Dutch Conference on the Impact of the ECHR on Private International Law

On 12 November 2010 the Netherlands Organisation for Scientific Research (NWO), the Amsterdam Center for International Law (ACIL) and the Centre for the Study of European Contract Law (CSECL) will organize a symposium about 'The Impact of the European Convention on Human Rights on Private International Law'.

The conference will take place in Amsterdam in the Doelenzaal of the university library (UB).

Preliminary Program

9h00–9h30: Arrival and Registration

9h30–9h45: *Welcome and Introduction*: Erika de Wet (Amsterdam/ Pretoria)

9h:45–11h.15: *The ECHR and the Public Policy Exception in Private International Law*
Chair: Jannet Pontier (Amsterdam)
Speaker: Ioanna Thoma (Athens) (25min)
Discussants: James Fawcett (Nottingham); Aukje van Hoek (Amsterdam) (20min each)

11h:45-13h15: *Art. 1 ECHR and Private International Law*
Chair: André Nollkaemper (Amsterdam)
Speaker: Louwrens Kiestra (Amsterdam) (25min)
Discussants: Jaco Bomhoff (Leiden, tbc); Michael Stürner (Frankfurt/Oder) (20min each)

13h15-14h15: Lunch

14h15-15h45: *The Prohibition of Discrimination under the ECHR and Private International Law*
Chair: Ted de Boer (Amsterdam)

Speaker: Patrick Kinsch (Luxemburg) (25min)
Discussants: Andrea Büchler (Zurich); Mathias Reimann (Ann Arbor) (20min each)

16h15-17h15: *General Discussion* – Chair: A.E. Oderkerk (Amsterdam)

17h15-17h30: *Closing Comments by the Organizers*

More information can be found here.

Is the Brussels Convention Compliant with Article 6 ECHR?

This is the interesting question that the French supreme court for private matters (*Cour de cassation*) addressed in a judgement of March 6, 2007.

The argument was raised in respect of the rule allowing to seek a decision of enforceability of the foreign judgement ex parte. Article 34 of the 1968 Brussels Convention provided:

> *the party against whom enforcement is sought shall not at this stage of the proceedings be allowed to make any submissions on the application.*

In this case, a Belgian bank, Fortis, had sued in Belgium two spouses domiciled in France. The Court of appeal of Mons, Belgium, had ruled in favour of the bank, which sought enforcement of the judgement in France. The Belgian judgement was declared enforceable by a French first instance court. The defendants appealed to the Court of appeal of Amiens and lost. They then appealed to the *Cour de cassation*. Their only argument was that the proceedings in the first instance in France were a violation of their right to a fair trial, as they were ex parte proceedings. The *Cour de cassation* held that there was no such violation as they were entiteld to appeal. The appeal was thus dismissed (again).

This case raises two issues. The first is anecdotal. It is fascinating to see that the

defendants could take this case up to the French supreme court. The Belgian judgement was made in 2001, and it seems that the enforcement proceedings took six years.

The second issue is much more interesting. Could the Brussels Convention or the Brussels I Regulation be found to be in violation of the European Convention of Human Rights (ECHR)? Before the *Cour de cassation*, the defendants argued that the ECHR was superior to any treaty concluded by the French state. In *Fortis*, the Court does not directly deal with the argument, but it indirectly addresses it since it accepts to rule on whether article 34 complies with article 6 ECHR.

Obviously, the *Cour de cassation* will only give the point of view of the French legal order. The Strasbourg or the Luxembourg courts would certainly have different views on this.

Was the issue addressed elsewhere in Europe?

The Impact of Art 6(1) of the ECHR on Private International Law

There is a substantial article by Professor James Fawcett (University of Nottingham, and co-author of Cheshire & North) in the new issue of the International & Comparative Law Quarterly on "**The Impact of Article 6(1) of the ECHR on Private International Law**" (Int Comp Law Q 2007 56: 1-48). The abstract reads:

> *An increasing trend in private international law cases decided by courts in the United Kingdom has been to refer to the European Convention on Human Rights and, in particular, to Article 6. This article will examine the impact of this provision on private international law. The article will go on to examine why the impact has been so limited and will put forward a new approach that*

takes human rights more seriously, using human rights law to identify problems and the flexibility inherent in private international law concepts to solve them.

And a small extract from the conclusion to whet your appetite:

A new approach is needed which takes human rights more seriously. A hybrid human rights/private international law approach should be adopted. The first stage of this requires the court to ascertain whether, in the circumstances of a particular case, there has been, or there is a real risk that there will be, a breach of Article 6 standards in England or abroad. Human rights jurisprudence should be used to ascertain whether there is such a breach. The second stage involves solving the human rights problem that has been identified. The English courts should act in a way that ensures that they are not in breach of Article 6 standards. In the areas of greatest risk of encountering a breach of Article 6 standards, this can be achieved by using existing private international law concepts of public policy and the demands of justice.

Those with a subscription to the Journal can download the full article from the ICLQ website.

Advocate General in Case Mirin (C-4/23): Refusal of recognition of a new gender identity legally obtained in another Member State violates the freedom of movement

and residence of EU citizens

The following case note has been kindly provided by *Dr. Samuel Vuattoux-Bock*, LL.M. (Kiel), University of Freiburg (Germany).

On May 7, 2024, Advocate General Jean Richard de la Tour delivered his opinion in the case C-4/23, *Mirin*, concerning the recognition in one Member State of a change of gender obtained in another Member State by a citizen of both States. In his opinion, Advocate General de la Tour states that the refusal of such a recognition would violate the right to move and reside freely within the Union (Art. 21 TFEU, Art. 45 EU Charter of Fundamental Rights) and the right of respect for private and family life (Art. 7 EU Charter of Fundamental Rights).

1. Facts

The underlying case is based on the following facts: a Romanian citizen was registered as female at birth in Romania. After moving with his family to the United Kingdom and acquiring British citizenship, he went through the (medically oriented) gender transition process under English law and finally obtained in 2020 a "Gender Recognition Certificate" under the Gender Recognition Act 2004, confirming his transition from female to male and the corresponding change of his forename. As the applicant retained his Romanian nationality, he requested the competent Romanian authorities (Cluj Civil Status Service) to record the change on his birth certificate, as provided for by Romanian law (Art. 43 of Law No. 119/1996 on Civil Status Documents). As the competent authority refused to recognize the change of name and gender (as well as the Romanian personal numerical code based on gender) obtained in the United Kingdom, the applicant filed an action before the Court of First Instance, Sector 6, Bucharest. The court referred the case to the CJEU for a preliminary ruling on the compatibility with European law (Art. 21 TFEU, Art. 1, 20, 21, 45 of the Charter of Fundamental Rights) of such a refusal based on Romanian law. In particular, the focus is on the Cluj Civil Status Office's demand that the plaintiff initiates a new judicial procedure for the change of gender in Romania. The plaintiff sees in this request the risk of a contrary outcome to the British decision, as the European Court of Human Rights ruled that the Romanian procedure lacks clarity and predictability

(ECHR, *X. and Y. v. Romania*). In addition, the Romanian court asked whether Brexit had any impact on the case (the UK proceedings were initiated before Brexit and concluded during the transition period).

