Northern Cyprus and the Acquis Communautaire

The **Court of Appea**l (Civil Division) has referred an interesting reference for a preliminary ruling to the ECJ on the application of the Brussels I Regulation with regard to judgments relating to land in the Turkish Republic of Northern Cyprus (*Meletis Apostolides v David Charles Orams, Linda Elizabeth Orams*, C-420/07):

> *1. In this question,*
>
> *the term "the Government-controlled area" refers to the area of the Republic of Cyprus over which the Government of the Republic of Cyprus exercises effective control; and*
>
> *the term "the northern area" refers to the area of the Republic of Cyprus over which the Government of the Republic of Cyprus does not exercise effective control.*
>
> *Does the suspension of the application of the acquis communautaire in the northern area [by Article 1(1) of Protocol No 10 of the Act of Accession 2003 of Cyprus to the EU preclude a Member State Court from recognising and enforcing a judgment given by a Court of the Republic of Cyprus sitting in the Government-controlled area relating to land in the northern area, when such recognition and enforcement is sought under Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*[1] *("Regulation 44/2001"), which is part of the acquis communautaire'?*
>
> *Does Article 35(1) of Regulation 44/2001 entitle or bind a Member State court to refuse recognition and enforcement of a judgment given by the Courts of another Member State concerning land in an area of the latter Member State over which the Government of that Member State does not exercise effective control? In particular, does such a judgment conflict with Article 22 of Regulation 44/2001?*
>
> *3. Can a judgment of a Member State court, sitting in an area of that State over which the Government of that State does exercise effective control, in respect*

of land in that State in an area over which the Government of that State does not exercise effective control, be denied recognition or enforcement under Article 34(1) of Regulation 44/2001 on the grounds that as a practical matter the judgment cannot be enforced where the land is situated, although the judgment is enforceable in the Government-controlled area of the Member State?

4. Where –

a default judgment has been entered against a defendant;

the defendant then commenced proceedings in the Court of origin to challenge the default judgment; but

his application was unsuccessful following a full and fair hearing on the ground that he had failed to show any arguable defence (which is necessary under national law before such a judgment can be set aside),

can that defendant resist enforcement of the original default judgment or the judgment on the application to set aside under Article 34(2) of Regulation 44/2001, on the ground that he was not served with the document which instituted the proceedings in sufficient time and in such a way as to enable him to arrange for his defence prior to the entry of the original default judgment? Does it make a difference if the hearing entailed only consideration of the defendant's defence to the claim.

5. In applying the test in Article 34(2) of Regulation 44/2001 of whether the defendant was "served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence" what factors are relevant to the assessment? In particular:

Where service in fact brought the document to the attention of the defendant, is it relevant to consider the actions (or inactions) of the defendant or his lawyers after service took place?

What if any relevance would particular conduct of, or difficulties experienced by, the defendant or his lawyers have?

(c) Is it relevant that the defendant's lawyer could have entered an appearance

before judgment in default was entered?

The **background of the case** was as follows: Mr. Apostolides, a Greek Cypriot, owned land in an area which is now under the control of the Turkish Republic of Northern Cyprus, which is not recognised by any country save Turkey, but has nonetheless *de facto* control over the area. When in 1974 the Turkish army invaded the north of the island, Mr. Apostolides had to flee. In 2002, Mr. and Mrs. Orams (British citizens) purchased part of the land which had come into the ownership of Mr. Apostolides. In 2003, Mr. Apostolides was – due to the easing of travel restrictions – able to travel to the Turkish Republic of Northern Cyprus and saw the property. In 2004 he issued a writ naming Mr. and Mrs. Orams as defendants claiming to demolish the villa, the swimming pool and the fence they had built, to deliver Mr. Apostolides free occupation of the land and damages for trespass. Since the time limit for entering an appearance elapsed, a judgment in default of appearance was entered on 9 November 2004. Subsequently, a certificate was obtained in the form prescribed by Annex V to the Brussels I Regulation. Against the judgment of 9 November 2004, an application was issued on behalf of Mr. and Mrs. Orams that the judgment be set aside. This application to set aside the judgment, however, was dismissed by the District Court at Nicosia on the grounds that Mr. Apostolides had not lost his right to the land and that neither local custom nor the good faith of Mr. and Mrs. Orams constituted a defence.

