for a video conference via zoom in case we need it. We assume that all of you would agree to proceeding via zoom if necessary. We will take a final and corona risk-averse decision on this during July and keep you posted. Please do not hesitate to register with us (sekretariat.weller@jura.uni-bonn.de) if you wish to be updated by email.

Looking forward to seeing you in Bonn in September!

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Brexit has become reality – one more reason to think about the EU's Judicial Cooperation with third states:

The largest proportion of EU economic growth in the 21st century is expected to arise in trade with third countries. This is why the EU is building up trade relations with many states and other regional integration communities in all parts of the world. The latest example is the EU-MERCOSUR Association Agreement concluded on 28 June 2019. With the United Kingdom's exit of the Union on 31 January 2020, extra-EU trade with neighboring countries will further increase in importance. Another challenge for the EU is China's "Belt and Road Initiative", a powerful global development strategy that includes overland as well as sea routes in more than 100 states around the globe.

The increasing volume of trade with third states will inevitably lead to a rise in the number and importance of commercial disputes. This makes mechanisms for their orderly and efficient resolution indispensable. China is already setting up infrastructures for commercial dispute resolution alongside its belts and roads. In contrast, there seems to be no elaborate EU strategy on judicial cooperation in civil matters with countries outside of the Union, despite the DG Trade's realisation that "trade is no longer just about trade". Especially, there is no coherent plan for establishing mechanisms for the coordination of cross-border dispute resolution and the mutual recognition and enforcement of judgments. This is a glaring gap in the EU's policy making in external trade relations.

This is why the Bonn group of PIL colleagues – Moritz Brinkmann, Nina Dethloff, Matthias Lehmann, Philipp Reuss, and Matthias Weller – will host a conference on Friday and Saturday, 25 and 26 September 2020, at the University of Bonn that seeks to explore ways in which judicial cooperation in civil matters between the

EU and third countries can be improved by the HCCH 2019 Judgments Convention as an important driver, if not game changer, of legal certainty in cross-border commercial relations.

The list of speakers includes internationally leading scholars, practitioners and experts from the Hague Conference on Private International Law (HCCH), the European Commission (DG Trade, DG Justice), and and the German Federal Ministry of Justice and Consumer Protection (Bundesministerium der Justiz und für Verbraucherschutz)

The Conference is co-hosted by the HCCH as one of the first European events for discussing the HCCH 2019 Judgments Convention. The Conference will be further supported by the Zentrum für europäisches Wirtschaftsrecht at the University of Bonn and The International Litigation Exchange (ILEX).

The Organizers will kindly ask participants to contribute with € 100.- to the costs of the event (includes conference dinner).

Dates:

Friday, 25 September 2020, and Saturday, 26 September 2020.

Venue:

Friday:

Universitätsclub Bonn, Konviktstraße 9, D – 53113 Bonn

Saturday:

Main Auditorium (Aula), Hauptgebäude, Am Hof 21, 53113 Bonn

Registration: sekretariat.weller@jura.uni-bonn.de

Registration Fee: € 100.-

To be transferred to the following account (you will receive confirmation of your registration only after payment was booked on this account):

Bonn Conference 2020

IBAN: DE71 5001 0517 0092 1751 07

BIC: INGDDEFF (ING-Diba Bank)

Programme

Friday, 25 September 2020

1.30 p.m. Registration

2 p.m. Welcome note

Prof Dr Wulf-Henning Roth, University of Bonn, Director of the Zentrum für Europäisches Wirtschaftsrecht (ZEW)

Dr Christophe Bernasconi, Secretary General of the HCCH (video message)

2.10 p.m. Part 1: Chances and Challenges of the HCCH 2019 Judgments Convention

Chairs of Part 1: Prof Dr Matthias Weller / Prof Dr Matthias Lehmann

Keynote: Hague Conference's Perspective and Experiences

Hans van Loon, Former Secretary General of the Hague Conference on Private International Law, The Hague

1. **Scope of application**

Prof Dr Xandra Kramer, Erasmus Universiteit Rotterdam

2. **Judgments, Recognition, Enforcement**

Prof Dr Wolfgang Hau, Ludwig-Maximilians-Universität Munich

Discussion

3.30 p.m. Coffee Break

4.00 p.m. Part II: Chances and Challenges of the HCCH 2019 Judgments Convention

Chairs of Part 2: Prof Dr Nina Dethloff / Prof Dr Moritz Brinkmann

1. **Jurisdictional filters**

Prof Dr Pietro Franzina, Catholic University of Milan

2. **Grounds for refusal**

Prof Dr Francisco Garcimartín Alférez, University of Madrid

Discussion

5.30 p.m. Panel Discussion: Prospects for Judicial Cooperation in Civil Matters between the EU and Third Countries

Chairs of Part 3: Prof Dr Matthias Weller / Prof Dr Matthias Lehmann

Colin Brown, Unit Dispute Settlement and Legal Aspects of Trade Policy, DG Trade (tbc)

Andreas Stein, Head of Unit, DG JUST – A1 "Civil Justice"