2. Opinion of the Advocate General

Advocate General de la Tour gave his opinion on these two questions. Regarding the possible consequences of Brexit, de la Tour drew two sets of conclusions from the fact that the applicant still holds Romanian nationality. First, an EU citizen can rely on the right to move freely within the European Union with an identity document issued by his or her Member State of origin (a fortiori after Brexit). Second, the United Kingdom was still a Member State when the applicant exercised his freedom of movement and residence. As the change of gender and first name was acquired, the United Kingdom was also still a Member State. EU law is therefore still applicable as the claimant seeks to enforce in one Member State the consequence of a change lawfully made in another (now former) Member State.

On the question of the recognition of a change of first name and gender made in another Member State, Advocate General de la Tour argues that these issues should be treated differently. The fact that the first name may be sociologically associated with a different sex from the one registered should not be taken into account as a preliminary consideration for recognition (no. 61). He therefore answers the two questions separately. Already at this point, de la Tour specifies that the relevant underpinning logic for this type of case should not be the classical recognition rules of private international law, but rather the implementation and effectiveness of the freedom of movement and residence of EU citizens (nos. 53-55).

a) Change of first name

With regard to the change of the first name, de la Tour states (with reference to the *Bogendorff* case) that the refusal to recognize the change of the first name legally acquired in another Member State would constitute a violation of the freedoms of Art. 21 TFEU (no. 58). Since the Romanian Government does not give any reason why recognition should not be granted, there should be no obstacle to automatic recognition. The Advocate General considers that the scope of such

recognition should not be limited to birth certificates but should be extended to all entries in a civil register, since a change of first name, unlike a change of surname, does not have the same consequences for other family members (nos. 63-64).

b) Change of gender

With regard to gender change, Advocate General de la Tour argues for an analogy with the Court's case-law on the automatic recognition of name changes, in particular the *Freitag* decision. Gender, like the name, is an essential element of the personality and therefore protected by Art. 7 of the Charter of Fundamental Rights and Art. 8 ECHR. The jurisprudence on names (in particular *Grunkin and Paul*) shows that the fact that a Member State does not have its own procedure for such changes (according to de la Tour, this concerns only 2 Member States for gender changes) does not constitute an obstacle to the recognition of a change lawfully made in another Member State (nos. 73-74). Consequently, de la Tour sees the refusal of recognition as a violation of the freedoms of Art. 21 TFEU, because the existence of a national procedure is not sufficient for such a refusal (no. 81). Furthermore, the Romanian procedure cannot be considered compatible with EU law, as the judgment of the European Court of Human Rights *X. and Y. v. Romania* shows that it makes the implementation of the freedoms of Art. 21 TFEU impossible or excessively difficult (No. 80). Nevertheless, there is nothing to prevent Member States from introducing measures to exclude the risk of fraudulent circumvention of national rules, for example by making the existence of a close connection with the other Member State (e.g. nationality or residence) a condition (nos. 75-78).

Unlike the change of first name, the change of gender affects other aspects of personal status and may have consequences for other members of the family (e.g. the gender of the parent on a child's birth certificate before the transition) or even for the exercise of other rights based on gender differentiation (e.g. marriage in States that do not recognize same-sex unions, health care, retirement, sports competition). Imposing rules on the Member States in these areas (in particular same-sex marriage) would not be within the competence of the Union (no. 94), so Advocate General de la Tour proposes a limitation to the effect of recognition in the Member State of origin. If the change of gender would have an effect on other documents, the recognition should only have an effect on

the person's birth certificate and the documents derived from it which are used for the movement of the person within the Union, such as identity cards or passports. The Advocate General himself points out that this solution would lead to unsatisfactory consequences in the event of the return of the person concerned to his or her State of origin (no. 96), but considers that the solution leads to a "fair balance" between the public interest of the Member States and the rights of the transgender person.

3. Conclusion

In conclusion, Advocate General de la Tour considers that the refusal to recognize in one Member State a change of first name and gender legally obtained in another Member State violates the freedoms of Art. 21 TFEU. The existence of an own national procedure could not justify the refusal. Drawing an analogy with the Court's case-law on change of name, the Advocate General recommends that the change of first name should have full effect in the Member State of origin, while the change of gender should be limited to birth certificates and derived documents used for travel (identity card, passport).

Although the proposed solution may not be entirely satisfactory for the persons concerned, as it could still cause difficulties in the Member State of origin, the recognition in one Member State of a change of first name and sex made in another Member State should bring greater security and would underline the mutual trust between Member States within the Union, as opposed to third countries, as demonstrated by the recent decision of the Swiss Federal Tribunal concerning the removal of gender markers under German law

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„El clásico" of Recognition and Enforcement – A Manifest Breach

of Freedom of Expression as a Public Policy Violation: Thoughts on AG Szpunar 8.2.2024 – Opinion C-633/22, ECLI:EU:C:2024:127 – Real Madrid Club de Fútbol

By Madeleine Petersen Weiner, Research Fellow and Doctoral Candidate at Heidelberg University

Introduction

On 8 February 2024, Advocate General (AG) *Szpunar* delivered his Opinion on C-633/22 (AG Opinion), submitting that disproportionate damages for reputational harm may go against the freedom of expression as enshrined in Art. 11 Charter of Fundamental Rights of the European Union (CFR). The enforcement of these damages therefore may (and at times *will*) constitute a violation of public policy in the enforcing state within the meaning of Art. 34 Nr. 1 Brussels I Regulation. The AG places particular emphasis on the severe deterring effect these sums of damages may have – not only on the defendant newspaper and journalist in the case at hand but other media outlets in general (AG Opinion, paras. 161-171). The decision of the Court of Justice of the European Union (CJEU) will be of particular topical interest not least in light of the EU's efforts to combat so-called "Strategic Lawsuits Against Public Participation" (SLAPPs) within the EU in which typically financially potent plaintiffs initiate unfounded claims for excessive sums of damages against public watchdogs (see COM(2022) 177 final).