On the application of Mr. Apostolides to the English High Court, the master ordered in October 2005 that those judgments should be registered in and declared enforceable by the High Court pursuant to the Brussels I Regulation. However, Mr. and Mrs. Orams appealed in order to set the aside the registration, *inter alia* on the ground that the Brussels I Regulation was not applicable to the area controlled by the Turkish Republic of Northern Cyprus due to Art. 1 of Protocol 10 to the Treaty of Accession of the Republic of Cyprus to the European Union.

This article reads as follows:

> *1. The application of the acquis shall be suspended in those areas of the Republic of Cyprus in which the government of the Republic of Cyprus does not exercise effective control. […]*

Jack J (Queen´s Bench Division) allowed the appeal on 6 September 2006 by holding *inter alia*

> *that the effect of the Protocol [10 of the Treaty of Accession of the Republic of Cyprus] is that the acquis, and therefore Regulation No 44/2001, are of no effect in relation to matters which relate to the area controlled by the TRNC [i.e. the Turkish Republic of Northern Cyprus], and that this prevents Mr Apostolides relying on it to seek to enforce the judgments which he has obtained. (para. 30)*

Subsequently, Mr. Apostolides lodged an appeal against the judgment of the Queen's Bench Division at the Court of Appeal. The Court of Appeal decided to refer the above cited questions to the ECJ for a preliminary ruling according to Art. 234 EC-Treaty.

The outcome of the case is both of general significance since it concerns the ambit of the application of the acquis communautaire and of particular relevance for comparable cases since – depending on the Court's ruling – it may have consequences for other Greek Cypriots who have lost their property in Northern Cyprus.

The decision of the Queen's Bench Division of 6 September 2006 can be accessed via Westlaw, [2006] EWHC 2226 (QB).

Flying to California to Bypass the French Ban on Surrogacy – Update

A few weeks ago, I wrote a post on the story of a French couple who bypassed the French ban on surrogacy by resorting to a Californian surrogate mother. When the couple came back to France, French prosecutors took all available legal steps to deny them recognition of their parental status in France.

I am grateful to Kees Saarloos for forwarding me the judgment of the Paris court of appeal which ruled on the conflict issue on October 25, 2007. The judgment, however, is quite disappointing. It seems that French prosecutors were unable to analyze properly the conflict issues and thus to present a robust argumentation against the recognition of the parental status acquired in the U.S. This enabled the French court to reach a decision without truly addressing the issues. The judgment identified a few of them, but then stressed that they were not put forward by the plaintiff (i.e. the prosecutors), and that it did not need address them.

The judgment is more useful for the background it gives on what happened in California. The California Supreme Court had conferred the parental status to the French couple before the actual birth of the children, and ordered both the hospital in San Diego and the Californian Department of Public Health to mention the couple as the only parents on the hospital registry and the birth certificate. The couple could thus have sought recognition of a variety of foreign public acts. One was the Californian judgment, another was the birth certificate.

In a nutshell, the actual decision of the court can be summarized as follows:

> *As the plaintiffs have not challenged the recognition of either of these acts in France, their challenge of the transcription of the parental status on the French registries is inadmissible. The foreign acts govern.*
>
> *The plaintiffs did not challenge the accuracy of the content of the transcription, but only the transcription itself. The issue of whether the couple was actually the parents of the children was therefore not before the court.*
>
> *Finally, and in any case, failure to provide the couple with a parental status would result in the children having no parents legally speaking, which would not comport with the superior interest of the children.*

One issue which is addressed (very) implicitly by the court is whether the dispute ought to have been decided by application of a law or of a decision. In other words, the court could have ruled that the issue at stake was one of choice of law. It would have then applied its choice of law rule in order to determine the law governing parenthood. Indeed, this was argued by the defendants. Instead, the court finds that the issue is one of recognition. The foreign acts govern, because

they were recognised. Arguably, this could have been different if the accuracy of the content of the transcription had been challenged, and this is maybe what the court rules implicitly by noting that there was no such challenge.

