ECJ Rules on Jurisdiction for Copyright Infringement

Yesterday, the Court of Justice of the European Union delivered its judgment in Pinckney v. KDG Mediatech (Case C-170/12).

Mr Pinckney, who lives in Toulouse (France), claims to be the author, composer and performer of 12 songs recorded by the group Aubrey Small on a vinyl record. When he discovered that those songs had been reproduced without his authority on a compact disc pressed in Austria by Mediatech, then marketed by United Kingdom companies Crusoe or Elegy through various internet sites accessible from his residence in Toulouse, Mr Pinckney brought an action against Mediatech before a French court seeking compensation for damage sustained on account of the infringement of his copyrights. Mediatech challenged the jurisdiction of the French courts.

The European Court understood the question formulated by the referring court to be whether Article 5(3) of the Brussels I Regulation must be interpreted as meaning that where is an alleged infringement of a copyright which is protected by the Member State of the court seised, that court has jurisdiction to hear an action to establish liability brought by the author of a work against a company established in another Member State, which has in the latter State reproduced that work on a material support which is subsequently marketed by companies established in a third Member State through an internet site which is also accessible in the Member State of the court seised.

The Court reiterated its distinction between infringements of personality rights and of intellectual and industrial property rights, and insisted that the allegation of an infringement of an intellectual and industrial property right, in respect of which the protection granted by registration is limited to the territory of the Member State of registration, must be brought before the courts of that State. It is the courts of the Member State of registration which are the best placed to ascertain whether the right at issue has been infringed. It then applied it to copyrights.

> *39 First of all, it is true that copyright, like the rights attaching to a national*

trade mark, is subject to the principle of territoriality. However, copyrights must be automatically protected, in particular by virtue of Directive 2001/29, in all Member States, so that they may be infringed in each one in accordance with the applicable substantive law.

40 In that connection, it must be stated from the outset that the issue as to whether the conditions under which a right protected in the Member State in which the court seised is situated may be regarded as having been infringed and whether that infringement may be attributed to the defendant falls within the scope of the examination of the substance of the action by the court having jurisdiction (see, to that effect, Wintersteiger, paragraph 26).

41 At the stage of examining the jurisdiction of a court to adjudicate on damage caused, the identification of the place where the harmful event giving rise to that damage occurred for the purposes of Article 5(3) of the Regulation cannot depend on criteria which are specific to the examination of the substance and which do not appear in that provision. Article 5(3) lays down, as the sole condition, that a harmful event has occurred or may occur.

42 Thus, unlike Article 15(1)(c) of the Regulation, which was interpreted in Joined Cases C-585/08 and C-144/09 Pammer and Hotel Alpenhof [2010] ECR I-12527, Article 5(3) thereof does not require, in particular, that the activity concerned to be 'directed to' the Member State in which the court seised is situated.

43 It follows that, as regards the alleged infringement of a copyright, jurisdiction to hear an action in tort, delict or quasi-delict is already established in favour of the court seised if the Member State in which that court is situated protects the copyrights relied on by the plaintiff and that the harmful event alleged may occur within the jurisdiction of the court seised.

44 In circumstances such as those at issue in the main proceedings that likelihood arises, in particular, from the possibility of obtaining a reproduction of the work to which the rights relied on by the defendant pertain from an internet site accessible within the jurisdiction of the court seised

45 However, if the protection granted by the Member State of the place of the court seised is applicable only in that Member State, the court seised only has jurisdiction to determine the damage caused within the Member State in

which it is situated.

46 If that court also had jurisdiction to adjudicate on the damage caused in other Member States, it would substitute itself for the courts of those States even though, in principle, in the light of Article 5(3) of the Regulation and the principle of territoriality, the latter have jurisdiction to determine, first, the damage caused in their respective Member States and are best placed to ascertain whether the copyrights protected by the Member State concerned have been infringed and, second, to determine the nature of the harm caused.

Final ruling:

Article 5(3) of Council Regulation (EC) No 44/2001 … must be interpreted as meaning that, in the event of alleged infringement of copyrights protected by the Member State of the court seised, the latter has jurisdiction to hear an action to establish liability brought by the author of a work against a company established in another Member State and which has, in the latter State, reproduced that work on a material support which is subsequently sold by companies established in a third Member State through an internet site also accessible with the jurisdiction of the court seised. That court has jurisdiction only to determine the damage caused in the Member State within which it is situated.

H/T: Bernd J. Jütte

Venice Conferences on Institutional Arbitration (12 and

19 October 2013)

The Venice Chamber of Arbitration and the Venice Chamber of Commerce, in collaboration with the University of Venice "Cà Foscari" and ARBIT (Italian Forum for Arbitration and ADR), will host two one-day conferences on institutional arbitration: "**Arbitrato interno e internazionale: aspetti procedurali dall'avvio all'esecuzione del lodo in Italia e nel mondo**" [Internal and International Arbitration: Procedural Aspects from the Commencement to the Execution of the Award in Italy and in the World].

