

Advocate General Emiliou's Opinion on Case C-799/24: Res Judicata Effect Applies Despite Breach of Art 31(2) Brussels Ia



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On 23 April 2026, Advocate General *Emiliou* published his opinion on Case C-799/24 - *Babcock Montajes S.A. v Kanadevia Inova Steinmüller GmbH*. It adds another piece to the puzzle that is the CJEU's broad interpretation of the term 'judgment' in the Brussels Ia Regulation. At the same time, the case highlights the persisting problems with procedural coordination under the regulation.

I. Facts of the case

The facts of the case as well as the procedural history have already been summarised in detail by *Lino Bernard* and *Marta Requejo Isidro* respectively, [here](#) and [here](#).

To summarize:

A German and a Spanish company concluded a contract with an exclusive choice-of-court agreement in favour of a German court. Despite this agreement, the Spanish company initiated proceedings before a Spanish court in Madrid, seeking payment allegedly owed under the contract in connection with a bank guarantee invoked by the German company. Shortly thereafter, the German company brought proceedings before the designated German court in Cologne, seeking a declaration that the Spanish company was under an obligation to reimburse the German company and/or to pay damages.

The Madrid court affirmed its international jurisdiction without addressing the

choice-of-court agreement, but declined territorial competence and referred the case to the court in San Sebastián (Spain). Although the German company did not challenge the Madrid court's decision, it subsequently contested the international jurisdiction before the San Sebastián court. This objection was rejected in an interim decision, with the court relying on the prior determination of the Madrid court.

In parallel, the German court seized by the German company dismissed the action as inadmissible, holding that it was bound, pursuant to Art. 36(1) of the Brussels Ia Regulation, to recognise the decision of the San Sebastián court, even though the choice-of-court agreement had been disregarded. On appeal, however, the German appellate court overturned this decision, finding that it retained international jurisdiction despite the Spanish court's ruling. This was due to the appellate court's assertion that the interim decision did not constitute a 'judgment' within the meaning of the Brussels Ia Regulation. The Spanish company appealed to the German Federal Court of Justice, which referred the following questions to the Court of Justice of the European Union:

1. Is the term 'judgment' in Article 36(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the Brussels I Regulation') to be interpreted to the effect that the court of a Member State on which an agreement as referred to in Article 25 of the Brussels I Regulation confers exclusive jurisdiction (Article 31(2) of the Brussels I Regulation) must recognise a judgment by which a non-designated court of a Member State finds that the courts of that Member State have international jurisdiction if the judgment in question is an interim judgment, in other words, is not a decision which terminates a dispute?
2. If the answer to Question 1 is, in principle, in the affirmative: Does recognition of the interim judgment also depend on whether the interim judgment affirming the international jurisdiction of the courts of the Member State is binding on the non-designated court itself and/or whether the affirmation of international jurisdiction may be varied in the context of an appeal?

II. Opinion of Advocate General Emiliou

AG *Emiliou* addressed the questions jointly, understanding them as asking ‘whether an interim decision adopted by a court of a Member State, in which that court (only) declares itself to have international jurisdiction, but which does not yet make any determination on the merits of the claim, is covered by the concept of “judgment” within the meaning of Art. 36(1) of Regulation No 1215/2012 and must therefore be recognised in accordance with that provision, even if that decision allegedly contradicts an exclusive choice-of-court agreement designating the courts of another Member State.’ (para 27).

He begins by emphasising that an infringement of a choice-of-court agreement cannot justify refusal of recognition (paras 38-56). This is based on the prohibition of a *révision au fond* (para 39), as also confirmed by the *Gjensidige* judgement (C-90/22) (para 42).

Turning to the central issue – whether an interim decision by which a court of a Member State declares itself to have jurisdiction, allegedly in breach of a choice-of-court agreement, constitutes a ‘judgment’ within the meaning of Art. 2(a) of the Brussels Ia Regulation – AG *Emiliou* relies on the Court’s case law, in particular *Maersk* (Joined Cases C-345/22 to C-347/22) and *Gothaer* (C-456/11), to show that procedural decisions are not excluded from the concept of a ‘judgment’ (para 67-73). While acknowledging that these cases do not directly address the present issue (para 69), he argues that there is no convincing reason to distinguish between a decision declining jurisdiction (as in *Gothaer*) and one confirming jurisdiction (as in the present case) (para 79).

The AG then highlights the importance of the concept of ‘judgment’ in the context of *lis pendens* (para 74). He notes that the proper functioning of the obligation to decline jurisdiction under Art. 29(3) would be uncertain if a purely jurisdictional decision were not regarded as a ‘judgment’ capable of recognition (para 76).

AG *Emiliou* emphasises that, although safeguarding the practical effectiveness of choice-of-court agreements is a legitimate concern, the protection afforded by Art. 31(2) does not justify excluding decisions containing only jurisdictional findings from the concept of a ‘judgment’ within the meaning of the Regulation (paras 86-88). Refusing recognition of such an interim decision would effectively permit parallel proceedings and thereby create a risk of conflicting judgments –

undermining the very objectives of the *lis pendens* rules (para 89). In such circumstances, Art. 29(3) should take precedence over Art. 31(2) once it becomes clear that parallel proceedings cannot be avoided through the mechanisms of Art. 31(2) (para 90).

Finally, AG *Emiliou* argues that the obligation to decline jurisdiction under Art. 29(3) may arise at different stages of the proceedings, depending on whether the defendant is still able to contest jurisdiction. The court second seised should only decline jurisdiction once it can be safely assumed that the court first seised will proceed to examine the case on the merits (para 96). Referring to the wording of Art. 38(a), he concludes that the obligation to recognise a judgment containing only a jurisdictional determination may arise irrespective of whether that judgment is final. By contrast, the obligation to decline jurisdiction under Art. 29(3) arises only once the jurisdiction of the court first seised has been established in such a way that it can no longer be contested (para 98).

In response to the second question referred, *Emiliou* further suggests that a jurisdictional determination may produce *res judicata* effects which cannot subsequently be set aside by the courts with priority (paras 99-101).

To summarise the Opinion of AG *Emiliou*: an interim decision, even if given in breach of a choice-of-court agreement, constitutes a ‘judgment’ within the meaning of Art. 2(a) of the Regulation and must be recognised. While the obligation of recognition arises irrespective of whether the decision is final, the obligation of the court designated in the choice-of-court agreement to decline jurisdiction under Art. 29(3) arises only once the jurisdiction of the court first seised can no longer be contested in the ongoing proceedings.

III. Comment

The present proceedings will likely make a further contribution to the CJEU’s emerging, controversial line of case law on what constitutes a ‘judgment’ capable of recognition within the meaning of Art. 36 of the Brussels Ia Regulation. Prominent examples include *H Limited* (C-568/20), *London Steam-Ship* (C-700/20) and *Gothaer* (C-456/11), all of which are referenced in the Opinion (Fn. 32, 34, 39).

To date, the Court has consistently adopted a broad interpretation of this concept, notwithstanding substantial criticism from scholars. The Opinion of AG *Emiliou*

continues this approach by interpreting 'judgment' within the meaning of the Regulation as encompassing interim decisions, even where they are given in breach of Art. 31(2).

Even though (German) scholarship remains cautious with regard to the recognition of such decisions, the reasoning of AG *Emiliou* is largely convincing, albeit with some caveats.

The main reservation concerns his argument that the obligation to decline jurisdiction under Art. 29(3) needs to be reinforced by treating jurisdictional decisions as recognisable judgments (paras 76–78). This step does not appear necessary. As he himself acknowledges (para 78), the same line of reasoning could lead to the opposite conclusion, namely that Art. 29(3) already provides a sufficient mechanism, making the recognition of an interim judgment in such circumstances superfluous.

However, the Opinion remains firmly in line with the Court's existing case law, with the judgment in *Gothaer* (see especially Nr. 79). It is convincing in emphasising that, while the Regulation seeks to protect choice-of-court agreements, the prevention of parallel proceedings – and thus of conflicting judgments – carries greater weight (paras 89–90). This is further underpinned by the emphasis on mutual trust and the free circulation of judgments (paras 38–40, 82, 85, 87).

It is, however, somewhat surprising that AG *Emiliou* initially relies on Art. 29(3) as a key argument in favour of recognising the interim judgment, yet ultimately maintains a substantive distinction between the obligation to recognise such a judgment under Art. 36(1) and the obligation to decline jurisdiction under Art. 29(3). In the present case, this distinction does not appear to affect the outcome. It remains to be seen in which situations it might lead to different results.

Ultimately, however, the case reveals a more fundamental issue. As Lino Bernard has aptly observed, it is, in essence, concerned with procedural coordination under the Brussels Ia Regulation. Since a violation of the *lis pendens* rules does not constitute a ground for refusal of recognition (*Liberato* – C-386/17; see also AG *Emiliou*'s Opinion, Nr. 53), the question whether an interim decision is capable of recognition becomes particularly significant in this context. By contrast, if the *lis pendens* rules were enforced at the level of Art. 45(1), the issue

of recognisability would be far less consequential, as recognition could be refused on that basis.

In this regard, it is remarkable that AG *Emiliou's* decision *prima facie* strengthens (see para 76) the *lis pendens* rules at the stage of recognition. It may provide a workable interim solution for the principle of priority under Art. 29(1) and (3). But at the same time, as the present case illustrates, it sacrifices the protection of choice-of-court agreements under Art. 31(2). This could conceivably create new opportunities to misuse the *lis pendens* rules and encourage a *race to the courts*, particularly for claimants with the ability to convince the court to issue an early interim decision.

