

Avotiņš v. Latvia: Presumption of Equivalent Protection not Rebutted


The much awaited decision Avotiņš v. Latvia of the Grand Chamber of the ECtHR was finally delivered yesterday. The decision can be found [here](#). A video of the delivery is also available.

The European Court of Human Rights held by a majority that there had been no violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights. The Court reiterated that, when applying European Union law, the Contracting States remained bound by the obligations they had entered into on acceding to the European Convention on Human Rights. Those obligations were to be assessed in the light of the presumption of equivalent protection established by the Court in the *Bosphorus* judgment and developed in the *Michaud* judgment. The Court did not consider that the protection of fundamental rights had been manifestly deficient such that the presumption of equivalent protection was rebutted in the case at hand.

While at first sight the decision comes as a relief for all those who have been holding breath, fearing the worst after the CJEU Opinion 2/13, a careful reading (immediately undertaken by the academia: the exchange of emails has already started here in Luxembourg) reveals some potential points of friction. Following the advice of both Patrick Kinsch and Christian Kohler I would like to draw your attention in particular to para. 113-116.

Judge Lemmens and Judge Briede expressed a joint concurring opinion and Judge Sajó expressed a dissenting opinion, all three annexed to the judgment.

Thomale on Surrogate Motherhood

Chris Thomale from the University of Heidelberg has written a private  international critique of surrogate motherhood (Mietmutterschaft, Mohr Siebeck, 2015, X+ 154 pages). Provocatively entitled “mothers for rent” the book offers a detailed and thorough (German language) analysis of the ethical and legal problems associated with gestational surrogacy.

The author has kindly provided us with the following abstract:

Surrogacy constitutes an intricate ethical controversy, which has been heavily debated for decades now. What is more, there are drastic differences between national surrogacy rules, ranging from a complete ban including criminal sanctions to outright legalisation. Hence, on the one hand, surrogacy constitutes a prime example of system shopping. On the other hand, however, we are not simply dealing with faits accomplis but rather enfants accomplis, i.e. we find it hard to simply undo the gains of system shopping at law as the “gain” levied by the parties is in fact a party herself, the child.

In his new book, “Mietmutterschaft - Eine international-privatrechtliche Kritik” (Mohr Siebeck Publishers, 2015), Chris Thomale from the University of Heidelberg, Germany, provides a fully-fledged analysis of surrogacy as a social and legal phenomenon. Starting from an ethical assessment of all parties’ interests (p. 5-18), the treatment of foreign surrogacy arrangements before the courts of a state banning surrogacy is discussed both on a conflict of laws level (p. 19-40) and at the recognition stage with respect to foreign parental orders based on surrogacy contracts (p. 41-52). The essay follows up with investigating the implications of EU citizenship (p. 53-58) and human rights (p. 59-72) for the international legal framework of surrogacy, ensued by a brief sketch of the boundaries of judicial activism in this regard (p. 73-80). Finally, proposals for legislative reform on an international, European and national level are being developed (p. 81-99).

Thomale looks at both the empirical medical background of surrogacy and the economic, political and ethical arguments involved. It is from this

*interdisciplinary basis that he engages the legal questions of international surrogacy in a comparative fashion. His main conclusion is that surrogacy in accordance notably with human rights and recent jurisprudence by the European Court of Human Rights as well as the principle of the superior interest of the child can and should be banned at a national level. At the same time, according to Thomale, national legislators should reform their adoption procedures, building on the well-developed private international law in that field, in order e.g. to offer an adoption perspective also to couples who cannot procreate biologically, such as notably gay couples. In the essay, recent international case-law on surrogacy, including notably *Mennesson et Labassée* and *Paradiso et Campanelli* (both ECHR), is discussed in great detail.*

Report on ERA conference on Recent case law of the ECtHRs in Family law matters

Guest post by Asma Alouane, PhD candidate at Panthéon-Assas (Paris II) University on *Private international law to the test of the right to respect for private and family life*.

On February 11 and 12 2016, the Academy of European law (ERA) hosted in Strasbourg a conference on *Recent Case law of the European Court of Human Rights in Family law matters*. The Court's evolutive interpretation of the notion of family life combined with its controversial understanding has created a long series of new challenges in the field of Family law. The conference participants discussed these issues, as well as the difficulties that States may face in complying with their obligations under the Convention.

The purpose of this post is to give a succinct overview of the presentations, which were of interest from a conflicts-of-law perspective.

