Update: Repository HCCH 2019 Judgments Convention

HCCH 2019 Judgments Convention Repository

In preparation of the Conference on the HCCH 2019 Judgments Convention on 9/10 June 2023, taking place on campus of the University of Bonn, Germany, we are offering here a Repository of contributions to the HCCH 2019 Judgments Convention. Please email us if you miss something in it, we will update immediately…

Update of 28 September 2022: New entries are printed bold.

Please also check the "official" Bibliography of the HCCH for the instrument.

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III. Recordings of Events Related to the HCCH 2019 Judgments Convention

ASADIP; HCCH	“Conferencia Internacional: Convención HCCH 2019 sobre Reconocimiento y Ejecución de Sentencias Extranjeras”, 3 December 2020 (full recording available here and here)
ASIL	“The Promise and Prospects of the 2019 Hague Convention”, 25-26 June 2020 (full recording available here and here)
Department of Justice Hong Kong; HCCH	“Inaugural Global Conference – 2019 HCCH Judgments Convention: Global Enforcement of Civil and Commercial Judgments”, 9 September 2019 (recording available here)
HCCH	“HCCH a|Bridged: Innovation in Transnational Litigation – Edition 2021: Enabling Party Autonomy with the HCCH 2005 Choice of Court Convention”, 1 December 2021 (full recording available here)
HCCH	“22nd Diplomatic Session of the HCCH: The Adoption of the 2019 Judgments Convention”, 2 July 2020 (short documentary video available here)

JPRI; HCCH; UNIDROIT; UNCITRAL	"2020 Judicial Policy Research Institute International Conference – International Commercial Litigation: Recent Developments and Future Challenges, Session 3: Recognition and Enforcement of Foreign Judgments", 12 November 2020 (recording available here)
UIHJ; HCCH	"3rd training webinar on the Hague Conventions on service of documents (1965) and recognition and enforcement of judgements (2019)", 15/18 March 2021 (full recording available here in French and here in English)
University of Bonn; HCCH	"Pre-Conference Video Roundtable on the HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil and Commercial Matters between the EU and Third Countries", 29 October 2020 (full recording available here)
Lex & Forum Journal; Sakkoula Publications SA	« The Hague Conference on Private International Law and the European Union – Latest developments », 3 December 2021 (full recording available here)

Second Issue of Journal of Private International Law for 2022

The second issue of *Journal of Private International Law* for 2022 was released today. It features the following interesting articles:

T Kruger *et. al.,* Current-day international child abduction: does Brussels IIb live up to the challenges?

Regulation 2019/1111 tries to tackle the new challenges arising from societal changes and legal developments in international child abduction. The result is a sophisticated set of rules centred on the child and aimed at enhancing their protection. The Regulation provides for the hearing of the child and for speedy and efficient proceedings. In it the EU acknowledges its role in the protection of human and children's rights and sets goals towards de-escalating family conflicts. The new EU child abduction regime is at the same time more flexible than its predecessor allowing consideration of the circumstances characterising each single case in the different stages of the child abduction procedure

O Vanin, Assisted suicide from the standpoint of EU private international law

The article discusses the conflict-of-laws issues raised by such compensatory claims as may be brought against health professionals and medical facilities involved in end-of-life procedures. The issues are addressed from the standpoint of EU private international law. The paper highlights the lack of international legal instruments on assisted-suicide procedures. It is argued that the European Convention on Human Rights requires that States provide a clear legal framework concerning those procedures. The author contends that the said obligation has an impact on the interpretation of the relevant conflict-of-laws provisions of the EU.

S Avraham-Giller, The court's discretionary power to enforce valid jurisdiction clauses: time for a change?

The paper challenges the well-rooted principle in the Anglo-American legal tradition that courts have discretion whether they should enforce a valid jurisdiction clause. The paper highlights the ambiguity and uncertainty that accompany this discretionary power, which raises a serious analytical problem. The paper then analyses two factors that shaped this discretionary power – jurisdictional theories and the general principle of party autonomy in contracts. Based on the analysis, the paper argues that the time has come to end the courts' discretionary power with respect to the limited context of the enforcement of valid jurisdiction clauses. The proposal relies on a number of foundations: contractual considerations that relate to autonomy and efficiency; jurisdictional and procedural considerations, including the consent of a party to the jurisdiction of the court by general appearance; the increasing power of parties to re-order

procedure; the more appropriate expression of the forum's public interests and institutional considerations through overriding mandatory provisions; and finally the legal position regarding arbitration agreements and the willingness of a common law legal system such as the United Kingdom to accede to the Hague Convention on Choice of Court Agreements.

TT Nguyen, Transnational corporations and environmental pollution in Vietnam – realising the potential of private international law in environmental protection

Many transnational corporations have been operating in Vietnam, contributing to economic and social development in this country. However, these actors have caused a number of high-profile environmental incidents in Vietnam through the activities of their local subsidiaries, injuring the local community and destroying the natural ecosystem. This paper discloses the causes of corporate environmental irresponsibility in Vietnam. Additionally, this paper argues that Vietnam's private international law fails to combat pollution in this country. To promote environmental sustainability, Vietnam should improve ex-ante regulations to prevent and tackle ecological degradation effectively. Additionally, this paper suggests that Vietnam should remedy its national private international law rules to facilitate transnational liability litigation as an ex-post measure to address the harmful conducts against the natural ecosystem of international business.

D Levina, Jurisdiction at the place of performance of a contract revisited: a case for the theory of characteristic performance in EU civil procedure

The article revisits jurisdiction in the courts for the place of performance of a contract under Article 7(1) of the Brussels Ia Regulation. It proposes a new framework for understanding jurisdiction in contractual matters by offering a comparative and historical analysis of both the place of performance as a ground for jurisdiction and its conceptual counterpart, the place of performance as a connecting factor in conflict of laws. The analysis reveals that jurisdiction in the courts for the place of performance is largely a repetition of the same problematic patterns previously associated with the place of performance as a connecting factor. The article asserts that the persisting problems with Article 7(1) of the

Brussels Ia Regulation are due to the inadequacy of the place of performance as a ground for jurisdiction and advocates for the transition to the theory of characteristic performance in EU civil procedure.

T Bachmeier and M Freytag, Discretional elements in the Brussels Ia Regulation
Following continental European traditions, the Brussels Ia Regulation forms a rigid regime of mandatory heads of jurisdiction, generally not providing jurisdictional discretion. Nonetheless, to some limited extent, the Brussels regime includes discretional elements, in particular when it comes to lis pendens (see Articles 30, 33 and 34 of Brussels Ia). Reconsidering the strong scepticism towards forum non conveniens stipulated by the CJEU in its Owusu case, the fundamental question arises whether a substantial form of discretion concerning jurisdictional competence might be (in)compatible with the core principles of the Brussels regime.