Accordingly, the case once again highlights the need to elevate the entire *lis pendens* regime to a ground for refusal of recognition. Encouragingly, the Commission's Report on the application of the Brussels Ia Regulation suggests that the recast may address this issue.

Independent of any reform of the Regulation, it remains to be seen whether the Court will follow AG *Emiliou's* broad understanding of 'judgment' and continue its line of extending the interpretation of that concept within the meaning of the Regulation.

The New Moroccan Framework on International Jurisdiction and Foreign Judgment Enforcement - A Preliminary Critical Assessment

I. Introduction

Finally out: the new Moroccan Code of Civil Procedure (Law No. 58.25), the preparation of which was previously announced on this blog, has been

promulgated by *Dahir* (Royal Decree) No. 1.26.07 of 11 February 2026 and published in the Official Journal (*Al-Jarida Ar-Rasmiyya*) No. 7485 of 23 February 2026. The legislative process was fraught with difficulties, and the draft went back and forth several times before its final adoption earlier this year. The Code will enter into force six months after its publication, i.e. on 24 August 2026.

As previously introduced on this blog, the preparatory work for the new Code dates back to 2023, when a first draft was submitted to the Moroccan House of Representatives (Draft No. 02.23). One of the main innovations of the new Code is the introduction, *for the first time in Moroccan history*, of a catalogue of rules on international jurisdiction. The Code also amends the existing rules governing the recognition and enforcement of foreign judgments. Apart from a few minor exceptions, the provisions contained in the new Code, both on international jurisdiction and on the recognition and enforcement of foreign judgments, remain largely unchanged compared with those previously presented, save for limited linguistic and stylistic adjustments that do not entail any substantive legal implications.

What follows is a brief outline of the main solutions adopted in the Code, followed by a short assessment.

II. International Judicial Jurisdiction

The rules governing international jurisdiction are now expressly set out in Articles 72 to 75 of the new Code, contained in Chapter IV, entitled “*International Judicial Jurisdiction*” (*al-Ikhtisas al-Qada’i ad-Duwali*). The new rules may be summarized as follows:

1. General jurisdiction based on the defendant’s Moroccan nationality and the domicile or residence of a foreign defendant in Morocco (Articles 72 and 73)

Article 72 confers general jurisdiction on Moroccan courts on the basis of the Moroccan nationality of the defendant, even where the latter has neither domicile nor residence in Morocco. Article 73, by contrast, adopts the classical principle of

actor sequitur forum rei when proceedings are brought against a foreign defendant. In both cases, jurisdiction is excluded where the action concerns an immovable property located abroad (last sentence of Articles 72 and 73).

2. Special jurisdiction in cases where the action is brought against foreign defendants with no domicile or residence in Morocco (Article 74)

Article 74 lays down an additional set of rules on special international jurisdiction applicable where proceedings are brought against foreign defendants who have neither domicile nor residence in Morocco. In such cases, Moroccan courts may assume jurisdiction when the action concerns:

- 1) assets located in Morocco, or obligations formed, performed, or to be performed in Morocco (Article 74(1));
- 2) tortious liability where the act giving rise to liability or the damage occurred in Morocco (Article 74(2));
- 3) the protection of intellectual property rights in Morocco (Article 74(3));
- 4) proceedings relating to businesses in difficulty instituted in Morocco (Article 74(4));
- 5) cases involving multiple defendants, provided that at least one of them is domiciled in Morocco (Article 74(5));
- 6) maintenance obligations where the maintenance beneficiary resides in Morocco (Article 74(6));
- 7) matters relating to the filiation of a minor residing in Morocco, or to guardianship over a person or property (Article 74(7));
- 8) matters of personal status where
 - (i) the plaintiff is Moroccan, or
 - (ii) the plaintiff is a foreigner residing in Morocco and the defendant has no known domicile abroad (Article 74(8))
- 9) dissolution of the marital bond where

- (i) the marriage contract was concluded in Morocco;
- (ii) the action is brought by a spouse who is a Moroccan national; or
- (iii) one spouse has abandoned the other and established domicile abroad or has been deported from Morocco (Article 74(9)).

In addition, article 74 *in fine* further clarifies the ancillary heads of international jurisdiction. In particular, Moroccan courts to hear an original action are also empowered can assume jurisdiction to adjudicate any counterclaims and related claims arising from the same legal relationship. Finally, Moroccan courts are granted jurisdiction to order conservative and provisional measures intended to be executed in Morocco, even where they lack jurisdiction over the merits of the principal dispute.

3. Jurisdiction based on the agreement of the parties (Art. 75)

The new Code also recognises party autonomy as an independent basis of international jurisdiction. Under Article 75 para. 1, even where a dispute would not otherwise fall within the ordinary heads of jurisdiction set out above, Moroccan courts may assume jurisdiction where the defendant expressly or implicitly consents to, or submits to, their jurisdiction. This jurisdiction by consent is, however, excluded where the action concerns immovable property situated abroad.

4. Ex officio declining jurisdiction in the event of non-appearance

The Code further introduces a rule aimed at preventing the exercise of jurisdiction by default (Article 75 *in fine*). Where the defendant fails to enter an appearance, the court is required, *ex officio*, to decline jurisdiction and to declare itself incompetent.

III. Recognition and Enforcement of Foreign Judgments

The new rules on the recognition and enforcement of foreign judgments are now set out in Articles 451 to 456 of the new Code. While they largely reproduce

existing solutions, they nonetheless introduce several important innovations.

1. Necessity of *exequatur*

Article 451 establishes the principle that foreign judgments cannot be enforced in Morocco as such. Their enforcement is subject to a prior declaration of enforceability (*exequatur*) by the competent Moroccan court, granted in accordance with the conditions laid down in the Code. Article 452 sets out the procedural framework governing applications for *exequatur*, while article 454 specifies the documentary requirements and the avenues of appeal applicable to *exequatur* proceedings.

2. Enforcement requirements

Article 453 sets out the substantive conditions that must be satisfied before a foreign judgment may be declared enforceable in Morocco. These requirements may be grouped as follows.

a) Requirements relating to the jurisdiction of the foreign court. First, the foreign court must not have ruled on a matter falling within the exclusive jurisdiction of Moroccan courts (Article 453(i)). In addition, the choice of the foreign forum must not have been tainted by fraud (Article 453(ii)).

b) Requirement relating to due process. Due process guarantees must have been respected, in particular insofar as the parties were duly summoned and properly represented in the proceedings before the foreign court (Article 453(iii)).

c) Requirements relating to finality and the absence of conflicting judgments. The judgment must be final and conclusive under the law of the court of origin (Article 453(iv)). Moreover, it must not be incompatible with a judgment previously rendered by Moroccan courts (Article 453(v)).

d) Requirement relating to public policy. The foreign judgment must not violate Moroccan public policy (Article 453(vi)).

e) Requirement relating to the contravention of international conventions ratified

by Morocco. Finally, the content of the enforcement judgment must not contravene the provisions of any international convention ratified by Morocco and published in the Official Gazette (Article 453(vii)).

3. The reciprocity requirement

In addition to the foregoing conditions, Article 456 introduces the requirement of reciprocity as a condition for the enforcement of foreign judgments. While the application of the above requirements remains subject to international conventions binding on Morocco, the new Code now expressly requires that the existence of reciprocal treatment between Morocco and the State of origin be taken into account when ruling on an application for *exequatur*.

4. Instruments eligible to enforcement

Article 455 extends the *exequatur* mechanism beyond foreign judgments to cover titles and authentic instruments drawn up abroad. Such instruments may be enforced in Morocco provided that they were established by competent public officers or public servants and that they qualify as enforceable titles under the law of the State of origin. Their enforcement in Morocco is subject to a prior declaration of enforceability and is conditional upon the instrument being enforceable in its State of origin and not being contrary to Moroccan public policy.

IV. Comments

The introduction of new rules on international jurisdiction and on the recognition and enforcement of foreign judgments is, in itself, a welcome development. It reflects a growing awareness among the Moroccan authorities of the practical importance of private international law and an intention to provide legal practitioners and courts with a clearer and more structured framework. This development is consistent with Morocco's increasing engagement at the international level, notably through the work of the Hague Conference on Private International Law (HCCH), an engagement that has recently culminated in the

establishment of an HCCH Regional Office for Africa in Morocco.

However, from a substantive point of view, the newly adopted rules may leave a certain sense of dissatisfaction. This is due to a number of issues, most of which were already pointed out in a previous post on this blog.

1. International jurisdiction

First, as regards the legal framework governing international jurisdiction, a reading of the adopted provisions gives the impression that the legislature has remained attached to an outdated conception of private international law, and has failed to take account of more recent developments, even with respect to some fundamental issues. In particular, the new rules do not distinguish between exclusive and concurrent heads of jurisdiction, despite the practical importance of such a distinction for the recognition and enforcement of foreign judgments. Nor do they introduce specific regimes for situations requiring enhanced protection, such as disputes involving weaker parties (notably consumers and employees), or provide more detailed rules for parallel proceedings, including *lis pendens* and *connexity*.

More importantly, the new Code introduces a number of questionable grounds of jurisdiction. These include, in particular, the nationality of the defendant, the place of conclusion of the contract, and the mere location of property in Morocco, irrespective of its value. Finally, although the Code introduces a new rule based on party autonomy in matters of jurisdiction, it fails to provide a clear and coherent regime governing choice-of-court agreements, in particular as regards whether the parties may oust the jurisdiction of Moroccan courts that would otherwise be competent under the newly adopted rules.