Dr Jan Teubel, German Federal Ministry of Justice and Consumer Protection

RA Dr Heiko Heppner, Attorney at Law (New York), Barrister and Solicitor Advocate (England and Wales), Chair of ILEX, Head of Dispute Resolution, Partner Dentons, Frankfurt

and perhaps more…

Discussion

7 p.m. Conference Dinner

Saturday, 26 September 2020

9.00 a.m. The context of the HCCH 2019 Judgments Convention

Chairs of Part 4: Prof Dr Moritz Brinkmann / Prof Dr Philipp Reuss

1. **Lessons from the Genesis of the Judgments Project**

Dr Ning Zhao, Senior Legal Officer, HCCH

2. **Relation to the HCCH 2005 Convention on Choice of Court Agreements**

Prof Paul Beaumont, University of Stirling

3. **Relations to the Brussels Regime / Lugano Convention**

Prof Marie-Elodie Ancel, Université Paris-Est Créteil

4. **Brexit…**

Dr Pippa Rogerson, Reader in Private International Law, Faculty of Law, Cambridge

Discussion

11:00 a.m. Coffee Break

11:30 a.m. Chairs of Part 5: Prof Dr Nina Dethloff / Prof Dr Matthias Lehmann

1. **South European Neighbouring and Candidate Countries**

Ass. Prof Dr Ilija Rumenov, Ss. Cyril and Methodius University, Skopje, Macedonia

2. **MERCOSUR**

Dr Veronica Ruiz Abou-Nigm, Director of Internationalisation, Senior Lecturer in International Private Law, School of Law, University of Edinburgh

3. **China (OBOR)**

Prof Zheng (Sophia) Tang, University of Newcastle

4. **International Commercial Arbitration**

Jose Angelo Estrella-Faria, Senior Legal Officer UNCITRAL Secretariat, International Trade Law Division Office of Legal Affairs, United Nations, Former Secretary General of UNIDROIT

Discussion

1.30 p.m. Closing Remarks

Dr João Ribeiro-Bidaoui, First Secretary, HCCH

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 2/2020: Abstracts

The latest issue of the „Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)“ features the following articles:

H.-P. Mansel/K. Thorn/R. Wagner: **European Conflict of Law 2019: Consolidation and multilateralisation**

This article provides an overview of developments in Brussels in the field of judicial cooperation in civil and commercial matters from January/February 2019 until November 2019. It provides an overview of newly adopted legal instruments and summarizes current projects that are presently making their way through the EU legislative process. It also refers to the laws enacted at the national level in Germany as a result of new European instruments. Furthermore, the authors look at areas of law where the EU has made use of its external competence. They discuss important decisions of the CJEU. In addition, the article looks at current projects and the latest developments at the Hague Conference of Private International Law.

B. Hess: **The Abysmal Depths of the German and European Law of the Service of Documents**

The article discusses a judgment of the Higher Regional Court Frankfurt on the plaintiff’s obligations under the European Service Regulation in order to bring about the suspension of the statute of limitations under § 167 of the German Code of Civil Procedure (ZPO). The court held that the plaintiff should first have

arranged for service of the German statement of claim in France pursuant to Art. 5 Service Regulation because, pursuant to Art. 8(1) Service Regulation, a translation is not required. However, the article argues that, in order to comply with § 167 ZPO, the translation must not be omitted regularly. The service of the translated lawsuit shall guarantee the defendant's rights of defense in case he or she does not understand the language of the proceedings.

H. Roth: **The international jurisdiction for enforcement concerning the right of access between Art. 8 et seq. Brussel IIbis and §§ 88 et. seq., 99 FamFG**

According to § 99 para. 1 s. 1 No. 1 German Act on Procedure in Family Matters and Non-Contentious Matters (FamFG), German courts have international jurisdiction for the enforcement of a German decision on the right of access concerning a German child even if the child's place of habitual residence lies in another Member State of the Regulation (EC) No. 2201/2003 (EuEheVO) (in this case: Ireland). Regulation (EC) No. 2201/2003 does not take priority according to § 97 para. 1 s. 2 FamFG because it does not regulate the international jurisdiction for enforcement. This applies equivalently to the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (KSÜ).

J. Rapp: **Attachment of a share in a Limited Liability Partnership (LLP) by German courts**

Attachment of a share in a Limited Liability Partnership (LLP) by German courts: Despite Brexit, the LLP still enjoys great popularity in Germany, especially among international law and consulting firms. Besides its high acceptance in international business transactions, it is also a preferred legal structure due to the (alleged) flexibility of English company law. In a recent judgement, the Federal Court of Justice (Bundesgerichtshof) had the opportunity to examine the LLP's legal nature in connection with the attachment of a share in a Limited Liability Partnership. The court decided that German courts have jurisdiction for an attachment order if the company has a branch and its members have a residence in Germany. By applying § 859 Code of Civil Procedure, it furthermore ruled that not the membership as such but the share of a partner in the company's assets is liable to attachment.

