# Towards an EU Regulation on the International Protection of Adults

On 31 May 2023, the European Commission presented a proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults (in the following: EU Adult Protection Regulation – EUAPR). This proposal is a response to significant demographic and social changes in the EU: Many Member States face enormous challenges posed by an increasingly aging population. Due to considerable improvements in medical care in recent decades, people grow much older than they used to, and this lengthening of the average lifespan in turn leads to an increase in age-related illnesses such as Alzheimer's disease. This demographic change creates problems for private international law, because the mobility of natural persons has increased within the EU where borders may, in principle, be crossed without restrictions. Many people who have left their state of origin in search for work elsewhere in their youth or middle age do not return to their home state after retirement, but rather spend the last part of their lives where they have established a new habitual residence. Besides, more and more people decide to leave their home state once they have reached the age of retirement. Such processes of migration at a late stage in life may have different reasons: Some old-age movers may want to avoid a heavy taxation of their estates that would put a burden on their heirs, some may wish to circumvent other restrictions of domestic inheritance laws (e.g. the right to a compulsory portion), others may simply wish to spend the remaining parts of their lives in milder climates, e.g. the Mediterranean, or look for a place to stay where the cost of living is lower, e.g. in some parts of Eastern Europe. When these persons begin to suffer from an impairment or an insufficiency of their personal faculties which no longer allows them to protect their interests themselves, however, intricate conflict of laws problems may arise: The authorities or courts of which state shall have jurisdiction to take protective measures concerning vulnerable adults or their property? Which law is to be applied to such measures? Under which conditions may protective measures taken in one state be recognised and enforced in other states?

The EUAPR is meant to solve these problems.It is in many parts based on

proposals made by two working groups set up by the European Law Institute and the European Association of Private International Law, respectively. The Regulation will partially supersede and complement the Hague Convention on the International Protection of Adults (in the following: Hague Adult Protection Convention – HAPC), a derogation which is permitted by Art. 49(2) and (3) HAPC. The Hague Convention was concluded on 13 January 2000 and entered into force on 1 January 2009 between France, Germany and the United Kingdom (restricted to Scotland, however). Today, the Convention is in force as well in Switzerland, Finland, Estonia, the Czech Republic, Austria, Monaco, Latvia, Portugal, Cyprus, Belgium, Greece, and Malta. The Netherlands, Ireland, Italy, Luxembourg, and Poland have signed the Convention, but have not ratified it yet. In the Netherlands, however, the Convention is already applied by the courts as a part of Dutch autonomous law (see Hoge Raad 2 February 2018, ECLI:NL:HR:2018:147). Thus, more than 23 years after the HAPC was concluded, the status of ratifications is rather unsatisfactory, as only 12 EU Member States have ratified the Convention so far. In order to speed up this process, the Regulation shall be accompanied by a Council Decision authorising Member States to become or remain parties, in the interest of the EU, to the HAPC.

For a long time, it was controversial whether the EUAPR could be based on the EU's general competence in PIL matters (Art. 81(2) TFEU) or whether such a measure ought to be classified as concerning family law within the meaning of Art. 81(3) TFEU. On the one hand, adult protection is traditionally codified in the family law sections of many Member States' civil codes (e.g. in Germany), and people will frequently benefit from the protection of family members (see COM(2023) 280 final, p. 4). On the other hand, a guardian, curator or a person endowed with a power of representation does not necessarily have to be a relative of the vulnerable adult. Following the example set by the EU Succession Regulation, the Commission eschews the cumbersome special procedure envisioned for family law matters and bases its proposal on Art. 81(2) TFEU instead.