2. Enforcement of foreign judgments

While the new provisions clarify the formal requirements for the enforcement of foreign judgments, they fail to take sufficient account of existing judicial practice and introduce rules that lack precision and are open to divergent interpretations.

For instance, Moroccan law does not, as a general rule, clearly distinguish

between recognition and enforcement, as foreign judgments are in principle subject to a prior declaration of *exequatur*. Nevertheless, the case law of the Moroccan Supreme Court has, to some extent, developed a pragmatic approach that de facto allows the recognition of certain effects of foreign judgments even in the absence of a prior *exequatur* declaration. However, the new Code does not take these developments into account and instead adopts rules focusing exclusively on the enforcement of foreign judgments, thereby leaving the status quo on this issue largely unchanged.

In addition, the new rules clarify the control exercised over the jurisdiction of the foreign court by introducing a twofold examination. First, the matter decided by the foreign court must not fall within the exclusive jurisdiction of Moroccan courts. However, as noted above, the new provisions on international jurisdiction fail to identify or define the matters that are to be regarded as falling within such exclusive jurisdiction. Secondly, the rules require that the choice of the court of origin must not have been fraudulent. In this respect, it should be noted that an additional requirement concerning the existence of a characteristic connection between the dispute and the State of the rendering court had initially been envisaged. This requirement, which echoed the approach adopted by the French *Cour de cassation* in the well-known *Simitch* case, was ultimately removed from the final version of the Code, arguably because of the practical difficulties it would have entailed for judges in assessing the existence of such a connection.

Furthermore, the version finally adopted introduces a new requirement that was absent from earlier drafts and appears to have been added during the legislative process. This concerns the condition that the content of the enforcement judgment must not contravene an international convention duly ratified by Morocco. The rationale for the introduction of this requirement is not only unclear, but the provision itself is largely redundant. Indeed, Articles 454 and 456 of the new Code already give priority to the application of international conventions ratified by Morocco. The provision appears also to be difficult to apply in practice, given that the manner in which this provision is formulated, particularly in the Arabic version of the text, is awkward and makes its precise scope and operation difficult to ascertain.

Finally, the introduction of reciprocity as a condition for the enforcement of foreign judgments comes as something of a surprise and is arguably problematic. The former Code of Civil Procedure contained no reference to reciprocity, and

Moroccan practice had long evolved without treating it as a relevant requirement. It is true that Article 19 of the *Dahir* (Royal Decree) of 12 August 1913 on the civil status of French nationals and foreigners in Morocco refers to reciprocity. However, although that provision has never been formally repealed, the prevailing view among Moroccan scholars is that it is no longer applicable, a position reflected in judicial practice, as Moroccan courts do not rely on it in their decisions. More importantly, the inclusion of reciprocity appears at odds with the general tendency in comparative law, which is either to abandon this requirement or to significantly limit its effect. Its (re?)introduction sends a negative signal to jurisdictions where reciprocity remains a condition for recognition and enforcement and is likely to unnecessarily complicate both the recognition of foreign judgments in Morocco and, consequently, the circulation of Moroccan judgments abroad.

V. Concluding Remarks

The general impression that emerges from a reading of the new rules is, on the whole, one of disappointment. The newly adopted provisions appear to be based on an outdated model and fail to take account of recent developments, including those observed in neighbouring jurisdictions. The content of a number of provisions gives the impression of a step backwards in time. For instance, some of the newly adopted rules, notably in matters of international jurisdiction, are comparable to those formerly found, for example, in Tunisia under the Code of Civil Procedure of 1959, which were later repealed and replaced by more modern provisions now contained in the Code of Private International Law of 1998. The new rules also do not fully reflect existing Moroccan practice, whether at the diplomatic level, where Morocco has been actively engaged with the work of the HCCH - an engagement that contributed to the establishment of its Regional Office for Africa in Morocco - or at the judicial level, particularly in the field of recognition and enforcement of foreign judgments. Available records relating to the drafting process suggest that these issues did not receive the level of attention they deserved, nor did they benefit from sufficient expert consultation or discussion that might have allowed the legislature to draw on both recent international developments and established domestic practice. One hope nevertheless remains: that the Code will already be subject to early reform.

The Reception of *Hilton v Guyot* and Comity in the Recognition and Enforcement of Foreign Judgments in Anglophone Africa

Introduction

Hilton v Guyot, is the most influential case in the United States—and perhaps globally—on the use of comity as a basis for recognising and enforcing foreign judgments. In that case, Justice Gray of the United States Supreme Court defined comity as follows:

“No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent of which the law of one nation... shall be allowed to operate within the dominion of another nation, depends upon... the “comity of nations”...”

Comity in the legal sense is neither a matter of absolute obligation, on one hand, nor a mere courtesy and goodwill, on the other; it is the recognition which one allows within its territory to the legislative, executive or judicial act of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under protection of its laws...”

By contrast, under English common law, the dominant basis for recognising and enforcing foreign judgments is the theory of obligation. Blackburn, J in the English case of *Schibsby v Westenholz* stated that the true principle is that,

“...the judgment of a court of competent jurisdiction over the defendant, imposes a duty or obligation on him to pay the sum for which the judgment is given, which the courts in this country are bound to enforce...”

And further on in his judgment, Blackburn J. makes it plain that the doctrine of “comity” is incorrect. Thus, no question of reciprocity could arise in an action brought upon a foreign judgment.”

The theory of obligation is applied in many Commonwealth and Anglophone African countries. Interestingly, an emerging but underexplored trend is the growing consideration—and in some instances, application—of the principle of comity by courts in these jurisdictions, with several African judges expressly citing *Hilton v Guyot*.

This blog highlights selected cases illustrating this development, focusing on Liberia, Kenya, Uganda, Tanzania, South Africa, and Nigeria. The discussion is limited to the common law framework and does not address statutory regimes or international conventions.

Liberia

Liberia is a country that has historical ties of dependence to the United States located in West Africa. In *Turner v Burnette*, the Liberian Supreme Court firmly established the principle of comity in the recognition and enforcement of foreign judgments, drawing particular support from *Hilton v Guyot*. The Court further explained—by reference to another U.S. authority—that:

“The application of comity does not rise [sic] to the effect of establishing an imperative rule of law; it has the power to persuade but not command. Comity being voluntary, and not obligatory, rests in the discretion of the tribunal of the forum and is governed by certain more or widely recognized rules.” Generally, greater force and dignity will be given to judgments of foreign courts when parties have had their day in a court of competent jurisdiction, after due service of process or after an entry of appearance, and have had a full and impartial hearing upon the merits of their case; unless it can be shown that the proceedings were tainted with fraud.”

Andrew Moran and Anthony Kennedy, conclude on the basis of the above Liberian Supreme Court decision that, *“It seems, therefore, that any foreign judgment may be enforceable in Liberia at common law as a matter of comity between nations. The procedure appears to be that a suit commenced on the foreign judgment, in*

the same way as an action is commenced at common law in other jurisdictions.”

Kenya

Kenya is a former colony of the United Kingdom located in East Africa. Nevertheless, Kenyan courts apply both the theory of obligation and the principle of comity in recognising and enforcing foreign judgments at common law.

In *ABSA Bank Uganda Limited (Formerly Known as Barclays Bank of Uganda Limited) v Uchumi Supermarkets PLC*, the Kenyan High Court held at paragraph 5 that,

In the absence of a reciprocal enforcement arrangement, a foreign judgment was enforceable in Kenya as a claim in common law. Where a foreign court of competent jurisdiction had adjudicated a certain sum to be due to another, a legal obligation arose to pay that sum, on which an action of debt to enforce the judgment could be maintained. In deciding whether a foreign court was one of competent jurisdiction, the courts would apply not the law of the foreign court itself but English rules of private international law. The competence of the foreign court was the competence of the court in an international sense, that was, its territorial competence over the subject matter and the defendant. Its competence or jurisdiction in any other sense was not material.”

However, in a more recent case, the Kenyan Supreme Court in *Ingang’a & 6 others v James Finlay (Kenya) Limited*, relying on *Hilton v Guyot*, applied the principle of comity in determining whether to recognise and enforce a locus inspection order from Scotland (see Anam Abdul Majid and Chukwuma Okoli). After quoting the key passage from *Hilton v Guyot* with approval, the Court stated at paragraph 60 that:

“This approach prioritizes citizen protection while taking into account the legitimate interests of foreign claimants. This approach is consistent with the adaptability of international comity as a principle of informed prioritizing national interests rather than absolute obligation, as well as the practical differences between the international and national contexts.”

Uganda

Uganda is a former colony of the United Kingdom located in East Africa.

Nevertheless, Ugandan judges apply both the theory of obligation and the principle of comity in recognising and enforcing foreign judgments at common law.

At common law, the principle of comity, with key reference to *Hilton v Guyot*, also formed the sole basis of recognising and enforcing a US judgment in the earlier Ugandan case of *Christopher Sales v Attorney General*.

More recently, Ugandan courts have justified the recognition and enforcement of foreign judgments by reference to the theories of obligation, comity, and reciprocity. In the very recent case of *Brianna v Mugisha*, Justice Nagawa, after a careful consideration of Ugandan case law authorities and *Hilton v Guyot*, stated that:

“5.4 However, I have observed that despite the absence of a statutory reciprocal arrangement, Ugandan courts have recognized and enforced foreign judgments under the common law principles of obligation, reciprocity, and comity.