The Facts of the Case and Procedural History

Soccer clubs *Real Madrid* and *FC Barcelona*, two unlikely friends, suffered the same fate when both became the targets of negative reporting: The French newspaper *Le Monde* in a piece titled "Doping: First cycling, now soccer" had covered a story alleging that the soccer clubs had retained the services of a doctor linked to a blood-doping ring. Many Spanish media outlets subsequently

shared the article. *Le Monde* later published *Real Madrid's* letter of denial without further comment. *Real Madrid* then brought actions before Spanish courts for reputational damage against the newspaper company and the journalist who authored the article. The Spanish courts ordered the defendants to pay 390.000 euros in damages to *Real Madrid*, and 33.000 euros to the member of the club's medical team. When the creditors sought enforcement in France, the competent authorities were disputed as to whether the orders were compatible with French international public policy due to their potentially interfering with freedom of expression.

The *Cour de Cassation* referred the question to the CJEU with a request for a preliminary ruling under Art. 267 TFEU, submitting no less than seven questions. Conveniently, the AG summarized these questions into just one, namely essentially: whether Art. 45(1) read in conjunction with Arts. 34 Nr. 1 and 45(2) Brussels I Regulation and Art. 11 CFR are to be interpreted as meaning that a Member State may refuse to enforce another Member State's judgment against a newspaper company and a journalist based on the grounds that it would lead to a manifest infringement of the freedom of expression as guaranteed by Art. 11 CFR.

Discussion

The case raises a considerable diversity of issues, ranging from the relationship between the European Convention on Human Rights (ECHR), the CFR, and the Brussels I Regulation, to public policy, and the prohibition of *révision au fond*. I will focus on whether and if so, under what circumstances, a breach of freedom of expression under Art. 11 CFR may lead to a public policy violation in the enforcing state if damages against a newspaper company and a journalist are sought.

Due to the Regulation's objective to enable free circulation of judgments, recognition and enforcement can only be refused based on limited grounds – public policy being one of them. Against this high standard (see as held recently in C-590/21 *Charles Taylor Adjusting*, ECLI:EU:C:2023:633 para. 32), AG *Szpunar* submits first (while slightly circular in reasoning) that in light of the importance of the press in a democracy, the freedom of the press as guaranteed by Art. 11 CFR constitutes a fundamental principle in the EU legal order worthy of protection by way of public policy (AG Opinion, para. 113). The AG rests this

conclusion on the methodological observation that Art. 11(2)CFR covers the freedom and plurality of the press to the same extent as Art. 10 ECHR (ECtHR, Appl. No. 38433/09 – *Centro Europa and Di Stefano/Italy*, para. 129).

Under the principle of mutual trust, the Regulation contains a prohibition of *révision au fond*, Art. 45(2) Brussels I Regulation, i.e., prevents the enforcing court from reviewing the decision as to its substance. Since the assessment of balancing the interests between the enforcement creditors and the enforcement debtors had already been carried out by the Spanish court, the AG argues that the balancing required in terms of public policy is limited to the freedom of the press against the interest in enforcing the judgment.

Since the Spanish court had ordered the defendants to pay a sum for damages it deemed to be *compensatory* in nature, in light of Art. 45(2) Brussels I Regulation, the enforcing court could not come to the opposing view that the damages were in fact *punitive*. With respect to punitive damages, the law on enforcement is more permitting in that non-compensatory damages may potentially be at variance, in particular, with the legal order of continental states (*cf.* Recital 32 of the Rome II Regulation). In a laudable overview of current trends in conflict of laws, taking into account Art. 10(1) of the 2019 Hague Judgments Convention, the Résolution de L'Institut de Droit International (IDI) on infringements of personality rights via the internet (which refers to the Judgments Convention), and the case law of the CJEU and the ECtHR (AG Opinion, paras. 142-158), AG *Szpunar* concludes that, while generally bound by the compensatory nature these damages are deemed to have, the enforcing court may only resort to public policy as regards compensatory damages in exceptional cases if further reasons in the public policy of the enforcing Member State so require.

The crux of this case lies in the fact that the damages in question could potentially have a deterring effect on the defendants and ultimately prevent them from investigating or reporting on an issue of public interest, thus hindering them from carrying out their essential work in a functioning democracy. Yet, while frequently referred to by scholars, the CJEU (see e.g., in C-590/21 *Charles Taylor Adjusting*, ECLI:EU:C:2023:633 para. 27), and e.g., in the preparatory work for the Anti-SLAPP Directive (see the explanatory memorandum, COM(2022) 177 final; see also Recital 11 of the Anti-SLAPP Recommendation, C(2022) 2428 final), it is unclear what a deterring effect actually consists of. Indeed, the terms "deterring effect" and "chilling effect" have been used interchangeably (AG

Opinion, para. 163-166). In order to arrive at a more tangible definition, the AG makes use of the ECtHR's case law on the deterring effect in relation to a topic of public interest. In doing so, the deterring effect is convincingly characterized both by its *direct effect* on the defendant newspaper company and the journalist, and the *indirect effect* on the freedom of information on society in the enforcing state as a whole (AG Opinion, para. 170). Furthermore, in the opinion of the AG it suffices if the enforcement is likely to have a deterring effect on press freedom in the enforcing Member State (AG Opinion, para. 170: "*susceptible d'engendrer un effet dissuasif*").

As to the appropriateness of the amount of damages which could lead to a manifest breach of the freedom of the press, there is a need to differentiate: The newspaper company would be subject to a severe (and therefore disproportionate) deterring effect, if the amount of damages could jeopardize its economic basis. For natural persons like the journalist, damages would be disproportionate if the person would have to labor for years based on his or her or an average salary in order to pay the damages in full. It is convincing that the AG referred to the ECtHR's case law and therefore applied a gradual assessment of the proportionality, depending on the financial circumstances of the company or the natural person. As a result, in case of a thus defined deterring effect on both the defendants and other media outlets, enforcing the decision would be at variance with public policy and the enforcing state would have to refuse enforcement in light of the manifest breach of Art. 11 CFR (AG Opinion, para. 191).

Conclusion

The case will bring more clarity on public policy in relation to freedom of expression and the press. It is worth highlighting that the AG relies heavily on principles as established by the ECtHR. This exhibits a desirable level of cooperation between the courts, while showing sufficient deference to the ECtHR's competence when needed (see e.g., AG Opinion, para. 173). These joint efforts to elaborate on criteria such as "public participation" or issues of "public interest" – which will soon become more relevant if the Anti-SLAPP Directive employs these terms –, will help bring legal certainty when interpreting these (otherwise partially ambiguous) terms. It remains to be seen whether the CJEU will adopt the AG's position. This is recommended in view of the deterrent effect of the claims for damages in dispute – not only on the defendants, but society at

large.