1. Evgueni Boev, Setting the scene: Private and family life under the Convention

Setting the scene of the conference, Evgueni Boev's presentation provided an answer to the question of *What is a family according to Court Cases?* Whereas the term *family* is mentioned in several provisions (art 8, art 12, art 5 of Protocol 7...), most of the cases are examined under the concept of family life of art 8. Article 12 and Protocol 7's article 5 appear as the *lex specialis* regarding marriage and equality within a married couple. Thus, article 8 is the pillar of the case law of the Court regarding family matters.

From the broad perspective of the ECtHR cases, Boev demonstrated that the concept has expanded in two different directions: in a horizontal way between partners and in a vertical way between parent and child. In both directions, only the substantive reality matters. For instance, in the relationship between partners, family life exists regardless of whether there is legal recognition of the situation (e.g. *Abdulaziz, Cabales and Balkandali v. the United Kingdom*). The extension of the concept of family life to same-sex *de facto* couples in the *Schalk and Kopf v. Austria* case is another illustration of the broad scope of the family life. In the other direction, between parent and child, what matters most is not the biological link and in these cases too the Court emphasises the substantive relationship (e.g. *Nazarenko v. Russia*).

Thus, only the substantive situation is relevant. However, the recognition of family life does not necessarily lead to a right to respect such family life. The questions of whether there is an interference with or a failure to comply with art 8 obligations are linked to the particular circumstances of the case, especially through the proportionality test.

As pointed out by Boev, the broad understanding of what is a family gives rise to new trends regarding for instance the recognition of non-traditional forms of family life or the international dimension of family ties, especially as in matters of child care. The following presentations focused on these two broad topics.

2. Thalia Kruger, International Child Abduction

Thalia Kruger showed in her presentation how the goals of the international child abduction instruments are disturbed when put to the test of the human rights perspective. Following the assumption that it is in the interest of the child not to be abducted, the 1980 Hague Child Abduction Convention and the Brussels II bis Regulation (No. 2201/2003) aim to facilitate the return of the child to his or her habitual residence. A return order must be issued within a period of six weeks. Only exceptional circumstances allow the State of the retention of the child not to order the return. Moreover, article 11 of Brussels II bis permits a second chance procedure to obtain return. Looking at the situation from the perspective of human rights, the Court considered that national authorities have to look into the particular situation of the child (see *Neulinger v. Switzerland*). Thus, the Court makes the best interests of the child the leading principle. The Court shifts from an *in abstracto* conception of the best interests of the child to an *in concreto* appreciation. Even though the Court explained later that it is possible to read the Hague Convention and the ECHR as aligned (*X. v. Latvia*), Kruger noted that the ECHR cases create sensitive dilemmas for the contracting States, for instance how to comply with the speedy proceeding obligation while taking into account all issues raised with respect to the best interests of the child.

According to Kruger, the Court's interpretation also shows that the Brussels II bis enforcement rules may not be compatible with the best interests of the child.

The *Bosphorus* doctrine assumes compatibility of EU law with the ECHR, but this applies only when courts have no discretionary power (for instance the abolition of exequatur; see *Povse v. Austria*). The application of the *Bosphorus* doctrine in the current context is problematic. Kruger concluded by noting that the on-going recast of Brussels II bis and the continuing efforts of the Hague Conference, such as its promotion of mediation, may provide a way to ensure the compatibility of the child abduction goals and the human rights standard.

3. Marilisa D'Amico and Costanza Nardocci, LGBT rights and the way forward:

From the perspective of the *Oliari v. Italy* case and the specific Italian experience, Costanza Nardocci presented an overview of the LGBT family rights. The last step

in a long series of cases, *Oliari* illustrates the long path of same-sex couples before the ECtHR. A significant step was accomplished in 2010 with *Schalk and Kopf v. Austria*, when the Court recognized that same-sex couples are just as capable of enjoying family life as opposite-sex couples. The Court found that article 12 could be applicable to same-sex couples, but that at this stage the question of whether same-sex couples can marry is left to regulation by national law. However, referring to the large margin of appreciation of contracting States, it considered that there is no positive obligation to introduce same-sex marriage. Then, in 2013, embracing this new interpretation, the Court considered in *Vallianatos and Others v. Greece* that opening civil unions to opposite-sex couples only was a violation of articles 8 and 14. In the *Oliari* case, the Court held that there was a violation of article 8. It considered that Italy had violated its positive obligation to grant legal protection to same-sex couples. Recalling the specific situation of LGBT rights in Italy, Nardocci emphasized the contrast between the lack of legislative activity and the judicial and administrative activism for the recognition of same-sex couples, if only in a symbolic way. Thus, the condemnation of the Italian government in the *Oliari* case was not unexpected considering the previous warnings of by the Constitutional Court, which had urged the legislator to intervene. Although *Oliari* is specific to the Italian situation, it has to be considered an important step for same-sex couples in their pursuit of legal recognition. In other words, since the *Oliari* case the contracting States are now compelled to ensure a core legal protection for same-sex couples in a stable committed relationship.

