Bonn University / HCCH Conference — The HCCH 2019 Judgments Convention: Cornerstones – Prospects – Outlook, 9 and 10 June 2023

Registration now open

Dates:

Friday and Saturday, 9 and 10 June 2023

Venue:

Universitätsclub Bonn, Konviktstraße 9, D – 53113 Bonn

Registration:

sekretariat.weller@jura.uni-bonn.de

Registration Fee:	**€ 220.-**
Young Scholars Rate (limited capacity):	**€ 110.-**
Dinner (optional):	**€ 60.-**

Registration: Please register with sekretariat.weller@jura.uni-bonn.de. **Please communicate your full name and your postal address (for accounting purposes).** Clearly indicate whether you want to benefit from the young scholars' reduction of the conference fees and whether you want to participate in the conference dinner. You will receive an invoice **invoice per email** for the respective conference fee and, if applicable, for the conference dinner. **Please make sure that we receive your payment at least two weeks in advance to the conference (26 May 2023 at the latest).** After receiving your payment we will send out a confirmation of your registration. This confirmation will allow you to access the conference hall and the conference dinner.

Please note: Access will only be granted if you are vaccinated against Covid-19. Please confirm in your registration that you are, and attach an e-copy of your vaccination document. Please follow further instructions on site, e.g. prepare for producing a current negative test, if required by University or State regulation at that moment. We will keep you updated. Thank you for your cooperation.

Accommodation: We have blocked a larger number of rooms in the newly built hotel **"MotelOne Bonn-Beethoven"**, https://www.motel-one.com/de/hotels/bonn/hotel-bonn-beethoven/, few minutes away from the conference venue. The hotel's address is: Berliner Freiheit 36, D – 53111 Bonn. The contact details are: bonn-beethoven@motel-one.com, +49 228 9727860. These rooms need to be booked on your own initiative and account by making reservation with the Hotel and by referring to „Universität Bonn". These rooms will be **blocked until 22 April 2023 at the latest.** As there will be several larger events in town at the date of our conference we recommend making arrangements for accommodation quickly.

Programme

Friday, 9 June 2023

8.30 a.m. Registration

9.00 a.m. Welcome notes

Prof Dr Matthias Weller, Director of the Institute for German and International Civil Procedural Law, Rheinische Friedrich-Wilhelms-Universität Bonn;
Dr Christophe Bernasconi, Secretary General, HCCH

Moderators: Prof Dr Moritz Brinkmann, Prof Dr Nina Dethloff, Prof Dr Matthias Weller, University of Bonn; Prof Dr Matthias Lehmann, University of Vienna; Dr João Ribeiro-Bidaoui, Former First Secretary, HCCH; Melissa Ford, Secretary, HCCH

Part I: Cornerstones

1. **Scope of application**
   Prof Dr Xandra Kramer, Erasmus University Rotterdam, Utrecht University, The Netherlands
2. **Judgments, Recognition, Enforcement**
   Prof Dr Wolfgang Hau, Ludwig-Maximilians-Universität Munich, Germany
3. **The jurisdictional filters**
   Prof Dr Pietro Franzina, Catholic University of Milan, Italy
4. **Grounds for refusal**
   Adj Prof Dr Marcos Dotta Salgueiro, University of the Republic, Montevideo; Director of International Law Affairs, Ministry of Foreign Affairs, Uruguay
5. **Article 29: From a Mechanism on Treaty Relations to a Catalyst of a Global Judicial Union**
   Dr João Ribeiro-Bidaoui, Former First Secretary, HCCH

Dr Cristina Mariottini, Senior Research Fellow at the Max Planck Institute for International, European and Regulatory Law, Luxembourg

1.00 p.m. Lunch Break

6. **The HCCH System for choice of court agreements: Relationship of the HCCH Judgments Convention 2019 to the HCCH 2005 Convention on Choice of Court Agreements**
   Prof Dr Paul Beaumont, University of Stirling, United Kingdom

Part II: Prospects for the World

1. **European Union**
   Dr Andreas Stein, Head of Unit, DG JUST – A1 "Civil Justice", European Commission

2. **Perspectives from the US and Canada**
   Professor Linda J. Silberman, Clarence D. Ashley Professor of Law, Co-Director, Center for Transnational Litigation, Arbitration, and Commercial Law, New York University School of Law, USA
   Professor Geneviève Saumier, Peter M. Laing Q.C. Professor of Law, McGill Faculty of Law, Canada

3. **Southeast European Neighbouring and EU Candidate Countries**
   Prof Dr Ilija Rumenov, Associate Professor at Ss. Cyril and Methodius University, Skopje, North Macedonia

8.00 p.m. Conference Dinner (€ 60.-)

Dinner Speech
Prof Dr Burkhard Hess, Director of the Max Planck Institute for International, European and Regulatory Law, Luxembourg

Saturday, 10 June 2023

9.00 a.m. Part II continued: Prospects for the World

4. **Perspectives from the Arab World**
   Prof Dr Béligh Elbalti, Associate Professor at the Graduate School of Law and Politics at Osaka University, Japan

5. **Prospects for Africa**
   Prof Dr Abubakri Yekini, University of Manchester, United Kingdom
   Prof Dr Chukwuma Okoli, University of Birmingham, The Netherlands

6. **Gains and Opportunities for the MERCOSUR Region**
   Prof Dr Verónica Ruiz Abou-Nigm, Director of External Relations, Professor of Private International Law, University of Edinburgh, United Kingdom

7. **Perspectives for ASEAN**
   Prof Dr Adeline Chong, Associate Professor of Law, Yong Pung How School of Law, Singapore Management University, Singapore

8. **China**
   Prof Dr Zheng (Sophia) Tang, University of Newcastle, United Kingdom

1.00 p.m. Lunch Break

Part III: Outlook

1. **Lessons Learned from the Genesis of the HCCH 2019 Judgments Convention**
   Dr Ning Zhao, Principal Legal Officer, HCCH

2. **International Commercial Arbitration and Judicial Cooperation in civil matters: Towards an Integrated Approach**
   José Angelo Estrella-Faria, Principal Legal Officer and Head, Legislative Branch, International Trade Law Division, Office of Legal Affairs, United Nations; Former Secretary General, UNIDROIT

3. **General Synthesis and Future Perspectives**
   Hans van Loon, Former Secretary General, HCCH

UNIVERSITÄT BONN

Rechts- und Staatswissenschaftliche Fakultät
Rechtswissenschaft

Institut für deutsches und internationales Zivilverfahrensrecht

Zentrum für Europäisches Wirtschaftsrecht (ZEW)

HCCH

Bundesministerium der Justiz und für Verbraucherschutz

The HCCH 2019 Judgments Convention: Cornerstones – Prospects – Outlook

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https://www.jura.uni-bonn.de/professur-prof-dr-weller/the-hcch-2019-judgments-convention-cornerstones-prospects-outlook-conference-on-9-and-10-june-2023

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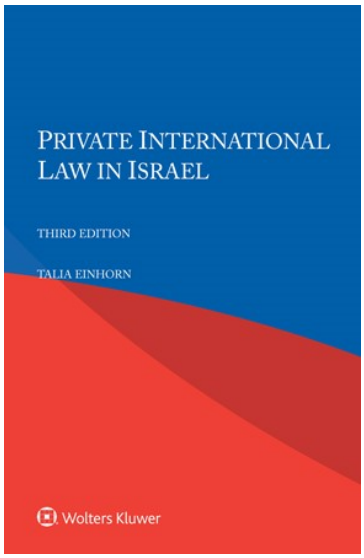
Out now: Talia Einhorn, Private International Law in Israel, 3rd edition



It is my pleasure to recommend to the global CoL community a real treat: Talia Einhorn's "Private International Law in Israel", an analysis of the country's private international law of no less than almost 900 pages, now in its third edition. This monograph, significantly enlarged and extended, grounds on the respective country report for the International Encyclopedia of Laws/Private International Law amongst a large series of country reports on which the "General Section" by Bea Verschraegen, the editor of the entire series, builds.

According to the Encyclopedia's structure for country reports, the text covers all conceivable aspects of a national private international law, from "General Principles (Choice of Law Techniques)" in Part I, including the sources of PIL, the technical and conceptual elements of choice of law rules ("determination of the applicable law") as well as "basic terms". Part II unfolds a fascinating tour d'horizon through the "Rules of Choice of Law" on persons, obligations, property law, intangible property rights, company law, corporate insolvency and personal bankruptcy, family law and succession law. Part III covers all matters of international civil procedure, including jurisdictional immunities, international jurisdiction, procedure in international litigation, recognition and enforcement and finally international arbitration.