P Mostowik and E Figura-Góralczyk, *Ordre public* and non-enforcement of judgments in intra-EU civil matters: remarks on some recent Polish-German cases
The article discusses the enforcement of foreign judgments within the European Union and the public policy (ordre public) exception. It is mainly focused on some recent judgments of Polish and German courts. On 22nd December 2016 and 23rd of March 2021 rulings in cases of infringement of personality rights were issued by the Court of Appeal in Cracow (ordering an apology and correction). The enforcement of the former ruling was dismissed by the German Supreme Court (Bundesgerichtshof, BGH) (IX ZB 10/18) on 19th July 2018. The non-enforcement was justified by invoking German ordre public and "freedom of opinion" as a constitutional right stipulated in Article 5 of the German Constitution (Grundgesetz). A reference to the CJEU ruling of 17 June 2021 is also presented.

After presenting the issue of ordre public in the context of enforcement of foreign judgments within the EU, the authors evaluate as questionable the argumentation of the BGH in its 2018 judgment. The Polish ruling ordering the defendant to correct and apologise for the false statement was included by the BGH in the category of "opinion" (Meinung) protected by the German Constitution. Enforcement of the judgment of the Polish court in Germany was held to be contrary to this German constitutional right and the enforceability of the Polish judgment was denied as being manifestly contrary to German public policy.

The authors support the functioning of the ordre public clause in intra-EU

relations. It is justified inter alia by the large differences in EU legal systems and future possible changes. However, the common standards of the ECHR should be particularly taken into consideration when applying the public policy clause, because they co-shape the EU legal systems.

Conference Report from Luxemburg: On the Brussels Ibis Reform

On 9 September 2022, the Max Planck Institute for Procedural Law Luxembourg hosted a conference on the Brussels Ibis Reform, in collaboration with the KU Leuven and the EAPIL.

The Brussels Ibis Regulation is certainly the fundamental reference-instrument of cross-border judicial cooperation in civil matters within the European Union. Since its establishment in 1968, it has been constantly evolving. At present, the European Commission is required to present a report on the application of the Regulation and to propose improvements. Against this background, a Working Group was set up within the network of the European Association of Private International Law (EAPIL) to draft a position paper. The group is led by Burkhard Hess (MPI Luxembourg) and Geert van Calster (KU Leuven). Members of the working group answered a questionnaire, reporting the application and possible shortcomings of the Brussels Ibis Regulation in their respective jurisdictions.

The topics of the conference were based on the 19 reports that were received from 16 working group members and 3 observers. Additional experts presented topics ranging from insolvency proceedings to third state relationships. The aim of the conference is to prepare a position paper. The paper will be presented to the European Commission to advise it on the evaluation process. EAPIL Members are invited to join the Members Consultative Committee (MCC) of the EAPIL

Working Group on reforming Brussels Ibis.

After welcome notes by Burkhard Hess (MPI Luxembourg), Andreas Stein (Head of Unit, DG JUST – A1 "Civil Justice", European Commission European Commission, connected via Video from outside), Gilles Cuniberti (University of Luxemburg/EAPIL) and Geert van Calster (KU Leuven), the first panel, chaired by Marie-Élodie Ancel, Paris, focused on the role and scope of the Brussels Ibis Regulation in European Procedural Law. Dário Moura Vicente, Lisbon, highlighted the Regulation's indispensable function as a "backbone" of European civil procedural law, reaching far beyond civil and commercial matters into e.g. family law, in order to increase consistency. Room for improvement in this respect was identified, inter alia, for the definition of the substantive scope, in particular in relation to arbitration, the subjective or personal scope, in particular in relation to third state domiciled defendants, and for coordinating the relationships with other instruments such as the GDPR. Following up on the latter aspect, Björn Laukemann, Tübingen, analysed the delineation of the Regulation and the European Insolvency Regulation with a view to annex actions and preventive restructuring proceedings. No imminent need for textual reform was seen for the former, whereas for the latter suggestions for amendments of the Recitals were submitted. Vesna Lazic, Utrecht/The Hague, discussed the controversial judgment of the ECJ in London Steamship that certainly put again on the table the question whether the arbitration exception of the Regulation should be drafted more precisely. Whereas some argued that the large differences in the arbitration laws of the Member States would not allow any unifying approach based on notions of mutual trust, others held that there was some sense in the ECJ's attempt not to get blocked the Spanish judgments in the UK via arbitration. As to the suggestion of a full-fledged European Arbitration Regulation, one reaction was that this might result in unintended consequences, namely exclusive external competence by the EU on arbitration. Further, the question came up whether in light of the ECJ's judgment in London Steamship its earlier decision in Liberato should be rectified in the reform. In Liberato, the ECJ held that a violation of the lis pendens rules of the Regulation does not amount to a ground for refusal of recognition whereas in London Steamship the Court held that the lis pendens rules formed part of the fundamental principles of the Regulation to be respected under all circumstances. Speaking of lis pendens, another question in the discussion was whether a backbone instrument like the Brussels Ibis Regulation would or should allow *de lege lata* transferring certain

core elements, such as the rules on lis pendens, to other instruments without any rules on lis pendens, such as the European Insolvency Regulation. The ECJ in Alpine Bau GmbH had rejected the application of Article 29 Brussels Ibis Regulation by way of analogy, as it considered the EIR as a special and distinct instrument of its own kind, so the question was whether analogies from the "backbone" should be encouraged expressly where appropriate in the concrete constellation.

The second panel, chaired by Burkhard Hess, dealt with collective redress. François Mailhé, Picardy, Stefaan Voet, Leuven, and Camelia Toader, Bucharest, discussed intensely the cross-border implications of the new Representative Actions Directive, in particular the potential need for specific heads of jurisdiction, as the Directive was described as subtly seeking to encourage pan-European actions but at the same time leaves a number of options to the Member States. Obviously, this means that provision and allocation of – ideally one-stop – jurisdiction would be of the essence, e.g. by extending the forum connexitatis of Article 8 (1) Brussels Ibis Regulation to connected claimants, possibly even for third state domiciled claimants. However, concerns were formulated that the Brussels Ibis Regulation should not be "politicized" (too strongly). In addition, the importance of other aspects were highlighted such as coordinating and consolidating proceedings, the delineation of settlements and court judgments in respect to court-approved settlements (probably to be characterised as judgments) and the essential role of funding. The overall tendency in the room seemed to be that one should be rather careful with (at least large-scale) legislative interventions at this stage.