However, as pointed out by Nardocci, the progress of same-sex couples' right to family life has not gone hand in hand with similar advances for transgender persons. Even though the recognition of a positive obligation to provide legal protection is a huge step forward compared to past cases, the absence of a positive obligation to enact same-sex marriages could adversely affect transgender persons' right to family life. As in *Hämäläinen v/ Finland*, transgender individuals still have to choose between their former marital life and the legal recognition of the new gender. Nardocci considered that a better use of the distinguishing technique between positive and negative obligations could provide more flexibility and lead to better protection of transgender persons.

4. Michael Wells-Greco, Spectrum of Reproductive Rights and the Challenges

Reproductive rights are one of the most sensitive and challenging topics the Court has had to deal with. The increasing use of medical technology in Europe has led to the emergence of a discussion as to their influence on reproductive choices. The spectrum of reproductive rights is wide: it encompasses such issues as abortion (*A.B. C; v. Ireland*), home birth (*Ternovszky v. Hungray; Dubska and Krejzova v. Czech Republic*), embryo donation for scientific research (*Parrillo v. Italy*) and surrogacy (*Menesson and Labassée v. France; Paradiso and Campanelli v. Italy*). In the ECHR, reproductive rights fall within the right to respect of private life. Considering the diversity of national policies and the ethical and moral issues these questions may raise, there is no consensus between contracting States. As a result, the Court generally leaves States a wide margin of appreciation.

Surveying each of these topics in turn, Michael Wells-Greco considered the existence of emerging trends. He showed that the Court has made a gradual evolution: an isolated national position regarding one issue does not necessarily come into conflict with the ECHR, as reproductive rights are deeply connected to national identities. However, once a contracting State takes the step to grant more rights in this field, it has to respect certain procedural guarantees (e.g. *A.B.C. v. Ireland*). Wells-Greco criticized this “all or nothing approach” that leaves no room for a potential future consensus and widens even more the divisions between contracting States. Conversely, it appears that the margin of appreciation is smaller when it comes to cross-border situations (e.g. *Menesson and Labassée v. France*). However, as the PIL response may not take into consideration the human rights response, Wells-Greco advocates resorting to soft law to address the diversity of reproductive rights.

5. Klaudiusz Ryngielewicz, Contents of an individual application

Concluding the Conference, Klaudiusz Ryngielewicz explained the correct way to lodge an application (see the video) especially with regards to the new formalistic article 47 of the Rules of the Court (see the Report on the revised rule). The increasing number of applications have forced the Court to set strict criteria. After explaining how to fill in the application form, Ryngielewicz insisted on the

fact that only a valid application can interrupt the 6-month time-limit set in article 35 of the Convention.

Conference for Young PIL Scholars: “Politics and Private International Law (?)” - Call for Papers

The following announcement has been kindly provided by Dr. Susanne Lilian Gössl, LL.M., University of Bonn:

Call for Papers

On 6th and 7th April 2017, for the first time a young scholars' conference in the field of Private International Law (PIL) will be held at the University of Bonn.

The general topic will be

Politics and Private International Law (?)

We hereby invite interested junior researchers to send us their proposals for conference papers. We envisage presentations of half an hour each in German language with subsequent discussion on the respective subject. The presented papers will be published in a conference transcript by Mohr Siebeck.

Procedure

If we have stimulated your interest we are looking forward to your application to

until **30 June 2016, 12 a.m. CET** (deadline!).

The application shall include an exposé of maximum 1,000 words in German language and shall be composed anonymously that is without any reference to the authorship. The author including his/her position or other affiliation shall be identifiable from a separate file.

Selection decisions will be communicated in October 2016.

For organisational reasons, a preliminary version of the paper (to measure 35,000 to 50,000 characters including footnotes) and the core statements must be received by not later than 31 March 2017.