U. Spellenberg: **How to ascertain foreign law – Unaccompanied minors from Guinea**

The Federal Court's decision of 20 December 2017 is the first of four practically identical ones on the age of majority in Guinean law. It is contested between several Courts of Appeal whether that is 18 or 21 years. As of now, there are nine published decisions by the Court of Appeal at Hamm/Westf. and five by other Courts of Appeal. For some years now, young men from Guinea have been arriving in considerable numbers unaccompanied by parents or relatives. On arrival, these young men are assigned guardians ex officio until they come of age. In the cases mentioned above, the guardians or young men themselves seized the court to ascertain that the age of majority had not yet been reached. The Federal Court follows its unlucky theory that it must not state the foreign law itself but may verify the methods and ways by which the inferior courts ascertained what the foreign law is. Thus, the Federal court quashed the decisions of the CA Hamm inter alia for not having ordered an expert opinion on the Guinean law. The CA justified, especially in later judgments, that an expert would not have had access to more information. With regards to the rest of the judgment, the Federal Court's arguments concerning German jurisdiction are not satisfying. However, one may approve its arguments and criticism of the CA on the questions of choice of law.

D. Martiny: **Information and right to information in German-Austrian reimbursement proceedings concerning maintenance obligations of children towards their parents**

A German public entity sought information regarding the income of the Austrian son-in-law of a woman living in a German home for the elderly, the entity having initially made a claim for information against the woman's daughter under German family law (§ 1605 Civil Code; § 94 para. 1 Social Security Act [Sozialgesetzbuch] XII). German law was applicable to the reimbursement claim pursuant to Article 10 of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations. Pursuant to § 102 of the Austrian Act on Non-Contentious Proceedings (Außerstreitverfahrensgesetz), and in accord with the inquisitorial principle, third persons like a son-in-law are also obligated to give information. The court applied this procedural rule and declared possible restrictions under Austrian or German substantive law inapplicable.

In the reverse case of an Austrian recovery claim filed in Germany, the outcome

would be doubtful. While true that under German law an adjustment (Anpassung) might allow the establishment of an otherwise non-existing duty to inform, restrictions on the duty to disclose information pursuant to Austrian and German law make it difficult to justify such a claim.

M. Gernert: **Effects of the Helms-Burton Act and the EU Blocking Regulation on European proceedings**

For more than 20 years, each US president had made use of the possibility of suspending the application of the extraterritorial sanctions of the Helms-Burton Act, thus preventing American plaintiffs from bringing actions against foreigners before American courts for the „trafficking" of property expropriated to Cuba. This changed as President Trump tightened economic sanctions against the Caribbean state. The first effects of this decision are instantly noticeable, but it also has an indirect influence on European court proceedings. In this article, the first proceeding of this kind will be presented, focusing on international aspects in relation to the Helms-Burton Act and the EU-Blocking-Regulation.

K. Thorn/M. Cremer: **Recourse actions among third-party vehicle insurance companies and limited liability in cases of joint and several liability from a conflict of laws perspective**

In two recent cases, the OGH had to engage in a conflict of laws analysis regarding recourse actions among third-party vehicle insurance companies concerning harm suffered in traffic accidents which involved multiple parties from different countries. The ECJ addressed this problem in its ERGO decision in 2016, but the solution remains far from clear. The situation is further complicated because Austria, like many European states, has ratified the Hague Convention on the Law Applicable to Traffic Accidents. This causes considerable differences in how the law applicable to civil non-contractual liability arising from traffic accidents is determined.

In the first decision discussed, the OGH endorsed the decision of the ECJ without presenting its own reasoning. The authors criticizes this lack of reasoning and outline the basic conflict of laws principles for the recourse actions among third-party vehicle insurance companies. The second decision discussed provides a rare example for limited liability in the case of joint and several liability. However, given that the accident in question occurred almost 20 years ago, the OGH was

able to solve the problem applying merely the Convention and autonomous Austrian conflict of laws rules. The authors examine how the problem would have been solved under the Rome II Regulation.

A. Hiller: **Reform of exequatur in the United Arab Emirates**

In the United Arab Emirates, an extensive reform of the Code of Civil Procedure entered into force on 2 February 2019. The reform covers half of the Code's provisions, among them the law regulating the enforcement of foreign judgments, arbitral awards and official deeds. This article provides an overview of the amendments made on the enforcement of foreign decisions and puts them into the context of the existing law. The article also sheds light on the procedure applying to appeals against decisions on the enforcement. The reform does away with the requirement of an action to declare the foreign decision enforceable. Instead, a simple ex parte application is sufficient, putting the creditor at a strategic advantage. However, with a view to arbitral awards in particular, important issues remain unadressed due to the somewhat inconsistent application of the New York Convention by Emirati courts.