The analyses offered seem to be extremely thorough and precise, including in-depth evaluations of key judgments, which enables readers to grasp quickly core concepts and issues beyond basic information and the mere black letter of the rules. For example, Chapter 4 of Part III on the recognition and enforcement of foreign judgments explains that Israel is a State Party to only one rather specific convention, the UN Convention on the Recovery Abroad of Maintenance 1956 (apparently operated without any implementing legislation, see para. 2434). Further, Israel entertains four bilateral treaties (with Austria, Germany, Spain and the UK) that provide generally for recognition and enforcement of judgments in civil and commercial matters. These four treaties, however, seem to differ substantially from each other and from the domestic statutory regime under the Israeli Foreign Judgments Enforcement Law ("FJEL"), see para. 2436. These differences are spelled out down to the level of decisions of first instance courts of the respective foreign State Party, see e.g. footnote 1927 with reference to recent jurisprudence (of the German Federal Court of Justice and) of the local court of Wiesbaden on Article 8(2) of the bilateral treaty with Germany stipulating, according to these courts' interpretation, a far-reaching binding effect to the findings of the first court. This is contrasted with case law of the Israeli Supreme Court rejecting recognition and enforcement of a German judgment, due to the lack of a proper implementation of the Treaty in Israeli domestic law, see paras. 2437 et seq. – a state of things criticized by the author who also offers an alternative interpretation of the legal constellation that would have well allowed recognition and enforcement under the Treaty, see para. 2440. Additionally, interpretation of the domestic statutory regime in light of treaty obligations of the State of Israel, irrespective of a necessity of any specific implementation measures, is suggested, para. 2447. On the level of the domestic regime, the FJEL, in § 3 (1), prescribes as one out of a number of cumulative conditions for enforcement that "the judgment was given in a state, the courts of which were, according to its laws, competent to give it", see para. 2520. Indeed, "the first condition is puzzling", para. 2526, but by no means unique and does even appear in at least one international convention (see e.g. Matthias Weller, RdC 423 [2022], at para. 251, on Art. 14(1) of the CEMAC 2004 Agreement and on comparable national rules). At the same time, and indeed, controlling the jurisdiction of the first court according to its own law appears hardly justifiable, all the more, as there is no control under § 3 FJEL of the international jurisdiction according to the law of the requested court / State, except perhaps in extreme cases under the general public policy control in § 3 (3) FJEL. Additionally, on the level of domestic

law, English common law seems to play a role, see paras. 2603, but the relation to the statutory regime seems to pose a question of normative hierarchy, see para. 2513, where Einhorn proposes that the avenue via common law should only be available as a residual means. In light of this admirably clear and precise assessment, one might wonder whether Israel should considering participating in the HCCH 2019 Judgments Convention and the reader would certainly be interested in hearing the author's learned view on this. The instrument is not listed in the table of international treaties dealt with in the text, see pp. 821 et seq., nor is the HCCH 2005 Choice of Court Agreements Convention. Of course, these instruments do not (yet?) form part of the Israeli legal system, but again, the author's position whether they should would be of interest.

As this very brief look into one small bit of Einhorn's monograph shows, this is the very best you can expect from the outsider's and a PIL comparative perspective, probably as well from the insider's perspective if there is an interest in connecting the own with the other. Admirable!

Return of the anti-suit injunction: parallel European proceedings and English forum selection clauses

Written by Kiara van Hout. Kiara graduated from the Law Tripos at the University of Cambridge in 2021 (St John's College). She is currently an Associate to a Judge at the Supreme Court of Victoria.

In two recent English cases, the High Court has granted injunctive relief to restrain European proceedings in breach of English forum selection clauses. This article compares the position on anti-suit injunctive relief under the Brussels I Regulation Recast and the English common law rules, and the operation of the latter in a post-Brexit landscape. It considers whether anti-suit injunctions to

protect forum selection clauses will become the new norm, and suggests that there is Supreme Court authority militating against the grant of such injunctive relief as a matter of course. Finally, it speculates as to the European response to this new English practice. In particular, it questions whether the nascent European caselaw on anti anti-suit injunctions foreshadows novel forms of order designed to protect European proceedings.

Anti-suit injunctions under the Brussels I Regulation Recast

In proceedings commenced in the English courts before 1 January 2021, it is not possible to obtain an anti-suit injunction to restrain proceedings in other EU Member States.

In Case 159/02 Turner v Grovit [2004] ECR I-3565, the Full Court of the European Court of Justice found that it was inconsistent with the Brussels I Regulation to issue an anti-suit injunction to restrain proceedings in another Convention country. That is so even where that party is acting in bad faith in order to frustrate existing proceedings. The Court stated that the Brussels I Regulation enacted a compulsory system of jurisdiction based on mutual trust of Contracting States in one another's legal systems and judicial institutions:

> It is inherent in that principle of mutual trust that, within the scope of the Convention, the rules on jurisdiction that it lays down, which are common to all the courts of the Contracting States, may be interpreted and applied with the same authority by each of them… Any injunction prohibiting a claimant from bringing such an action must be seen as constituting interference with the jurisdiction of the foreign court which, as such, is incompatible with the system of the Convention.

In the subsequent Case 185/07 Allianz v West Tankers [2009] ECR I-00663, the question arose as to whether it was inconsistent with the Brussels I Regulation to issue an anti-suit injunction to restrain proceedings in another Convention country on the basis that such proceedings would be contrary to an English arbitration agreement. In its decision, the Grand Chamber of the European Court of Justice found that notwithstanding that Article 1(2)(d) excludes arbitration from the scope of the Brussels I Regulation, an anti-suit injunction may have consequences which undermine the effectiveness of that regime. An anti-suit

injunction operates to prevent the court of another Contracting State from exercising the jurisdiction conferred on it by the Brussels I Regulation, including its exclusive jurisdiction to determine the very applicability of that regime to the dispute. The decision in Allianz v West Tankers represents an extension of Turner v Grovit insofar as it prohibits the issue of anti-suit injunctions in support of English arbitration as well as jurisdiction agreements.

Anti-suit injunctions under the common law rules

The Brussels I Regulation Recast rules govern proceedings commenced in the English courts before 1 January 2021. The regime governing jurisdiction in proceedings commenced after 1 January 2021 comprises the Hague Choice of Court Convention and, more pertinently for present purposes, the common law rules.

At common law, a more flexible approach to parallel proceedings is taken. Anti-suit injunctions may be deployed to ensure the dispute is heard in only one venue. Section 37 of the Senior Courts Act 1981 empowers courts to grant an anti-suit injunction where it appears just and convenient to do so. The ordinary justification for injunctive relief is protection of the private rights of the applicant by preventing a breach of contract. Where parties have agreed to a forum selection clause, either in the form of a jurisdiction or arbitration agreement, anti-suit injunctions may be available to prevent a breach of contract.

In two recent cases, the English courts have granted injunctive relief to restrain European proceedings in breach of English forum selection clauses. These cases demonstrate clearly the change of position as compared with Allianz v West Tankers and Turner v Grovit, respectively.

Proceedings in violation of English arbitration agreement

In QBE Europe SA/NV v Generali España de Seguros Y Reaseguros [2022] EWHC 2062 (Comm), a yacht allegedly caused damage to an underwater power cable which resulted in hydrocarbon pollution. The claimant had issued a liability insurance policy to the owners in respect of the yacht. That policy contained a multi-faceted dispute resolution and choice of law clause, which provided *inter alia* that any dispute arising between the insurer and the assured was to be

referred to arbitration in London.

The defendant had issued a property damage and civil liability insurance policy with the owners of the underwater power cable. The defendant brought a direct claim against the claimant in the Spanish courts under a Spanish statute. The claimant responded by issuing proceedings in England, and applied for an anti-suit injunction in respect of the Spanish proceedings brought by the defendant.

The court found that the claims advanced by the defendant in the Spanish proceedings were contractual in nature, as the Spanish statute provided the defendant with a right to directly enforce the contractual promise of indemnity created by the insurance contract. The matter therefore concerned a so-called 'quasi-contractual' anti-suit injunction application, as the defendant was not a party to the contractual choice of jurisdiction in issue. Nevertheless, the right which the defendant purported to assert before the Spanish court arose from an obligation under a contract (the claimant's liability insurance policy) to which the arbitration agreement is ancillary, such that the obligation sued upon is said to be 'conditioned' by the arbitration agreement.

That the defendant was seeking to advance contractual claims without respecting the arbitration agreement ancillary to that contract provided grounds for granting an anti-suit injunction. As such, the position under English conflict of laws rules is that the court will ordinarily exercise its discretion to restrain proceedings brought in breach of an arbitration agreement unless the defendant can show strong reasons to refuse the relief (see Donohue v Armco Inc [2001] UKHL 64). The defendant advanced several arguments, which were dismissed as failing to amount to strong reasons against the grant of relief. Therefore, the court found that it was appropriate to grant the claimant an anti-suit injunction restraining Spanish proceedings brought by the defendants.

Proceedings in violation of exclusive English jurisdiction agreement

In Ebury Partners Belgium SA/NV v Technical Touch BV [2022] EWHC 2927 (Comm), the defendants were interested in receiving foreign exchange currency services from the claimant company. The claimant submitted that the parties had entered into two agreements in early 2021.

The first agreement was a relationship agreement entered into by the second defendant Mr Berthels as director of the first defendant Technical Touch BV. Mr Berthels completed an online application form for currency services, agreeing to the claimant's terms and conditions. These terms and conditions were available for download and accessible via hyperlink to a PDF document, though in the event Mr Berthels did not access the terms and conditions by either method. The terms and conditions included an exclusive jurisdiction agreement in favour of the English courts.

The second agreement was a personal guarantee and indemnity given by Mr Berthels in respect of the defendant company's obligations to the claimant. This guarantee also included an exclusive English jurisdiction agreement.

When a dispute arose in April 2021 as to the first defendant's failure to pay a margin call made by the claimant under the terms of the relationship agreement, the defendants initiated proceedings in Belgium seeking negative declaratory relief and challenging the validity of the two agreements under Belgian law. The claimant responded by issuing proceedings in England, and applied for an interim anti-suit injunction in respect of Belgian proceedings brought by the defendants. The claimant submitted that the Belgian proceedings were in breach of exclusive jurisdiction agreements in favour of the English court.

An issue arose as to whether there was a high degree of probability that the English jurisdiction agreement was incorporated into the relationship agreement, and which law governed the issue of incorporation. It is not within the scope of this article to consider this choice of law issue in depth. For present purposes, it is sufficient to note that the court decided that it was not unreasonable to apply English law to the issue of incorporation, and that on this basis, there was a high degree of probability that the clause was incorporated into the relationship agreement.