Topic:

For our purposes, we explicitly understand PIL in a broader sense: international jurisdiction and procedure, the law of the international settlement of disputes (including ADR) as well as uniform law and comparative law and the comparison of legal cultures are included insofar as they allude to cross-border questions.

Ever since Savigny, conflict of laws rules have traditionally been perceived as “unbiased” or “value-neutral” in Central Europe as they are solely supposed to coordinate the applicable substantive law. However, during the second half of the past century the opinion that conflict of law rules may also strengthen or prevent certain results of substantive law has become prevalent. In the U.S., such discussion led to a partial abolition of the “classical” PIL in favour of balancing the individual governmental interests as to the application of their respective substantive law provisions (so called *governmental interest analysis*). But other legal systems have also explicitly or indirectly restricted classical PIL in some areas in favour of governmental interests. Our conference is dedicated to the various possibilities and aspects of this interaction between PIL and politics as well as to the advantages and disadvantages of this interplay.

Possible topics or topic areas are:

General questions:

- “Politicisation” of PIL on the national, European and international level, or

- the political target of “value-free” PIL rules (?)
- “Politicisation” of comparative law (?)
- Convergence of PIL and Public International Law, especially the protection of fundamental rights and human rights by means of PIL
- Uniform applicable law or harmonisation of PIL
- PIL in day-to-day application of law - theory and reality (?)
- General instruments of PIL to enforce political targets: overriding mandatory rules, public policy, *forum non conveniens*, extensive/narrow jurisdiction ...
- Allocative functions of PIL and International Civil Procedure Law
- Users, stakeholders and their interests in cross-border questions: parties, attorneys, judges, notaries, experts etc.
- Protection by formal requirements or third parties’ obligations to cooperate (e.g. notarial recording of the choice of law agreement)
- Parties’ or courts’ expenses due to the application of foreign law
- Regulatory competition, e.g. in order to establish a national venue of arbitration
- Forum shopping and locational advantages through low standards of protection (e.g. regarding data protection law, copyright law, family law or consumer protection law)
- Issues of competences as regards European PIL rules
- Extraterritorial application of national (private) law (*Kiobel*, *Bodo Community*)

Business Law:

- Financial crisis, e.g. resolution of globally operating banks
- Gender Quotas of in Corporate Law, e.g. application of German law on foreign companies or comparison between international regulatory models
- Protection of competition in case of worldwide groups operating, e.g. Google antitrust proceedings by FTC and EU Commission
- Law on co-determination within the European context, e.g. questions referred for a preliminary ruling by KG (Court of Appeal in Berlin) and LG Frankfurt
- Worker protection

Family and Inheritance Law:

- Protection of minors, i.e. regarding repatriation of children or international adoptions: successful legal unification (?)
- Cross-border protection of adults
- Application of religious law and judgements of religious courts

Consumer protection:

- Consumer protection and market freedom (i.a. in the Internet)
- Special jurisdiction, party autonomy and the enforcement of minimum standards in substantive law

Internet and new media:

- Territoriality of rights to ubiquitous goods (e.g. copyright law and data protection rules) and cross-border trade
- Copyright Law and “Fair Use”
- Data protection/privacy and freedom of information

Other recent focal points:

- Migration and refugee crisis, e.g. the determination of the law of the person between integration or preservation of cultural identity
- Environmental protection, e.g. enforcement of titles from class actions or international litigation regarding mass damages
- Protection of cultural property - issues regarding ownership and repatriation

For more information, please visit <https://www.jura.uni-bonn.de/en/institut-fuer-deutsches-europaeisches-und-internationales-familienrecht/pil-conference/>.

If you have any further questions, please contact Dr. Susanne Gössl, LL.M. (sgoessl(at)uni-bonn.de).

We are looking forward to thought-provoking and stimulating discussions!

Yours faithfully,

Susanne Gössl
Rafael Harnos
Leonhard Hübner

Malte Kramme
Tobias Lutzi
Michael Müller
Caroline Rupp
Johannes Ungerer

Fourth “journées Mohamed Charfi de droit international privé” colloquium in Tunis

The following announcement has been kindly provided by Béligh Elbalti, Assistant Professor, Graduate School of Law, Kyoto University.