5.5. These doctrines provide a legal foundation for cross-border judicial cooperation, particularly in the absence of a formal treaty or statutory framework, such as in the case of Uganda and the United States.

5.6. The doctrine of comity is based on mutual respect between sovereign states. It allows a court to recognize and enforce a foreign judgment not as a matter of strict legal obligation, but out of respect to the foreign court’s authority and fairness in its proceedings. Courts apply comity where: the foreign court had competent jurisdiction over the matter and the parties, the proceedings were conducted fairly, with due process observed and enforcing the judgment would not be contrary to public policy in the recognizing jurisdiction.

5.7. The obligation theory treats a valid foreign judgment as creating a legal

duty on the judgment debtor to comply, similar to a contractual obligation. This approach holds that once a court of competent jurisdiction has determined a party's liability, that decision should be respected and enforced in other jurisdictions unless there is a compelling reason not to do so, such as: Fraud in obtaining the judgment, Violation of natural justice, or a fundamental defect in jurisdiction.

5.8. Under reciprocity, a foreign judgment will only be enforced if courts in the originating country would likewise enforce judgments from the enforcing country. This principle ensures mutual legal cooperation between jurisdictions."

It must be noted, however, that the recent acceptance of reciprocity in Uganda as a basis for recognising and enforcing foreign judgments at common law represents a significant departure from the position in other Anglophone and Commonwealth African countries, as well as Commonwealth jurisdictions more generally. It should also be emphasised that the court's remarks on the applicability of reciprocity at common law were, at best, obiter, as the court did not apply the doctrine to the facts of the case.

Tanzania

In Tanzania, a significant number of recent cases have used foreign judgments to preclude new actions on grounds of res judicata, obligation, and comity (*Exim Bank (COMORES) SA vs Costa Sari; Standard Chartered Bank (Hong Kong) Limited & Another vs Independent Power Tanzania Limited & Others*)

South Africa

South Africa, located in Southern Africa and formerly colonised by both Britain and the Netherlands, is a mixed legal system drawing from Roman Dutch law and the common law. The theory of obligation remains the dominant basis for the recognition and enforcement of foreign judgments. This position was affirmed by the Supreme Court of Appeal in *Jones v Krok*, where the Court endorsed the English authority of *Nouvion v Freeman* as support for applying the obligation theory in recognising and enforcing foreign judgments

However, in *Government of the Republic of Zimbabwe v Fick*, the Constitutional

Court referred to the principle of comity to justify the development of the common law framework for recognising and enforcing judgments from international courts, signalling a limited but notable openness to comity based reasoning.

Nigeria

Nigeria is a former colony of the United Kingdom and is located in West Africa. Under the common law regime, it applies the theory of obligation in the recognition and enforcement of foreign judgments (*Alfred C Toepfer Inc v Edokpolor*).

However, some Nigerian judges at the Supreme Court have proposed comity, jurisdictional reciprocity, and the facilitation of international trade and commerce as additional bases for enforcing foreign judgments (*Grosvenor Casinos Ltd v Ghassan Halaoui* (2009) 10 NWLR 309, 338-39 (Oguntade JSC)), but there has been no reported case where these proposals have been implemented in practice.

Conclusion

The purpose of this post is to highlight how selected Commonwealth and Anglophone African courts have received and applied the principle of comity in the recognition and enforcement of foreign judgments under the common law, particularly as articulated in *Hilton v Guyot*.

At present, Liberia is the only jurisdiction that fully applies the principle of comity as advanced in *Hilton v Guyot*, arguably influenced by its historical ties to the United States.

Kenya, Uganda and Tanzania apply the doctrine of obligation alongside the principle of comity.

South Africa primarily follows the doctrine of obligation, although a few cases have considered comity in the context of recognising and enforcing foreign judgments, albeit without concrete application.

In Nigeria, courts continue to rely principally on the doctrine of obligation at common law. Although some Supreme Court justices have proposed comity as a possible basis for enforcement, this has not been implemented in practice.

Overall, the doctrine of obligation remains the dominant common law basis for the recognition and enforcement of foreign judgments across Anglophone and Commonwealth Africa. Nonetheless, the principle of comity, as developed in *Hilton v Guyot*, continues to play an important role in shaping the jurisprudence of a limited number of African jurisdictions.

No Exequatur Granted for a Panamanian Judgment in Greece Due to Public Policy Considerations [Piraeus Court of First Instance Case No. 2040/2026, Unreported]

INTRODUCTION

Following a significant hiatus, the public policy defense has re-emerged prominently in discussions surrounding the enforcement of foreign judgments, particularly in the context of a judgment issued by the Panama Maritime Court in 2024. The primary issue addressed by the Greek court was whether a foreign judgment could be recognized and enforced when the foreign court denied appellate proceedings due to the failure to post a security deposit that was both substantial and necessary for the appeal process.

FACTUAL BACKGROUND AND LEGAL FRAMEWORK

The case involved a claim for damages between a company based in Hong Kong and another company registered in the Marshall Islands. This dispute was adjudicated under Panama's maritime law, established by Law 8 of 1982 and updated by Law 55 of 2008, which governs maritime-related disputes through a specialized and efficient legal framework. The Panamanian maritime courts possess exclusive jurisdiction over in rem actions, enabling prompt vessel arrests and maritime liens within both Panamanian territorial waters and the Panama Canal for claims related to damages, cargo issues, and collisions.

The Panamanian court ruled in favor of the claimant, mandating the defendant to either return the vessel or pay approximately 45 million USD, i.e., the valuation of the vessel along with associated legal costs, as ordered by the court.

Subsequently, the judgment creditor sought recognition and enforcement of the Panamanian judgment in Greece, as the vessel was docked within Greek territorial waters.

The opposing party contended that the ruling from the Panamanian Naval Court of First Instance contravened Greek public policy and the European Convention on Human Rights (ECHR), primarily because the appellate process was effectively obstructed. According to Article 490 of Panama's Maritime Courts and Disputes Law, the appellant was required to deposit a security of nearly 45 million USD (equivalent to the judgment amount and associated legal fees) within ten days to have its appeal considered.

The original text from Article 490 reads:

"Artículo 490. Para cursar la apelación se requerirá la consignación, ante la secretaría del Tribunal Marítimo de primera instancia, de una caución que garantice el pago del monto de la condena más las costas. Para determinar el monto de la caución se considerará la caución consignada para levantar el secuestro o el valor del bien secuestrado. Dicha caución será consignada dentro de los diez días siguientes a la notificación de la providencia que admita el recurso. Si el apelante no consigna la caución de que trata este artículo, el juez declarará desierto el recurso."

In light of the above, the excessive requirement for a security deposit resulted in the judgment debtor's appeal being dismissed, thereby forfeiting its right to be heard.

FINDINGS OF THE GREEK COURT.

The Greek court recognized that while imposing a financial guarantee as a prerequisite for appeal can have legitimate justifications, such as discouraging vexatious litigation and promoting judicial efficacy, the circumstances in this case revealed that the requirement was manifestly disproportionate and unduly burdensome. The court articulated the following concerns:

- The required guarantee matched the total amount of the initial judgment plus costs.
- There was no cap, no exceptions, and no discretion for reduction based on the specifics of the case.
- It effectively forced the appellant to comply with the first-instance judgment in full just to access the appeal process.

The court referenced Article 323(5) of the Greek Code of Civil Procedure, which encompasses the public policy clause, confirming that the security requirement violated the principle of proportionality. Furthermore, limiting access to the court and undermining judicial protection directly contravened Article 6(1) of the ECHR and Article 20, paragraph 1 of the Greek Constitution.

Consequently, the obligation to deposit an amount of USD 44,397,715.97, which constitutes the awarded sum of the initial judgment (USD 41,248,107.88) plus legal costs (USD 3,149,608.09), was viewed as an untenable financial burden that contradicts the right to judicial protection.

More specifically, the imposition of a security deposit that equaled the judgment amount plus legal fees, with no statutory limits, exceptions, or discretionary reduction possibilities, violated public policy. This requirement substantially infringed upon the appellant's right to access judicial remedies against an enforceable ruling.

Finally, the court noted that while Greek law allows for provisional enforceability of first-instance judgments under certain conditions, including the possibility of appeal suspension without a guarantee if there is a likelihood of success, such provisions were absent in Panamanian law.

Non-Qualifying Ceremonies: The Futility of Foreign Registration of Islamic Marriages under English Law

*This blog note is kindly provided by Dr. **Muhammad Zubair Abbasi** (Lecturer, School of Law, Royal Holloway, University of London; zubair.abbasi@rhul.ac.uk). It follows the author's previous post on this topic, which was published earlier **on this blog**.*

Introduction

In *MA v WK* [2025] EWFC 499, three women had undergone Islamic marriage (*nikah*) ceremonies in England. Each argued that subsequent registration of her marriage in Pakistan had converted it into a valid foreign marriage entitled to recognition in England and Wales. The Family Court rejected this argument because the *lex loci celebrationis* is fixed at the place and moment of the ceremony; no later act of registration in another jurisdiction can alter it.