Finally, the central issues of whether the foreign acts were contrary to French public policy and whether there had been a *fraude à la loi* are not addressed (on these ground for denial of recognition, see my previous post).

UPDATE: The French text of the decision can be found here (thanks to Esurnir). Various comments of the decision can be found on French blogs (see here and here) Finally, a personal reaction of the father of the children can be found here (in French). The couple has also created its own website.

Flying to California to Bypass the French Ban on Surrogacy

You are a French couple and you cannot have a baby? One option is to fly to San Diego and to find a surrogate mother. Now, you should really want it, because 1) California is almost on the other side of the world, 2) it can get pretty warm out there, especially when half of the state is burning and 3) French authorities will give you a really hard time when you will come back.

The French press reports this week-end on how French authorities have been doing everything they could to prevent a French couple who resorted to a Californian surrogate mother from gaining recognition in France of their parental status. The Paris Court of appeal has just ruled in their favour, but I could not see the decision. The article of *Liberation* can be found here (in French).

Californian dream

Meet Dominique and Sylvie. In 1998, they learned that they could not have a baby, as Sylvie discovered she had no uterus. They did not want to adopt, but knew that surrogacy was legal in California (*Liberation* reports that they

understood that it was even viewed with favor). They flew there, found a francophile surrogate mother, Mary. Eventually, two girls were born on October 25, 2000. Dominique and Sylvie say that their experience was great. Californian authorities delivered a birth certificate providing that they were the parents. Time to go back home.

Problems began on American soil. Dominique and Sylvie sought to establish a French passport for the children. At the French consulate, they were told that it would not be easy. Several comparable requests were on hold. A French officer told them off the record that the best was probably to get a U.S. passport. They got one easily, and "with big smiles" (i.e. the Americans were happy to deliver the passport).

Welcome back

But that was only the beginning. French consular authorities had liaised with French prosecutors. Upon arrival in France, the couple was investigated by the French police, who searched their home, their offices, even her doctor's office. In 2001, they were charged with a variety of French criminal offences, including attempt to fraud civil registries (because they wanted to have the children registered in France as theirs, i.e. have the American birth certificate recognized in France) and facilitating the dealing of children between a parent willing to adopt and a parent willing to abandon his/her child. In 2004, a French investigating judge dismissed the charges on the ground that French criminal law did not apply to acts which took place abroad, in a jurisdiction where they were legal.

In the meantime, prosecutors had also initiated civil proceedings. The point was to set aside the transcription on the French registries of the parental relationship, and get a judicial declaration that Dominique and Sylvie were not the parents of the children. The Paris court of appeal has just dismissed the proceedings a few days ago. Although I could not read the decision, I understand that it rules that the children should be considered for all purposes as the daughters of the couple.

Recognition of foreign birth certificates

From the perspective of the conflict of laws, the case raises the very interesting issue of the recognition of foreign birth certificates. These are typically not judicial decisions, and I guess that Californian ones are not either.

The issue is therefore whether to apply the law of foreign judgments to them, or at least similar rules. Under French law, the answer is clearly that you should apply similar rules. However, there are very few precedents, and French writers do not agree on the requirements that foreign public acts ought to meet to be recognized in France. Yet, most of them would agree on the three following propositions:

1) the foreign public act may not be reviewed on the merits,

2) however, it should not be contrary to public policy (i.e. its solution should not be shocking from a French perspective),

3) there should be no *fraude à la loi* (i.e. it should not have been obtained for the sole purpose of avoiding the application of French law).