As far as the spatial scope of the EUAPR is concerned, Art. 59 EUAPR contains detailed rules on the relation between the Regulation and the HAPC. The basic factor that triggers the application of the EUAPR is the vulnerable adult's habitual residence in the territory of a Member State (Art. 59(1)(a) EUAPR). There are some exceptions to this rule, however, in order to ensure a smooth coordination

with the Contracting States of the HAPC which are not Member States of the EUAPR (see Art. 59(1)(b) and (2) EUAPR). The substantive scope of the EUAPR is broadly similar to that of the HAPC, although it should be noted that Art. 2(2) EUAPR speaks of "matters" to which the Regulation shall apply, whereas Art. 3 HAPC uses the narrower term "measures". This may allow the inclusion of ex-lege powers of representation which are not directly covered by the HAPC. The Regulation's personal scope is defined in Art. 3(1), which states that, for the purposes of the EUAPR, an adult is a person who has reached the age of 18 years. Although the Regulation is largely a response to problems created by an aging population, it must be borne in mind that its scope is not restricted to elderly people, but encompasses all adults above the age of 18, and, if the exceptional condition of Art. 2(2) EUAPR is met, even younger people.

With regard to the rules on jurisdiction, the Regulation largely refers to the HAPC, with one significant divergence, though. The Convention does not permit a direct prorogation of jurisdiction, because it was feared that an uncontrolled freedom of prorogating the authorities of another state could be abused to the detriment of the adult concerned. Art. 8(2)(d) HAPC merely gives the authorities of a Contracting State having jurisdiction under Art. 5 or 6 HAPC the possibility of requesting the authorities of another Contracting State designated by the adult concerned to take protective measures. Contrary to this restrictive approach, Art. 6(1) EUAPR provides that the authorities of a Member State other than the Member State in which the adult is habitually resident shall have jurisdiction where all of the following conditions are met:

- the adult chose the authorities of that Member State, when he or she was still in a position to protect his or her interest;
- the exercise of jurisdiction is in the interest of the adult;
- the authorities of a Member State having jurisdiction under Art. 5 to 8 HAPC have not exercised their jurisdiction.

The following paragraphs 2 to 3 of Art. 6 EUAPR concern formal requirements and the integration of the adult's choice of court into the HAPC's jurisdictional framework. The possibility of choosing the competent authorities is a welcome addition to the choice-of-law provision on powers of representation in Art. 15 HAPC.

In order to determine the applicable law, Art. 8 EUAPR refers to Chapter III of the

HAPC. As in the HAPC, there are no specific conflicts rules for ex-lege powers of representation. Moreover, advance medical directives that are not combined with a power of representation (Art. 15 HAPC) are neither covered by the HAPC nor the EUAPR. Since the authorities exercising their jurisdiction under the HAPC usually apply their own law pursuant to Art. 13(1) HAPC, the spatial scope of the Convention's jurisdictional rules also indirectly determines the reach of its conflicts rules. This will lead to a new round of the debate that we are familiar with in the context of the relationship between the Hague Child Protection Convention and the Brussels IIb Regulation, i.e. whether the intended parallelism only works if at least a hypothetical jurisdiction under the respective Convention's rules can be established, or whether it suffices that jurisdiction is established according to a provision that is only found in the respective Regulation. Within the framework of the EUAPR, this problem will arise with regard to a choice of court pursuant to Art. 6 EUAPR, an option that is not provided for by the HAPC. Applying Art. 13(1) HAPC in this context as well seems to be the preferable solution, which leads to an indirect choice of law by the vulnerable adult even in cases where no voluntary power of representation is established under Art. 15 HAPC.

The recognition of measures taken in other Member States is governed by Art. 9 and 10 EUAPR. Notwithstanding mutual trust – and, in this particular area of law, with good reason – , the Regulation still contains a public policy clause (Art. 10(b) EUAPR). For the purpose of enforcement, Art. 11 EUAPR abolishes the declaration of enforceability (exequatur) that is still required under Art. 25 HAPC, thus allowing for simplified enforcement procedures within the EU.

A major innovation is found in Chapter VII. The Regulation will introduce a European Certificate of Representation (Art. 34 EUAPR) which will supersede the certificate under Art. 38 HAPC. The Certificate shall be issued for use by representatives, who, in another Member State, need to invoke their powers to represent a vulnerable adult (Art. 35(1) EUAPR). The Certificate may be used to demonstrate that the representative is authorised, on the basis of a measure or confirmed power of representation, to represent the adult in various matters defined in Art. 35(2) EUAPR.