The third panel, chaired by Thalia Kruger, Antwerp, focused on third state relations. Chrysoula Michailidou, Athens, discussed potential extensions of heads of jurisdiction for third state domiciled defendants, in particular in respect to jurisdiction based on (movable) property and a forum necessitatis. Alexander Layton, London, focused on the operation of Articles 33 and 34 and reiterated the position that discretion of the court to a certain extent was simply inevitable, also in a distributive system of unified heads of jurisdiction, as it is provided for e.g. in these Articles, in particular by the tool of a prognosis for the chances of recognition of the future third state judgment ("Anerkennungsprognose") in Article 33(1) lit. a and Article 34(1) lit. b, and by the general standard that the later proceedings in the Member State in question should only be stayed if the

Member State court is satisfied that a stay is necessary for the proper administration of justice (Articles 33(1) lit. b and 34(1) lit. c). Further, the question was posed why Articles 33 and 34 would only apply if the proceedings in the Member State court are based on Articles 4, 7, 8 or 9, as opposed to e.g. Articles 6(1) and sections 3, 4 and 5 of Chapter II. The author of these lines observed that relations to third states should be put on a consistent basis including all aforementioned aspects as well as recognition and enforcement of such judgments. Further, need for clarification, e.g. in the respective Recitals, was identified for the question whether there is an implicit obligation of the Member State courts not to recognize third state judgments that violate Articles 24, 25 and the said sections 3, 4 and 5 of Chapter II. This could be framed as a matter of the Member States' public policy, including fundamental notions of EU law (see ECJ in Eco Swiss on another fundamental notion of EU law as an element of the respective Member State's public policy). The central point, however, was the suggestion to correct the latest steps in the jurisprudence of the ECJ towards allowing double exequatur, if a Member State's lex fori provides for judgments upon foreign judgments (see ECJ in H Limited). Options for doing so would be either adjusting the relevant Recitals, 26 and 27 in particular, or the definition of "judgment" or inserting another specific ground for refusal outside the general public policy clause, thereby in essence restating the principle of "no double exequatur" within the mechanics of the Regulation as understood by the ECJ, or limiting the effects of a judgment upon judgments for the purposes of the Brussels system, a method (altering the effects of a judgment under its lex fori) employed by the ECJ in Gothaer Versicherung in respect to other effects of a judgment from a Member State court, or, finally, by introducing an entire set of rules on the recognition and enforcement of third state judgments. In the latter case, all measures would have to be coordinated with the latest and fundamental development within the EU on third state judgments, namely the (prospective) entering into force of the HCCH 2019 Judgments Convention on 1 September 2023. Anyone who is interested in what this Convention could offer should feel warmly invited to participate and discuss, inter alia, the interplay between the Brussels and the Hague systems at the Bonn / HCCH Conference on 9 and 10 June 2023.

The next panel, chaired by Geert van Calster, related to certain points on jurisdiction and pendency to be reformed. Krzystof Pacula, Luxemburg, discussed Articles 7 no. 1 and no. 2 and, inter alia, suggested abstaining from a general

reformulation of these heads of jurisdiction but rather opted for concrete measures for improving the text in light of lines of case law that turned out to be problematic. Problems identified were, inter alia, the delineation of the personal scope of Article 7 no. 1 in light of the principle of privity of contracts ("Relativität des Schuldverhältnisses") and the concurrence of claims under Article 7 no. 1 and no. 2. In this regard, it was discussed whether both of these heads should allow to assume annex competence in regard to each other. Marta Requejo Isidro, Luxemburg, discussed the intricate interplay of Article 29 and 31 and, inter alia, considered increased obligations of the two Member State courts involved to coordinate conclusively the proceedings, for example by inserting certain time limits and, in case only the non-designated court is seized, powers to order the parties to institute proceedings at the designated court within a certain time limit. Otherwise the court seized should decline jurisdiction finally. Victória Harsági, Budapest, discussed the implications of the judgment of the ECJ in Commerzbank in respect to balancing consumer protection with foreseeability when the consumer, after a Lugano Convention State court has been seized with the matter, transferred its domicile to another (Lugano Convention) State, thereby creating the only international element of the case. Burkhard Hess dealt with reforming Article 35 of the Brussels Ibis Regulation after the ECJ in Toto and observed that there was no express hierarchy between measures under that Article and measures by the court of the main proceedings, and the Court did not infer any such hierarchy in its decision. The suggestion, therefore, was to think about introducing express coordination, be it along the lines of Rules 202 et seq. of the 2020 European Model Rules of Civil Procedure, be it along those of Article 6(3) of the 2022 Lisbon Guidelines on Privacy (on these see here and here), be it along those of Article 15 (3) Brussels IIter Regulation. Good reasons for the latter approach were identified, and this led back to the fundamental question to what extent the notion of a coherent "Brussels system" might allow even *de lege lata* not only to apply concepts from the Brussels Ibis Regulation, the "backbone" of that system, to other instruments by analogy, but also vice versa from the latter instruments to the former.

The last panel started with a submission by Gilles Cuniberti, Luxemburg, to remove Article 43, based on a number of reasons, as the Brussels I Recast aimed at removing "intermediate measures" such as exequatur, which rendered it inconsistent to uphold the intermediate measure foreseen in Article 43 – service of the certificate of Article 53 upon the judgment debtor. This was held to be all

the more so, as this measure would primarily protect the debtor, already adjudged to pay, to an unjustifiable degree. Marco Buzzoni, Luxemburg, discussed the adaptation of enforcement titles under Article 54, a provision that was held to be one of the major innovations of the last Recast but turned out to be of little practical relevance. A similar provision had been proposed in the preparatory works for the HCCH 2019 Judgments Convention (February 2017 Draft Convention, Article 9), but was ultimately dropped, as opposed to the 2022 Lisbon Guidelines on Privacy (see its Article 12(2) Sentence 2). Vesna Rijavec, Maribor (unfortunately unable to attend for compelling reasons, but well represented by the chair, Geert van Calster) presented proposals on refining Articles 45(1) lit. c and d, mainly arguing that these should connect to pendency (as had already been proposed by the Heidelberg Report for the Recast of the Brussels I Regulation).