In the present case, two arguments could be made against the recognition of the Californian certificate. First, even though the certificate was not to be reviewed on the merits, it could have been argued that it was contrary to French public policy. The issue here was how badly surrogacy is perceived in France. Is it only a remarkable foreign practice, or is it a practice which is repugnant to the French society? The story of Dominique and Sylvie made the front page of *Liberation*, with the following headline: *Ca vient* ("It is coming"). The French law prohibiting surrogacy dates back to 1994, but is meant to be revised in 2009, and it is *Liberation*'s hope that the ban will end then (See the editorial here). It may be, then, that the French society has reached the point where, although it is not a legal practice yet, it is not anymore contrary to French public policy.

However, the second argument which could be made was much stronger. It seems that the French couple had indeed flown to San Diego for the sole purpose of avoiding the French ban. The practice remains illegal in France. Going abroad for no other reason than obtaining the application of another law is a *fraude à la loi*. It will be interesting to see how the court responded to that argument, if the argument was put forward at all.

Swedish Supreme Court on Legal Basis for Jurisdiction

The Swedish Supreme Court (Högsta Domstolen) recently rendered a decision on the legal basis for its international adjudicatory authority in civil matters when the Council Regulation no 44/2001 of 22 December 2000 (hereinafter "the Brussels I Regulation") is inapplicable. The decision rendered 15 June 2007 with case no. Ö 494-06 can be retrieved here.

Parties, facts, contentions before the court

The plaintiff, BIG, a company domiciled in Sweden, served the defendant, Isle of Man Assurance Limited (IOMA), an insurance company domiciled in Isle of Man, with a subpoena in a Swedish court, asking that court to force IOMA to pay BIG 48 million Swedish Kroner on the basis of BIG having acquired the rights and obligations of the original policyholders´ insurance agreement with IOMA entered into in November 1991. The background for that agreement was allegedly that BIG in 1991-92 had offered goods to customers while issuing certificates promising to repay customers the sum of the purchase price 10 years after purchase. BIG contended IOMA in accordance with an insurance agreement had promised to recompense BIG for the sum equivalent to that of the sum claimed in accordance with the said certificates. The judgment of the First Instance was appealed to the Swedish Court of Second Instance (Hovrätten för Övre Norrland) whose judgment was appealed to the Swedish Supreme Court.

Ratio decidendi of the Swedish Supreme Court

First, the Swedish Supreme Court questioned whether there was legal basis for attributing adjudicatory authority to Swedish courts.

Second, the Swedish Supreme Court stated that Swedish law did not have any general rules for determining Swedish adjudicatory authority in international civil and commercial disputes, which, by contrast exist in the Brussels I Regulation and the Lugano Convention. The former is, within its scope of application, directly applicable in Sweden and is applicable in disputes involving parties domiciled in the EU, whereas the latter is adopted and implemented by incorporation as law in Sweden and is applicable in international civil and commercial matters between

persons domiciled within EFTA-States, and between persons domiciled in an EFTA-State and an EU-State.

Third, the Swedish Supreme Court asserted that in accordance with the Brussels I Regulation and the Lugano Convention, when the defendant is domiciled in a Member State or Contracting State, the plaintiff may, in accordance with the main rule of jurisdiction in Article 2, sue the defendant at the place of the defendant's domicile. By contrast, if the defendant is not domiciled in a Member State or Contracting State, the international adjudicatory authority is as a main rule to be determined by national law, including also disputes relating to insurance. Since the defendant, IOMA, was domiciled in Isle of Man where IOMA pursued its business activities, and Isle of Man neither is a Member of the EU nor is a contracting State to the Lugano Convention, it follows that the question of international adjudicatory of Swedish courts must be determined by national Swedish rules.

Fourth, the Swedish Supreme Court stated there did not exist any particular rules in Swedish national law determining international adjudicatory authority of Swedish courts. Under such circumstances, the Court reasoned, this question is to begin with determined by analogical application of the forum-rules in Chapter 10 of "Rättegångsbalken", which in this case did not support the attribution of adjudicatory authority to Swedish courts.