The conferences, which will take place in Venice on **Saturday 12 October** and **Saturday 19 October**, will focus on institutional arbitration (both in international commercial and investment disputes), under the point of view of the procedural aspects ("L'arbitrato istituzionale. Aspetti procedurali", 12 October) and of the challenging and enforcement of the arbitral award ("L'arbitrato istituzionale. Il lodo: annullamento, nullità, esecuzione", 19 October). Speakers include leading academics and practitioners and members of arbitration institutions (see the full programme here).

Participation is free, upon registration on the site of the Venice Chamber of Arbitration.

Commentary of the Succession Regulation

The first commentary of the European Regulation No 650/2012 of 4 July 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 has been published by Bruylant.

The book is conceived as a commentary, article by article, of the Regulation. It is

written in French and, in its 940 pages, it provides a comprehensive analysis of comparative law as well as extensive explanations and examples in order to allow practitioners to address the issues of future international successions and family business succession planning.

With the contributions of :

Andrea Bonomi (Introduction ; Préambule ; article 1er, paragraphe 1er, paragraphe 2,
points a à g, j ; article 3, paragraphe 1er, points a à d ; articles 4-12 ;
article 14-18 ; articles 20-22 ; article 23, paragraphe 1er, paragraphe 2,
points a à d, h, i ; articles 24-27 ; articles 34-38 ; articles 74-75 ;
articles 77-82);

Ilaria Pretelli (Articles 39-58);

Patrick Wautelet (Article 2 ; article 3, paragraphe 1er, points e à i, paragraphe 2 ;
article 13 ; article 19 ; article 23, points e à g, j ; articles 28-33 ;
articles 59-73 ; article 76 ; articles 83-84).

More information available here.

Online Symposium: Abolition of Exequatur and Human Rights

In June, the European Court of Human Rights ruled in *Povse v. Austria* that the abolition of exequatur was compatible with the European Convention of Human Rights, and that the mechanism introduced by the Brussels IIa Regulation was not dysfunctional from the perspective of the Convention.

In December 2010, the Court of Justice of the European Union had also ruled in *Joseba Andoni Aguirre Zarraga v. Simone Pelz* that the allegation of violation of fundamental rights should not prevent the free circulation of judgments under the Brussels IIa Regulation.

For several years, European scholars debated whether the project of the European Commission to abolish exequatur and to suppress the public policy exception would comport with Member States ECHR obligations. Many thought that it would not. Member States eventually successfully resisted the project which was not adopted in the Brussels I Recast.

From this week-end onwards, *ConflictofLaws.net* will organize an online symposium on Abolition of Exequatur and Human Rights. Scholars from different jurisdictions will share their first reaction on the *Povse* judgment and on its consequence on the evolution of European civil procedure. Readers interested in participating may either contact directly the editors or use the comment section.

- Requejo on *Povse*
- Muir Watt on Abolition of Exequatur and Human Rights
- Arenas Garcia on *Povse*: Taking Direct Effect Seriously?
- Gascon on *Povse*: a Presumption of ECHR Compliance when Applying the European Civil Procedure Rules?
- van Iterson on *Povse*: a Legislative Perspective

Jurcys on Economic Analysis of Party Autonomy in Family Law

Paulius Jurcys (Kyushu University Graduate School of Law) has posted Party Autonomy in International Family Law: A Note from the Economic Perspective on SSRN.

> *This paper aims to contribute to the discussion concerning the scope of party autonomy in international family law. It is suggested to adopt a wider view and analyse the principle of party autonomy from the efficiency perspective. In particular, this short note questions the widely accepted assumption that agreements in family law are very similar, if not identical, to other forms of market transactions. In order to facilitate the debate, it is suggested to take into consideration that some forms of agreements perform signaling function*

and therefore should be treated differently from other forms of market transactions. It is argued that such a perspective could help identify the surplus value of the agreement. The paper concludes with some further thoughts about the implications of the signaling and surplus value to the discussion on party autonomy in international family law.

TDM 4 (2013) – Ten years of Transnational Dispute Management

TDM has published its special anniversary issue. According to the Editorial by Mark Kantor, and especially relevant to readers of this site, "the TDM community has not limited itself to investment treaty disputes. Instead, we have promoted discussion of international commercial arbitration, litigation over international issues in national courts, mediation of cross-border disputes, administrative law in national and international tribunals, labor and environmental disputes, the overlap between human rights law and tribunals and investments, the overlap between WTO dispute resolution and investments, administrative law and international matters, treaty making and treaty unmaking, and so many other methods for transnational dispute management." With articles from leading authorities on timely topics of regional and substantive interest, the anniversary issue is no different.