An overall sense of the conference was that no radical revolutions should be expected in the forthcoming Recast, which should be taken as another sign for the overall success of the backbone of the Brussels system, but that there was quite some room for specific and well-reasoned improvements. The conference contributed to preparing these in a truly excellent and inspiring way and in outstanding quality.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 5/2022: Abstracts

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

(These abstracts can also be found at the IPRax-website under the following link: https://www.iprax.de/en/contents/)

J. Richter: **Cross-border service of writs of summons according to the revised EU Service Regulation**

The service of judicial documents, particularly the service of writs of summons, is of central importance in civil proceedings. In cross-border proceedings, service of legal documents poses particular problems, which are addressed by the European Regulation on the Service of Documents. The revision of this regulation, which will enter into force on 1 July 2022, provides an opportunity to examine the current and future rules by taking the example of the international service of writs of summons.

G. van Calster: **Lex ecologia. On applicable law for environmental pollution (Article 7 Rome II), a pinnacle of business and human rights as well as climate change litigation.**

The European Union rules on the law that applies to liability for environmental damage, are an outlier in the private international law agenda. EU private international law rules are almost always value neutral. Predictability is the core ambition, not a particular outcome in litigation. The rules on applicable law for environmental damage, contained in the Rome II Regulation on the law that applies to non-contractual obligations, are a clear and considered exception. Courts are struggling with the right approach to the relevant rules. This contribution maps the meaning and nature of those articles, their application in case-law, and their impact among others on business and human rights as well as climate change litigation.

M. Castendiek: **“Contractual” rights of third parties in private international law**

Although contractual rights are usually limited to the parties, almost all jurisdictions in Europe recognize exceptions of this rule. Whereas those “contractual” rights of third parties are strictly limited in common law countries, German and Austrian Law even extend contractual duties of care on third persons related to the parties. Prior to the Rome Regulations, the conflict-of-law judgments on those “contracts with protective effect in favour of third parties”

differed between German and Austrian courts.

The article points out that a consistent jurisdiction on this issue needs a clear distinction between contractual and non-contractual rights even between the parties of the contract. It points out that the Regulation Rome I covers only obligations that would not exist without the contract. Those obligations remain contractual even if they entitle a third party.

“Contractual” duties of care corresponding with negligence in tort, on the other hand, fall within the scope of the Regulation Rome II. For the contracting parties as well as for third parties, the conflict-of-laws in claims following the disregard of such duties is determined by the application of Article 4 Regulation Rome II. The article provides criteria to determine whether the close connection rule in Article 4(3) Regulation Rome II can lead to the application of the law governing the contract.

C. von Bary: **News on Procedural Consumer Protection from Luxemburg: Consumer Status and Change of Domicile**

In two recent decisions, the CJEU continues to refine the contours of procedural consumer protection in cross-border disputes. In the case of a person who spent on average nine hours a day playing – and winning at – online poker, the court clarified that factors like the amount involved, special knowledge or the regularity of the activity do not as such lead to this person not being classified as a consumer. It remains unclear, however, which criteria are relevant to determine whether a contract is concluded for a purpose outside a trade or profession. Further, the CJEU stated that the relevant time to determine the consumer’s domicile is when the action is brought before a court. This seems to be true even if the consumer changes domicile to a different member state after the conclusion of the contract and before the action is brought and the seller or supplier has not pursued commercial or professional activities or directed such activities at this member state. This devalues the relevance of this criterion to the detriment of the professional party.

W. Voß: **The Forum Delicti Commissi in Cases of Purely Pecuniary Loss – a**

Cum-Ex Aftermath

Localising the place of damage in the context of capital investment cases is a perennial problem both under national and European civil procedural law. With prospectus liability having dominated the case law in the past decades, a new scenario is now increasingly coming into the courts' focus: liability claims resulting from cum-ex-transactions. In its recent decision, the Higher Regional Court of Munich confirms the significance of the place of the claimant's bank account for the localisation of purely financial loss in the context of sec. 32 German Civil Procedure Code but fails to provide any additional, viable reasoning on this notoriously debated issue. The decision does manage, however, to define the notion of principal place of business as delimitation of the scope of application of the Brussels regime convincingly. Incidentally, the text of the judgment also proves an informative lesson for the recently flared-up debate about anonymization of judicial decisions.

L. Hornkohl: **International jurisdiction for permission proceedings under the German Telemedia Act (TMG) in cases of suspected abusive customer complaints on online marketplaces**

In its decision of 11 March 2021, the Cologne Higher Regional Court denied the international jurisdiction of the Cologne courts for permission proceedings under the German Telemedia Act (TMG) in cases of suspected abusive customer complaints in online marketplaces. The Cologne court decision combined several precedents of the German Federal Court and the European Court of Justice. Although the Cologne Higher Regional Court decided that permission proceedings constitute a civil and commercial matter within the meaning of the Brussels I Regulation, international jurisdiction could not be established in Germany. The place of performance according to Art. 7 No. 1 lit. b second indent Brussels Ibis Regulation must, in case of doubt, uniformly be determined at the place of establishment of the online marketplace operator in Luxembourg. Article 7 No. 2 of the Regulation also does not give jurisdiction to German courts. The refusal to provide information per se is not a tort in the sense of Article 7 No. 2. Furthermore, there is no own or attributable possibly defamatory conduct of the platform operator. Contradictory considerations of the German legislator alone cannot establish jurisdiction in Germany.

A. Spickhoff: **Contract and Tort in European Jurisdiction – New Developments**

The question of qualification as a matter of contract or/and of tort is among others especially relevant in respect to the jurisdiction at place of performance and of forum delicti. The decision of the court of Justice of the European Union in res Brogsitter has initiated a discussion of its relevance and range to this problem. Recent decisions have clarified some issues. The article tries to show which. The starting point is the fraudulent car purchase.

R.A. Schütze: **Security for costs for UK plaintiffs in German civil proceedings after the Brexit?**

The judgment of the Oberlandesgericht Frankfurt/Main deals with one of the open procedural questions of the Brexit: the obligation of plaintiffs having permanent residence in the United Kingdom to provide security of costs in German civil proceedings. The Court has rightly decided that from January 1st, 2021 plaintiff cannot rely on sect. 110 par. 1 German Code of Civil Procedure (CCP) anymore as the United Kingdom is no longer member of the EU. If the plaintiff has lodged the complaint before January 1st, 2021, the obligation to provide security of costs arises at that date and security can be claimed by respondent according to sect. 110 CCP. However, the Court has not seen two exceptions from the obligation to provide security for costs according to sect. 110 par. 2 no. 1 and 2 CCP which relieve plaintiff from the obligation to provide security of costs if an international convention so provides (no. 1) or if an international convention grants the recognition and execution of decisions for costs (no. 2). In the instant case the court had to apply art. 9 par. 1 of the European Convention on Establishment of 1955 and the Convention between Germany and the United Kingdom on Recognition and Execution of Foreign Judgments of 1960, both Conventions not having been touched by the Brexit. Facit therefore: claimants having permanent residence in the United Kingdom are not obliged to provide security for costs in German Civil proceedings.