The Inter-American Court of Human Rights: first judgment on international child abduction

Guest post by Janaína Albuquerque, International Lawyer and Mediator

The Inter-American Court of Human Rights (IACtHR) has just published their first ever judgment on an international child abduction case in *Córdoba v. Paraguay*, which concerns the illicit removal of a child who was habitually resident in Argentina. The applicant and left-behind parent, Mr. Arnaldo Javier Córdoba, claimed that Paraguay violated his human rights by failing to enforce the return order and ensuring the maintenance of contact with his son. At the time of the abduction, the child was about to reach 2 years of age and the taking parent relocated, without the father's consent, to Paraguay.

Both Argentina and Paraguay are Contracting States to the American Convention on Human Rights (or Pact of San José) and the American Declaration of the Rights and Duties of Man, which are the main instruments assessed by the Inter-American Court and Commission. Paraguay has also accepted the Court's jurisdiction in 1993. Differently from the European Court of Human Rights (ECtHR), applicants cannot present a request directly to the Inter-American Court. The petition must be firstly examined by the Inter-American Commission on Human Rights (IACHR), which will, then, issue recommendations or refer the case to the Court.

Apart from the abovementioned human rights instruments, the Inter-American framework also comprises the 1989 Convention on the International Return of Children. In accordance with Article 34, the referred treaty prevails over the 1980 Hague Convention on the Civil Aspects of International Child Abduction where the

States involved are both Members of the Organisation of American States (OAS), unless otherwise stipulated by a bilateral agreement.

Although similar in content, the Inter-American Convention differs substantially from the Hague mechanism, particularly regarding jurisdiction. For instance, Article 6 states that it is the Contracting State in which the child was habitually resident before the removal or retention that has jurisdiction to consider a petition for the child's return, indicating that the Contracting State in whose territory the abducted child is or is thought to be only has jurisdiction if the left-behind parent choses so and in urgent cases. Another core change is found in Article 10, which prescribes that, if a voluntary return does not take place, the judicial or administrative authorities shall forthwith meet with the child and take measures to provide for his or her temporary custody or care. The exceptions to the return are in a different order than the Hague Convention, but remain relatively the same in practice, with minor changes to the wording of the provisions.

In *Córdoba v. Paraguay*, the applicant filed the petition on 30 January 2009. During the time that the merits were being assessed by the Commission, the applicant presented two requests for precautionary measures and only the second one was adopted by the *Resolución nº 29/19* on 10 May 2019. The case was finally referred to the Court 13 years after it was initiated, on 7 January 2022. Public hearings were held on 28 April 2023 and Reunite (United Kingdom), as well as the legal clinics of the Catholic University Andrés Bello (Venezuela) and the University of La Sabana (Colombia) participated in the proceedings as Amicus Curiae.

Restitution efforts in Paraguay

As regards the restitution efforts, the left-behind parent seized the Argentinian Central Authority on 25 January 2006, 4 days after the abduction took place. The dossier was received by the Paraguayan counterpart on 8 February 2006. Thereafter, judicial cases were brought both to the Juvenile Courts of Buenos Aires, in Argentina, and of Caacupé, in Paraguay. The return proceedings were carried out in the latter.

The taking parent argued the grave risk exception due to a history of physical and psychological domestic violence. Nevertheless, the Caacupé court ordered the

return of the child. The taking parent appealed, claiming, furthermore, that the child suffered from a permanent mental condition. The Court of Appeal and the Supreme Court of Paraguay confirmed the first judgment. A 'restitution hearing' was scheduled to take place on 28 September 2006, but the taking parent did not attend.

Paraguayan authorities conducted searches for the taking parent and the child between the remainder of 2006 and 2009, which were unsuccessful. The child was eventually located by INTERPOL on 22 May 2015, still in Paraguay, at the city of Atyrá. The taking parent was preventively detained and custody was granted to the maternal aunt. The Juvenile court also ordered a protective measure in order to establish a supervised and progressive contact arrangement with the father and the paternal family. The child refused to go near the left-behind parent, and the psychological team of the court concluded that it would be impossible to enforce the return order.

On 7 March 2017, the Public Defender's Office filed a request to establish the child's residence in Paraguay, which was accepted by the Juvenile court under the argument that 11 years had passed since the return order was issued and that other rights had originated in the meantime. Additionally, it was decided that, given the outcomes of the previous attempts, no contact would be established between the left-behind parent and the child. The Paraguayan Central Authority appealed and reverted the decision in regard to visitation, where it was stipulated that the left-behind parent should come to Paraguay to meet with the child. This arrangement was, then, confirmed by the Court of Appeal and, subsequently, by the Supreme Court.

In 2019, the Ministry of Childhood and Adolescence of Paraguay asked for an evaluation of the situation of the child. It was informed that the child had been receiving monthly psychological treatment; that he was living with his aunt and her husband; and that the mother visited him daily. Contrastingly, between 2015 and 2018, 4 visits had been organised with the father, in which 3 were accompanied by the paternal grandmother. A hearing was finally held on 23 May 2019, where the child expressed to the court that he did not want to be 'molested' by his father nor did he desire to maintain a bond with him.

Merits

On the merits, the IACtHR (hereinafter, 'the Court') noted that it would assess potential violations to Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 11 (Right to Privacy), 17 (Rights of the Family), 19 (Rights of the Child) and 25 (Right to Judicial Protection) of the Pact of San José ('the Pact') in light of the application of the 1989 Inter-American Convention. References were also made to the complementary incidence of the United Nations Convention on the Rights of the Child, the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, as well as the General Comments nº 12 and 14 of the Committee on the Rights of the Child.

Initially, the Court remarked that, at the time of the case's referral by the Commission, the child was about to turn 18 and that both the Inter-American and Hague Conventions were only applicable until the child reached the age of 16. It was noted, with concern, that the child had not been heard during most of the proceedings and that Article 12 of the UNCRC had been disregarded. As the child manifested that he did not feel like a victim and had no interest in pursuing his father's claim, the Court decided to only assess the human rights violations suffered by Mr. Córdoba.