As in QBE Europe, the court approached the discretion to award injunctive relief on the basis that the court will ordinarily restrain proceedings brought in breach of a jurisdiction agreement unless the defendant can show strong reasons to refuse the relief. No sufficiently strong reasons were shown. Therefore, the court found that it was appropriate to grant the claimant an anti-suit injunction restraining the Belgian proceedings.

Anti-suit injunctions to protect forum selection clauses: the new norm?

It is plainly important to the status of London as a litigation hub in Europe that English forum selection clauses maintain their security and enforceability. The Brussels I Regulation Recast provided one means of managing parallel proceedings contrived to circumvent such clauses. Absent the framework provided by the Brussels I Regulation Recast; the English courts appear to be employing anti-suit injunctions as an alternative means of protecting English forum selection clauses. This ensures that litigants are still equipped to resist parallel proceedings brought to 'torpedo' English proceedings.

Proceedings in which there is an exclusive English forum selection clause represent among the most compelling circumstances in which the court might grant an anti-suit injunction. In those circumstances, the court is likely to grant injunctive relief to protect the substantive contractual rights of the applicant. The presence of an exclusive forum selection clause is a powerful ground for relief which tends to overcome arguments as to comity and respect for foreign courts. As noted in the joint judgment of Lord Hamblen and Lord Leggatt (with whom Lord Kerr agreed) in Enka Insaat Ve Sanayi A.S. v OOO Insurance Company Chubb [2020] UKSC 38, citing Millett LJ in Aggeliki Charis Cia Maritima SA v Pagnan SpA (The Angelic Grace) [1995] 1 Lloyd's Rep 87, a foreign court is unlikely to be offended by the grant of an injunction to restrain a party from invoking a jurisdiction which he had promised not to invoke and which it was its own duty to decline.

Nevertheless, it is not to be assumed that injunctive relief will always be granted to enforce English forum selection clauses. As Lord Mance (with whom Lord Neuberger, Lord Clarke, Lord Sumption and Lord Toulson agreed) stated in Ust-Kamenogorsk Hydropower Plant JSC v AES Ust-Kamenogorsk Hydropower Plant LLP [2013] UKSC 35, at paragraph [61]:

> In some cases where foreign proceedings are brought in breach of an arbitration clause or exclusive choice of court agreement, the appropriate course will be to leave it to the foreign court to recognise and enforce the parties' agreement on forum. But in the present case the foreign court has refused to do so, and done this on a basis which the English courts are not bound to recognise and on grounds which are unsustainable under English law which is accepted to govern the arbitration agreement. In these

> circumstances, there was every reason for the English courts to intervene to protect the prima facie right of AESUK to enforce the negative aspect of its arbitration agreement with JSC.

It is too early to say whether anti-suit injunctions will be granted as a matter of course in circumstances such as those in QBE Europe and Ebury Partners. The judgment of Lord Mance indicates that there is a residual role for comity and respect for foreign courts even in cases of breach of a forum selection clause. The English court should not necessarily assume that its own view as to the validity, scope and interpretation of a forum selection clause is the only one. In some instances, it will be appropriate to allow a foreign court to come to its own conclusion, and consequently to refuse injunctive relief. [see Mukarrum Ahmed, *Brexit and the Future of Private International Law in English Courts* (OUP 2022) 117-124] It is clear, at least, that anti-suit injunctions have returned to the toolbox.

The European response: anti anti-suit injunctions?

It seems likely that English anti-suit injunctions will be met with resistance by European courts who find their proceedings obstructed by such orders. As a matter of theory, it is now possible for European courts to issue anti-suit injunctions to restrain English proceedings: the inapplicability of Allianz v West Tankers and Turner v Grovit vis-à-vis England cuts both ways. However continental European legal systems have traditionally regarded anti-suit injunctions as being contrary to international law on the basis that they operate extraterritorially and impinge on the sovereignty of the State whose legal proceedings are restrained.

It is more plausible that European courts would deploy anti anti-suit injunctions to unwind offending English orders. [see Mukarrum Ahmed, *Brexit and the Future of Private International Law in English Courts* (OUP 2022) 50] Assuming that the grant of anti-suit injunctions becomes a regular practice of the English courts in these circumstances, this could provide the impetus for legal developments in this direction across the Channel. In recent years both French and German courts have issued orders of this kind in the context of patent violation. In a December 2019 judgment, the Higher Regional Court of Munich issued an anti anti-suit injunction to prevent a German company from making an application in US proceedings for an anti-suit injunction (see Continental v Nokia, No. 6 U

5042/19). In a March 2020 judgment, the Court of Appeal of Paris issued an anti anti-suit injunction ordering various companies of the Lenovo and Motorola groups to withdraw an application for an anti-suit injunction in US proceedings (see IPCom v Lenovo, No. RG 19/21426).

However, neither decision endorses the general availability of anti anti-suit injunctions outside of the specific circumstances in which relief was sought in those cases. It remains to be seen whether European courts will be willing to utilise anti anti-suit injunctions in circumstances wherein parties have agreed to English forum selection clauses. At this stage, it can only be said that there is a possibility of an undesirable tussle of anti-suit injunctions and anti anti-suit injunctions. This would expose litigants to increased litigation costs, wasted time and trouble, uncertainty as to which court will ultimately hear their case, and the spectre of coercive consequences in the event of non-compliance. Furthermore, a move towards relief of this kind would have a profound impact on the security of English jurisdiction and arbitration agreements. Developments in this area should be watched with interest.

Yegiazaryan v. Smagin, Civil RICO, and the Enforcement of Foreign Awards in the United States

Thanks to Alberto Pomari, JD Candidate at the University of Pittsburgh School of Law, for his assistance with this post.

Two cases slated for Supreme Court's 2024 term could boost the enforcement of foreign arbitral awards in the United States. On Friday January 13, 2023, the U.S. Supreme Court granted certiorari and consolidated the cases of Yegiazaryan v. Smagin and CMB Monaco v. Smagin. Both present the question of when an injury is foreign or domestic for purposes of RICO civil applicability. Beyond this statutory issue, however, the Supreme Court's decision will have consequences

for the enforcement of foreign arbitral awards too.

The Racketeer Influenced and Corrupt Organizations Act ("RICO") enables private individuals injured by a racketeering violation to bring a civil suit and recover treble damages if he was "injured in his business or property." In RJR Nabisco, Inc. v. European Cmty., the U.S. Supreme Court upheld the federal presumption against extraterritoriality to limit RICO's private right of action to only those injuries that are "domestic" in their nature. However, no definition or test was provided to draw a bright line between domestic and foreign injuries.

In Yegiazaryan v. Smagin, the defendant (Yegiazaryan) is a Russian businessman living in California. The plaintiff (Smagin) commenced arbitration proceedings against him in London and was awarded $84 million. In 2014, Smagin successfully filed to recognize and enforce the award against Yegiazaryan in the U.S. district court where Yegiazaryan now resides. In 2020, Smagin filed a RICO action against Yegiazaryan alleging that he and various associates attempted to conceal $198 million from Smagin, which inevitably "injured in his business or property." Specifically, Smagin alleged that his U.S. judgment confirming this prior foreign arbitral award against Yegiazaryan is intangible property located in the United States, thus making any injury thereto eligible for a RICO civil claim even though he lives abroad.

As to the location of intangible property for purposes of RICO injuries, circuits have split. The Seventh Circuit adopted the residency test, according to which an injury to intangible property must occur in the place where the plaintiff has its residence. Accordingly, a foreign-resident plaintiff like Smagin always suffers foreign injuries to intangible property and cannot recover under RICO. The Third Circuit rejected the residency test in favor of a holistic, six-factor test, with particular emphasis on where the plaintiff suffers the effect of the injurious activity. The Ninth Circuit in the Smagin cases adopted a totality-of-the-circumstances test similar to the Third Circuit's one, yet with a particular emphasis on the defendant's conduct. Indeed, the court concluded that Smagin had pleaded a domestic injury because much of the defendant's alleged misconduct took place in California and the U.S. judgment confirming the foreign award could be executed against the defendant only in California.

The case also has implications for the enforcement of foreign judgments and arbitral awards in the United States. If a U.S. judgment recognizing a foreign

judgment or confirming a foreign arbitral award are considered property in the United States, then RICO violations committed in the process of trying to avoid enforcement of the U.S. judgment may give rise to civil liability.

Ferrari, Rosenfeld & Kotuby, Recognition and Enforcement of Foreign Arbitral Awards: A Concise Guide to the New York Convention's Uniform Regime

With my co-authors Professor Franco Ferrari and Friedrich Rosenfeld, I am pleased to announce the publication of my newest work, "*Recognition and Enforcement of Foreign Arbitral Awards: A Concise Guide to the New York Convention's Uniform Regime*." It is available for order here.

This incisive book is an indispensable guide to the New York Convention's uniform regime on recognition and enforcement of foreign arbitral awards. Framing the Convention as a uniform law instrument, the book analyses case law from major arbitration jurisdictions to explain its scope of application, the duty to recognize arbitral agreements and awards as well as their limitations, and the procedure and formal requirements for enforcing arbitral awards.

Combining insight from arbitration practice with perspectives from private international law, the book underlines the importance of the Convention's foundation in a treaty of international law, arguing that this entails a requirement to interpret the key concepts it sets forth based on international law rules of interpretation. However, it also demonstrates where municipal laws are relevant and discusses the private international law principles through which these instances can be identified.

Addressing one of the core treaties of international arbitration, this will be crucial reading for legal practitioners and judges working in the field. It will also prove valuable to scholars and students of commercial and private international law, particularly those focused on cross-border disputes and arbitration.