Italian Book on the Succession Regulation

The Italian publisher Giuffrè has recently published *Il diritto internazionale privato europeo delle successioni mortis causa* [The EU Private International Law of Succession upon Death], edited by Pietro Franzina and Antonio Leandro, with a preface by Karen Vandekerckhove.

The book is a collection of essays, in Italian, covering a variety of issues in connection with Regulation No 650/2012 of 4 July 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.

In an introductory paper, Pietro Franzina (University of Ferrara) examines the reasons for unifying private international law rules in succession matters in Europe and the main policy options underlying the new instrument. Giacomo Biagioni (University of Cagliari) deals in his contribution with the scope of application of Regulation No 650/2012 and with the relationship entertained by the latter with other texts – international conventions and EU legislative acts – that may come into play in respect of cross-border successions.

Antonio Leandro (University of Bari) explores the rules laid down by the Regulation as regards jurisdiction in matters of succession. The provisions determining the law applicable to succession are examined from a general perspective by Domenico Damascelli (University of Salento), while Bruno Barel (University of Padova) focuses on the conflict-of-laws issues raised by agreements as to succession.

Elena D'Alessandro (University of Torino) analyses in her paper the rules relating to the recognition, the enforceability and the enforcement of judgments and court settlements, whereas the contribution of Paolo Pasqualis (Italian Council of Notaries) is concerned with the movement of authentic instruments relating to succession matters across Europe. The newly instituted European Certificate of Succession is the object of a paper by Fabio Padovini (University of Trieste). Finally, Emanuele Calò (Italian Council of Notaries) provides an overview of the

main features of the substantive regulation of succession upon death from a comparative perspective.

The table of contents of the book may be downloaded here.

Conference Announcement: What Law Governs International Commercial Contracts?

On October 18, 2013, Brooklyn Law School is hosting an important symposium on the question of what law governs international commercial contracts. A link to the event is here. Below is a short description of the symposium. This should be of great interest to private international lawyers and the international arbitration community.

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What Law Governs International Commercial Contracts? Divergent Doctrines and the New Hague Principles

Friday, October 18 9:15 am-3:15 pm

Brooklyn Law School Subotnick Center 250 Joralemon Street Brooklyn, New York

Co-Sponsors Dennis J. Block Center for the Study of International Business Law *Brooklyn Journal of International Law*

About the Symposium With the continued dramatic growth of international commerce, a critical question has become even more important: What law governs the contracts behind the commerce? Key issues include:

- In much of the world, courts accept the choice of the parties to a contract as to what law will govern it – but this principle is not accepted

everywhere. Even in nations where it is accepted, differences abound.
- Should the ability of parties to select the law governing their contract be approached differently in the increasingly prevalent world of international commercial arbitration?
- In many arbitral systems, parties may select not only the law of a sovereign state, but also "rules of law" emanating from non-state sources, such as "principles" promulgated by international organizations. Should courts show the same deference to the parties' choice of non-state law?

The Hague Principles on Choice of Law in International Contracts, prepared by the Hague Conference on Private International Law and now nearing completion, are expected to be quite influential, both in establishing the principle of party autonomy to select the law governing commercial contracts and in developing the principle and its limits.

This symposium addresses the important issues described above – from the perspectives of both current law and the "best practices" represented by the draft Hague Principles.

Nagy on the Draft Regulation on Matrimonial Property

Csongor István Nagy (University of Szeged, Faculty of Law) has posted The European Commission's Draft Regulation on the Conflict of Laws of Matrimonial Property – Some Conceptual Questions on SSRN.

> *The paper analyses, in the context of the European Commission's Draft Regulation on the conflict of laws of matrimonial property and from a choice-of-law perspective, the property issues connected to the dissolution of the marriage, with special emphasis on matrimonial property. It examines the problems emerging from the differences between Member State laws in terms of thinking and conceptualization and analyses how these impact the application of the Draft Regulation.*

New Edition of Collier’s Conflict of Laws

Pippa Rogerson (University of Cambridge) has published the fourth edition of her former colleague John Collier’s manual on the Conflict of Laws.

> *This reworked version of Conflict of Laws introduces a new generation of students to the classic. It has been completely rewritten to reflect all the recent developments including the increased legislation and case law in the field. The author’s teaching experience is reflected in her ability to provide students with a clear statement of rules which sets out a framework to the subject, before adding detail and critical analysis. Recognising that the procedural aspect of the subject challenges most students, the book explores conflict of laws in its practical context to ensure understanding. Teachers will appreciate the logical structure, which has been reworked to reflect teaching in the field today. Retaining the authority that was the hallmark of the previous edition, this contemporary and comprehensive textbook is essential reading.*

- *Clear and accessible updated version of the classic text on the subject*
- *Focuses on commercial law*
- *Substantially rewritten to reflect all case law and legislative developments*
- *Restructured to map contemporary courses*