Regarding the violations of judicial guarantees and protection, the Court analysed the right to a reasonable timeframe and the State's obligation to enforce judgments issued by competent authorities, accentuated by the particular condition of urgency required in proceedings involving children. An explicit reference was made to *Maumousseau and Washington v. France* inasmuch as the ECtHR concluded that, in international child abduction cases, the *status quo ante* must be re-established as quickly as possible to prevent the consolidation of illegal situations.

As the judicial proceedings for the return were concluded within 8 months, the Court did not find that there had been a violation of Article 8.1 of the Pact. However, Article 25.2.c prescribed that the State's responsibility did not end when a judgment had been reached and that public authorities may not obstruct the meaning nor the scope of judicial decisions or unduly delay their enforcement (*Mejía Idrovo v. Ecuador* and *Federación Nacional de Trabajadores Marítimos y Portuarios v. Perú*). References to *Maire v. Portugal* and *Ignaccolo-Zenive v. Romania* from the ECtHR were also made to reinforce that such delays brought irreparable consequences to parent-child relationships. It had not been reasonable that the State of Paraguay, for 9 years, was not able to locate a child

that regularly attended school and received care from the public health services. After the child was found, custody was immediately granted to the maternal aunt and contact with the father was hindered throughout the subsequent proceedings. Furthermore, the precautionary measures awarded by the Commission to instate a detailed visitation plan had not been enforced as a result of the COVID-19 pandemic, which contributed to the permanent deterioration of paternal bonds. Hence, the lack of diligence and morosity of the Paraguayan authorities resulted in a violation of Article 25.2.c of the Pact of San José.

In relation to the personal integrity, private and family life, and family protection, the Court focused on the assessment of Articles 11.2 and 17.1. It was firstly stated that arbitrary or abusive interferences to family life from third parties or the State are strictly forbidden, and that the latter must take positive and negative actions to protect all persons from this kind of conduct, especially if they affect families (*Ramírez Escobar y otros v. Guatemala* and *Tabares Toro y otros v. Colombia*). Secondly, it was asserted that the separation of children from their families should be exceptional and, preferably, temporary (*Opinión Consultiva OC-17/02*, *Opinión Consultiva OC-21/14*, *Fornerón e hija v. Argentina* and *López y otros v. Argentina*), emphasizing that the child must remain in their family nucleus as parental contact constitutes a fundamental element of family life (*Dial et al. v. Trinidad y Tobago* and *Personas dominicanas y haitianas expulsadas v. República Dominicana*). The Court clarified that effective family protection measures favour the development and strengthening of the family nucleus and that, in contexts of parental separation, the State must guarantee family reunification to prevent unduly estrangement (*K. and T. v. Finland*, *Jansen v. Norway* and *Strand Lobben and Others v. Norway*).

The Court concluded that the lack of diligence and exceptional promptness required by the circumstances resulted in a rupture of paternal bonds. Moreover, the reconnection efforts were excessively delayed without providing significant advances or conditions to enable the improvement of the family relationship on the paternal side. Therefore, Paraguay had not only breached Articles 11.2 and 17, but also Article 5 for putting the applicant in a permanent state of anguish that resulted in a violation of his personal integrity.

Lastly, the Court stated that States are encouraged to adopt all necessary provisions in their legal systems to ensure the adequate implementation of international treaties and improve their operation. Even though it was observed

that Paraguay had enacted internal regulations, they had not yet entered into force when the facts of the case unravelled. Consequently, Articles 1.1 and 2 of the Pact of San José had also been violated.

Reparations

One of the keys aspects of the Inter-American Court's judgments is that they thoroughly establish resolution points that must be individually satisfied. The State will send periodic reports to the Court specifying what measures have been taken to fulfil the decision, for as long as it takes, until the case is considered to be fully resolved.

In *Córdoba v. Paraguay*, the Court determined:

1. The payment of psychological and/or psychiatric treatment to Mr Córdoba;
2. The publication of the summary of the judgment in the officialgazette and in a media outlet with wide national circulation;
3. The adaptation of the domestic framework through the adoption of legislation that incorporates the standards set out in the judgment;
4. The establishment of a database to cross-reference information on internationally abducted children, which comprises all public systems that record data on people, such as social security, education, health and reception centres;
5. The creation of a communication network to process entries of internationally abducted children whose whereabouts are unknown and send search alerts for institutions involved in their care;
6. The accreditation of a training aimed at public servants of the judicial system and officials of the Ministry of Childhood and Adolescence on the issues appertaining to internationally abducted children and the need to safeguard their right to family life. The State must also indicate to which officials such training was addressed, the number of persons who effectively participated, and whether it was instituted as a permanent programme; and
7. The payment of the amounts set out in the judgement in terms of material and moral damages, costs and expenses, and reinstatement of the costs to the Court's victims' legal aid fund.

Final observations

International child abduction has been a long-awaited addition to the Inter-American portfolio in its intersection between international human rights law and international family law. The fact that *Córdoba* is the first decision to reach the Court does not mean that human rights violations seldom happen within American States in such cases, but it undoubtedly reveals that the pathway to reach an international judgment is long. Because the Commission must refer the cases to the Court, it will take time before extensive case-law is developed on the topic. Nonetheless, the decision represents an advance in many aspects, especially for establishing a set of standards amongst Caribbean and Latin American countries, which are the ones who majorly ratified the Pact of San José and accepted the Court's jurisdiction.

It must also be noted that, despite there being allegations by the taking parent against the left-behind parent of domestic violence, little was mentioned in regard to the evaluation of grave risk of harm to the physical and psychological well-being of the child by the Paraguayan authorities and if this interfered in any way with the applicant's rights. Many references were made to the Guide of Good Practice of the 1980 Hague Conventions and the ECtHR case-law, yet this assessment seems to have been ignored by the IACtHR. As remarked in *X. v. Latvia*, "*the [ECtHR] reiterates that while Article 11 of the [1980] Hague Convention does indeed provide that the judicial authorities must act expeditiously, this does not exonerate them from the duty to undertake an effective examination of allegations made by a party on the basis of one of the exceptions expressly provided for, namely Article 13 (b) in this case*". Additionally, the HCCH Guide to Good Practice on Article 13 (1) (b) states in paragraph 37 that "(…) *past incidents of domestic or family violence may, depending on the particular circumstances, be probative on the issue of whether such a grave risk exists*". The exceptions displayed on Article 13 (1) (b) and (2) of the 1980 Hague Convention are both reflected on Article 11 of the 1989 Inter-American Convention, which arguably means that more attention could have been granted to the analysis of potential situations of danger and the vehement refusal of the child to maintain any sort of contact with the father.