Fifth, BIG contended that Swedish courts were competent to adjudicate, insisting, first, that the insurer, in accordance with Brussels I Regulation (and the relevant provisions in the Lugano Convention) may be sued not only in the courts of the State where the insurer is domiciled (Article 9.1.a), but also, in case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled (Article 9.1.b), and, second, that the insurer, in accordance with Brussels I Regulation Article 10 (and the relevant provisions in the Lugano Convention) may be sued in the courts for the place where the harmful event occurred. Further, BIG contended – with reference to the Swedish Supreme Court decision in NJA 1994 p. 81, where the Court had stated that "the Lugano Convention must be seen as expressing international accepted principles on conflicts of competence between courts of different States" – that the rules of the Brussels I Regulation and the Lugano Convention should be applicable in order to attribute adjudicatory authority to Swedish courts regardless of the said regulations not being directly applicable. In answering those contentions, the

Swedish Supreme Court pointed out, first, that the Court had stated that cited phrase in a dispute between two Swedes in relation to a better right to foreign patent claims, and, second, that the cited phrase was occasioned by the circumstance that the Lugano Convention on exclusive jurisdiction in proceedings concerned with certain patent claims did not give better rights for the seeking of a patent invention, and by consequence was not an argument for the lack of Swedish adjudicatory authority. Further, the Swedish Supreme Court pointed out that the reasoning in NJA 1994 p. 81 – that Swedish courts in that case had adjudicatory authority in accordance with the main principle that defendants shall be sued in the courts of the State where they are domiciled – was not to be conceived as an expression of a general principle so that the rules of the Brussels I Regulation (and the Lugano Convention) were applicable by analogy in cases where the question of adjudicatory authority is to be determined in accordance with national law. Furthermore, in support of such lack of a general principle, the Swedish Supreme Court referred to NJA 2001 p. 800.

Sixth, having concluded that the Brussels I Regulation and the Lugano Convention neither were expressions of general principles, nor were applicable by analogy, the Swedish Supreme Court emphasized that those regulations nevertheless could serve as an important basis for the assessment of whether there should be sufficient ground to attribute adjudicatory authority to Swedish courts even in situations when these regulations were not directly applicable.

Seventh, in recognizing that the Brussels I Regulation and the Lugano Convention expressly are based on the main principle that defendants shall be sued in the courts of the State where they are domiciled, the Swedish Supreme Court stated that one consequence thereof is that exceptions to the main rule are to be interpreted restrictively, also including the rules of jurisdiction in matters of insurance. Further, the Court stated that if the Brussels I Regulation and the Lugano Convention were to serve as legal basis for adjudicatory authority in accordance with Swedish law, it had to be required that adjudicatory authority could have been attributed to Swedish courts if the Brussels I Regulation and the Lugano Convention were applicable.

Eighth, responding to BIG´s contention that Article 10 of the Brussels I Regulation attributed adjudicatory authority to Swedish courts, the Swedish Supreme Court stated, first, that liability insurance is in general considered as an insurance covering responsibility of damage in relation to a third party, and,

second, that the insurance at hand in this case could not be qualified to count as liability insurance. Consequently, the Court reasoned, the Brussels I Regulation Article 10 is inapplicable and could therefore not serve as legal basis for attributing adjudicatory authority to Swedish courts.

Ninth, responding to BIG´s contention that Article 9.1.b of the Brussels I Regulation attributed adjudicatory authority to Swedish courts, the Swedish Supreme Court stated, first, that Article 9.1.b presupposes either the policyholder, the insured or a beneficiary to serve the defendant with a subpoena and start court proceedings, which was not the circumstances of the case since the insurance agreement was not entered into between the plaintiff, BIG, and the defendant, IOMA, but was rather an insurance agreement where BIG had acquired the rights and obligations of the original policyholders. Therefore, the Swedish Supreme Court doubted that BIG could be qualified to count as "insurer" within the meaning of Article 9.1.b of the Brussels I Regulation. Having regard to the purpose of that Article, which is to protect the weaker party to the agreement (referring to point 13 of the Preamble of the Brussels I Regulation), its primary purpose is usual standard types of insurance agreements, which in the case at hand deviated there from. Against this background, the Swedish Supreme Court concluded that the Brussels I Regulation Article 9.1.b would not be a strong argument for attributing adjudicatory authority to Swedish courts (referring in parenthesis to the European Court of Justice, Judgment of 13 July 2000, Group Josi Reinsurance Company vs Universal Insurance Company).