Since 2008, the Research Unit on International Private Relations, Commerce, Arbitration and Migrations of the Faculty of Legal, Political and Social Sciences of Tunis (Carthage University) has been organizing the “*journées Mohamed Charfi de droit international privé*” colloquium which address various Private International Law issues. These colloquiums are organized on the memory of the late Dr. Mohamed Charfi, an eminent and leading Tunisian scholar specialized in the field of family law, human rights and private international law.

On April 2016, the Research Unit will organize its fourth *journées Mohamed Charfi de droit international privé* under the theme of international contracts and private international law. The colloquium will be held at the Faculty of Legal, Political and Social Sciences of Tunis on the 13 and 14 April 2016. Eminent and distinguished professors, as well as leading Tunisian law professors and private international law specialists will take part in this event.

The program will be as follow:

First Day : 13 avril 2016 (Wednesday) :

Les tendances générales dans le droit du contrat international

Morning Sesseion

8h30 - 9h15: Welcome Speech

9h15 - 9h30: Ali MEZGHANI (*Professeur, Faculté de Droit des sciences juridiques, politiques et sociales de Tunis*)

Présentation générale du colloque : « À propos du contrat international »

9h30 - 10h : Pierre MAYER (*Professeur émérite, École de Droit de la Sorbonne*)

Rapport introductif : « L'internationalité du contrat »

10h -10h30 : Jean-Michel JACQUET (*Professeur, Institut des Hautes études internationales et du développement de Genève*)

« Sanctions économiques internationales et contrats internationaux »

10h30-11h : Coffee Break

11h - 11h30 : Souhayma BEN ACHOUR (*Professeur, Faculté de Droit et des sciences politiques de Tunis*)

« L'essor de l'autonomie de la volonté en Droit international privé tunisien »

11h30 - 12h : Salma TRIKI (*Maitre-assistante, Institut supérieur des études juridiques et politiques de Kairouan*)

« La hiérarchie des normes dans le droit du commerce international »

12h - 12h30 : Debate

Afternoon Session

15h - 15h30 : Imed BÉJAOUI (*Maitre-assistant, École supérieure de commerce de Sfax*)

« La pérennité du contrat international entre *pacta sunt servanda* et *rebus sic stantibus* : réflexions au regard du pouvoir interprétatif de l'arbitre»

15h30 - 16h : Donia ALLANI (*Assistante, Faculté des sciences juridiques, politiques et sociales de Tunis*)

« La loi applicable au contrat d'après l'article 62 du Code tunisien de droit international privé »

16h-16h30 : Coffee Break

16h30h-17h: Thouraya AHMADI (*Assistante, Faculté des sciences juridiques, politiques et sociales de Tunis*)

« Les lois de police étrangères et le contrat international »

17h-17h30 : Debate

Second Day : 14 avril 2016 (Thursday) :

De quelques solutions particulières dans le droit du contrat international

Morning Session

9h - 9h30 : Lotfi CHEDLY (*Professeur, Doyen de la Faculté de Droit des sciences juridiques, politiques et sociales de Tunis*)

« La protection du consommateur en Droit international privé tunisien »

9h30 - 10h : Fatma BOURAOUI (*Maitre assistante, Faculté de Droit des sciences juridiques, politiques et sociales de Tunis*)

« Les contrats de transmission des créances en droit international privé »

10h - 10h30 : Rym BEN KHELIFA (*Maitre-assistante, Faculté de Droit et des sciences politiques de Tunis*)

« L'impact des traités relatifs à la protection des investissements sur les contrats conclus entre États-hôtes et investisseurs étrangers »

10h30 - 11h : Coffee Break

11h - 11h30: Jallel BACCAR (*Maitre-assistant, École supérieure de commerce de Sfax*)

« Le crédit documentaire international »

11h30 - 12h : Inès YOUSSEF (*Maitre-assistante, Faculté des sciences juridiques, économiques et de gestion de Jendouba*)

« Le paiement d'un contrat international par crédit documentaire »

12h - 12h30: Debate

12h30 : End of the Colloquium

All presentations are in French. Participation to this event is free of charge and no prior reservation is required.

CELCOS Conference in Maribor (Slovenia): Strengthening the Rule of Law in the EU (31 March - 2 April 2016)

The **University of Maribor (Slovenia)** is organizing the **Central European Law Conference for Students (CELCOS)**. It will take place in Maribor from 31 March to 2 April 2016. CELCOS will be the first large international student event in Central and Southeastern Europe to reflect current issues of EU law.