A Major Amendment to Provisions on Foreign-Related Civil Procedures Is Planned in China

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1. Background

The present Civil Procedure Law of China (hereinafter "CPL") was enacted in 1990 and has been amended four times. All amendments made no substantive adjustments to the foreign-related civil procedure proceedings. In contrast with legislative indifference, foreign-related cases in the Chinese judicial system have been growing rapidly and call for modernization of the foreign-related civil procedure law. On 30 December 2022, China's Standing Committee of the National People's Congress issued the "Civil Procedure Law of the People's Republic of China (amendment draft)". Amendments are proposed for 29 articles, 17 of which relate to special provisions on foreign-related civil procedures, including rules on the jurisdiction, service abroad, taking of evidence abroad and recognition and enforcement of judgements.

2. Jurisdiction

Special jurisdiction: Present special jurisdiction rules apply to "disputes concerning contract or other property rights or interests". The literal interpretation may suggest non-contractual or non-propertary disputes are

excluded. The amendment draft extends special jurisdiction rules to cover "disputes relating to property right or interest, and right or interest other than property" (Art. 276, para. 1). The amendment draft provides proceedings may be brought before the courts "where the contract is signed or performed, the subject matter of the action is located, the defendant has any distrainable property, the tort or harmful event occurred, or the defendant has any representative office" (Art. 276, para. 1). Furthermore, "the Chinese court may have jurisdiction over the action if the dispute is of other proper connections with China" (Art. 276, para. 2).

Choice of court agreement: A special provision on the choice of court agreement is inserted in the foreign-related procedure session (Art. 277), which states: "If the place actually connected to dispute is not within the territory of China, and the parties have agreed in written that courts of China are to have jurisdiction, Chinese courts may exercise jurisdiction. The competent court shall be specified according to provisions on hierarchical jurisdiction and exclusive jurisdiction of this law and other laws of China." In contrast to Art. 35 on choice of court agreement in purely domestic cases, Art. 277 partly partially abolished the constraint prescribed in Art. 35, which requires the chosen forum to have practical connection to the dispute. When the party chose Chinese court to exercise jurisdiction, there will be no requirement for actually connection between the dispute and chosen place. But it does not state whether Chinese court should stay jurisdiction if a foreign court is chosen, and whether the chosen foreign court must have practical connections to the dispute. This is an obvious weakness and uncertainty.

Submission to jurisdiction: Art. 278 inserted a new provision on submission to jurisdiction: "Where the defendant raises no objection to the jurisdiction of the courts of China and responds to the action by submitting a written statement of defence or brings a counterclaim, the court of China accepting the action shall be deemed to have jurisdiction."

Exclusive jurisdiction: The draft article expands the categories of disputes

covered by exclusive jurisdiction (Art. 279), including disputes arising from: "(1) the performance of contracts for Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures or Chinese-foreign cooperative exploration and exploitation of natural resources in China; (2) the formation, dissolution, liquidation and effect of decisions of legal persons and other organizations established within the territory of China; (3) examining the validity of intellectual property rights which conferred within the territory of China." Not only matters relating to Chinese-foreign contractual cooperation, but the operation of legal persons and other organizations and the territoriality of intellectual property rights are deemed key issues in China.

Jurisdiction over consumer contracts: The proposal inserts protective jurisdiction rule for consumer contracts (Art. 280). paragraph 1 of this article provides "(w)hen the domicile of consumer is within the territory of China but the domicile of operator or its establishment is not", which permits a Chinese consumer to sue foreign business in China. Paragraph 2 restricts the effect of standard terms on jurisdiction. It imposed the operator the "obligation to inform or explicate reasonably" the choice of court clause, otherwise the consumer may claim the terms are not part of the contract. Furthermore, even if consumers are properly informed of the existence of a choice of court clause, if it is "obviously inconvenient for the consumer" to bring proceedings in the chosen court, the consumer may claim the terms are invalid. In other words, the proposal pays attention to the fairness of a choice of court clause in consumer contracts both in procedure and in substance.

Jurisdiction over cyber torts: With regard to cyber torts, Art. 281 of the draft states: action for cyber torts may be instituted in the Chinese court if: (1) "computer or other information device locates in the territory of China"; (2) "the harmful event occurs in the territory of China"; (3) "the victim domiciles in the territory of China".

3. Conflict of Jurisdiction, Lis pendens and Forum Non Conveniens

Parallel litigation and exclusive jurisdiction agreements: Art. 282 states: "If one party sues before a foreign court and the other party sues before the Chinese court, or if one party sues before a foreign court as well as the Chinese court, for the same dispute, the Chinese court having jurisdiction under this law may exercise jurisdiction. If the parties have agreed in writing on choosing a foreign court to exercise jurisdiction exclusively, and that choice does not violate the provisions on exclusive jurisdiction of this law or involve the sovereignty, security or social public interests of China, the Chinese court may dismiss the action." The first part of this article deals with parallel litigation. It allows the Chinese court to exercise jurisdiction over the same dispute pending in a foreign court. The second part of this article provides exception to exclusive jurisdiction agreements. Although Chinese courts are not obliged to stay jurisdiction in parallel proceedings, they should stay jurisdiction in favour of a chosen foreign court in an exclusive jurisdiction clause, subject to normal public policy defence.

First-seized court approach: If the same action is already pending before a foreign court, conflict of jurisdiction will happen. First-seized court approach encourages the latter seized court to give up jurisdiction. The draft implements this approach in China. Art. 283 states: "Where a foreign court has accepted action and the judgment of the foreign court may be recognized by Chinese court, the Chinese court may suspend the action with the party's written application, unless: (1) there is choice of court agreement indicating to Chinese court between the parties, or the dispute is covered by exclusive jurisdiction; (2) it is obviously more convenient for the Chinese court to hear the case. Where foreign court fails to take necessary measures to hear the case, or is unable to conclude within due time, the Chinese court may remove the suspension with the party's written application." This provision is the first time that introduces the first-in-time or lis pendens rule in China. But the doctrine is adopted with many limitations. Firstly, the foreign judgment may be recognised in China. Secondly, Chinese court is not the chosen court. Thirdly, Chinese court is not the natural forum. The lis pendens rule is thus fundamentally different from the strict lis pendens rule adopted in the EU jurisdiction regime, especially it incorporates the consideration of forum conveniens. Furthermore, it is also necessary to reconcile the first-in-time provision with the article on parallel proceedings, which states Chinese courts, in principle, can exercise jurisdiction even if the dispute is pending in the foreign

court.

Res judicata: Paragraph 3 of Art. 283 state: “Once the foreign judgment has been fully or partially recognized by Chinese court, and the parties institute an action over issues of the recognized content of the judgement, Chinese court shall not accept the action. If the action has been accepted, Chinese court shall dismiss the action.”

Forum non conveniens: Even if the conflict of jurisdiction has not actually arisen, the Chinese court may decline jurisdiction in favour of the more appropriate court of another country. The defendant should plead forum non conveniens or challenge jurisdiction. Applying forum non conveniens should meet four prerequisites. (1) “Since major facts of disputes in a case do not occur within the territory of China, Chinese court has difficulties hearing the case and it is obviously inconvenient for the parties to participate in the proceedings”. (2) “The parties do not have any agreement for choosing Chinese court to exercise jurisdiction”. (3) “The case does not involve the sovereignty, security or social public interests of China”. (4) “It is more convenient for foreign courts to hear the case” (Art. 284, para. 1). This article also provides remedy for the parties if the proceedings on foreign court do not work well. “Where foreign court declined to exercise jurisdiction over the dispute, failed to take necessary measures to hear the case, or is unable to conclude within due time after Chinese court’s dismissal, the Chinese court shall accept the action which the party instituted again.” (Art. 284, para. 2).

4. Judicial Assistance

Service of process on foreign defendants: One of the amendment draft’s main focuses is to improve the effectiveness of foreign-related legal proceedings. In order to achieve this goal, the amendment draft introduces multiple mechanisms to serve process abroad.

Before the draft, the CPL has provided the following multiple service methods: (1)

process is served in the manners specified in the international treaty concluded or acceded to by the home country of the person to be served and China; (2) service through diplomatic channels; (3) if the person to be served is a Chinese citizen, service of process may be entrusted to Chinese embassy or consulate stationed in the country where the person to be served resides; (4) process is served on a litigation representative authorized by the person to be served to receive service of process; (5) process is served on the representative office or a branch office or business agent authorized to receive service of process established by the person to be served within the territory of China; (6) service by post; (7) service by electronic means, including fax, email or any other means capable of confirming receipt by the person to be served; (8) if service of process by the above means is not possible, process shall be served by public notice, and process shall be deemed served three months after the date of public notice.[1]

Article 285 of the draft outlines two new methods to serve a foreign natural person not domiciled in China. First, if the person has a cohabiting adult family member in China, the cohabiting adult family member shall be served (Art. 285, para. 1(g)). Second, if the person acts as legal representative, director, supervisor and senior management of his enterprise established in the territory of China, that enterprise shall be served (Art. 285, para. 1(f)). Similarly, a foreign legal person or any other organization may be served on the legal representative or the primary person in charge of the organization if they are located in China (Art. 285, para. 1(h)). It is clear that by penetrating the veil of legal persons, the amendment draft increases the circumstances of alternative service between relevant natural persons and legal persons.

Amongst the amendments to the CPL, there are points relating to service by electronic means that are worthy of note. Compared to traditional ways of service, service by electronic means is usually more convenient and more efficient. The position in respect of service by electronic means, both before and after the amendment to the CPL, is that such service is permitted. A major innovation introduced by the amendment draft is that the service can now be conducted via instant messaging tools and specific electronic systems, if such means are legitimate service methods recognized in the state of destination (Art. 285, para. 1(k)). It meets the urgent demand of both sides in lawsuits by improving the delivery efficiency.