Apart from those substantive achievements, the Regulation contains necessary rules on rather procedural and technical subjects, such as the cooperation between the competent authorities (Chapter VI EUAPR), the establishment and

interconnection of protection registers (Chapter VIII EUAPR), digital communication (Chapter IX EUAPR), and data protection (Chapter X EUAPR). These rules will also lead to a major modernisation compared with the older rules of the HAPC.

In sum, the proposal of the EUAPR will considerably strengthen the international protection of vulnerable adults within the EU.

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# The Supreme Administrative Court of Bulgaria's final decision in the Pancharevo case: Bulgaria is not obliged to issue identity documents for baby S.D.K.A. as she is not Bulgarian (but presumably Spanish)

*This post was written bij Helga Luku, PhD researcher at the University of Antwerp.*

On 1 March 2023, the Supreme Administrative Court of the Republic of Bulgaria issued its final decision no. 2185, 01.03.2023 (see here an English translation by Nadia Rusinova) in the *Pancharevo* case. After an appeal from the mayor of the Pancharevo district, the Supreme Administrative Court of Bulgaria ruled that the decision of the court of first instance, following the judgment of the Court of Justice of the European Union (CJEU) in this case, is "valid and admissible, but incorrect". It stated that the child is not Bulgarian due to the lack of maternal ties between the child and the Bulgarian mother, and thus there is no obligation for the Bulgarian authorities to issue a birth certificate. Hereafter, I will examine the

legal reasoning behind its ruling.

## Background

On 2 October 2020, the Administrative Court of the City of Sofia in Bulgaria requested a preliminary ruling from the CJEU in the case C-490/20 V.M.A. v. Stolichna Obshtina, Rayon '*Pancharevo*'. It sought clarification on the interpretation of several legal provisions. Specifically, the court asked whether a Member State is obliged, under Article 4(2) of the Treaty on European Union (TEU), Articles 20 and 21 of the Treaty on the Functioning of the European Union (TFEU), and Articles 7, 24, and 45 of the Charter of Fundamental Rights of the European Union (the Charter), to issue a birth certificate to a child, who is a national of that Member State, in order to obtain the identity document. This inquiry arose with respect to a child, S.D.K.A., born in Spain, whose birth certificate was issued by Spanish authorities, in accordance with their national law. The birth certificate identifies a Bulgarian national, V.M.A., and her wife, a British national, as the child's mothers, without specifying which of the two women gave birth to the child.

The CJEU decided that Article 4(2) TEU, Articles 20 and 21 TFEU and Articles 7, 24 and 45 of the Charter, read in conjunction with Article 4(3) of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, must be interpreted as meaning that, in the case of a child, being a minor, who is a Union citizen and whose birth certificate, issued by the competent authorities of the host Member State, designates as that child's parents two persons of the same sex, the Member State of which that child is a national is obliged

- to issue to that child an identity card or a passport without requiring a birth certificate to be drawn up beforehand by its national authorities, and
- to recognise, as is any other Member State, the document from the host Member State that permits that child to exercise, with each of those two persons, the child's right to move and reside freely within the territory of the Member States.

## The trajectory of the case within the Bulgarian courts

On the basis of the decision of the CJEU in the *Pancharevo* case, the referring court, i.e. the Administrative Court of the City of Sofia obliged the authorities of

the *Pancharevo* district to draw up the birth certificate of S.D.K.A., indicating two women as her parents.

The mayor of the Pancharevo district then filed an appeal to the Supreme Administrative Court of Bulgaria, contending that the decision is inadmissible and incorrect.