H. Roth: **Qualification Issues relating to § 167 Civil Procedure Code (Zivilprozessordnung, ZPO)**

§ 167 of the Civil Procedure Code (ZPO) aims to relieve the parties of the risk accruing to them through late official notification of legal action over which they have no control. This norm is part of procedural law. It is valid irrespective of whether a German court applies foreign or German substantive law. The higher regional Court (Oberlandesgericht) of Frankfurt a.M. found differently. It holds that § 167 should only be considered when German substantive law and thus German statute of limitations law is applied.

A. Hemler: **Undisclosed agency and construction contract with foreign building site: Which law is applicable?**

Does the term "contract for the provision of services" in Art 4(1)(b) Rome I Regulation include a building contract with a foreign building site? Or should we apply the exception clause in Art 4(3) Rome I Regulation if the building site is abroad? Which law governs the legal consequences of undisclosed agency, i.e. how should we treat cases where a contracting party acts as an agent for an undisclosed principal? Furthermore, what are the legal grounds in German law for a refund of an advance payment surplus in such a building contract? In the case discussed, the Oberlandesgericht (Higher Regional Court) Köln only addressed the latter question in detail. Unfortunately, the court considered the interesting PIL issues only in disappointing brevity. Therefore, based on a doctrinal examination of the exception clause in Art 4(3) Rome I Regulation, the paper discusses whether the scope of the general conflict of laws rule for contracts for the provision of services should exclude building contracts with a foreign building site by virtue of a teleological limitation. It also sheds light on the dispute around the law governing cases of undisclosed agency. The paper argues that Art 1(2)(g) Rome I Regulation is not applicable in this regard, i.e. the issue is not excluded from the Rome I Regulation's scope. Instead, it is covered by Art 10(1) Rome I Regulation; hence, the law governing the contract remains applicable.

S.L. Gössl: **Uniqueness and subjective components – Some notes on**

habitual residence in European conflict of laws and procedural law

The article deals with the case law of the ECJ on the habitual residence of adults, as addressed in a recent decision. The ECJ clarified that there can only ever be one habitual residence. Furthermore, it confirms that each habitual residence has to be determined differently for each legal acts. Finally, in the case of the habitual residence of adults, subjective elements become more paramount than in the case of minors. In autonomous German Private International Law, discrepancies with EU law may arise precisely with regard to the relevance of the subjective and objective elements. German courts should attempt to avoid such a discrepancy.

D. Wiedemann: **Holidays in Europe or relocation to Bordeaux: the habitual residence of a child under the Hague Convention on International Child Abduction**

A man of French nationality and a woman of Chilean nationality got married and had a daughter in Buenos Aires. A few months after the birth of their daughter, the family travelled to Europe, where they first visited relatives and friends and finally stayed with the man's family in Bordeaux. One month and a few days after they arrived in Bordeaux, mother and daughter travelled to Buenos Aires and, despite an agreement between the spouses, never returned to Bordeaux. The father in France asked Argentinean authorities for a return order under the HCA. According to the prevailing view, the HCA only applies, if, before the removal or retention, the child was habitually resident in any contracting state except for the requested state. The court of first instance (Juzgado Civil) assumed a change of the child's habitual residence from Argentina to France, but, considering that the lack of the mother's consent to move to France results in a violation of the Convention on the Elimination of All Forms of Discrimination against Women, it granted an exception under Art. 20 HCA. The higher court (Cámara Nacional de Apelaciones en lo Civil) and the Argentinian Supreme Court (Corte Suprema de Justicia de la Nación) required the manifestation of both parents' intent for a change of the child's habitual residence. The higher court saw a sufficient manifestation of the mother's intent to move to France in the termination of her employment in Buenos Aires and ordered the return. In contrast, the CSJN refused to give weight to the termination of employment as it happened in connection with the birth of the daughter.

H.J. Snijders: **Enforcement of foreign award (in online arbitration) ex officio refused because of violation of the defendant's right to be heard**

With reference to (inter alia) a judgement of the Amsterdam Court of Appeal, some questions regarding the consideration of requests for recognition and enforcement of foreign arbitral awards in the Netherlands are discussed. Should the State Court ex officio deal with a violation of public order by the arbitral tribunal, in particular the defendant's right to be heard, also in default proceedings like the Amsterdam one? In addition, which public order is relevant in this respect, the international public order or the domestic one? Furthermore, does it matter for the State Court's decision that the arbitral awards dealt with were issued in an online arbitration procedure (regarding a loan in bitcoin)? Which lessons can be derived from the decision of the Amsterdam Court for drafters of Online Arbitration Rules and for arbitral tribunals dealing with online arbitration like the arbitral e-court in the Amsterdam case? The author also points out the relevance of transitional law in the field of arbitration by reference to a recent decision of the Dutch Supreme Court rejecting the view of the Amsterdam Court of Appeal in this matter; transitional law still is dangerous law.

Notifications:

E. Jayme/E. Krist: The War of Aggression on Ukraine: Impact on International Law and Private International Law –Conference, March 31st, 2022 (via Zoom)

C. Budzikiewicz/B. Heiderhoff: „Dialogue International Family Law"- Conference, April 1st-2nd, 2022 in Marburg

Update: Repository HCCH 2019 Judgments Convention

HCCH 2019 Judgments Convention Repository

In preparation of the Conference on the HCCH 2019 Judgments Convention on 9/10 June 2023, taking place on campus of the University of Bonn, Germany, we are offering here a Repository of contributions to the HCCH 2019 Judgments Convention. Please email us if you miss something in it, we will update immediately…

Update of 31 August 2022: New entries are printed bold.

Please also check the "official" Bibliography of the HCCH for the instrument.