Party autonomy in service abroad is also accepted. The validity of service by other

means agreed to by the person served is recognized, provided that it is permitted by the state of the person served (Art. 285, para. 1(l)).

If the above methods fail, the defendant may be served by public notice. The notice should be publicized for 60 days and the defendant is deemed served at the end of the period. Upon the written application of the party, the above methods and the way of service by public notice may be made at the same time provided that the service by public notice is not less than 60 days and the litigation rights of the defendant are not affected (Art. 285, para. 2).

Investigation and collection of evidence:

Prior to the draft, the CPL stipulated that Chinese and foreign courts can each request the other to provide judicial assistance in acquiring evidence located in the territory of the other country, in accordance with treaty obligations and the principle of reciprocity. Chinese courts can take evidence abroad generally via two channels. First, evidence overseas can be acquired according to treaty provisions. In the absence of treaties, foreign evidence can only be obtained through diplomatic channels based on the principle of reciprocity.[2]

Article 286 of the draft provides more varied methods to collect foreign evidence. Firstly, foreign evidence can be acquired according to the methods specified in the international treaties concluded or acceded to by both the country where the evidence is located and China. Secondly, the evidence can also be obtained through diplomatic channels. Thirdly, for a witness with Chinese nationality, the Chinese embassy or consulate in the country of the witness will be entrusted to take the evidence on behalf of the witness. Fourthly, via instant messenger tools or other means. Access to electronic evidence stored abroad faces the dilemma of inefficient bilateral judicial assistance, controversial unilateral evidence collection and inadequate functioning of multilateral conventions.[3] The application of modern information technology, such as video conferencing and teleconferencing, can overcome the inconvenience of distance, saving time and costs. It is the mainstream of international cooperation to apply modern technology in the field of extraterritorial evidence-taking. For example, in 2020, the EU Parliament and Council revised the EU Evidence Regulation. The most important highlight of the EU Evidence Regulation is the emphasis on the digitalization of evidence-taking

and the use of modern information technology in the process of evidence-taking.[4] On this basis, the amendment draft proposes that the court may, with the consent of the parties, obtain evidence through instant messenger tools or other means, unless prohibited by the law of the country where the evidence is collected (Art. 286).

5. Recognition and enforcement of foreign judgments and arbitral awards

Grounds for non-recognition and non-enforcement of foreign judgments: Recognition and enforcement shall not be granted if (1) the foreign court has no jurisdiction over the case in accordance with the provisions of Article 303; (2) the respondent has not been legitimately summoned or has not been given a reasonable opportunity to be heard or to argue, or the party who is incapable of litigation has not been properly represented; (3) the judgment or ruling has been obtained by fraud; (4) the court of China has issued a judgment or ruling on the same dispute, or has recognized and enforced a judgment or ruling issued by a court of a third country on the same dispute; (5) it violates the Chinese general principles of the law or sovereignty, national security or public interests of China (Art. 302).

After several amendments and official promulgation, the CPL has not significantly changed the requirements for the recognition and enforcement of foreign judgments. In China, reciprocity as a prerequisite for recognition of foreign judgments continues to play a dominating role in China. The difficulty of enforcing foreign judgments is one of the major concerns in the current Chinese conflicts system when applying the principle of reciprocity, impeding the development of international cooperation in trade and commerce. The local judicial review process may become more transparent thanks to this new draft. However, the key concern, the reciprocity principle, is still left unaltered in this draft.

In addition, if the foreign judgment for which recognition and enforcement are sought involves the same dispute as that being heard by a Chinese court, the proceedings conducted by the Chinese court may be stayed. If the dispute is more closely related to China, or if the foreign judgment does not meet the conditions for recognition, the application shall be refused (Art. 304).

Lack of jurisdiction of the foreign court: One of the grounds for non-recognition and non-enforcement of foreign judgments is that the foreign court lacks jurisdiction (See Art. 302). Article 303 provides that the foreign courts shall be found to have no jurisdiction over the case in the following circumstances: (1) The foreign court has no jurisdiction over the case pursuant to its laws; (2) Violation of the provisions of this Law on exclusive jurisdiction; (3) Violation of the agreement on exclusive choice of court for jurisdiction; or (4) The existence of a valid arbitration agreement between the parties (Art. 303).

Recognition and enforcement of foreign arbitral awards: If the person sought to be enforced is not domiciled in China, an application for recognition and enforcement may be made to the Chinese intermediate court of the place of domicile of the applicant or of the place with which the dispute has an appropriate connection (Art. 306). The inclusion of the applicant's domicile and the court with the appropriate connection to the dispute as the court for judicial review of the arbitration significantly facilitates the enforcement of foreign awards. A major uncertainty, however, is how "appropriate connection" is defined. The amendment draft remains silent on the criterion.

6. Conclusion

The amendment draft presents efforts to actively correspond to the trends in the internationalization of the civil process along with the massive ambition to build a fair, efficient, and convenient civil and commercial litigation system. It offers more comprehensive and detailed rules that apply to all proceedings involving foreign parties. The amendment draft is significant both in terms of its impact on foreign-related civil procedures and the continuing open-door policy. It demonstrates that China is growing increasingly law-oriented to provide more efficient and convenient legal services to foreign litigants and to safeguard the country's sovereignty, security and development interests. On the other hand, the proposal also includes discrepancy and uncertainty, especially whether the practical connection for choice of foreign court is still required, what is the relationship between the first-in-time rule and the rule permitting parallel

proceedings, whether reciprocity should be reserved for recognition and enforcement of foreign judgments. It is also noted that although anti-suit injunction is used in Chinese judicial practice, the proposal does not include a provision on this matter. Hopefully, these issues may be addressed in the final version.

[1] The CPL, Art. 274.

[2] The CPL, Art. 284.

[3] Liu Guiqiang, 'China's Judicial Practice on the Taking of Evidence Abroad in Civil and Commercial Matters: Current Situation, Problems and Solutions' (2021) 1 Wuhan University International Law Review, 92, 97.

[4] Regulation (EU) 2020/1783 on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters (Taking of Evidence Recast). Official Journal of the European Union [online], L 405, 2 December 2020.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 1/2023: 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/)

R. Wagner: **European account preservation orders and titles from provisional measures with subsequent account attachments**

The enforcement of a claim, even in cross-border situations, must not be jeopardised by the debtor transferring or debiting funds from his account. A creditor domiciled in State A has various options for having bank accounts of his debtor in State B seized. Thus, he can apply for an interim measure in State A according to national law and may have this measure enforced under the Brussels Ibis Regulation in State B by way of attachment of accounts. Alternatively, he may proceed in accordance with the European Account Preservation Order Regulation (hereinafter: EAPOR). This means that he must obtain a European account preservation order in State A which must be enforced in State B. By comparing these two options the author deals with the legal nature of the European account preservation order and with the subtleties of enforcement under the EAPOR.

H. Roth: **The „relevance (to the initial legal dispute)“ of the reference for a preliminary ruling pursuant to Article 267 TFEU**

The preliminary ruling procedure under Article 267 of the Treaty on the Functioning of the European Union (TFEU) exists to ensure the uniform interpretation and application of EU law. The conditions under which national courts may seek a preliminary ruling are based on the established jurisdiction of the European Court of Justice (CJEU) and are summarised in Article 94 of the Rules of Procedure of the CJEU. One such condition is that the question referred to the court must be applicable to the decision in the initial legal dispute. Any future judgement by the referring court must thereafter be dependant on the interpretation of Union law. When cases are obviously not applicable, the European Court dismisses the reference for a preliminary ruling as inadmissible. The judgement of the CJEU at hand concerns one of these rare cases in the decision-making process. The sought-after interpretation of Union law was not materially related to the matter of the initial legal dispute being overseen by the referring Bulgarian court.

S. Mock/C. Illetschko: **The General International Jurisdiction for Legal Actions against Board Members of International Corporations – Comment**

on OLG Innsbruck, 14 October 2021 – 2 R 113/21s, IPRax (in this issue)

In the present decision, the Higher Regional Court of Innsbruck (Austria) held that (also) Austrian courts have jurisdiction for investors lawsuits against the former CEO of the German Wirecard AG, Markus Braun. The decision illustrates that the relevance of the domicile of natural persons for the jurisdiction in direct actions for damages against board members (Art 4, 62 Brussels Ia Regulation) can lead to the fact that courts of different member states have to decide on crucial aspects of complex investor litigation at the same time. This article examines the decision, focusing on the challenges resulting from multiple residences of natural persons under the Brussels Ia Regulation.

C. Kohler: **Lost in error: The ECJ insists on the "mosaic solution" in determining jurisdiction in the case of dissemination of infringing content on the internet**

In case C-251/20, Gtflix Tv, the ECJ ruled that, according to Article 7(2) of Regulation No 1215/2012, a person, considering that his or her rights have been infringed by the dissemination of disparaging comments on the internet, may claim, before the courts of each Member State in which those comments are or were accessible, compensation for the damage suffered in the Member State of the court seized, even though those courts do not have jurisdiction to rule on an application for rectification and removal of the content placed online. The ECJ thus confirms the "mosaic solution" developed in case C-509/09 and C-161/10, eDate Advertising, and continued in case C-194/16, Bolagsupplysningen, for actions for damages for the dissemination of infringing contents on the internet. The author criticises this solution because it overrides the interests of the sound administration of justice by favouring multiple jurisdictions for the same event and making it difficult for the defendant reasonably to foresee before which court he may be sued. Since a change in this internationally isolated case law is unlikely, a correction can only be expected from the Union legislator.