Tenth, the Swedish Supreme Court went on to comment, that in determining how and to what extent the Brussels I Regulation and the Lugano Convention should and could be legal basis for attributing adjudicatory authority to Swedish courts in accordance with Swedish national law, the Court stated that both regulations also contain rules on recognition and enforcement of judgements, and that the rules on jurisdiction had been formed in relation to the obligations following from the rules on recognition and enforcement of judgements (and with a view to a common legal market), which especially was the case with insurance disputes.

Eleventh, having regard to the foregoing considerations, the Swedish Supreme Court concluded that without legal support in Swedish law in general, it was out of the question to attribute adjudicatory authority to Swedish courts in insurance disputes as the Brussels I Regulation, independent of the object of the insurance agreement, who the policyholder or insured is, or where the insurer is domiciled

or has his place of business. Such special circumstances, which could occasion the attribution of adjudicatory authority to Swedish courts in the present case had not been presented to the Court. Hence, the Swedish Supreme Court concluded that Swedish courts lacked adjudicatory authority.

Rome II and Small Claims Regulations published in the Official Journal

The Rome II Regulation (see the dedicated section of our site) and the Regulation establishing a European Small Claims Procedure have been published in the Official Journal of the European Union n. L 199 of 31 July 2007. The official references are the following:

Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ n. L 199, p. 40 ff.): pursuant to its Articles 31 and 32, the Rome II Regulation will apply from 11 January 2009, to events giving rise to damage occurred after its entry into force (the twentieth day following its publication in the O.J., according to the general rules on the application in time of EC legislation).

Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ n. L 199, p. 1 ff.). The text of the Regulation is accompanied by four annexes, containing the standard forms to be used by the parties and the court in the procedure, as follows:

- Annex I: Form A – Claim form, to be filled in by the claimant (see Art. 4(1) of the Reg.)
- Annex II: Form B – Request by the Court or Tribunal to complete and/or rectify the claim form (see Art. 4(4) of the Reg.);

- Annex III: Form C – Answer form, containing information and guidelines for the defendant (see Art. 5(2) and (3) of the Reg.);
- Annex IV: Form D – Certificate concerning a judgment in the European Small Claims Procedure (to be filled by the Court/Tribunal: see Art. 20(2) of the Reg.).

According to its Art. 29, the ESCP Regulation will enter into force today (1 August 2007, the day following its publication in the O.J.), and will apply from 1 January 2009.

European Parliament Votes for Common Rules on Succession and Wills

On 16th November, MEPs voted overwhelmingly (**450 to 51**) in favour of a report by Mr Gargani of the Committee on Legal Affairs, asking the European Commission to draw up a

> *Community legal instrument relating to private international law on successions and wills, as already called for in the 1998 Vienna action plan, the programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters, adopted by the Council and Commission in 2000, the Hague Programme of 4 November 2004 for strengthening freedom, security and justice in the European Union, and the Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union (p.3-4).*

The Report calls on the Commission to submit a legislative proposal to Parliament under Articles 65(b) and 67(5), second indent, of the EC Treaty during 2007, and to launch a call for proposals for an information campaign regarding cross-border wills and succession matters, targeted at legal practitioners in the field. The

current problems in transnational testaments are described by the Rapporteur with an example:

> *Let us consider the hypothetical case of a German citizen who, on retirement, moves from Germany to the south of Spain (where he spends the last decade of his life) and dies there, leaving two sons residing in Germany and an estate comprising property in Germany. In a case of this kind, if the jurisdiction were determined solely on the basis of the deceased person's habitual place of residence at the time of death, the heirs – supposing they were in dispute over the will – would be obliged to bring the proceedings in question before the Spanish courts.*