The more important question is why the argument was made at all. Each applicant had already accepted that her ceremony was a non-marriage or non-qualifying ceremony (NQC) under English matrimonial law. Each had therefore been excluded, by the rule established in *Attorney General v Akhter & Others* [2020] EWCA Civ 122 from the financial remedies that the Matrimonial Causes Act 1973 would otherwise have provided. The argument from Pakistani registration was, in substance, a desperate attempt to find through private international law a route that domestic law had closed. It was always going to fail but the fact that it was attempted is itself instructive. When the law systematically denies recognition to a form of marriage that a significant part of the population regards as valid, litigants will look for whatever route remains open. *MA v WK* is a

record of one such attempt, and it is unlikely to be the last as long as the existing legal framework remains unreformed.

The Facts

There were three female applicants, each of whom had celebrated a *nikah*-only in England and sought to rely on subsequent registration in Pakistan. The first, MA, had celebrated a *nikah* with WK in Oxfordshire on 1 April 2013. She produced a Pakistan Marriage Registration Certificate recording both the marriage date and entry date as 1 April 2013, with an issue date of 26 August 2024. The second, TM, had celebrated a *nikah* with MM at a mosque in England on 19 January 1992. She produced a Pakistan Marriage Registration Certificate, but the entry date was 2 October 2025 — thirty-three years after the ceremony and after MM had already remarried in Pakistan in 2017. The third, AM, had celebrated a *nikah* with RK in England in 2005. No evidence of registration was produced.

Non-Qualifying Ceremonies and Private International Law

The formal validity of a marriage is governed by the *lex loci celebrationis*, as restated by Moylan LJ in *Tousi v Gaydukova* [2024] EWCA Civ 203. All three ceremonies took place in England; all three applicants accepted that none had complied with the Marriage Act 1949. Each was therefore a non-qualifying ceremony (NQC). The question was whether subsequent registration in Pakistan could convert them into valid foreign marriages capable of recognition in England and Wales. The court held that it could not: the *lex loci* is determined by the place of celebration, not by any later administrative act. There is no authority for the proposition that registration can substitute for, or supplement, the ceremony for the purposes of legal recognition.

The applicants advanced two arguments. First, that registration is the operative event for *lex loci* purposes, deriving from *Sottomayor v De Barros (No 1)* (1877) 3 PD 1, a principle elevating it to the “pinnacle” of matrimonial law [para 16]. That reading does not survive examination: in *Sottomayor* ceremony and registration

happened simultaneously at an English register office, and their coincidence does not make registration the constitutive event. The three further authorities relied upon, *Boughajdim v Hayoukane* [2022] EWHC 2673; *Entry Clearance Officer v Firdous* [2018] HU/04562/2016 (Upper Tribunal); and *Farah v Farah* 16 Va. App. 329 (Va. Ct. App. 1993), each turned on where the ceremony, or its dominant elements, had taken place. None held that registration of an English ceremony abroad could shift the *lex loci*; they are authority for the opposite proposition.

The second argument assumed what it needed to prove. The principle in *Berthiaume v Dastous* (Quebec) [1929] UKPC 73, that a marriage valid where celebrated is valid everywhere, operates in favour of a marriage validly formed at its place of celebration. It avails nothing where the ceremony was not valid there in the first place. A further difficulty lay in Pakistani law itself. On the expert evidence, accepted in *Rana v Manan* [2011] EWHC 2132 and applied here, registration under section 5 of the Muslim Family Laws Ordinance 1961 is directory rather than mandatory: it is the *nikah* contract that creates the marriage. What Pakistani law had done in registering these marriages was not to create new Pakistani marriages, but to record marriages that Pakistani law treated as having taken place in England.

On the presumption of marriage, the answer was straightforward. The presumption, as Evans LJ explained in *Chief Adjudication Officer v Bath* [1999] EWCA Civ 3008 at [31]-[32], fills evidential gaps; it does not operate where there is positive evidence of non-compliance with the statutory formalities. The circularity this produces is uncomfortable. A party who wishes to argue for recognition of her marriage must disclose to the court the circumstances of the ceremony; and once she has done so honestly, she will typically have foreclosed the only doctrine that might have assisted her.

Commentary

The judgment in this case is the latest in a sequence that has progressively narrowed the legal options available to parties in religious-only or a *nikah*-only marriages. Until *Attorney General v Akhter & Others* [2020] EWCA Civ 122, the courts had available to them a range of tools: the “hallmarks of marriage” test from *Gereis v Yagoub* [1997] Fam Law 475; the presumption of marriage from

long cohabitation from *Chief Adjudication Officer v Bath* [1999] EWCA Civ 3008; and a generally flexible approach to the non-marriage category, which had been applied in reported cases almost exclusively to polygamous unions (*A-M v A-M (Divorce: Jurisdiction: Validity of Marriage)* [2001] 2 FLR 6; *Gandhi v Patel* [2002] 1 FLR 603; *Shagroon v Sharbatly* [2012] EWCA Civ 1507; and *El Gamal v Al-Maktoum* [2011] EWHC B27).

The Court of Appeal's introduction of the NQC category in *Attorney General v Akhter & Others* [2020] EWCA Civ 122 changed the landscape. A court asked to classify a religious-only ceremony now asks a single, decisive question: did the ceremony comply, at least to some degree, with the statutory requirements? If the answer is no, the ceremony is outside the regulatory framework entirely, and neither the hallmarks test nor the presumption can operate to bring it back in. The present case is a private international law application of the same logic: the question is what happened at the ceremony, assessed as at the date of the ceremony, and later events, including registration abroad, are irrelevant.

The choice of jurisdiction made no difference to that conclusion. The applicants sought declarations of marital status under section 55(1) of the Family Law Act 1986, which enables a person to apply for a declaration that a marriage was at its inception valid, or that it subsisted on a particular date. That jurisdiction is declaratory, not constitutive: it identifies the status that the law recognises, it does not create one. The argument from foreign registration was in substance an invitation to the court to use the section 55 jurisdiction to confer a status that English law does not recognise. It was always going to fail, not because of any deficiency in the evidence or any technical point of procedure, but because the declaratory jurisdiction cannot be deployed as a means of circumventing the requirements that the Marriage Act 1949 imposes.

None of this is a criticism of the applicants, who were doing what people in their position typically do: looking for whatever route the law might offer. It is a comment on the law itself. The Attorney General had foreshadowed a public policy objection under section 58(1) of the 1986 Act had the court found in the applicants' favour, an indication that the state's interest in maintaining the integrity of the marriage framework is regarded as sufficiently strong to resist even a successful argument from foreign registration [para 30]. That the argument failed means the public policy point did not arise, but its potential invocation confirms that the current framework is not one the courts are inclined

to look for ways around.

Conclusion

The decision in *MA v WK* is easy to justify on the law as it stands. The *lex loci celebrationis* is not a rule that administrative convenience in another jurisdiction can displace, and the section 55 jurisdiction does not exist to remedy the deficiencies of the Marriage Act 1949. But the case is a reminder that when domestic law closes every available door, litigants will look elsewhere.

The failure in this case is not one of private international law. The Marriage Act 1949, built on foundations laid by Lord Hardwicke's Clandestine Marriages Act 1753, which transformed the private marriage contract into a public act requiring the sanction of the church-state — was not designed with cultural and religious diversity in mind. The Government has committed to reform. But the proposed changes are prospective. They will not assist the three women in this case, nor the many others in the same position. Until Parliament addresses that gap, family courts will continue to turn away women whose marriages are real to everyone except the law.

**A few takeaways from the
Conclusions & Decisions of the
HCCH governing body (CGAP -
2026 meeting):
parentage/surrogacy, jurisdiction**

project, cross-border recognition and enforcement of protection orders and a Note on the Trusts Convention

This week the Conclusions & Decisions (C&D) of the HCCH governing body, the Council on General Affairs and Policy (CGAP or Council), were published. Click the links below for the relevant language versions (English, French and Spanish).

Although a wide range of topics were discussed, I would like to focus on four items: parentage/surrogacy project, the cross-border recognition and enforcement of protection orders, the jurisdiction project and a Note on the Trusts Convention.

In my view, the C&D are significant for two reasons. First, the work related to a possible new instrument of a long-standing topic at the HCCH has been concluded (without a Convention) and secondly, a “new” topic has been inserted into the agenda of the HCCH. For more information, see below.

Parentage/surrogacy project

The parentage/surrogacy project has been a recurrent topic in the work of the HCCH. It has expanded more than a decade, starting in 2010 with some preliminary research, which resulted in the establishment of an Experts Group (EG) and subsequently, a Working Group (WG).

In preparation for this meeting, a document was drawn up by the Working Group (WG) on Parentage / Surrogacy entitled: *Final Report on the Feasibility of a possible Convention on the Recognition of Judgments on Legal Parentage* (Preliminary Document (Prel. Doc.) No. 1). This is a monumental work, which includes a text of a draft Convention (as of p. 13).

The specific proposal of the WG to the Council was the following:

“The WG acknowledged the importance of the HCCH Parentage / Surrogacy Project to develop an international instrument on legal parentage in cross-border situations. The WG agreed that such an instrument is desirable, as it could

enhance legal certainty, predictability and continuity while protecting the rights of children and families, and all persons involved.”

It further acknowledged that policy differences remained and for some experts these were fundamental, and as a result, consensus could not be reached on a way forward (*i.e.* advancing to a Special Commission, which is the usual path when negotiating a HCCH Convention and which are meetings held prior to a Diplomatic Session).

With this Final Report, and as its name suggests, the work of the WG has concluded and this Preliminary Document is the last document drawn up by the WG on this topic.