Even though the Court decided to respect the child's wishes and refrained from

examining the human rights violations that affected him, it must not be disregarded that the *Córdoba* judgment lacks a best interests assessment and that it might take some time before another international child abduction case gets a Commission referral. Apart from the grave risk analysis, it would have been enlightening to better understand how the Court perceived a potential violation of the child's right to be heard, including an assessment of *how*the child was heard, as well as the other children related rights safeguarded by the Inter-American normative instruments, including the protection of private and family life, that were afflicted.

International child abduction: navigating between private international law and children's rights law

In the summer of 2023 **Tine Van Hof** defended her PhD on this topic at the University of Antwerp. The thesis will be published by Hart Publishing in the Studies in Private International Law series (expected in 2025). She has provided this short summary of her research.

When a child is abducted by one of their parents, the courts dealing with a return application must consider several legal instruments. First, they must take into account private international law instruments, specifically, the Hague Child Abduction Convention (1980) and the Brussels IIb Regulation (2019/1111). Second, they have to take into account children's rights law instruments, including mainly the UN Convention on the Rights of the Child.

Because these instruments have different approaches regarding the concept of the best interests of the child, they can lead to conflicting outcomes. Strict adherence to private international law instruments by the return court could

mean sending a child back to the country where they lived before the abduction. Indeed, the Hague Child Abduction Convention and Brussels IIb presume that it is generally best for children to return to the State of habitual residence and therefore require ¾ in principle ¾ a speedy return. The children's rights law instruments, on the other hand, require that the best interests of the individual child be taken into account as a primary consideration. If the court follows these instruments strictly, it could for example rule in a particular case that it is better for a child with medical problems to stay in country of refuge because of better health care.

The question thus arises how to address these conflicts between private international law and children's rights law in international child abduction cases. To answer this question, public international law can give some inspiration, as it offers a number of techniques for addressing conflicts between fields of law. In particular, the techniques of formal dialogue and systemic treaty interpretation can provide relief.

Formal dialogue, in which the actors of one field of law visibly engage with the instruments or case law of the other field of law, can be used by the Hague Conference, the EU and the Court of Justice of the European Union (CJEU) as private international law actors, and the Committee on the Rights of the Child and the European Court of Human Rights (ECtHR) as children's rights law actors. By paying attention to the substantive, institutional and methodological characteristics of the other field of law, these actors can promote reconciliation between the two fields and prevent the emergence of actual conflict. However, a prerequisite for this is that the actors are aware of the relevance of the other field of law and are willing to engage in such a dialogue. This awareness and willingness can be generated through informal dialogue. The CJEU and the ECtHR, for example, conduct such informal dialogue in the form of their biennial bilateral meeting.

In addition, supranational, international and domestic courts can apply the technique of systemic treaty interpretation by interpreting a particular instrument (e.g., the Hague Child Abduction Convention) in light of other relevant rules applicable in the relationship between the parties (e.g., the UN Convention on the Rights of the Child). This allows actual conflicts between the two fields of law to be avoided. This technique was used, for example, by the ECtHR in *X v. Latvia*. To apply this technique, it is also important that courts are aware of the applicability

of the other field of law and are willing to take into account its relevant rules. Again, courts have established initiatives that promote this awareness and willingness, such as the International Hague Network of Judges.

The expectation is that by applying these techniques, the potential conflict between private international law and children's rights law in the context of international child abduction will no longer manifest itself as an actual conflict. Further, applying these techniques will make it possible for national courts to adequately apply all instruments and make a balanced decision on the return of children. In addition to these two techniques, other techniques, such as coordination *ex ante*, are considered appropriate to better align private international law and children's rights law when dealing with other issues, such as for example international surrogacy.

Seminar Report on Personal identity and status continuity – a focus on name and gender in the conflict of laws

Written by Thalia Kruger (University of Antwerp) and Laura Carpaneto (University of Genoa)

On 1 June 2023 the European Law Institute (ELI) and the Swiss Institute of Comparative Law (SICL) held the third session of a conference on personal identity and status continuity. The focus of this third session was on names and gender in the conflict of laws. The programme included recent amendments to Swiss legislation, the portability and recognition of names, and new gender statuses in private international law.

The conference, including a screening of the film 'The Danish Girl' (Tom Hooper,

2015), illustrated the importance of gender and names as part of people's identity, beyond the law. Names can be essential for people to identify with their religious group. In central and southern Africa, the use of names taken from people's own language instead of English names has been part of the black consciousness movement. The film showed the struggle of a person to change her sex despite the absence of any legal framework. And yet, Lukas Heckendorn Urscheler (director of the SICL) and Martin Föhse (University of St Gallen) showed that the societal issues turn into legal ones. Sharon Shakargy (University of Jerusalem) explained that the law is important when individuals have to use identity cards, credit cards, licences, certificates and the like. The law struggles to provide the most appropriate solutions, respecting the rights of all involved and ensuring portability of gender and names.

When talking about **rights**, there is a blurring, or at least a lack of terminological clarity, between human rights and fundamental rights. The free movement of persons in the EU is also classified as a fundamental right. Giulia Rossolillo (University of Pavia) compared the approaches of the European Court of Human Rights (ECtHR) and the Court of Justice of the EU (CJEU) with respect to the recognition and continuation of names. She showed that the solutions reached by the two courts can be quite different, as a result of their different approaches. The ECtHR uses the (human) right to the respect of private and family life protected by Article 8 of the European Convention of Human Rights (ECHR) while the CJEU uses the (fundamental) right to free movement of EU citizens. Moreover, the ECtHR is not so much concerned with the cross-border aspect, but focuses on the right to a person's identity. The CJEU emphasises continuity of name in cross-border contexts. For instance, the facts in the ECtHR case Künsberg Sarre v. Austria and the CJEU case Sayn-Wittgenstein were quite similar, dealing with the Austrian prohibition on the use of noble titles. The ECtHR found that Austria, but allowing for a long time the use of the noble 'von' and then disallowing it, violated the applicant's rights under Article 8 of the ECHR. The CJEU, on the other hand, found the obstacle to the right to free movement in the EU to be justified.

Different approaches to rights can also result in conflicting rights, i.e. the society's right to equality (no noble titles) versus the individuals' rights to continuity of name. Other rights that come into play, include the LGBTIQ+ rights and rights of women (a gender logic, Ilaria Pretelli SICL), and the rights linked to

the free market (economic logic), societal rights, and the right to self-determination and autonomy, such as the right to freely choose and change a name.