T. Lutzi: **Art 7 No 2 Brussels Ia as a Rule on International and Local Jurisdiction for Cartel Damage Claims**

Once again, the so-called “trucks cartel” has provided the CJEU with an opportunity to clarify the interpretation of Art. 7 No. 2 Brussels Ia in cases of cartel damage claims. The Court confirmed its previous case law, according to which the place of damage is to be located at the place where the distortion of competition has affected the market and where the injured party has at the same time been individually affected. In the case of goods purchased at a price inflated by the cartel agreement, this is the place of purchase, provided that all goods have been purchased there; otherwise it is the place where the injured party has its seat. In the present case, both places were in Spain; thus, a decision between them was only necessary to answer the question of local jurisdiction, which is also governed by Art. 7 No. 2 Brussels Ia. Against this background, the Court also made a number of helpful observations regarding the relationship between national and European rules on local jurisdiction.

C. Danda: **The concept of the weaker party in direct actions against the insurer**

In its decision T.B. and D. sp. z. o. o. ./. G.I. A/S the CJEU iterates on the principle expressed in Recital 18 Brussels I bis Regulation that in cross-border insurance contracts only the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules. In the original proceedings – a joint case – the professional claimants had acquired insurance claims from individuals initially injured in car accidents in Poland. The referring court asked the CJEU (1) if such entities could be granted the forum actoris jurisdiction under Chapter II section 3 on insurance litigation against the insurer of the damaging party and (2) if the forum loci delicti jurisdiction under Art. 7(2) or 12 Brussels I bis Regulation applies under these conditions. Considering previous decisions, the CJEU clarified that professional claimants who regularly receive payment for their services in form of claim assignment cannot be considered the weaker party in the sense of the insurance section and therefore cannot rely on its beneficial jurisdictions. Moreover, the court upheld that such claimants may still rely on the special jurisdiction under Art. 7(2) Brussels I bis Regulation.

C. Reibetanz: **Procedural Consumer Protection under Brussels Ibis**

Regulation and Determination of Jurisdiction under German Procedural Law (Sec. 36 (1) No. 3 ZPO)

German procedural law does not provide for a place of jurisdiction comparable to Article 8 (1) Brussels Ibis Regulation, the European jurisdiction for joinder of parties. However, according to Sec. 36 ZPO, German courts can determine a court that is jointly competent for claims against two or more parties. In contrast to Art. 8 (1) Brussels Ibis Regulation, under which the plaintiff has to choose between the courts that are competent, the determination of a common place of jurisdiction for joint procedure under German law is under the discretion of the courts. Since EU law takes precedence in its application over contrary national law, German courts must be very vigilant before determining a court at their discretion. The case is further complicated by the fact that the prospective plaintiff can be characterised as a consumer under Art. 17 et seq. Brussels Ibis Regulation. The article critically discusses the decision of the BayObLG and points out how German judges should approach cross-border cases before applying Sec. 36 ZPO.

M.F. Müller: **Requirements as to the „document which instituted the proceedings“ within the ground for refusal of recognition according to Art 34 (2) Brussels I Regulation**

The German Federal Court of Justice dealt with the question which requirements a document has to comply with to qualify as the “document which instituted the proceedings” within the ground for refusal of recognition provided for in Art 34 (2) Brussels I Regulation regarding a judgment passed in an adhesion procedure. Such requirements concern the subject-matter of the claim and the cause of action as well as the status quo of the procedure. The respective information must be sufficient to guarantee the defendant’s right to a fair hearing. According to the Court, both a certain notification by a preliminary judge and another notification by the public prosecutor were not sufficiently specific as to the cause of action and the status quo of the procedure. Thus, concerning the subject matter of the claim, the question whether the “document which instituted the proceedings” in an adhesion procedure must include information about asserting civil claims remained unanswered. While the author approves of the outcome of the case, he argues that the Court would have had the chance to follow a line of reasoning that

would have enabled the Court to submit the respective question to the ECJ. The author suggests that the document which institutes the proceedings should contain a motion, not necessarily quantified, concerning the civil claim.

B. Steinbrück/J.F. Krahé: **Section 1032 (2) German Civil Procedural Code, the ICSID Convention and Achmea – one collision or two collisions of legal regimes?**

While the ECJ in Achmea and Komstroy took a firm stance against investor-State arbitration clauses within the European Union, the question of whether this will also apply to arbitration under the ICSID Convention, which is often framed as a "self-contained" system, remains as yet formally undecided. On an application by the Federal Republic of Germany, the Berlin Higher Regional Court has now ruled that § 1032 (2) Civil Procedural Code, under which a request may be filed with the court to have it determine the admissibility or inadmissibility of arbitral proceedings, cannot be applied to proceedings under the ICSID Convention. The article discusses this judgment, highlighting in particular that the Higher Regional Court chooses an interpretation of the ICSID Convention which creates a (presumed) conflict between the ICSID Convention and German law, all the while ignoring the already existing conflict between the ICSID Convention and EU law.

L. Kuschel: **Copyright Law on the High Seas**

The high seas, outer space, the deep seabed, and the Antarctic are extraterritorial – no state may claim sovereignty or jurisdiction. Intellectual property rights, on the other side, are traditionally territorial in nature – they exist and can be protected only within the boundaries of a regulating state. How, then, can copyright be violated aboard a cruise ship on the high seas and which law, if any, ought to be applied? In a recent decision, the LG Hamburg was confronted with this quandary in a dispute between a cruise line and the holder of broadcasting rights to the Football World Cup 2018 and 2019. Unconvincingly, the court decided to circumnavigate the fundamental questions at hand and instead followed the choice of law agreement between the parties, in spite of Art. 8(3) Rome II Regulation and opting against the application of the flag state's copyright

law.

T. Helms: **Validity of Marriage as Preliminary Question for the Filiation and the Name of a Child born to Greek Nationals in Germany in 1966**

The Higher Regional Court of Nuremberg has ruled on the effects of a marriage on the filiation and the name of a child born to two Greek nationals whose marriage before a Greek-orthodox priest in Germany was invalid from the German point of view but legally binding from the point of view of Greek law. The court is of the opinion that – in principle – the question of whether a child's parents are married has to be decided independently applies the law which is applicable to the main question, according to the conflict of law rules applicable in the forum. But under the circumstances of the case at hand, this would lead to a result which would be contrary to the jurisprudence of the Court of Justice on names lawfully acquired in one Member State. Therefore – as an exception – the preliminary question in the context of the law of names has to be solved according to the same law which is applicable to the main question (i.e. Greek law).

K. Duden: **PIL in Uncertainty – failure to determine a foreign law, application of a substitute law and leaving the applicable law open**

A fundamental concern of private international law is to apply the law most closely connected to a case at hand – regardless of whether this is one's own or a foreign law. The present decision of the Hanseatic Higher Regional Court as well as the proceedings of the lower court show how difficult the implementation of this objective can become when the content of the applicable law is difficult to ascertain. The case note therefore first addresses the question of when a court should assume that the content of the applicable law cannot be determined. It examines how far the court's duty to investigate the applicable law extends and argues that this duty does not seem to be limited by disproportionate costs of the investigative measures. However, the disproportionate duration of such measures should limit the duty to investigate. The comment then discusses which law should be applied as a substitute for a law whose content cannot be ascertained. Here the present decision and the proceedings in the lower court highlight the advantages of applying the lex fori as a substitute – not as an ideal solution, but as

the most convincing amongst a variety of less-than-ideal solutions. Finally, the note discusses why it is permissible as a matter of exception for the decision to leave open whether German or foreign law is applicable.

M. Weller: **Kollisionsrecht und NS-Raubkunst: U.S. Supreme Court, Entscheidung vom 21. April 2022, 596 U.S. ____ (2022) – Cassirer et al. ./. Thyssen-Bornemisza Collection Foundation**

In proceedings on Nazi-looted art the claimed objects typically find themselves at the end of a long chain of transfers with a number of foreign elements. Litigations in state courts for recovery thus regularly challenge the applicable rules and doctrines on choice of law – as it was the case in the latest decision of the U.S. Supreme Court in Cassirer. In this decision, a very technical point was submitted to the Court for review: which choice-of-law rules are applicable to the claim in proceedings against foreign states if U.S. courts ground their jurisdiction on the expropriation exception in § 1605(3)(a) Federal Sovereign Immunities Act (FSIA). The lower court had opted for a choice-of -aw rule under federal common law, the U.S. Supreme Court, however, decided that, in light of Erie and Klaxon, the choice-of-law rules of the state where the lower federal courts are sitting in diversity should apply.

List of publications on South African private international law as from 2020

LIST OF PUBLICATIONS ON SOUTH AFRICAN PRIVATE INTERNATIONAL LAW AS FROM 2020

Adams “Choice of Islamic law in the context of the wider *lex mercatoria*: an express choice of non-State law in contract” 2021 *Journal of South African Law*

59.

Adams “The UCP as a choice of non-State law in international commercial contracts” 2022 *Potchefstroom Electronic Law Journal* 1.

Adams and Kruger “Private international law and choice of law clauses” in Hutchison and Myburgh (eds) *International Commercial Contracts: Autonomy and Regulation in a Dynamic System of Lex Mercatoria* (Edward Elgar, 2020) 110.

Bouwers *Tacit Choice of Law in International Commercial Contracts – A Global Comparative Study* (Schulthess, 2021) 68-75.

Coleman “Assessing the efficacy of forum selection agreements in Commonwealth Africa” 2020 *Journal of Comparative Law in Africa* 1.

Coleman “Reflecting on the role and impact of the constitutional value of *ubuntu* on the concept of contractual freedom and autonomy in South Africa” 2021 *Potchefstroom Electronic Law Journal* 1.