Reflecting the disagreement existing at the WG level, the Council decided on this topic the following: “While recognising the progress made by the Working Group, CGAP decided not to advance to a Special Commission at this stage, with the understanding that this issue may be revisited at a later stage.”

Accordingly, this year marks the end of this project (if not the end of an era), with the exception of monitoring legal and practical developments on the subject that are to be presented at the 2028 meeting of the Council (C&D No. 5). Perhaps this topic may be revived in the future when and if the time is ripe.

Cross-border recognition and enforcement of protection orders

While the ashes of the Surrogacy/Parentage project were still warm, a “new” proposal for a Convention emerged and was tabled by the UK as: *Prel. Doc. No 25 of January 2026 - Proposal from the United Kingdom to establish a Working Group on Recognition and Enforcement of Protection Orders* - not publicly available.

The Council mandated the establishment of a WG on a potential future convention on cross-border recognition and enforcement of protection orders (see C&D No. 22). This is remarkable and underlines the importance of keeping women and children safe. By tabling this proposal, the UK makes clear that this is an absolute priority.

This initiative will build on previous work conducted by the Permanent Bureau from 2011-2018, during which an Experts Group was established (see C&D No.

23 and 24). At its 2018 meeting, the Council noted that “14. The Council decided to remove from the Agenda of the HCCH the topic of recognition and enforcement of foreign civil protection orders, with the understanding that this issue may be revisited at a later stage.” A statement that now is history.

This will be an important initiative to follow in the future.

Jurisdiction project

The decision on the future of the jurisdiction project has been delayed until the next meeting of the Council in 2027. At that meeting a decision will be made whether that project advances to a Special Commission “or decide on any other outcome of the Project” (C&D 9).

A Report of the Chair of the Working Group on matters related to jurisdiction in transnational civil or commercial litigation was presented as Prel. Doc. No 2A of December 2025. This Report includes a draft text of a future convention on parallel proceedings and related actions (from p. 13, with many [square brackets], signalling lack of consensus or agreement on the text).

Last year a public consultation was launched on the Draft Text of a possible new convention on parallel proceedings and related actions, the results of which still need to be analysed. The Council mandated that a document be submitted analysing such responses by the end of September 2026 and gave specific instructions on how it should be drafted (C&D No. 8). The responses will be published subject to the permission of the respondents.

We will keep you informed of any new developments.

A Note on the Trusts Convention

Finally, a Note on the Application and Interpretation of Article 2 of the Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition and on the Institutions Analogous to Trusts was submitted as Prel. Doc. No 12B of January 2026 (for the actual Note see Annex V, p. 25). In particular, a fascinating explanation of the terms used in English (estate) and French (patrimoine) is included in pages 28-29. Equally interesting is Annex A to Note (for Section V) - Institutions Meeting the Criteria in Article 2 of the Trusts Convention. This Note was approved and will be published together with its

Annexes (C&D 69).

In sum, this Council's meeting decided on crucial matters related to treaty making on Private International Law at the HCCH. The next meeting of the Council in 2027 will also be of great importance as it will decide on the future of the jurisdiction project. With regard to specific projects, the cross-border recognition and enforcement of protection orders attests to the fact that a topic can indeed return to the agenda of the HCCH, and thus some experts may harbour the wish that the parentage/surrogacy project may rise one day like a phoenix from the ashes.

Muscles from Munich? How German Courts Might Stop US Companies from Violating Copyright through AI Training



Yesterday, the Regional Court of Munich (*Landgericht München I*) held a highly interesting oral hearing in a dispute brought by *GEMA*, a German collecting society representing composers, and *Suno*, a generative music AI company based in Cambridge, MA. The hearing was noteworthy, first, because it gave the public an opportunity to listen to numerous international hits, from Alphaville's *Forever Young* to Lou Bega's *Mambo No. 5* (and their alleged copies created by *Suno*) in a courtroom; and secondly, because the dispute raises some interesting questions of private international law.

After *GEMA* had already scored a famous victory against *OpenAI* in November 2025, when the same chamber of the Munich Court had held that the company

had been violating the copyrights of several artists and composers by reproducing their song texts, the present proceedings differed not just in scope (focusing on the musical arrangement rather than texts) but also in its international dimension. For the first time, the claimant explicitly included the use of the protected works for training that had happened (according to both parties) exclusively in the US.

As far as those claims are concerned, the main obstacle to overcome for the claimant is the German court's jurisdiction. As Germany has no (codified) law on international jurisdiction over non-EU defendants, international jurisdiction is established by extending the rules on local jurisdiction (venue) to international jurisdiction (so-called 'double functionality'; see Lutzi/Wilke, in Lutzi/Piovesani/Zgrabljic Rotar (eds), *Jurisdiction over Non-EU Defendants* (Hart 2024), 111 et seq). In the present case, this appears to provide an opportunity for the claimant to rely on a little-known norm of the German *Verwertungsgesellschaftsgesetz* (VGG; own translation and emphasis):

§ 131 Exclusive Jurisdiction

*(1) For legal disputes concerning claims by a collecting society for infringement of a right of use or right of consent administered by it, the court of the district in which the **infringing act was committed** or in which the infringer has their **general place of jurisdiction** shall have **exclusive jurisdiction**. (...)*

*(2) If, pursuant to paragraph 1, sentence 1, **different courts** have jurisdiction for multiple legal disputes against the same infringer, **the collecting society may bring all claims before any one of these courts**.*

While the provision is clearly aimed at allocating local jurisdiction within Germany, nothing in its wording seems to exclude an international understanding, similar to other norms on local jurisdiction. While this would create a clearly exorbitant *forum actoris* for German collecting societies in cases falling under paragraph 2, this might be justified by the peculiar nature of collecting societies, which are heavily regulated in German law and are required, for instance, to enter into licensing agreements under 'appropriate' conditions (§ 34 VGG). Indeed, the Munich court appeared rather amenable to the proposition of applying § 131 VGG internationally.

In the present case, this would raise further interesting questions.

For once, does paragraph 1, according to which the courts of the place of infringing and the courts of the defendant's seat are competent, lead to 'different courts' being competent in the sense of paragraph 2? Traditionally, the provision was supposed to solve the problem of traveling showmen performing committing similar infringements in numerous places. As far as the training of AI is concerned, there might only be a single place of infringement, though. Then again, paragraph 2 only requires multiple competent courts for proceedings 'against the same infringer', which should allow other infringements, such as the streaming of allegedly copyright-violating output in Germany to be taken into account.

Assuming that the court would not consider this sufficient to trigger the *forum actoris* of paragraph 2, it would need to answer another question, namely if paragraph 1 as a rule of exclusive jurisdiction would also prevent the claimant from (subsidiarily) relying on § 23 of the Civil Procedure Code (ZPO), which creates jurisdiction at the location of the defendant's property. In other contexts, authors have argued that provisions of exclusive *local* jurisdiction should not be understood as provisions of exclusive *international* jurisdiction so as not to render the recognition and enforcement of decisions from other fora impossible.

If the Munich court accepted its international jurisdiction on either of those bases, the applicable law would, of course, still be US copyright law (including its relatively far-reaching exceptions for 'fair use', which the defendants argue should apply here) pursuant to Article 8 Rome II. Thus, if the decision - which has been scheduled for **12 June** - includes a positive decision on international jurisdiction regarding the US-based training, it might not yet include a decision on the substance in this regard, but could instead include an order for expert evidence on foreign law (§ 293 ZPO).

The claimants would understandably still consider this as a win, though, as it would provide a basis for future claims by German collecting societies against AI companies. In this sense, it would fit neatly into what *Linda Kuschel* and *Darius Rostam* have described, in reaction to the previous decision against OpenAI, as 'the current popular narrative of a tightly regulating EU that protects rightsholders and a US that favors AI-friendly market solutions.' While the Munich judges said rather little about their own preferred interpretation of the

law at yesterday's hearing, especially with regard to international jurisdiction, they also made no effort to dispel this narrative.

German Federal Court of Justice on the Pegasus-Software Scandal: States do not have a general right of personality

This case note is kindly provided by *Dr. Samuel Vuattoux-Bock, LL.M. (Kiel)*, Freiburg University (Germany)

On February 24, 2026, the German Federal Court of Justice ruled on the Kingdom of Morocco's claim against the German news portal "Zeit Online" (Case no. VI ZR 415/23). In 2021, the journal alleged that Morocco had spied on several lawyers, journalists, and high-ranking politicians, including French President Emmanuel Macron, using the surveillance software "Pegasus". Morocco denied the allegations and sued the publication for damages, claiming an infringement of its general right of personality. The Federal Court of Justice of Germany, the highest court for civil and criminal matters, rejected Morocco's claim, arguing that states do not have such a right. This decision is interesting because it lies at the intersection of private international law, national tort law, and public international law. The following article aims to present the main points of this decision in terms of both its international and substantive aspects.

I. Aspects of Private International Law: A too Easy Gateway into German Law?

First, the court had to determine if it was competent and which law should apply to this claim (Nos. 7 et seq.). Despite the claimant's status as a Third State, the

application of the Brussels Ibis Regulation (EU 1215/2012) was unproblematic here. Morocco's claim was not made "in the exercise of State authority (*acta iure imperii*)" (Art. 1(1) Brussels Ibis), and the defendant is based in a European Union Member State (Hamburg, Germany).