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III. Recordings of Events Related to the HCCH 2019 Judgments Convention

ASADIP; HCCH	“Conferencia Internacional: Convención HCCH 2019 sobre Reconocimiento y Ejecución de Sentencias Extranjeras”, 3 December 2020 (full recording available here and here)
ASIL	“The Promise and Prospects of the 2019 Hague Convention”, 25-26 June 2020 (full recording available here and here)
Department of Justice Hong Kong; HCCH	“Inaugural Global Conference – 2019 HCCH Judgments Convention: Global Enforcement of Civil and Commercial Judgments”, 9 September 2019 (recording available here)
HCCH	“HCCH a|Bridged: Innovation in Transnational Litigation – Edition 2021: Enabling Party Autonomy with the HCCH 2005 Choice of Court Convention”, 1 December 2021 (full recording available here)
HCCH	“22nd Diplomatic Session of the HCCH: The Adoption of the 2019 Judgments Convention”, 2 July 2020 (short documentary video available here)
JPRI; HCCH; UNIDROIT; UNCITRAL	“2020 Judicial Policy Research Institute International Conference – International Commercial Litigation: Recent Developments and Future Challenges, Session 3: Recognition and Enforcement of Foreign Judgments”, 12 November 2020 (recording available here)

UIHJ; HCCH	"3rd training webinar on the Hague Conventions on service of documents (1965) and recognition and enforcement of judgements (2019)", 15/18 March 2021 (full recording available here in French and here in English)
University of Bonn; HCCH	"Pre-Conference Video Roundtable on the HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil and Commercial Matters between the EU and Third Countries", 29 October 2020 (full recording available here)
Lex & Forum Journal; Sakkoula Publications SA	« The Hague Conference on Private International Law and the European Union – Latest developments », 3 December 2021 (full recording available here)

MPI Luxembourg / KU Leuven / EAPIL Conference: "The Brussels Ibis Reform"

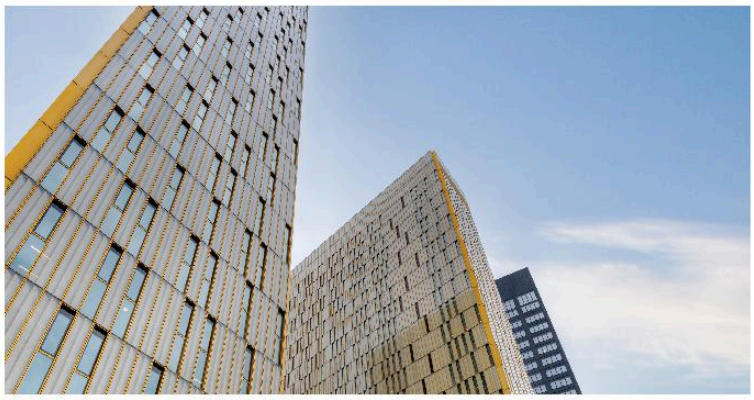
In view of the upcoming revision of the instrument, the Max Planck Institute Luxembourg in collaboration with EAPIL and KU Leuven hosts a (hybrid) international conference on "The Brussels Ibis Reform" scheduled for Friday, 9 September 2022. As part of the ongoing efforts within EAPIL, the event will serve to discuss the results of the corresponding working group chaired by Burkhard Hess and Geert van Calster as well as the application of the Regulation in general. In addition, legal experts will present on pertinent topics such as insolvency proceedings, arbitration and third state relations. The overarching goal of the discourse is to prepare an academic position paper that is to advise the the European Commission in the – mandatory although delayed – evaluation process.

Further information on the MPI Conference and online registration can be found in the attached programme and on the event’s website. A first overview of relevant aspects is provided in a Research Paper by Burkhard Hess.

Max Planck Institute LUXEMBOURG for Procedural Law

EAPIL The European Association of Private International Law

KU LEUVEN



THE BRUSSELS I^{bis} REFORM

9 September 2022, 8:30 am - 4:30 pm (CEST), International Conference

08:30	**Registration & Welcome Coffee**	
08:45	**Welcome & Introduction**	*Burkhard Hess* and *Geert van Calster*
Panel 1:	**The Role and Scope of the Brussels I^{bis} Regulation in European Procedural Law**	
Chair:	Marie-Élodie Ancel	
09:15	**Dario Moura Vicente:** The Role of the Regulation as a General Reference Instrument	
	Björn Laukemann: Insolvency Proceedings	
	Vesna Lazić: The arbitration exception (C-700/20, *London Steam-Ship Owners' Mutual Insurance Association*)	
09:45	Discussion	
Panel 2:	**The Brussels I^{bis} Regulation and Collective Redress**	
Chair:	Burkhard Hess	
10:15	**François Mailhé:** What needs to be done with regard to the Directive (EU) 2020/1828?	
	Stefaan Voet: Collective redress under national law and the Regulation	
	Camelia Toader: The application of specific heads of jurisdiction to collective redress; determining the moment of pendency	
10:45	Discussion	
11:15	*Break*	
Panel 3:	**Third States Relationships**	
Chair:	Thalia Kruger	
11:45	**Chrysoula Michailidou:** Residual Heads of Jurisdiction	
	Alexander Layton QC: The operation of Articles 33 and 34	
	Matthias Weller: Enforcing judgments from third states	
12:15	Discussion	
Panel 4:	**Jurisdiction and Pendency – Concrete Reform Proposals**	
Chair:	Geert van Calster	
14:00	**Krzysztof Pacula:** Article 7 no. 1 and no. 2: How to end an endless discussion?	
	Marta Requejo Isidro: Articles 25 and 31 – a working concept?	
	Viktória Harsági: Commerzbank (C-296/20) – balancing consumer protection with foreseeability	
	Burkhard Hess: Reforming Article 35 after Toto (C-581/20)	
14:40	Discussion	
Panel 5:	**Recognition and Enforcement**	
Chair:	N.N.	
15:10	**Gilles Cuniberti:** Giving up Article 43?	
	Vesna Rijavec: Refining Article 45(1) lit. c) and d)	
	Marco Buzzoni: Adaptation of enforcement titles (Article 54) and other procedural issues	
15:40	Discussion	
16:10	**Farewell and Perspectives**	*Burkhard Hess* and *Geert van Calster*

Hybrid Event

MPI Luxembourg or virtual participation

Registration deadline: 26 August 2022

Contact: Elisabeth Güllering • Phone: (+352) 26 94 88 - 928 • events@mpi.lu

Nigerian Bar Association Journal for 2022

The Nigerian Bar Association recently published articles on Nigerian law. Interestingly, the first two articles are on Nigerian conflict of laws. This should probably not come as a surprise because the editor-in-chief, Professor Uche Chukwumaeze, specialises in Nigerian conflict of laws.

The articles and abstracts read as follows:

O Uka, "Internal Conflict of Laws in Nigeria: Making a Case for the Consolidation of Rules of Jurisdiction in Inter-State Disputes"

"Owing to the central place that jurisdiction occupies in the adjudication process in Nigeria, jurisdictional conflicts will continue to take up precious judicial time into the foreseeable future. A lesser-known facet of these conflicts is the one among the various High Courts in Nigeria in actions in personam. Until recently, Nigerian courts have had to resolve these conflicts and generally interprete internal conflict of laws questions without the benefit of the direction that legislation and high-quality academic works provide. This paper examined the position on the jurisdiction of courts in inter-State jurisdictional challenges in actions in personam. It analysed decisions which tackled territorial jurisdiction challenges in actions in personam with a view to highlighting their inherent errors. Ultimately, the paper proposed a hierarchical roadmap for Nigerian courts to adopt in determining the issue of jurisdiction in inter-State in personam disputes which if followed, would potentially go a long way towards resolving the protracted jurisdictional conflicts between Nigerian courts, reduce the largely unnecessary challenges to these courts' authority, significantly reduce the notorious delays in the determination of cases in Nigeria, and eliminate one of the biggest impediments to the smooth administration of the justice delivery system in Nigeria."