The VW NOx Emissions Group Litigation, [2019] EWHC 783(QB), and (some aspects of) CoL

Yesterday, the High Court of London decided two preliminary issues in a large group action, certified as a Group Litigation Order (sub no. 105), brought by about 91,000 owners or lessees of VW, Audi, Skoda and SEAT cars. The claim is brought, against the manufacturers of the affected vehicles (VW, Audi, Skoda, and SEAT), against the relevant VW financial services arm and against a variety of authorised UK based VW dealers. Article 8 no. 1 of the Brussels Ibis Regulation will have been of relevance to the foreign ones amongst the defendants. No express explanations are offered how claimants eligible for the UK group

litigation are determined – presumably it depends on where the car was bought.

The precise personal/territorial scope of the respective mass litigations would have been interesting, since the proceedings in the UK are just some of many by disaffected VW owners around the world, and the outcomes for the claimants seem to differ quite substantially. As early as in 2015, a class-action similar to the UK one was commenced against VW in the Federal Court of Australia, on behalf of around 100,000 VW owners, which was settled for up to AusD 87 million. The total amount may go up to AusD 127 million, depending on the ultimate number of claimants. On 1 April 2020, the Federal Court of Australia approved the settlement of the Australian class actions. The settlement was approved on the basis of a Settlement Scheme developed by the solicitors for the applicants and made public here, that sets out the process by which claims can be registered, assessed and paid, and the Deed of Release and Settlement that was agreed between the parties, made publicly available by those solicitors here. In Germany, proceedings under the (quite restrictive) collective redress mechanism of the "*Musterfeststellungsklage*" were settled recently as well, in this case for up to € 830 Million in total in relation to around 400.000 claimants. These claimants still need to accept individually the offered sums until 20 April 2020 after receiving offers from VW based on the remaining value of their cars these days. Individual litigations outside the *Musterfeststellungsklage* about the influence of the amount of kilometres that the respective car has already run (amongst other issues) are reaching the German Federal Court of Justice these days (the hearings will take place on 5 May 2020). In addition, the Court of Justice of the European Union is dealing with other aspects of the VW case, see on CoL here.

The claim in the UK proceedings alleges a variety of causes of action against the Defendants, including fraudulent misrepresentation in relation to the sale of the affected vehicles. A number of those causes of action proceed upon the basis that the software function of the Engine amounts to a "defeat device" within the particular meaning of Article 3 (10) of EU Parliament and Council Regulation 715/2007 dated 20 June 2007. If so, then one consequence is that its use in the engine and thus, the sale of the affected vehicles, was unlawful, being prohibited by Article 5 (2) of the Regulation.

Thus, the question arose whether Brexit altered anything in this respect. This question is easy to answer at the moment, see para. 12: "Brexit makes no difference here because EU Law (including the jurisdiction of the CJEU) will

continue to have effect as if the UK was still a Member State until the end of the transition period which is 31 December 2020".

A further issue relates to the Claimants' reliance on formal letters to VW, issued by the "competent authority" in Germany for these purposes, being its Federal Motor Transport Authority, the German "*Kraftfahrtbundesamt*" ("the KBA") dated 15 October, 20 November, and 11 December 2015 ("the KBA Letters"). The Claimants contended that these letters constitute decisions that the software function is a defeat device, that those decisions bind the courts in Germany as a matter of German law, that they also bind other authorities in other Member States, including English courts, either as a matter of EU law or as a matter of German law and by reason of EU and/or English law, there is a conflicts rule to the effect that the question as to whether they bind the UK court must be decided by reference to their binding effect or otherwise under German Law, being the law of the seat of the KBA.

For a number of reasons, including analogies to competition law, the Court decided that the KBA's finding binds all Member States (including their courts) as a matter of EU law. This is why the Court abstained from taking a decision on the alternative grounds advanced by the Claimants.

At the same time and independently from the binding effects of the KBA's finding, the Court found on its own account that the affected vehicles did contain defeat devices. Another bad day for VW.

The full text of the judgment is available here.

Rivista di diritto internazionale privato e processuale (RDIPP) No

4/2019: Abstracts

The
fourth issue of 2019 of the *Rivista di diritto internazionale privato e processuale* (RDIPP,
published by CEDAM) was just released. It features:

Costanza Honorati,
Professor at the University Milan-Bicocca, **La
tutela dei minori migranti e il diritto internazionale privato: quali rapporti tra Dublino III e Bruxelles II-bis?** (The Protection of Migrant Minors and Private International Law: Which Relationship between the Dublin III and Brussels IIa Regulations?; in Italian)

- Few studies have investigated the relation between Migration Law and PIL. Even less have focused on the interaction between Brussels IIa and Dublin III Regulations. The present study, moving from the often declared assumption that 'a migrant minor is first of all a minor' focuses on the coordination between the two Regulations and the possible application of Brussels IIa to migrant minors in order to adopt protection measures to be eventually recognized in all EU Member States or to possibly place a minor in another EU Member State.