Johan Meeusen (University of Antwerp) considered the **specific approach** of the European Commission to matters of gender, drawing lessons from the Commission's Parenthood Proposal, Com(2022) 695. The lessons are that the Commission uses PIL to pursue its political ambition to advance non discrimination and LGBTIQ rights in particular; is on a mission to achieve status continuity; invests in legal certainty and predictability; approaches status continuity first and foremost from a fundamental rights perspective; acts within the limits of the Union's competence but tries to maximize its powers; ambitious with an eye for innovation…but within limits.

Anatol Dutta (Ludwig Maximilians University of Munich) explained the different waves of changes in gender legislation nationally. He indicated that private international law influences people's status differently depending on whether it considers sex registration and sex change as substantive or procedural. This would determine whether the lex fori or lax causae is used. Even when agreeing on a classification as substantive law, different legal systems use different connecting factors. Nationality is often used, but sometimes the individual is given a choice between the law of the habitual residence and nationality. Yet, public policy can still play a role (bringing back the ideas of human rights, discussed earlier).

All in all, it is becoming increasingly clear that the idea that private international law is a neutral and merely technical field of law is nothing more than a fiction. Besides the different right and approaches at play, as discussed above, feminist approaches (set out by Mirela Zupan, University of Osijek) also influence connecting factors and recognition rules.

The CJEU on Procedural Rules in Child Abduction Cases: private international law and children's rights law

Comment on CJEU case *Rzecznik Praw Dziecka e.a., C-638/22 PPU*, 16 February 2023)

Written by Tine Van Hof, post-doc researcher in Private International Law and Children's Rights Law at the University of Antwerp, previously published on EU live

The Court of Justice of the EU has been criticised after some previous cases concerning international child abduction such as *Povse* and *Aguirre Zarraga* for prioritising the effectiveness of the EU private international law framework (i.e. the Brussels IIa Regulation, since replaced by Brussels IIb, and the principle of mutual trust) and using the children's rights law framework (i.e. Article 24 of the EU Charter of Fundamental Rights and the principle of the child's best interests) in a functional manner (see e.g. Silvia Bartolini and Ruth Lamont). In *Rzecznik Praw Dziecka* the Court takes both frameworks into account but does not prioritise one or the other, since the frameworks concur.

Rzecznik Praw Dziecka e.a. concerns Article 388^1(1) of the Polish Code of Civil Procedure, which introduced the possibility for three public entities (Public Prosecutor General, Commissioner for Children's Rights and Ombudsman) to request the suspension of the enforcement of a final return decision in an international child abduction case. Such a request automatically results in the suspension of the enforcement of the return decision for at least two months. If the public entity concerned does not lodge an appeal on a point of law within those two months, the suspension ceases. Otherwise, the suspension is extended until the proceedings before the Supreme Court are concluded. The Court of Justice was asked to rule on the compatibility of this Article of the Polish CCP with Article 11(3) of the Brussels IIa Regulation and with Article 47 of the EU

Charter.

Private international law and children's rights law

As Advocate General Emilou emphasised in the Opinion on *Rzecznik Praw Dziecka*, (see also the comment by Weller) child abduction cases are very sensitive cases in which several interests are intertwined, but which should eventually revolve around the best interests of the child or children. In that regard, the Hague Child Abduction Convention, as complemented by Brussels IIa for intra-EU child abduction situations, sets up a system in which the prompt return of the child to the State of habitual residence is the principle. It is presumed that such a prompt return is in the children's best interests in general (*in abstracto*). This presumption can be rebutted if one of the Child Abduction Convention's exceptions applies. Next to these instruments, which form the private international law framework, the children's rights law framework also imposes certain requirements. In particular, Article 24(2) of the EU Charter, which is based on Article 3 of the UN Convention on the Rights of the Child, requires the child's best interests (*in abstracto* and *in concreto*) to be a primary consideration in all actions relating to children. The Court of Justice analyses Article 388^{1}(1) of the Polish CCP in light of both frameworks. The Court's attentiveness towards private international law and children's rights law is not new but should definitely be encouraged.

The private international law framework

The Court of Justice recalls that, for interpreting a provision of EU law, one should take into account that provision's terms, its context and the objectives pursued by the legislation of which it forms part. To decide on the compatibility of the Polish legislation with Article 11(3) Brussels IIa, the Court of Justice thus analyses the terms of this provision, its context (which was said to consist of the Child Abduction Convention) and the objectives of Brussels IIa in general. Based on this analysis, the Court of Justice concludes that the courts of Member States are obliged to decide on the child's return within a particularly short and strict timeframe (in principle, within six weeks of the date on which the matter was brought before it), using the most expeditious procedures provided for under national law and that the return of the child may only be refused in specific and exceptional cases (i.e. only when an exception provided for in the Child Abduction Convention applies).

The Court of Justice further clarifies that the requirement of speed in Article 11(3) of Brussels IIa does not only relate to the procedure for the issuing of a return order, but also to the enforcement of such an order. Otherwise, this provision would be deprived of its effectiveness.

In light of this analysis, the Court of Justice decides that Article 388^1(1) of the Polish CCP is not compatible with Article 11(3) Brussels IIa. First, the minimum suspension period of two months already exceeds the period within which a return decision must be adopted according to Article 11(3) Brussels IIa. Second, under Article 388^1(1) of the Polish CCP, the enforcement of a return order is suspended simply at the request of the authorities. These authorities are not required to give reasons for their request and the Court of Appeal is required to grant it without being able to exercise any judicial review. This is not compatible with the interpretation that Article 11(3) Brussels IIa should be given, namely that suspending the return of a child should only be possible in 'specific and exceptional cases'.

The children's rights law framework

After analysing the private international law framework, the Court of Justice addresses the children's rights law framework. It mentions that Brussels IIa, by aiming at the prompt adoption and enforcement of a return decision, ensures respect for the rights of the child as set out in the EU Charter. The Court of Justice refers in particular to Article 24, which includes the obligation to take into account, respectively, the child's best interests (para 2) and the need of the child to maintain personal relations and direct contact with both parents (para 3). To interpret these rights of the child enshrined in the EU Charter, the Court of Justice refers to the European Court of Human Rights, as required by Article 52(3) of the EU Charter. Particularly, the Court of Justice refers to *Ferrari v. Romania* (para 49), which reads as follows:

'In matters pertaining to the reunification of children with their parents, the adequacy of a measure is also to be judged by the swiftness of its implementation. Such cases require urgent handling, as the passage of time can have irremediable consequences for the relations between the children and the parent who does not live with them.'

Unfortunately, the Court of Justice does not explicitly draw a conclusion from its

analysis of the children's rights law framework. Nevertheless, it can be concluded that the Polish legislation is also incompatible with the requirements thereof. In particular, it is incompatible with both the collective and the individual interpretation of the child's best interests.