The main concept of this Jean Monnet project is to gather over 50 law doctoral students from universities across Europe for a three-day conference at the University of Maribor (Slovenia), where the doctoral students will be the main actors and about 30 experts, i.e. professors of EU law, judges, prosecutors and policy-makers at the national and EU level will give impulses to the discussion about selected areas of EU law by commenting on the students' contributions.

The aim of this conference is to analyze current topics of EU law, especially in light of the importance that EU law has for establishing the rule of law in Central and Southeastern Europe. Moreover, it aims at promoting fresh ideas and proposals for the future development of the EU legal system in general.

The conference will be divided into nine sessions dealing with the following topics:

Session 1: Triangle of cooperation between courts - ECtHR, CJEU and national courts.

Session 2: Managing migration in Europe - between economic feasibility and protection of human rights.

Session 3: Market integration through law: reforming legal foundations for a stable EU market.

Session 4: Effective enforcement of data protection law in Europe.

Session 5: EU Consumer protection – the current challenges.

Session 6: From transnational principles to European rules of civil procedure.

Session 7: Common EU standards on rights of suspects, the accused and victims in criminal proceedings.

Session 8: Integration of environmental protection into EU policies.

Session 9: Democracy and rule of law in Central and Southeastern Europe.

CELCOS is co-financed by the **EU Commission - Erasmus programme - Jean Monnet Project**. Further information is available at the Conference homepage. A detailed description of the sessions may be found here.

Article: Marriage for All and International Public Policy

Professor Victoria Camarero Suarez published an article on marriage for all and international public policy in the **Revista General de Derecho Canónico y Eclesiástico del Estado (no. 40/2016)**, a Spanish Journal on the Law of Church and State.

Here is the English abstract:

In this work, in the first place, some general considerations are carried out, in relation with same-sex marriages and their roots in comparative systems as far as the legal practice is concerned. After this brief outline, we offer a presentation of the Decision of the French Cour de Cassation dated 28 January 2015, following the development of its historical iter and the foundations on which it is based upon. Within the stage that we may define as a comment, our research makes a evaluation of such as those foundations and, above all, of the interplay between

international public policy and Fundamental Rights. In the same way we make detailed comparisons with the Spanish legal practice within the terms specially defined by DGRN. We put an end to our study through suggestive reflections with a view to throwing some light on the issue concerning the performance criteria of the French High Court and the need to reach full Human Rights, avoiding to the extent possible the emergence of unnecessary conflicts with regard to the subject of coexistence among the different legal systems.

ERA Conference on Recent case law of the ECtHR in family matters

Objective

This seminar will provide participants with a detailed understanding of the most recent jurisprudence of the European Court of Human Rights (ECtHR) related to family law matters.

The spotlight is centred on Article 8 (respect for private and family life) in conjunction with Article 14 (prohibition of discrimination) and Article 12 (right to marry). The case law of the ECtHR concentrates not only on the legal implications but also on social, emotional and biological factors.

Key topics

Notion of family life - current definition and interpretation by the ECtHR

International child abduction

Balancing children's rights, parents' rights and public order

Surrogacy parenthood

Home births and assistance rights

Abortion

Same-sex relationships and trans individuals' gender recognition

Who should attend?

Lawyers specialised in family law, human rights lawyers, judges dealing with family law matters, ministry officials, representatives of NGOs and child's rights

organisations.

See the full programme [here](#).

Romano on questions of family status in European PIL

Professor *Gian Paolo Romano* (University of Geneva) has just published a highly insightful paper entitled “Conflicts and Coordination of Family Statuses: Towards their Recognition within the EU?” The briefing note was prepared on request of the European Parliament as a contribution to a workshop on “Adoption: Cross-border legal issues” for JURI and PETI Committees, which took place on 1 December 2015. The paper focusses on, in the author’s words, “intra-EU conflicts of family statuses” that are bound to arise under the current legislative situation: Over the years, the European Union has adopted a wide set of Regulations that cover international jurisdiction, applicable law and recognition with regard to the legal effects flowing from a family status, while the creation or termination of family statuses are predominantly excluded from the Regulations’ scope. Thus, the question whether and on which grounds a family status awarded by one Member State is to be recognized in other Member States is still widely left to domestic PIL, often resulting in conflicts of inconsistent family statuses between Member States, which, at this stage, cannot be resolved in legal proceedings. After reflecting upon those conflicts being contrary to human rights as well as to the objectives and fundamental freedoms of the European Union and demonstrating their potential to frustrate the aims of European PIL instruments, the author discusses four possible legislative strategies for preventing conflicts of family statuses across the European Union or alleviating their adverse effects.