Francesca C. Villata,
Professor at the University of Milan, **Predictability First! *Fraus Legis*, Overriding Mandatory Rules and *Ordre Public* under EU Regulation 650/2012 on Succession Matters** (in English)

- This paper aims at investigating: (i) how *fraus legis*, overriding mandatory rules and *ordre public* exceptions position themselves within the system of the Succession Regulation; (ii) whether they are meant to perform their traditional function or to pursue any alternative or additional objective;

and (iii) which limits are imposed on Member States in the application of said exceptions and to what extent Member States can avail themselves of the same to preserve, if not to enforce, their respective legal traditions in this area, as acknowledged in Recital 6 of Regulation No 650/2012. The assumption here submitted is that the traditional notions to which those exceptions refer have been reshaped or, rather, adjusted to the specific needs of Regulation No 650/2012 and of the entire EU private international law system, which increasingly identifies in predictability the ultimate policy goal to pursue.

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

Michele Grassi, Research Fellow at the University of Milan, **Sul riconoscimento dei matrimoni contratti all'estero tra persone dello stesso sesso: il caso *Coman*** (On the Recognition of Same-Sex Marriages Entered into Abroad: The *Coman* Case; in Italian)

- With its judgment in the *Coman* case, the Court of Justice of the European Union has extended the scope of application of the principle of mutual recognition to the field of family law and, in particular, to same-sex marriages. In that decision the Court has ruled that the refusal by the authorities of a Member State to recognise (for the sole purpose of granting a derived right of residence) the marriage of a third-country national to a Union citizen of the same sex, concluded in accordance with the law of another Member State, during the period of their residence in that State, is incompatible with the EU freedom of movement of persons. The purpose of this paper is to analyse the private-international-law implications of the *Coman* decision and, more specifically, to assess the possible impact of the duty to recognise same-sex marriages on the European and Italian systems.

Francesco Pesce, Associate Professor at the University of Genoa, **La nozione di «matrimonio»: diritto internazionale privato e diritto materiale a confronto** (The Notion of 'Marriage': Private International Law and

Substantive Law in Comparison; in Italian)

- This paper tackles the topical and much debated issue of the notions of ‘marriage’ and ‘spouse’ under EU substantive and private international law. Taking the stand from the different coexisting models of family relationships and from the fragmented normative approaches developed at the domestic level, this paper (while aware of the ongoing evolutionary trends in this field) focuses on whether it is possible, at present, to infer an autonomous notion of ‘marriage’ from EU law, either in general or from some specific areas thereof. The response to this question bears significant consequences in terms of defining the scope of application of the uniform rules on the free movement of persons, on the cross-border recognition of family statuses and on the ensuing patrimonial regimes. With specific regard to the current Italian legal framework, this paper examines to which extent characterization issues are still relevant.

Carlo De Stefano, PhD, **Corporate Nationality in International Investment Law: Substance over Formality** (in English)

- Since incorporation is usually codified in IIAs as sole criteria for the definition of protected corporate ‘investors’, arbitral tribunals have traditionally interpreted and applied such provisions without requiring any thresholds of substantive bond between putatively covered investors and their alleged home State. By taking issue with the current status of international investment law and arbitration, the Author’s main proposition is that States revise treaty provisions dealing with the determination of corporate nationality so as to insert real seat and (ultimate) control prongs in coexistence with the conventional test of incorporation. This proposal, which seems to be fostered in the recent state practice, is advocated on the grounds of legal and policy arguments with the aim to combat questionable phenomena of investors’ ‘treaty shopping’, including ‘round tripping’, and, consequently, to strengthen the legitimacy of investor-State dispute settlement.

Ferdinando Emanuele, Lawyer in Rome, *Milo Molfa*, Lawyer in London, and *Rebekka Monico*, LL.M.

Candidate, **The Impact of Brexit on International Arbitration** (in English)

- This article considers the effects of the United Kingdom's withdrawal from the EU on international arbitration. In principle, Brexit will not have a significant impact on commercial arbitration, with the exception of the re-expansion of anti-suit injunctions, given that the *West Tankers* judgment will no longer be binding. With respect to investment arbitration, because the BITs between the United Kingdom and EU Member States will become extra-EU BITs, the *Achmea* judgment will no longer be applicable following Brexit. Furthermore, English courts will enforce intra-EU BIT arbitration awards pursuant to the 1958 New York Convention. Investment treaties between the EU and third countries will not be applicable to the United Kingdom.

Finally, the issue features the following case notes:

Cinzia Peraro, Research Fellow at the University of Verona, **Legittimazione ad agire di un'associazione a tutela dei consumatori e diritto alla protezione dei dati personali a margine della sentenza *Fashion ID*** (A Consumer-Protection Association's Legal Standing to Bring Proceedings and Protection of Personal Data in the Aftermath of the *Fashion ID* Judgment; in Italian)

Gaetano Vitellino, Research Fellow at Università Cattaneo LIUC of Castellanza, **Litispendenza e accordi confliggenti di scelta del foro nel caso *BNP Paribas c. Trattamento Rifiuti Metropolitani*** (*Lis Pendens* and Conflicting Choice of Court Agreements in *BNP Paribas v. Trattamento Rifiuti Metropolitani*; in Italian)

Gaetano Vitellino, Research Fellow at Università Cattaneo LIUC of Castellanza, **Note a margine di una pronuncia del Tribunale di Torino in materia societaria** (Remarks on a Decision of the Turin Tribunal on Corporate

Matters; in Italian)

Trending topics in international and EU law

Maria Caterina Baruffi (University of Verona) and Matteo Ortino (University of Verona) have edited the book «*Trending topics in international and EU law: legal and economic perspectives*». It collects the proceedings of the conference «#TILT Young Academic Colloquium», held in Verona on 23-24 May 2019 and organized by the Law Department of the University of Verona in collaboration with the Ph.D. School of Legal and Economic Studies and the European Documentation Centre.