Coleman “Contractual freedom and autonomy under the CISG and the UNIDROIT Principles as legislative and judicial guidance in Commonwealth Africa” 2021 *South African Mercantile Law Journal* 319.

Fredericks “Contractual capacity in African private international law” in Omlor (ed) *Weltbürgerliches Recht. Festschrift für Michael Martinek zum 70. Geburtstag* (CH Beck, 2020) 199.

Neels “The African Principles on the Law Applicable to International Commercial Contracts – a first drafting experiment” 2020 *Uniform Law Review* 426.

Neels “An experiment in the systematization of South African conflicts rules” in Omlor (ed) *Weltbürgerliches Recht. Festschrift für Michael Martinek zum 70. Geburtstag* (CH Beck, 2020) 529.

Neels “Characterisation and liberative prescription (the limitation of actions) in private international law – Canadian doctrine in the Eswatini courts (the phenomenon of dual cumulation)” 2021 *Journal of Private International Law* 361.

Neels “South African perspectives on the Hague Principles” in Girsberger, Kadner Graziano and Neels (gen eds) *Choice of Law in International Commercial*

Contracts. Global Perspectives on the Hague Principles (OUP, 2021) 350.

Neels "International commercial law emerging in Africa" 2022 *Potchefstroom Electronic Law Journal* Special Edition *Festschrift* Charl Hugo http://dx.doi.org/10.17159/1727-3781/2022/v25i0a14381.

Neels and Fredericks "The African Principles of Commercial Private International Law and the Hague Principles" in Girsberger, Kadner Graziano and Neels (gen eds) *Choice of Law in International Commercial Contracts. Global Perspectives on the Hague Principles* (OUP, 2021) 239.

Neels and Fredericks "Recognition and enforcement of Slovenian judgments in South Africa – contractual claims and supranational or international jurisdiction" in Fourie and Škerl (eds) *Universality of the Rule of Law. Slovenian and South African Perspectives* (Sun Press, 2021) 193.

Neels and Fredericks "Covid-19 regulations as overriding mandatory provisions in private international law – a comparison of regional, supranational and international instruments with the proposed African Principles on the Law Applicable to International Commercial Contracts" in Watney (ed) *The Impact of COVID-19 on the Future of Law and Related Disciplines* (UJ Press, 2022) 1.

Obiri-Korang "Party autonomy: promoting legal certainty and predictability in international commercial contracts through choice of law (applicable rules of law)" 2022 *Journal of South African Law* 106.

Obiri-Korang "Primary connecting factors considered by South African courts to determine applicable law of international contracts on the sale of goods" 2022 *Lex Portus* 7.

Okorley "The possible impact of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial matters on private international law in Ghana" 2022 *UCC Law Journal* 85.

Schoeman "South Africa: time for reform" in Keyes (ed) *Optional Choice of Court Agreements in Private International Law* (Springer, 2020) 347.

Wethmar-Lemmer "Recognition and enforcement of foreign arbitral awards under the International Arbitration Act 17 of 2017" 2019 *SA Merc LJ* 378 (appeared in 2020).

Wethmar-Lemmer “The new South African international arbitration landscape – advances and remaining conflict of laws challenges” in Omlor (ed) *Weltbürgerliches Recht. Festschrift für Michael Martinek zum 70 Geburtstag* (CH Beck, 2020) 867.

Wethmar-Lemmer “International commercial arbitration in South Africa and the CISG” 2022 *Uniform Commercial Code Law Journal* 311.

Chinese Supreme People’s Court Issued New Judicial Interpretation on Hierarchical Jurisdiction on Foreign-Related Disputes

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1. **Background**

The Chinese Supreme People’s Court (hereinafter “**SPC**“) issued “SPC’s Regulation on Several Matters Concerning the Jurisdiction of Foreign-Related Disputes” (hereinafter “**Regulation 2022**“),[1] which will enter into force on 1st January 2023. The Regulation focuses on hierarchical jurisdiction in cross-border litigation, although its title does not explicitly say so. According to SPC, the Regulation responds to the new circumstance of open-up after the 18th National Congress of the Communist Party of China. It has great value in protecting the right of parties, both foreign and domestic, making litigation more convenient and improving the quality and efficiency of the trial of foreign-related civil and commercial disputes.

2. **Main Content**

The Content can be divided into different categories according to the goals of Regulation 2022.

?1?Convenience and Efficiency

One of the most important goals of Regulation 2022 is to improve the efficiency of trial and bring convenience to the parties. To achieve this goal, Regulation 2022 has rearranged the hierarchical jurisdiction. Regulation 2022 generally authorises all the grass-roots courts to hear foreign-related disputes (Art. 1) and limits the jurisdiction of intermediate and higher courts (Art. 2 & Art. 3).

Initially, the hierarchical jurisdiction of foreign-related disputes was regulated by the 2002 SPC's Regulation on Several Matters Concerning the Jurisdiction of Foreign-Related Litigations (hereinafter "**Regulation 2002**").[2] Under Regulation 2002, only a few intermediate courts and grass-root courts were authorised to hear foreign-related disputes. In the past 20 years, the SPC has authorised more and more intermediate courts to hear foreign-related disputes according to the applications of higher courts. Nowadays, most intermediate courts have the jurisdiction to hear foreign-related disputes. But still, only a few grass-roots courts have such jurisdiction.

Such an arrangement has some adverse impacts. Firstly, the parties would have to sue in intermediate courts. Ordinarily, there is only one intermediate court in one city. Such an arrangement means that all the citizens would have to sue in one court instead of suing in their local grass-roots courts. This would inevitably bring inconvenience to the parties. Secondly, the intermediate courts may also overload by a large number of cases, which would decrease the efficiency of trials. In the past 20 years, the number of foreign-related cases has significantly increased. In 2022, the number of cases seized by courts of the first instance has exceeded 17 thousand. Such a circumstance not only increases the pressure on the judges but also decreases the efficiency of trials. It should also be noted that according to Art. 277 of the PRC Civil Procedure Law, different from domestic trials, foreign-related trials would not be subject to the statutory time limit. Thus, parties in foreign-related disputes may have to wait longer to receive judgments.

The Regulation 2022 enables nearly all grass-root courts to hear cross-border disputes, which brings convenience to the parties and reduces the burden of intermediate courts.

?2?Quality and Professionalism

Regulation 2022 also takes measures to ensure and improve the quality and professionalism of foreign-related trials. These efforts stem from the achievement of the judicial system reform, especially the establishment of the judge quota system. The judge quota system re-selects competent judges from the existing judges. Only limited judges who passed the re-selection would be authorised to hear the trial based on their qualification, professionalism, specialisation, and experience. The reform enhanced the overall ability of the judges and increased the percentage of judges with the knowledge base and competence to hear foreign-related disputes.

The efforts to improve the quality and professionalism in Regulation 2022 could be divided into two perspectives. On the one hand, Regulation 2022 reserves the centralised jurisdiction, which originated from Regulation 2002, with some adjustments (Art. 4). On the other hand, Regulation 2022 makes clear that foreign-related disputes should be heard in a specialised tribunal or collegial panel (Art. 5).

a. Centralised Jurisdiction

The centralised jurisdiction centralises jurisdiction of foreign-related disputes #in intermediate courts. Traditionally, centralised jurisdiction would have impact in both hierarchical and territorial aspects. From the hierarchical aspect, the centralised jurisdiction could deprive the grass-roots courts of jurisdiction to hear foreign-related disputes. From the territorial aspect, the centralised jurisdiction allows the appointed intermediate court to hear the dispute across its administrative division. Assume that Province A consists of five cities: City A, B, C, D, and E. If courts in City A were to be appointed to exercise the centralised jurisdiction, then the courts in City A would have jurisdiction over all foreign-related disputes, including those cases which courts in City B, C, D and E should hear.

The centralised jurisdiction could improve the quality of the trials. Firstly, the centralised jurisdiction could ensure that some experienced and better-trained judges would hear the cases. In general, foreign-related disputes are more complex than domestic disputes and thus would pose more challenges to the judges. The courts appointed to exercise centralised jurisdiction usually have

better-trained judges and, therefore, would be more competent to hear foreign-related disputes. Furthermore, there may be a huge gap in the quantities of foreign-related disputes among different courts. The centralised jurisdiction would also let those experienced courts hear the disputes and improve the quality of trials. Secondly, the centralised jurisdiction would increase the consistency of the judgements. Courts in PRC are not bound by precedents. The centralised jurisdiction allows the same courts or tribunal to hear similar cases in one region to achieve the consistency of judgements. Thirdly, the centralised jurisdiction would reduce local protectionism. The centralised jurisdiction may prevent local government's intervention in trial and create a relatively neutral place for the parties by moving the local party out from their home court.

However, the centralised jurisdiction may negatively affect efficiency. Thus, Regulation 2022 tries to strike a balance between professionalism and efficiency. Firstly, centralised jurisdiction is an exception that applies in limited situations instead of being a general rule. Centralised jurisdiction may only be granted if higher courts consider it necessary and acquire SPC's approval. Secondly, the impact of centralised jurisdiction is limited to the territorial aspect and would no longer prejudice the hierarchical jurisdiction. According to the SPC, there would be only two categories of centralised jurisdiction: the centralised jurisdiction of grass-roots courts and the centralised jurisdiction of intermediate courts. The centralised jurisdiction of grass-roots courts means that one authorised grass-roots court would have jurisdiction over all the first instance foreign-related cases in the region subject to its prior intermediate court's jurisdiction. The other type of centralised jurisdiction is the centralised jurisdiction of intermediate courts. An authorised intermediate court could hear all the cases in the region subject to its prior high court's jurisdiction, including trial of first instance and appeal from grass-roots courts.

b. Specialised Tribunal

Regulation 2022 makes clear that the foreign-related dispute should be heard in a specialised tribunal or collegial panel (Art. 5). This provision tries to improve the professionalism of the trial by centralising all the cases into a tribunal or collegial consisting of experienced and specialised judges in the court. In practice, several courts have already established such a tribunal. However, since Regulation 2022 authorises all the grass-roots courts to hear foreign-related disputes, it is necessary to ensure that each court is properly staffed to establish an appropriate

division of responsibility of the tribunals.