On a collective level, Article 388^1(1) of the Polish CCP is contrary to the children's best interests since it does not take into account that international child abduction cases require 'urgent handling, as the passage of time can have irremediable consequences for the relations between the children and the parent who does not live with them' (as has also been acknowledged by the ECtHR as being in the best interests of children that have been abducted in general).

On an individual level, it is possible that an enforcement of the return decision is contrary to the child's best interests and that a suspension thereof is desirable.

However, Article 388^1(1) of the Polish CPP is invaluable in that regard (see also Advocate General Emilou's Opinion on *Rzecznik Praw Dziecka*, points 77-92). First, the Article exceeds what would be necessary to protect a child's individual best interests. Indeed, under that Article, the authorities can request the suspension without any motivation and without any possibility for the courts to review whether the suspension would effectively be in the child's best interests. More still, the provision is unnecessary to protect a child's individual best interests. Indeed, a procedure already existed to suspend a return decision if the enforcement would be liable to cause harm to the child (Article 388 of the Polish CCP).

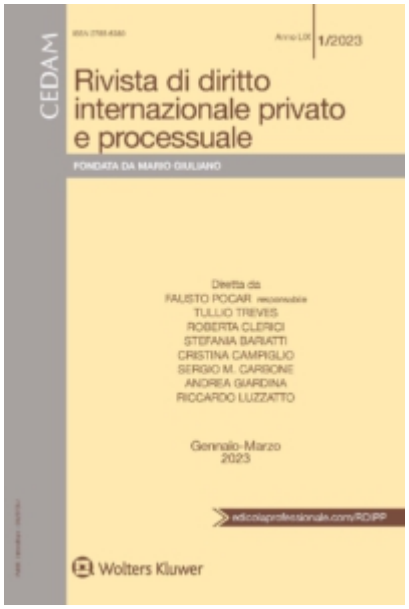
Conclusion

In this case, the private international law and the children's rights law framework concurred, and both preclude the procedural rule foreseen in Article 388^1(1) of the Polish CCP. The Court of Justice can thus not be criticised for prioritising the EU private international law framework in this case. Nevertheless, the Court of Justice could have been more explicit that the conclusion was reached not only based on the private international law framework but also on the children's rights law framework.

Finally, the Brussels IIb Regulation, which replaced Brussels IIa as from 1 August 2022, made some amendments that better embed and protect the child's best

interests. It provides *inter alia* that Member States should consider limiting the number of appeals against a return decision (Recital 42) and that a return decision 'may be declared provisionally enforceable, notwithstanding any appeal, where the return of the child before the decision on the appeal is required by the best interests of the child' (Article 27(6)). While the Polish provision was thus already incompatible with the old Regulation, it would certainly not be compatible with the new one. To prevent future infringements, legislative reform of the Polish CCP seems inevitable.

Rivista di diritto internazionale privato e processuale (RDIPP) No 1/2023: Abstracts



The first issue of 2023 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released. It features:

Francesco Salerno, (formerly) Professor at the University of Ferrara, **L'impatto della procedura di interpretazione pregiudiziale sul diritto internazionale privato nazionale** (**The Impact of the Preliminary Rulings of the Court of Justice on National Private International Law**; in Italian)

The European Court of Justice's uniform interpretation of private international law concerns mainly – albeit not only – the EU Regulations adopted pursuant to Article 81 TFEU: in the context of this activity, the Court also takes into account the distinctive features of EU Member States. The increasing number of autonomous notions developed by the Court greatly enhanced the consistency and the effectiveness of the European rules. Against this background, the Italian judicial authorities implemented such a case-law even when it ran counter well-established domestic legal principles. Moreover, the European institutions rarely questioned the case-law of the Court of Justice, but when they did so, they adopted new rules of private international law in order to "correct" a well-settled jurisprudential trend of the Court.

Cristina Campiglio, Professor at the University of Pavia, **La condizione femminile tra presente e futuro: prospettive internazionalprivatistiche** (**The Status of Women between Present and Future: Private International Law Perspectives**; in Italian)

One of the Goals of the U.N. 2030 Agenda for Sustainable Development is gender equality (Goal 5), which can also be achieved through the elimination of "all harmful practices, such as child, early and forced marriage" (Target No 3) and the protection of women reproductive rights (Target No 6). This article addresses these two issues in a conflict-of-laws perspective, identifying the legal mechanisms through which legal systems counter the phenomenon of early marriages celebrated abroad and tackle the latest challenges related to the so-called reproductive tourism. After analyzing the role played by public policy exceptions and by the principle of the best interest of the child, it summarizes the Court of Justice's case-law on the recognition of family situations across borders. In fact, the recognition of the possession of an EU status – meeting the social need to have a personal status which accompanies individuals anywhere within the EU area – is gaining ground. Such status is a personal identity merely functional to the exercise of EU citizens' freedom of movement (Article 3(2) TEU, Article 21 TFEU and Article 45 EU Charter of Fundamental Rights). The result is the possession, by EU citizens, of a split personal identity – one functional to circulation, while the other one to its full extent – whose compatibility with the EU Charter of Fundamental Rights principles and with the ECHR may be

called into question.

The following comment is also featured:

Marco Farina, Adjunct Professor at the University 'La Sapienza' in Rome, **I procedimenti per il riconoscimento e l'esecuzione delle decisioni straniere nella recente riforma del processo civile in Italia** (**Proceedings for the Recognition and Enforcement of Foreign Judgments in the Recent Italian Reform of Civil Procedure**; in Italian)

> In this article, the Author comments on the new Article 30-bis of Legislative Decree No 150/2011, introduced by Legislative Decree No 149/2022 reforming Italian civil procedure and aimed at regulating "proceedings for the recognition and enforcement of foreign judgments provided for by European Union law and international conventions". The Author analyses the new provision, focusing on the different procedural rules applicable, depending on the relevant EU Regulation or international convention concerned, to the proceedings that the EU Regulations listed in Article 30-bis of Legislative Decree No 150/2011 provide for obtaining the recognition and enforcement of the judgments rendered in a Member State other than the one in which they were rendered. In commenting on this new provision, the Author offers a reasoned overview of the problems generated by it with the relative possible solutions.

Finally, this issue features the following book review by *Francesca C. Villata*, Professor at the University of Milan: Pascal DE VAREILLES-SOMMIÈRES, Sarah LAVAL, ***Droit international privé***, Dalloz, Paris (11th ed., 2023) pp. XVI-1359.