The compilation of briefing notes is available [here](#) (please see page 17 *et seqq.* for Professor *Romano’s* contribution).

Third Issue of 2015's *Rivista di diritto internazionale privato e processuale*

(I am grateful to Prof. Francesca Villata - University of Milan - for the following presentation of the latest issue of the RDIPP)

✘ The third issue of 2015 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released. It features one article and two comments.

In his article *Reiner Hausmann*, Professor at the University of Konstanz, examines general issues of private international law in a European Union perspective addressing, *i.a.*, connecting factors and the questions of characterization and interpretation, in “**Le questioni generali nel diritto internazionale privato europeo**” (General Issues in European Private International Law; in Italian).

*This article tackles general issues in European private international law, and namely issues of connecting factors, characterization and renvoi, to portray, on the one hand, how and in which direction this area of the law has emancipated from the domestic legal systems of the EU Member States and to illustrate, on the other hand, which are the underlying principles that encouraged and made this transformation possible. As far as connecting factors are concerned, the paper shows that the recent development in European private international law - as opposed to the solution in force in many Member States - is characterized by (i) an extension of party autonomy to family and succession law; (ii) a systematic substitution of nationality with habitual residence as the primary objective connecting factor in international family and succession law, and (iii) the promotion of *lex fori* as objective and subjective connecting factor, in particular in cross-border divorce and succession law. Therefore, the primary objective of the European legislation in the field of private international law is not to identify the closest factual connecting element of a case to the law of a*

certain country but, rather, to accelerate and improve the legal protection of European citizens and to reduce the costs in cross-border disputes by allowing parties and courts to opt for the lex fori and thus to avoid, to a large extent, the application of foreign law. Moreover, the paper illustrates that while the introduction of renvoi into European private international law by means of Article 34 of the Regulation on cross-border successions appears to be in conflict with the principle of unity of the succession, which is a main pillar of the Regulation itself, the practical importance of renvoi is limited, because renvoi is mainly restricted to cases where the deceased had his last habitual residence in a third State and left property in a Member State. As suggested in the paper, in order to avoid difficult problems of characterization when marriage ends by the death of one of the spouses, it would appear sensible to follow the example of Article 34 of the Succession Regulation in the forthcoming EU regulation on matrimonial property.

In addition to the foregoing, the following comments are also featured:

Arianna Vettorel, Research fellow at the University of Padua, discusses recent developments in international surrogacy in **“International Surrogacy Arrangements: Recent Developments and Ongoing Problems”** (in English).

This article analyses problems occurring in cross-border surrogacy, with a particular focus on problems associated with the recognition of the civil status of children legally born abroad through this procreative technique. The legal parentage between the child and his or her intended parents is indeed usually not recognized in States that do not permit surrogacy because of public policy considerations. This issue has been recently addressed by the European Court of Human Rights on the basis of Article 8 of the ECHR and in light of the child’s best interests. Following these judgments, however, some questions are still open.

Cinzia Peraro, PhD candidate at the University of Verona, tackles the issues stemming from the *kafalah* in cross-border settings in **“Il riconoscimento degli effetti della kafalah: una questione non ancora risolta”** (Recognition of the Effects of the *Kafalah*: A Live Issue; in Italian).

The issue of recognition in the Italian legal system of kafalah, the instrument

used in Islamic countries to take care of abandoned children or children living in poverty, has been addressed by the Italian courts in relation to the right of family reunification and adoption. The aim of this paper is to analyse judgment No 226 of the Juvenile Court of Brescia, which in 2013 rejected a request to adopt a Moroccan child, made by Italian spouses, on the grounds that the Islamic means of protection of children is incompatible with the Italian rules. The judges followed judgment No 21108 of the Italian Supreme Court, issued that same year. However, the ratification of the 1996 Hague Convention on parental responsibility and measures to protect minors, which specifically mentions kafalah as one of the instruments for the protection of minors, may involve an adjustment of our legislation. A bill submitted to the Italian Parliament in June 2014 was going in this direction, defining kafalah as “custody or legal assistance of a child”. However, in light of the delicate question of compatibility between the Italian legal system and kafalah, the Senate decided to meditate further on how to implement kafalah in Italian law. Therefore, all rules on the implementation of kafalah have been separated from ratification of the Hague Convention and have been included in a new bill.

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