The event fell within the activities of the research project «Trending International Law Topics – #TILT» supervised by Maria Caterina Baruffi and funded by the programme «Ricerca di base 2015» promoted by the University of Verona. It was specifically targeted to Ph.D. students and early career scholars, selected through a Call for Papers. The book publishes the results of their research with the aim of fostering the scientific debate on trending topics in international and EU law and their impact on domestic legal systems.

The volume is divided into four parts, respectively devoted to public international law, including papers on human rights, international criminal law and investment law; private international law; EU law, addressing both general aspects and policies; and law and economics.

With specific regard to private international law (Part II of the volume), contributions deal with family, civil and commercial matters. For the former aspect, the volume collects papers on topics such as the EU Regulations on property relationships of international couples, recognition of adoptions, free movement of same-sex registered partners and cross-border surrogacy; for the latter, the volume includes contributions on topics such as choice-of-court agreements in the EU in the light of Brexit, insolvency, service of process and counter-claims in the Brussels regime.

More information about the book and the complete table of contents are available here.

Save the Date: “The HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil Matters between the EU and Third Countries” – Conference on 25 and 26 September 2020, University of Bonn, Germany

As of today, Brexit has become reality – one more reason to think about the EU’s Judicial Cooperation with third states:

The largest proportion of EU economic growth in the 21st century is expected to arise in trade with third countries. This is why the EU is building up trade relations with many states and other regional integration communities in all parts of the world. The latest example is the EU-MERCOSUR Association Agreement concluded on 28 June 2019. With the United Kingdom’s exit of the Union on 31 January 2020, extra-EU trade with neighboring countries will further increase in importance. Another challenge for the EU is China’s “Belt and Road Initiative”, a powerful global development strategy that includes overland as well as sea routes in more than 100 states around the globe.

The increasing volume of trade with third states will inevitably lead to a rise in the number and importance of commercial disputes. This makes mechanisms for their orderly and efficient resolution indispensable. China is already setting up infrastructures for commercial dispute resolution alongside its belts and roads. In contrast, there seems to be no elaborate EU strategy on judicial cooperation in civil matters with countries outside of the Union, despite the DG Trade's realisation that "trade is no longer just about trade". Especially, there is no coherent plan for establishing mechanisms for the coordination of cross-border dispute resolution and the mutual recognition and enforcement of judgments. This is a glaring gap in the EU's policy making in external trade relations (see also, in an earlier post by Matthias Weller on CoL on this matter: Mutual trust and judicial cooperation in the EU's external relations – the blind spot in the EU's Foreign Trade and Private International Law policy?).

This is why the Bonn group of PIL colleagues – Moritz Brinkmann, Nina Dethloff, Matthias Lehmann, Philipp Reuss, and Matthias Weller – are hosting a conference on Friday and Saturday, 25 and 26 September 2020, at the University of Bonn that seeks to explore ways in which judicial cooperation in civil matters between the EU and third countries can be improved by the Hague Judgments Convention of 2019 as an important driver, if not game changer, of legal certainty in cross-border commercial relations.

The list of speakers includes internationally leading scholars, practitioners and experts from the Hague Conference on Private International Law (HCCH), the European Commission (DG Trade, DG Justice), and the German Ministry of Justice and for Consumers (Bundesjustizministerium der Justiz und für Verbraucherschutz).

The Conference is supported by the HCCH as one of the first European events for discussing the HCCH 2019 Convention. The Conference will be further supported by the Zentrum für europäisches Wirtschaftsrecht at the University of Bonn and The International Litigation Exchange (ILEX).

The Organizers will kindly ask participants to contribute with € 75.- to the costs of the

event.

Date:

Friday, 25
September 2020, and Saturday, 26 September 2020.