I Olawunmi, “Party Autonomy and Commercial Expectations: How are the Nigerian Courts faring on Choice of Law and Forum Clauses in Contracts beyond Borders?”

“Where a contract bears a transnational coloration, it is only instinctual to have the parties agree on specific arrangements to guide their commercial endeavour. It is a legal right for parties to a contract to freely negotiate the terms to govern their agreement. This underpins the principle of party autonomy that guides the law of contract globally. It is a common practice to have parties to an international commercial contract select the law to govern their agreement. Since conflict is inevitable in any human relationship, parties can also agree to the forum to resolve their disputes. Parties can choose arbitration or even litigate in a foreign court over a contractual dispute. This paper aims to x-ray party autonomy, law and forum clauses, their different effects and the judicial attitude of Nigerian courts to them, especially for contracts entered into and/or are to be performed in Nigeria. The author adopts the doctrinal methodology of research, with reliance placed on both primary and secondary sources. This paper recommends that the courts should not derogate from the doctrine of party autonomy in determining commercial disputes as practical as possible, as this would help investors achieve their contractual goals.”

Third Issue of Lloyd’s Maritime and Commercial Law Quarterly for 2022

The third issue of the *Lloyd’s Maritime and Commercial Law Quarterly* for 2022 was recently published. It features the following case notes and articles:

A Briggs, “Render unto Caesar the things that are Caesar’s”

R Bork, “The Arbitrability of Insolvency-Related Claims”

CH Tham, “Assignments, Assignees and the Burden of an Arbitration Clause”

Developments in Third-Party Litigation Funding in Europe and Beyond

Written by Adrian Cordina, PhD researcher at Erasmus School of Law, project member of the Vici project ‘Affordable Access to Justice’ which deals with costs and funding of civil litigation, financed by the Dutch Research Council (NWO)

This blog post reports on a conference on Third Party Litigation funding (TPLF) as well as some other activities in the area of costs and funding, including a new project by the European Law Institute on TPLF.

(1) Conference ‘The Future Regulation of Third-Party Funding in Europe’

22 June 2022, Erasmus University Rotterdam

The right of access to civil justice continues to be constrained by the cost, complexity and delays of litigation and the decline in legal aid. Private litigation funding methods litigation like third-party litigation funding (TPLF) and alternative dispute resolution (ADR) methods have been developing, which address these challenges to a certain extent. The debate on whether and to what extent TPLF should be regulated in Europe has also been gathering pace. On the one hand, proponents argue that it facilitates access to civil justice whilst, on the other hand, critics say that there may be risks of abuse. These issues were critically discussed during the conference ‘The Future Regulation of Third-Party Funding in Europe’ held on the 22nd of June 2022. It concluded the online seminar series on ‘Trends and Challenges in Costs and Funding of Civil Justice’ organised

by Erasmus School of Law in the context of the Vici project Affordable Access to Justice, financed by the Dutch Research Council (NWO). Team members of the project are project leader Xandra Kramer, and Eva Storskrubb, Masood Ahmed, Carlota Ucin, Adriani Dori, Eduardo Silva de Freitas, Adrian Cordina, assisted by Edine Appeldoorn.

The series commenced in December 2021 with a general session that addressed several topics related to access to justice and costs and funding, including collective redress and litigation costs reforms, and a law-and-economics perspective. The second seminar in January 2022 was dedicated to legal mobilisation in the EU. The third one in February addressed the impact of public interest litigation on access to justice, and the fourth one in March, litigation funding in Europe from a market perspective. The April seminar focused in on austerity policies and litigation costs reforms, and the May session was dedicated to funding and costs of alternative dispute resolution (ADR).

The aim of this seventh and final conference of the seminar series was to reflect on the need and type of regulation of TPLF from different points of view. By seeking to engage representatives from both academia and stakeholders, the conference aimed to foster a lively exchange and contribute to the debate. The event was introduced by a keynote speech by Professor Geert Van Calster (KU Leuven, Belgium) who examined the key issues in TPLF.

The first panel was chaired by Xandra Kramer and addressed the current status quo of the regulation of TPLF and the possibilities of further regulation. Paulien van der Grinten outlined the situation of TPLF in the Netherlands from the point of view Senior Legislative Lawyer at the Ministry of Justice and Security. The presentation of Johan Skog (Kapatens, Sweden) highlighted the lack of factual basis in the European Parliament Research Service Study for the concern of TPLF giving rise to excessive and frivolous litigation. David Greene (Edwin Coe, England) centred his presentation around a critical outlook on litigation costs and funding and the merits and demerits of TPLF in England and Wales. Following the presentations of the first panel, a discussion among the participants and attendees ensued, including discussant Quirijn Bongaerts (Birkway, The Netherlands). Amongst others, the question of disclosure of funding was debated.

The second panel was chaired by Eva Storskrubb (Uppsala University and Erasmus University Rotterdam) and focused on the modes and levels of regulation

of TPLF. With respect to the Draft Report with recommendations to the Commission on Responsible Private Funding of Litigation, also examined in an earlier entry in this blog, Kai Zenner (European Parliament, Head of Office (MEP Axel Voss)) focused on the process which led up to the Draft Report and the risks of TPLF. Victoria Sahani (Professor, Arizona State University) approached the issue of TPLF from the perspective of arbitration, both commercial and investor-State arbitration. Finally, wrapping up the second panel and providing reflections connected to the preceding panelists, Albert Henke (Professor, Università degli Studi di Milano) addressed the issue of regulation and the multiple variables it faces.

The conference was held in hybrid format. In spite of some coordination challenges that this posed, both the live audience and online attendants found the opportunity to comment on the presentations and interact with the speakers, also with the use of the chat function. The discussions and interventions showed how opportune the timing of the conference was, as it was held at a period when the Draft Report is being deliberated and scrutinised, and when the debate on regulating TPLF is taking centre stage at a European and international level.

A more extensive conference report is scheduled for publication in the Dutch-Flemish journal for mediation and conflict management (Nederlands-Vlaams tijdschrift voor Mediation en conflictmanagement (TMD).