However, the determination of the applicable law revealed some hesitation on the part of the Court (Nos. 11 et seq.). Surprisingly, the Court did not decide whether the Rome II Regulation or German autonomous private international law should apply to the case (no. 13). Although the court considered the possible application of the exception of Art. 1(2)(g) Rome II ("non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation."), the Court did not address whether an infringement of a legal person's reputation falls under this exception (nos. 15 and 16). However, infringements of rights relating to personality through the media clearly fall under the exception of Art. 1(2)(g) Rome II. The debate about applying this exception to legal persons is actually caused by the application of the Rome II Regulation to claims related to unfair competition (Art. 6(1) and (2) Rome II), not by their mere quality as legal persons (see CJEU, ECLI:EU:C:2017:766, *Bolagsupplysningen and Ilsjan*, mn. 38). However, the present case is not related to business matters or competition claims; therefore, the exception of Art. 1(2)(g) Rome II should clearly apply.

Therefore, German private international law should apply, which the Court also examined (nos. 18 et seq.). The Court found that the parties had made an implied choice-of-law agreement for German law (no. 19). The Court ruled that, throughout the entire procedure, the parties' exclusive reference to substantive German law satisfied the conditions of such an agreement under Art. 14(1)(a) Rome II (no. 17) and Art. 42 of the Introductory Act to the Civil Code (EGBGB). This decision, if it can be understood, left some kind of an aftertaste of insecurity of the Court, as it appeared to be the simplest way to reach German law. Art. 40 EGBGB, relating to the applicable law for torts, allows the claimant to choose between the place where the harm arose (*Erfolgsort*) and the place where the event which gave rise to the harm occurred (*Handlungsort*). The eventual question of the claimant's (Morocco) choice for determining where the harm occurred would have led to the well-known difficult question of the localization of such an infringement through the Internet and the possible application of Moroccan law. In such a case, the Court would also have had to consider the application of Art. 40(3)(2) EGBGB, which states that this law is inapplicable if the

claimant's purpose is not actually to seek compensation (e.g. to exert pressure on the defendant). The Court did not address these issues and concluded that German law applies.

II. Aspects of Substantive Law: A Panorama of Public International Law for the Benefit of Private Law

German tort law is based on a restrictive approach. The central norm, Sect. 823(1) of the Civil Code (BGB), lists the legally protected rights: Life, Body, Health, Freedom, Property and "other right". This last category allows for the protection of interests comparable to those listed, such as the right to one's personality, or the protection of victims from certain types of professional pure economic loss. Schematically, damages can only be granted for other interests if the tortfeasor infringed upon a protective law (Sect. 823(2) BGB) or if the harmful act is immoral (Sect. 826 BGB), which conditions are stricter.

Therefore, the claimant first tried to obtain damages based on the general case law regarding the infringement of personality rights under Sect. 823(1) BGB, and second, based on the infringement of criminal laws as protective laws under Sect. 823(2) BGB. However, the claims based on criminal legislation (Sect. 90a, 90b, 185 et seq., 102 to 104a of the Criminal Code, StGB) failed because foreign states are not subject to these norms (nos. 62 et seq.).

Therefore, the debate focused on Sect. 823(1) BGB and, logically, if such a right of personality also exists for states. After establishing that domestic law does not grant states such a right according to settled case-law (nos. 21 et seq.), the Court considered whether such a right exists as a general principle of public international law (nos. 23 et seq.). In doing so, the Court examined an extensive body of case law (nos. 28 et seq.) from international courts and arbitral tribunals, the European Court of Human Rights, diverse international and regional organizations (e.g. the Council of Europe, the European Union, the OSCE...) and national courts (USA, England, Scotland, France and Germany). The Court concluded that a protection of an alleged right of personality for states against private individuals does not exist. Most of the relevant decisions involve cases concerning diplomats or claims from state to state. In fact, the Court noted that

many organizations encourage states to refrain from suing journalists regarding questions of the state's reputation to guarantee freedom of speech and press freedom (cf. no. 54). Although the Court does not explicitly refer to it, the idea of extracontractual liability that does not "open the floodgates" of liability, as well as the weighing of interests, are typical to German tort law. The interest of a foreign state in protecting its honor against statements by private individuals is neither necessary nor worthy of protection under civil law.

III. Final remarks

By ruling that foreign states do not have a right of personality that can be enforced against private individuals, the German Federal Court aligned itself with the decision of the French Cour de Cassation. The highest French court for civil and commercial matters also decided on the very same case in 2024, i.e. a claim of the Kingdom of Morocco against a French journal regarding the very same accusations. In this case too, the French Cour de cassation - without spending a word on the aspects of private international law - decided that "a foreign state is not entitled to bring a public defamation action against an individual" (no. 12). These decisions are certainly welcome, as they reinforce the independence of the press against foreign attempts to influence press freedom in Europe, especially in these troubled times.

Climate Litigation Before the German Federal Court of Justice - "Too Complex" for Private Law instruments?



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Written by Marc-Philippe Weller, Carolina Radke, and Marianna Dänner (all Heidelberg University)

On 2 March 2026, the German Federal Court of Justice (*Bundesgerichtshof*; “BGH”) held an oral hearing in two proceedings concerning the civil liability of companies regarding climate change. The authors of this blog post attended the hearing as members of the audience.

The German NGO *Deutsche Umwelthilfe (DUH)* is suing the car manufacturers *BMW* and *Mercedes Benz*, requesting a legal order obliging both companies to refrain from placing combustion engine cars on the market beyond 2030. These two proceedings join the club of (strategic) climate change lawsuits in Germany. Crucially, they are the first of their kind based on tort law to reach the German Federal Court of Justice. Accordingly, the hearing was eagerly awaited by many. The decision, which will be rendered on 23 March 2026, will undoubtedly have an impact on future climate lawsuits.

While no issues of international jurisdiction or applicable law arose in the proceedings in question – as all Parties are seated in Germany –, the judgment of the BGH could further motivate foreign parties to bring claims against German companies, thereby giving rise to questions of international jurisdiction and the applicable law (see for more details *Weller/Weiner*, Corporate Climate Liability in Private International Law, in: Japanese Yearbook of Private International Law, Vol. 26 (2024), 2). In this context, one may refer to the deliberations of the Higher Regional Court (OLG) Hamm in *Lliuya against RWE* (OLG Hamm, 28. Mai 2025, 5 U 15/17).

1. Legal Framework

The climate goal of the German Constitution (*Grundgesetz*; GG) derived from its Art. 20a was specified by the German Constitutional Court (*Bundesverfassungsgericht*) in line with the Paris Agreement, namely, to limit the rising global average temperature to well below 2°C and preferably to 1.5°C above pre-industrial levels. Combustion engine cars contribute to the global CO₂

emissions and hence to the greenhouse gas effect and the global warming. Against this background, the question arises whether the constitutional climate goal can (additionally) be enforced through private lawsuits against companies, notwithstanding the fact - as emphasized in the present case - *BMW* and *Mercedes* are acting in accordance with the existing public regulatory framework in Germany.

In both proceedings, the claim of *DUH* relies on Section 1004(1) of the German Civil Code (*Bürgerliches Gesetzbuch*; BGB) in conjunction with Section 823(1) BGB.

Section 1004(1) BGB allows an owner of an absolute individual right (like property or health) to demand that a disturbing party (“Störer”) - i.e. the party interfering with the individual right - remove an interference or *refrain from future interferences*. Section 823(1) BGB provides claims for damages in the event of a violation of such a right.

DUH bases its claim - to prevent the manufacturers from placing combustion engine cars on the market from 2030 onwards - on an infringement of the so-called “General Right to Personality” (*Allgemeines Persönlichkeitsrecht*), which is provided for by the German constitution (Art. 2(1) in connection with Art. 1(1) GG) and which is recognized as protected right within the meaning of Section 823(1) BGB and Section 1004(1) BGB. Hence, infringements of that personality right can be stopped via an injunction based on Section 1004(1) BGB.

In the proceedings against *BMW* and *Mercedes-Benz*, the claimants want to activate an intertemporal dimension of that “General Right to Personality” called “Right to greenhouse gas-related freedom” (*Recht auf treibhausgasbezogene Freiheit*). This approach would be new in private law. It builds upon the famous “Klimaurteil” (climate judgment) of the *Bundesverfassungsgericht* from 24 March 2021. In this judgment, the Constitutional Court established a new legal figure called “eingriffsähnliche Vorwirkung”. It extends the basic rights protection to a protection against infringements *by the state* in the future that are grounded in present state omissions or insufficient actions (in the sense of a right to intertemporal freedom). By analogy to this legal concept in public law, *DUH* argues that the legal figure “eingriffsähnliche Vorwirkung” should also apply in tort law to actions by private companies (such as *BMW* and *Mercedes*).

The claims of *DUH* were rejected in the previous instances (LG München I, 07 Feb 2023, 3 O 12581/21, OLG München, 12 Oct 2023, 32 U 936/23 for the claim against *BMW* and LG Stuttgart, 13 Sept 2022, 17 O 789/21, OLG Stuttgart, 08 Nov 2023, 12 U 170/22 for the claim against *Mercedes*).

2. Inside the courtroom: key legal arguments

In the oral hearing before the BGH, the arguments focused on two legal aspects:

(1) Does the legal figure of intertemporal protection of basic freedoms in the form of an “*eingriffsähnliche Vorwirkung*” apply also to private actors if - as is currently the case in Germany - the national CO₂ budget has not yet been attributed among industrial sectors, the federal states, or even single actors? According to the Constitutional Court, the state has the obligation to concretize the remaining national budget (“*Konkretisierungsauftrag*”) by assigning CO₂ budgets to the different actors. What does this mean for the duties of private actors if the state fails to comply with this obligation by not assigning specific reduction targets? May civil courts assign specific reduction targets?