The rules proposed in the Report are fairly wide-ranging; in terms of scope, "the legislative act to be adopted should aim to regulate succession exhaustively in private international law and at the same time: harmonise the rules concerning jurisdiction, the applicable law (the 'conflict rules') and the recognition and enforcement of judgments and public instruments issued abroad, except for the material substantive law and procedural law of the Member States (*p.5*). The proposed rule for determining a court's *jurisdiction* is the:

> ***habitual place of residence of the deceased at the time of his death*** *as the criterion for establishing both principal jurisdiction and the connecting factor.*

The Report also suggests that the parties be allowed to choose their court (in accordance with Articles 23-24 Brussels I Regulation), and that the testator be able to choose which law should govern the succession, the law of the country of which he is a national or the law of the country of his habitual residence at the time the choice is made; this choice should be indicated in a statement taking the form of a testamentary clause.

The default choice of law rule proposed is that of **the law of the country which was the habitual residence of the deceased at the time of his death**; this would ensure, the Rapporteur argues, that the court with jurisdiction and the applicable law would coincide, which would help to ensure that any disputes concerning the succession were rapidly and effectively resolved. The Rapporteur does, however, admit a problem with reconciling any kind of succession law with

the *lex loci rei sitae*: the law of the place where the property is situated, which generally governs the question of *transfer of title*. The Rapporteur simply recommends that those laws should be "coordinated." The suggested method is to ensure that:

> *the instrument to be adopted should make it clear that, for the purpose of acquiring and enjoying inherited property situated in a State other than that whose law applies to the succession, it is necessary to follow the rules of the law of the place where the property is situated only if that law requires further formalities or actions in addition to those required by the law applying to the succession.*

Amongst all this, the EP stress that:

> *if European citizens could have access to a standardised document which had binding force in all the Member States and identified the law applicable to the succession, the property concerned and the heirs and executors, those heirs and executors could exercise their rights in all Member States even more simply, safely and effectively.*

The EP therefore strongly recommend a "European Certificate of Inheritance", which should be issued by a public authority. The Report concludes by stating that,

> *This is obviously a complex and many-sided issue.*

That, at least, is apparent. The full Report by the Committee on Legal Affairs is available here. Also see the discussion in the 37th report of the UK government Committee on European Scrutiny. Does the Rapporteur's Report pick the right conflict of laws rules, and were the MEPs right to vote so strongly in favour of the Report? Comments welcome.

German Article on the Principle of Mutual Recognition

A very interesting article on the principle of mutual recognition by *Heinz-Peter Mansel* (Cologne) has been published in the latest volume of the German legal journal Rabels Zeitschrift (70 RabelsZ (2006), 651 et seq.): "Mutual Recognition as Basic Principle of the European Area of Justice" ("Anerkennung als Grundprinzip des Europäischen Rechtsraums").

Mansel gives first a short review on the European area of freedom, security and justice before differentiating the two forms of recognition as understood by the European Commission: The (procedural) recognition of judgments and the "recognition" of legal statuses and documents by means of choice of law rules. Subsequently he gives a definition of and an overview on the principle of mutual recogntion as well as its effects and its (possible) scope of application. Further, he attends to the developments in European primary legislation and in particular to the ECJ´s decisions in "Avello" and "Niebüll" (see concerning this case also our older posts which you can find here) and asks whether the findings of the ECJ concerning names might be applied also with regard to other questions relating to the personal status. This is followed by an analysis of possible developments at the level of European secondary legislation de lege ferenda. He concludes – inter alia – that the principle of mutual recognition could only be realised to a certain extent. He argues in particular that it could only complement, but not substitute the communitarisation of choice of law rules. He regards the proposal for a regulation introducing a "European certificate of inheritance" as a successful model for a possible rule on recognition de lege ferenda since it combines the communitarisation of choice of law rules with rules on recognition as well as uniform law.