(2) Further activities and publications on costs and funding

Recently, a special issue of Erasmus Law Review, edited by Vici members Masood Ahmed and Xandra Kramer on Global Developments and Challenges in Costs and Funding of Civil Justice (available open access). This Special Issue contains ten articles and is introduced by an editorial article by Ahmed and Kramer. It includes articles on different aspects of costs in six jurisdictions. John Sorabji focuses on legal aid insurance and effective litigation funding in England and Wales; David Capper on litigation funding in Ireland; Michael Legg on litigation funding in Australian class actions; Nicolas Kyriakides, Iphigeneia Fisentzou and Nayia Christodoulou on affordability and accessibility of the civil justice system in Cyprus; Jay Tidmarsh on shifting costs in American discovery; and Dorcas Quek Anderson on costs and enlarging the role of ADR in civil justice in Singapore. Three papers focus on general topics. Ariani Dori inquires in her paper whether the fact-finding process that supports the preparation of the EU Justice

Scoreboard, as well as the data this document displays, conveys reliable and comparable information. Adrian Cordina critically examines, including from a law-and-economics perspective, the main sources of concern leading to the scepticism shown towards TPF in Europe, and how the regulatory frameworks of England and Wales, the Netherlands, and Germany in Europe, and at the European Union level, the Representative Actions Directive addresses these concerns. In view of the UKSC's finding of non-infringement of Article 6 ECHR in Coventry v. Lawrence [2015] 50, Eduardo Silva de Freitas argues that a more holistic view of the procedural guarantees provided for by Article 6 ECHR is called for to properly assess its infringement, considering mainly the principle of equality of arms.

Some of the papers will be presented during an online seminar that will take place at the end of 2022.

(3) ELI project on Third Party Litigation Funding

The importance of Third Party Litigation Funding is also highlighted by the adoption of a new project by the European Law Institute (ELI) on TPLF. The commencement of the two-year-long project was approved by the ELI Council in July 2022. It will be conducted under the supervision of three reporters (Professor Susanne Augenhofer, Ms Justice Dame Sara Cockerill, and Professor Henrik Rothe) assisted by researchers Adriani Dori and Joseph Rich, and with the support of an International Advisory Committee. The project's main output will be the development of a set of principles (potentially supplemented by checklists) to identify issues to be considered when entering into a TPLF agreement. Adriani will participate as a project member (together with Mr Joseph Rich). The final outcome is expected in September 2024.

Enforceability of CAS awards in Greece – a short survey

Introductory remarks

Applications to recognize and enforce CAS awards are not part of Greek court's daily order business. About ten years ago, the first decision of a Greek court was published, which accepted an application to declare a decision of the Court of Arbitration for Sports (CAS) enforceable. For this ruling, see here (in English), and here (in Spanish). Two recent decisions are added to this short list of judgments, where the corresponding decisions of the above sports arbitration body were again declared enforceable

(Piraeus Court of first instance, decision published on 28. July 2021, and Thessaloniki Court of first instance, decision published on 26. April 2022, both unreported).

A summary of the new decisions

The first decision concerned a company of sport? management located in France, who initiated CAS proceedings against a football team in Greece due to non-payment of agreed fees for the transfer of a football player. The CAS granted the application and ordered the payment of 45.000 Euros and 16.391 CHF for the costs of the arbitral proceedings (case number 2018/O/5850).

The second decision concerned two accredited sports managers from Argentina against an Argentinian football player who terminated unilaterally the agreement, hence, he failed to abide by the conditions of the contract signed with the managers. They initiated arbitration proceedings before the CAS, which ordered the payment of 1 million Euros and 49.585,80 CHF for the costs of the arbitral proceedings (case number 2014/O/3726). The player appealed unsuccessfully before the Swiss Supreme Court (no reference available in the text of the decision).

Main findings

From the assessment of the aforementioned decisions, it is possible to draw the following conclusions:

- **NYC: The ruler of the game**. The application of the New York Convention regarding requests to recognize CAS awards is undisputable and common to all Greek decisions.

- **National rules of Civil procedure.** From the combination of Articles 3 and 4 NYC, and those of the Greek Code of Civil Procedure (Book on voluntary jurisdiction), it is clearly concluded that the true meaning of Articles 3 and 4 of the above convention is that, the one who requests the declaration of enforceability of a foreign arbitral award, is required to present the relevant decision and the arbitration agreement, either in original or in an official copy, as well as an official translation into the Greek language, *during the hearing* of his application, and without being obliged to file these documents at the court, when submitting the relevant application.

This because, to the eyes of Greek judges, Article 4 NYC, referring to a presentation "at the time of the application", does not determine the procedural 'moment' (stage) when the documents of the arbitration agreement and the arbitral decision must be submitted to the court. It simply determines the burden of proof and the party borne with it. The procedural method and the time of presentation of the documents referred to in Article 4 § 1 NYC are still regulated by the procedural law of the trial judge, in the case at hand the Greek Code of Civil Procedure.

- **Field of application of CAS.** On the grounds of the decisions rendered by Greek courts, it has been confirmed that the CAS has jurisdiction over the following disputes:
- Application for arbitration by an athlete against the team in which he plays;
- Application for arbitration by the sports manager of athletes and/or coaches against the sports club.
- Application for arbitration by the sports manager against the athlete.

- **Enforceability in the country of origin not a pre-requisite.** Contrary to finality, it is not necessary to meet the condition of enforceability of the

arbitral award in the state of origin, i.e., Switzerland.

- **Enforceability of CAS Costs.** The 'order' awarding arbitration costs, following the CAS award, must also be declared enforceable, according to Rule R.64.4 CAS Procedural Rules. The matter is noteworthy, as the above 'order' is issued after the award by the CAS Secretariat, not by the arbitration Panel that ruled on the dispute, and without the participation of the parties. However, it should be underlined that the letter from the CAS Secretariat merely specifies the amount of the arbitration costs awarded by the Panel; hence, it is considered as belonging to the award's operative part. In addition, the act of awarding costs is notified to the parties in accordance with CAS rules.

- **Irreconcilable judgments.** It is not necessary to furnish a certificate of non-irreconcilability with a decision, by following the domestic model of article 903 § 5 and 323 nr. 4 Greek Code of Civil Procedure. According to the judgment of the Greek court, it is not permissible to transfuse a condition regulated by domestic arbitration law into the context of the New York Convention.

- **No revision on the merits.** Finally, although not directly stated in the text of the NYC, a revision of the foreign arbitral award by the Greek court is prohibited, the latter being unanimously accepted and labelled as the principle of non-examination on the merits.