Venue:

Bonner Universitätsforum, Heussallee 18 – 22

Pre-Registration:

sekretariat.weller@jura.uni-bonn.de

Draft Programme

Friday, 25 September 2020

1.30 p.m. Registration

2 p.m. Welcome note

Prof Dr Wulf-Henning Roth, University
of Bonn, Director of the Zentrum für Europäisches Wirtschaftsrecht (ZEW)

2.10 p.m. Part 1: Chances and Challenges of the HCCH 2019 Judgments Convention

Chairs of Part 1: Matthias Weller /
Matthias Lehmann

Keynote: Hague Conference's Perspective and Experiences

Hans van Loon, Former Secretary General of the
Hague Conference on Private International Law, The Hague

1. Scope of application

Prof Dr Xandra Kramer, Erasmus Universiteit Rotterdam

2. Judgments, Recognition, Enforcement

Prof Dr Wolfgang
Hau, Ludwig-Maximilians-Universität Munich

Discussion

3.30 p.m. Coffee
Break

4.00 p.m. Part 2: Chances and Challenges of the HCCH 2019 Judgments Convention continued

Chairs of Part 2: Prof Dr Nina Dethloff / Prof Dr Moritz Brinkman

3. Jurisdictional filters

Prof Dr Pietro Franzina, Catholic University of Milan

4. Grounds for refusal

Prof Dr Paco Garcimartín, University of Madrid

Discussion

5.30 p.m. Part 3: Panel Discussion – Prospects for Judicial Cooperation in Civil Matters between the EU and Third Countries, 60 min:

Chairs of Part 3: Prof Dr Matthias Weller / Prof Dr Matthias Lehmann

Colin Brown, Unit Dispute Settlement and Legal Aspects of Trade Policy, DG Trade (tbc); Andreas Stein, Head of Unit, DG JUST – A1 "Civil Justice"; Dr. Jan Teubel, German Ministry of Justice and for Consumers; RA Dr. Heiko Heppner, Attorney at Law (New York), Barrister and Solicitor Advocate (England and Wales), Chair of ILEX, Head of Dispute Resolution, Partner Dentons, Frankfurt, and perhaps more…

Discussion

7 p.m. Conference
Dinner

Saturday

9.30 a.m. Part 4: The context of the HCCH 2019 Judgments Convention

Chairs: Prof Dr Moritz Brinkmann/Prof Dr Philipp Reuss

5. Relation to the HCCH 2005 Convention on Choice of Court Agreements

Prof Paul Beaumont, University of Stirlin

6. Relations to the Brussels Regime / Lugano Convention

Prof Marie-Elodie Ancel, Université Paris-Est Crétei

7. Brexit…

Dr
Pippa Rogerson, Reader in Private International Law, Faculty of Law, Cambridge

Discussion

11:00 a.m. Coffee Break

11:30 a.m. Part 4: The context of the HCCH 2019 Judgments Convention continued

Chairs: Prof Dr Nina Dethloff / Prof Dr Matthias Lehman

8. South European Neighbouring and Candidate Countries

Prof Dr Ilija Rumenov, Ss. Cyril and Methodius University, Skopje, Macedonia

9. MERCOSUR – EU

Dr Veronica Ruiz Abou-Nigm, Director of Internationalisation, Senior Lecturer in International Private Law, School of Law, University of Edinburgh

10. Relations to International Commercial Arbitration

Jose Angelo Estrella-Faria, Former Secretary
General of UNIDROIT, Senior Legal Officer UNCITRAL Secretariat, International Trade Law Division Office of Legal Affairs, United Nations (tbc)

Discussion

1 p.m. Closing Remarks

Matthias Weller

Mutual Trust v Public Policy : 1-0

In a case concerning the declaration of enforceability of a UK costs order, the Supreme Court of the Hellenic Republic decided that the 'excessive' nature of the sum (compared to the subject matter of the dispute) does not run contrary to public policy. This judgment signals a clear-cut shift from the previous course followed both by the Supreme and instance courts. The decisive factor was the principle of mutual trust within the EU. The calibre of the judgment raises the question, whether courts will follow suit in cases falling outside the ambit of EU law.

[Areios Pagos, Nr. 579/2019, unreported]

THE FACTS

The claimant is a Greek entrepreneur in the field of mutual funds and investment portfolio management. His company is registered at the London Stock Exchange. The defendant is a well known Greek journalist. On December 9, 2012, a report bearing her name was published in the digital version of an Athens newspaper, containing defamatory statements against the claimant. The claimant sued for damages before the High Court of Justice, Queens Bench Division. Although properly served, the respondent did not appear in the proceedings. The court allowed the claim and assigned a judge with the issuance of an order, specifying the sum of the damages and costs. The judge ordered the default party to pay the amount of 40.000 ? for damages, and 76.290,86 ? for costs awarded on indemnity basis. The defendant did not appeal.

The UK order was declared enforceable in Greece [Athens CFI 1204/2015,

unreported]. The judgment debtor appealed successfully: The Athens CoA ruled that the amount to be paid falls under the category of ‚excessive' costs orders, which are disproportionate to the subject matter value in accordance with domestic perceptions and legal provisions. Therefore, the enforcement of the UK order would be unbearable for public policy reasons [Athens CoA 1228/2017, unreported]. The judgment creditor lodged an appeal on points of law before the Supreme Court.