According to the claimant (*DUH*), the intertemporal protection of basic freedoms subsidiarily applies to such private actors that considerably contribute to global greenhouse gas emissions. The less reduction measures were taken now, the more strenuous reduction measures would be needed in the future, which would interfere in the basic rights freedoms more severely. CO₂ budgets for private actors such as the car manufacturers could in that case be measured by scientific data (such as attribution science), so even without state-allocated CO₂ budgets.

In the opinion of the defendants (*BMW* and *Mercedes*), it would exceed the competences of the courts if they were to allocate individual CO₂ residual budgets to companies in such climate lawsuits. The counsels for the defendants relied on the argument of separation of powers and the complexity of climate change requiring multi-level solutions. Climate change would be a topic too complex to be solved by courts and by private law - instead, a mixture of legal instruments and a balancing of interests by the democratic legislator was needed. Any private law based litigation, being bilaterally restricted to the involved parties, would be arbitrary and could not solve the climate challenge which was a problem of societal scale. Courts would put themselves at the place of the legislator or at least thwart the legislator’s concept or solution. The defendants’

counsels also argued with the margin of appreciation granted by the German Federal Constitutional Court in its 2021 decision.

The defendants also raised the argument that a CO2-budget for civil actors would be ineffective, as the climate reduction goals could only be achieved globally – as such, if in other states major emitters did not comply with their obligations, the national emitters had to make “extra” efforts to make up for the gaps. Besides, “national solo runs” would endanger international cooperation.

(2) Can private actors, such as *BMW* and *Mercedes*, be treated as “disturbing” within the meaning of Section 1004(1) BGB for contributing to the risk of future state climate protection measures? The BGH raised the question whether the manufacturers could be qualified as indirect disturber by action (“*mittelbare Handlungstörer*”). This was argued to result from an evaluative tailoring of the manufacturers’ responsibility (“*wertender Zuschnitt von Verantwortungsbereichen*”). A main point in the arguments in that respect revolved around the question if a private actor can be a disturber within the meaning of Section 1004(1) BGB if it complies with all legal requirements and duties. This was at least an indicator against a disturbance triggering liability under Section 1004(1) BGB.

The defendants argued that Section 1004(1) BGB as a *bilateral* claim was per se not suitable for resolving issues like climate change, which is a problem concerning our society *as a whole*, not only two parties in a civil proceeding. Civil law could not provide for protection if the threat caused concerned a mass of persons, not only another party.

Furthermore, according to the defendants, the disturber and the affected party would coincide since everyone contributed to climate change. It therefore would remain unclear where a distinction was to be drawn between who qualifies as a disturber and who does not. Besides, there was neither a general duty of care (“*Allgemeine Verkehrspflicht*”) nor specific CO2-budgets that the defendants are currently violating. Where the contested conduct was currently lawful, it could not be prohibited under civil law through the mechanism of Section 1004(1) BGB.

The claimant’s counsel argued that formal concerns against emitters being disturbers in the legal sense had to remain unapplied, as otherwise private law in general could not provide legal protection in the field of climate change.

The defendants relied finally on the argument that private law based litigation such as the given proceedings were arbitrary for the reason that (1) it was “random” which emitter would be the target of such litigation and (2) that there could be no redress in a bilateral two party relationship as this would lead to the same emission being litigated in several proceedings (e.g. car manufacturers, car rental agencies and car drivers).

III. Assessment and outlook

The final decision of the German Federal Court of Justice will be rendered on 23 March 2026. The Court will implicitly decide whether combating climate change primarily falls within the responsibility of the legislator, or whether civil courts can also play a meaningful role in addressing this global challenge.

Brazilian Ruling Recognises US Name Change

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In April 2025, the highest chamber (*Corte Especial*) of the Brazilian Superior

Notice is hereby given that an order entered by the Supreme Court, Suffolk County, on the 5th day of March, 2020, bearing Index Number 20-01194, a copy of which may be examined at the office of the clerk, located at 310 Center Drive, Riverhead, NY 11901, grants me the right to assume the name of Matthew Windsor. The city and state of my present address are 229 Spring Meadow Drive, Unit F, Holbrook, NY, 11741. The month and year of my birth are 06/15/1964. The place of my birth is Rio De Janeiro, Brazil; my present name is Ariosto Mateus De Menezes.
IB, 60756, 3/19 |

CourtofJustice(STJ),underJusticeMarialsabelGallottiasrapporteur,ruledon ‘Recognition of a Foreign Judgment’ (HDE) no. 7.091/EX. The case concerned the recognition of a United States ruling changing the last name of a Brazilian national who had acquired US nationality. The Plaintiff sought recognition of (i) his US naturalisation and (ii) a ruling of the Supreme Judicial Court of Suffolk County, Massachusetts, which changed his name from ‘Ariosto Mateus de Menezes’ to ‘Matthew Windsor’.

The Court decided it had no competence to ratify the naturalisation. Granting US citizenship is a prerogative of the US Government. And loss of Brazilian nationality is ruled by a specific domestic administrative procedure, under the Brazilian Ministry of Justice. The Court concluded that, because of lack of competence, the documents presented did not satisfy the statutory requirements for recognition under the Brazilian Code of Civil Procedure and the Court’s internal rules. By contrast, the Court granted recognition of the name-change judgment. It found that the formal requirements for recognition had been met: the decision was rendered by a competent authority, had become stable, and was properly documented and translated. The decisive issue, therefore, was whether recognition would violate Brazilian *ordre public*.

Justice Gallotti grounded her analysis in Article 7 of the Introductory Statute to the Norms of Brazilian Law (LINDB), a statute inspired by the German *Einführungsgesetz zum Bürgerlichen Gesetzbuche* (EGBGB). LINDB provides that the law of the person’s domicile governs name and capacity. The applicant was domiciled in the United States. The name change was carried out under US law. The case did not fall within any area of exclusive Brazilian jurisdiction (Article 23 of the Brazilian Code of Civil Procedure).

The Attorney General’s Office (*Ministério Público Federal*) argued that Brazilian law does not permit total suppression of family names. The foreign judgment therefore offended public policy. The Court rejected this view. It held that the mere fact that Brazilian legislation does not provide total suppression or change of surnames does not invalidate a foreign act. The prohibition is not a “nuclear” or

foundational norm of the Brazilian legal order. There was no violation of *ordre public*, national sovereignty, or human dignity. Justice Gallotti stated: “The “*ordre public* clause” is intended to prevent the recognition of rights that contradict the fundamental principles of our legal order. In general, private international law doctrine considers, for example, that Western countries tend not to recognise more than one spouse, even when the husband is domiciled in a country governed by Islamic law. Polygamy (the marriage of a man to multiple women) is understood to violate the basic and core rules of national family law and succession law.’ Nothing of that nature was present in the case, said the Court. A foreign name change, even one involving the substitution of a surname, does not approach the level of structural incompatibility exemplified by polygamy.

The Court also placed the case in the context of recent domestic legal reform. Brazilian Law no. 14.382/2022 significantly facilitated changes of forenames in Brazil. A person may now change their first name extrajudicially (before a notary), without demonstrating a relevant reason. But such a change can only happen once in a lifetime and solely encompasses first names. Surname changes have also been made more flexible, but exclusively by allowing the recovery and inclusion of ancestral surnames. Brazilian law therefore no longer reflects a rigid immutability model, even if surnames remain harder to change than forenames. In HDE 7.091/EX, the Court considered it understandable and reasonable that the applicant adopted anglophone first and last names in the United States in order to avoid possible discrimination in the country of his new nationality. The change did not harm any relevant public or third-party interest.

From a comparative perspective, the decision sits at an interesting point. In Common Law jurisdictions, name change is generally available with considerable freedom, often through unilateral instruments such as a deed poll, subject to modest administrative formalities. In Germany and Austria, by contrast, name changes are treated as exceptional and typically require an ‘important or relevant reason’ under public-law procedures. Christian von Bar’s comparative study *Gemeineuropäisches Privatrecht der natürlichen Person* (pp. 567–604) illustrates precisely the different models regarding name change. Some systems conceptualise the name primarily as an element of personal identity. Others see it as a structured institution embedded in family and public-order concerns. Brazil’s domestic law still reflects elements of the latter approach. Yet in recognition proceedings, Brazil’s highest Court with private law jurisdiction clearly opted for

continuity of status formed at the domicile.

The decision is also consistent with a long Brazilian tradition of construing public policy narrowly in cross-border cases. As noted in a recent article, Brazilian law was frequently referenced in Ernst Rabel's writings. For instance, Rabel noted how Brazilian Courts would recognise foreign divorces at a time when divorce was not yet permissible in Brazil. HDE 7.091/EX fits that pattern: foreign status effects may be recognised even when domestic law would not have produced the same result internally.

Ultimately, HDE 7.091/EX is a restrained and technically precise decision. It does not liberalise Brazilian internal surname law. It does not dissolve the state's control over civil status. What it does is confirm that *ordre public* remains a high threshold in recognition proceedings of foreign rulings. In an era of increasing personal mobility and multi-layered identities, this approach reinforces a central intuition of private international law: the stability of personal status across borders is itself a value worthy of legal protection.