Such a requirement was also prescribed in previous judicial interpretations. However, those interpretations were not as definite and broad as the present one. For instance, the SPC's Notice of 2017 on the Clarification of the Hierarchical Jurisdiction of the First Trial of the Foreign-Related Disputes and Several Issues concerning Belongings of Cases has listed several cases be heard by a specialised tribunal or collegial panel.[3] The SPC's Notice of 2017 on Several Issues concerning Belongings of Judicial Review of Arbitration also prescribed that the judicial review of arbitration should be subject to a specialised tribunal or collegial panel that takes charge of trials of foreign-related disputes.[4] Compared with these previous regulations, the provision in Regulation 2022 is more general and has a broader coverage.

?3?Compatibility between Regulations

Regulation 2022 also establishes some rules to achieve compatibility between different regulations.

Firstly, Regulation 2022 reforms the correspondent rules in foreign-related disputes to be compatible with the newly reformed hierarchical jurisdiction of domestic disputes. The standard of high courts' jurisdiction to hear the first trial of foreign-related disputes is now the same as their jurisdiction to hear domestic cases. The Regulation also raises the standard of intermediate courts' jurisdiction to hear the first trial of foreign-related disputes and reduces the difference in this aspect with domestic cases. These would prevent the situation that most domestic cases would be heard in grass-roots courts while foreign-related cases would be heard in intermediate courts, even though the latter's value is lower.

Secondly, Regulation 2022 has a clear scope of applications. In the past, the scope of application of Regulation 2002 is vague. Regulation 2002 applies to several listed types of foreign-related cases but keeps silent on its application to the other types of foreign-related cases. Regulation 2002 also excludes its application to "trade disputes occurred in border provinces and foreign-related real estate disputes". However, there was not a uniform understanding of the scope of these two types of cases. In contrast, Regulation 2022 generally applies to all foreign-related disputes with some explicit exclusions, including maritime disputes, foreign-related IP disputes, foreign-related environmental damages

disputes and foreign-related environmental public litigation (Art. 6). The maritime disputes would be subject to Maritime Court as a specialised court in China, and its hierarchical jurisdiction would be governed by Maritime Litigation Procedure Law. The hierarchical jurisdiction of the other three types of disputes is subject to their respective judicial interpretation of SPC.

?4?Predictability

Regulation 2022 enhances the predictability of the hierarchical jurisdiction. Before the new Regulation, SPC has made many individual authorisations for centralised jurisdiction of intermediate or grass-roots courts. However, due to the differences in the levels of economic development, the authorisations vary between regions. In some regions, all grass-roots courts maybe competent to hear foreign-related disputes; in other regions, only a few intermediate courts would have jurisdiction. It causes confusion in practice and the parties have to do research on hierarchical jurisdiction in each specific region to ensure they bring the case to the right court.

After the release of Regulation 2022, all the grass-roots courts would generally have jurisdiction to hear foreign-related disputes. The centralised jurisdiction would be limited in territorial aspect and would be publicized in advance, according to paragraph 2, Art. 4 of Regulation 2022. Regulation 2022 will abolish previous regulations and serve as a comprehensive guideline on hierarchical jurisdiction of foreign-related disputes (Art. 9). Regulation 2022 will enhance the predictability of the parties.

3. **Conclusion**

Chinese hierarchical jurisdiction in foreign-related disputes has been one of the most unclear and confusing matters in practice. Regulation 2022 has made significant progress in hierarchical jurisdiction. It improves the convenience and easy access to justice in foreign-related disputes, and balances other interests including professionalism and predictability. It manifests China’s determination to continue opening up in the current era by providing a more user-friendly judicial environment to parties in the international trade and commerce.

[1] Supreme People’s Court’s Regulation on Several Matters Concerning the

Jurisdiction of Foreign-Related Disputes, [2022] Fa Shi No. 18.

[2] Supreme People's Court's Regulation on Several Matters Concerning the Jurisdiction of Foreign-Related Litigations, [2002] Fa Shi No. 5.

[3] Supreme People's Court's Notice of 2017 on the Clarification of the Hierarchical Jurisdiction of the First Trial of the Foreign-Related Disputes and Several Issues concerning Belongings of Cases, [2017] Fa No. 359, para. 2.

[4] Supreme People's Court's Notice of 2017 on Several Issues concerning Belongings of Judicial Review of Arbitration, [2017] Fa No. 152, para. 2.

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This editorial has been prepared by **Prof. Paris Arvanitakis,** Aristotle University of Thessaloniki, Greece.

The European Regulations of Private and Procedural International Law are part of an enclosed legislative system. Since the early stages of European integration, third countries, and in particular the USA, had expressed their objections concerning the European integration process, questioning whether it reflects a "nationalistic" character, certainly not in the sense of ethnocentric provisions, since the European legislator had chosen the domicile instead of citizenship as the fundamental ground of jurisdiction from the beginning, but mostly because European law applied extreme provisions, such as the exorbitant jurisdiction, only against persons residing outside the EU, as well as the inability of third countries to make use of procedural options provided to member states (see *Kerameus*, Erweiterung des EuGVÜ-Systems und Verhältnis zu Drittstaaten, Studia Juridica V, 2008, pp. 483 ff., 497). However, the EU never intended a global jurisdictional unification. It simply envisioned a regional legislative internal harmonization in favor of its member states. Like any regional unification, EU law involves

discriminatory treatment against those who fall outside its scope. But even when the EU regulates disputes between member states and third countries (for example, the Rome Regulations on applicable law), it does so, not to bind third countries to EU law -nor it could do so-, but to avoid divergent solutions among its member states in their relations with third countries. ?owever, as the issue on the relationship between European Regulations and third countries continues to expand, a precise demarcation of the boundaries of application of European rules, which often differ even within the same legislative text, acquires practical importance.

The "Focus" of the present issue intends to highlight these discrepancies, as well as the corresponding convergences between European Regulations of Private / Procedural International Law and third countries. During an online conference on this topic, which took place on the 29th of September 2022, we had the great honor to host a discussion between well-known academics and leading domestic lawyers, who have dealt with this topic in depth. We had the honor to welcome the presentations of: Ms. *Astrid Stadler,* Professor of Civil Law, Civil Procedure, Private International and Comparative Law at the University of Konstanz/Germany, who presented a general introduction on the topic ('Ein Überblick auf die Drittstaatenproblematik in der Brüssel Ia VO'); Mr. *Symeon Symeonides,* a distinguished Professor of Law, at the Willamette University USA, , who presented an extremely interesting analysis on 'An Outsider's View of the Brussels Ia, Rome I, and Rome II Regulations'; Dr. *Georgios Safouris,* Judge and Counselor of Justice of Greece at the Permanent Greek Representation in the EU, , , who examined the application of the Brussels Ia and Brussels IIa Regulations in disputes with third countries, from the lens of the CJEU jurisprudence; Mr. *Nikitas Hatzimichael* ,Professor at the Law Department of the University of Cyprus, , who developed the important doctrinal issue of the exercise of judge's discretion in the procedural framework of the European Regulations in relation to third countries; Ms. *Anastasia Kalantzi*, PhD Candidate at the Aristotle University of Thessaloniki who dealt with the key issue of European lis pendens rules and third countries; and, finally Mr. *Dimitrios Tsikrikas*, Professor of Civil Procedure at the University of Athens, who developed the fundamental issue of the legal consequences of court judgments vis-à-vis third countries. On the topic of the relations between European Regulations and third countries, the expert opinion of the author of this editorial is also included in the present issue, focusing on multi-party disputes in cases where some of the defendants are EU residents and others

residents of a third country.

In the “Praefatio”, Mr. *Nikolaos Nikas,* Emeritus Professor at the Faculty of Law of the Aristotle University of Thessaloniki presents his thoughts on what is the “*next stage on the path to European procedural harmonization: the digitization of justice delivery systems*“. In the part of the jurisprudence, two recent judgments of the CJEU are presented: the decision No C-572/21 (CC/VO) regarding international jurisdiction on parental responsibility, when the usual residence of the child was legally transferred during the trial to a third state, that is a signatory to the 1996 Convention, , with a comment by the Judge Mr. *I. Valmantonis*, and the important decision No C-700/20 (London Steam/Spain), which is analyzed by Mr. *Komninos Komnios*, Professor at the International Hellenic University, (“Arbitration and Brussels Ia Regulation: Descent of the ‘Spanish Armada’ in the English legal order?”). Regarding domestic jurisprudence, the present issue includes the Supreme Court judgment No. 1181/2022, which demonstrates the incompatibility of the relevant provision of the new Greek CPC on service abroad with EU and ECHR rules, with a case comment by the undersigned, as well as a judgment of the County Court of Piraeus (73/2020), regarding the binding nature of the parties’ request for an oral presentation in the European Small Claims procedure, with a comment by Judge Ms. *K. Chronopoulou*. Finally, interesting issues of private international law on torts are also highlighted in the decisions of the Athens First Instance Court No 102/2019 and No 4608/2020, commented by Dr. *N. Zaprianos*.

Lex & Forum renews its scientific appointment with its readers for the next (eighth) issue, focusing on family disputes of a cross-border nature.