THE RULING

The Supreme Court was called to examine whether the Athens CoA interpreted properly the pertinent provisions of the Brussels I Regulation (which was the applicable regime in the case at hand), i.e. Article 45 in conjunction with Art. 34 point 1. The SC began its analysis by an extensive reference to judgments of the CJEU, combined with recital 16 of the Brussels I Regulation, which encapsulates the Mutual Trust principle. In particular, it mentioned the judgments in the following cases: C-7/98, Krombach, Recital 36; C-38/98, Renault, Recital 29; C-302/13, flyLAL-Lithuanian Airs, Recital 45-49; C-420/07, Orams, Recital 55), and C-681/13, Diageo, Recital 44. It then embarked on a scrutiny of the public policy clause, in which the following aspects were highlighted:

- The spirit of public policy should not be guided by domestic views; the values of European Civil Procedure, i.e. predominantly the European integration, have to be taken into consideration, even if this would mean downsizing domestic interests and values. Hence, the court of the second state may not deny recognition and enforcement on the grounds of perceptions which run contrary to the European perspective.
- The gravity of the impact in the domestic legal order should be of such a degree, which would lead to a retreat from the basic principle of mutual recognition.
- Serious financial repercussions invoked by the defendant may not give rise to sustain the public policy defense.
- In principle, a foreign costs order is recognized as long as it does not function as a camouflaged award of punitive damages. In this context, the second court may not examine whether the foreign costs order is 'excessive' or not. The latter is leading to a review to its substance.
- The proportionality principle should be interpreted in a twofold fashion: It is true that high costs may hinder effective access to Justice according to

Article 6.1 ECHR and Article 20 of the Greek Constitution. However, on an equal footing, the non-compensation of the costs paid by the claimant in the foreign proceedings leads to exactly the same consequence.

- In conclusion, the proper interpretation of Article 34 point 1 of the Brussels I Regulation should lead to a disengagement of domestic perceptions on costs from the public policy clause. Put differently, the Greek provisions on costs do not form part of the core values of the domestic legislator.

In light of the above remarks, the SC reversed the appellate ruling. The fact that the proportionate costs under the Greek Statutes of Lawyer's fees would lead to a totally different and significantly lower amount (2.400 in stead of 76.290,86 ?) is not relevant or decisive in the case at hand. The proper issue to be examined is whether the costs ordered were necessary for the proper conduct and participation in the proceedings, and also whether the calculation of costs had taken place in accordance with the law and the evidence produced. Applying the proportionality principle in the way exercised by the Athens CoA amounts to a re-examination on the merits, which is totally unacceptable in the field of application of the Brussels I Regulation.

COMMENTS

As mentioned in the introduction, the ruling of the SC departs from the line followed so far, which led to a series of judgments denying recognition and enforcement of foreign (mostly UK) orders and arbitral awards [in detail see my commentary published earlier in our blog, and my article: Recognition and Enforcement of Foreign Judgments in Greece under the Brussels I-*bis* Regulation, in Yearbook of Private International Law, Volume 16 (2014/2015), pp. 349 et seq]. The decision will be surely hailed by UK academics and practitioners, because it grants green light to the enforcement of judgments and orders issued in this jurisdiction.

The ruling applies however exclusively within the ambit of the Brussels I Regulation. It remains to be seen whether Greek courts will follow the same course in cases not falling under the Regulation's scope, e.g. arbitral awards, third country judgments, or even UK judgments and orders, whenever Brexit becomes reality.

EUFams II – International Exchange Seminar at the Max Planck Institute Luxembourg for Procedural Law

On 24-25 October 2019, the Max Planck Institute Luxembourg for Procedural Law will host an **International Exchange Seminar** in the framework of the **Project "EUFams II – Facilitating Cross-Border Family Life: Towards a Common European Understanding".** Funded by the European Commission, the Project aims to develop a common expertise and understanding of the EU instruments in family law: notably, it identifies practical problems and puts forth solutions to secure a uniform, coherent and consistent application of such instruments.

The Project tackles, in particular, the Regulations on matrimonial matters and matters of parental responsibility, including child abduction ((EC) No 2001/2003 to be repealed by (EU) 2019/1111), maintenance obligations ((EC) No 4/2009), successions ((EU) No 650/2012), the two Regulations implementing enhanced cooperation in matters of matrimonial property regimes and the property consequences of registered partnerships ((EU) 2016/1103 and 1104). It also tackles the Regulation adopted to simplify the requirements for cross-border use and acceptance of certain public documents in the European Union ((EU) 2016/1191) and the relevant Hague instruments. Furthermore, to ensure a comprehensive approach the Project engages with the legal challenges arising from the current refugee crisis and the potential impacts of Brexit on family law.

Gathering renowned academics from various institutions, judges, notaries, lawyers, and representatives of international organizations and family law associations, the International Exchange Seminar will address and explore possible solutions to controversial or problematic issues that were identified in the course of the National Exchange Seminars hosted, in the framework of the Project, by the Project Partners, and namely the Universities of Heidelberg

(coord.), Lund, Milan, Osijek, Valencia and Verona.

The **Program** of the International Exchange Seminar is available here.

The Project's **research outputs** and **case law database** are accessible here and here (both in progress).

For **more information** on the Project, see here and here.

This project was funded by the European Union's Justice Programme (2014-2020). The content of this study represents the views of the authors only and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.