Based on its considerations, the Supreme Court held that the decision of the court of first instance is "valid and admissible but incorrect". Its rationale is premised on several arguments. Firstly, it referred to Article 8 of the Bulgarian Citizenship Law, which provides that a Bulgarian citizen by origin is everybody of whom at least one of the parents is a Bulgarian citizen. In the present case, the Supreme Court deemed it crucial to ascertain the presence of the biological link of the child, S.D.K.A. with the Bulgarian mother, V.M.A. Thus, it referred to Article 60 of the Bulgarian Family Code, according to which the maternal origin shall be established by birth; this means that the child's mother is the woman who gave birth to the child, including in cases of assisted reproduction. Therefore, the Supreme Court proclaimed in its ruling that the Bulgarian authorities could not determine whether the child was a Bulgarian citizen since the applicant refused to provide information about the child's biological mother. Consequently, the authorities could not issue a birth certificate and register the child's civil status. Furthermore, in a written defence presented to the court of first instance by the legal representative of V.M.A., it was provided that S.D.K.A. was born to K.D.K., the British mother, and the British authorities had also refused to issue a passport to the child, as she was not a British citizen.

The Supreme Administrative Court of Bulgaria ruled that the child is not a Bulgarian citizen, and the conclusion of the CJEU that the child is a Bulgarian citizen and thus falls within the scope of EU law (Articles 20 and 21 TFEU and Article 4 of Directive 2004/38/EC) is inaccurate. According to the Supreme Court's legal reasoning, these provisions do not establish a right to claim the granting of Bulgarian citizenship, and Union citizenship is a prerequisite for enjoying free movement rights.

In these circumstances, the Supreme Administrative Court of Bulgaria held that the refusal to issue a birth certificate does not result in the deprivation of citizenship or the violation of the child's best interests. It referred to the law of the host country, Spain. Article 17 of the Spanish Civil Code of July 24, 1889,

provides that Spanish citizens by origin are persons born in Spain to parents:

- who are foreigners if at least one of the parents was born in Spain (except for the children of diplomatic or consular officials accredited to Spain),
- who are both stateless, or
- neither of whose national laws confer nationality on the child.

According to this Article, the Supreme Court reasoned that since the national laws of the parents named in the child's birth certificate (i.e. Bulgarian and UK legislation), issued in Spain, do not grant citizenship to the child, baby S.D.K.A. must be considered a Spanish citizen by virtue of this provision.

The applicability of Spanish law was expressly confirmed by the Spanish Government during the hearing at the CJEU, provided in paragraph 53 of Advocate General Kokott's Opinion, stating that if the child could claim neither Bulgarian nor UK nationality, she would be entitled to claim Spanish nationality. Thus, the Supreme Court ruled that the child is Spanish and averted the risk of leaving the child stateless.

## Is the decision of the Supreme Administrative Court of Bulgaria in conformity with EU law interpretation?

In light of the ruling of the CJEU on the *Pancharevo* case, certain aspects might have required further scrutiny and more attention from the Supreme Court. Paragraph 68 of the *Pancharevo* judgment provides:

"*A child, being a minor, whose status as a Union citizen is not established and whose birth certificate, issued by the competent authorities of a Member State, designates as her parents two persons of the same-sex, one of whom is a Union citizen,* ***must be considered, by all Member States, a direct descendant of that Union citizen*** *within the meaning of Directive 2004/38 for the purposes of the exercise of the rights conferred in Article 21(1) TFEU and the secondary legislation relating thereto.*"

According to this paragraph, it can be inferred that Bulgaria and other Member States must recognize a child with at least one Union citizen parent as a direct descendant of that Union citizen. This paragraph has important implications as regards the establishment of the parent-child relationship. The CJEU, in its case law (C-129/18 SM v Entry Clearance Officer), has firmly established that the term

“direct descendant” should be construed broadly, encompassing both biological and legal parent-child relationships. Hence, as a family member of the Bulgarian mother, according to Article 2 (2)(c) of Directive 2004/38, baby S.D.K.A., should enjoy free movement and residence rights as a family member of a Union citizen. In its decision, however, the Supreme Administrative Court of Bulgaria did not conform to the CJEU’s expansive understanding of the parent-child relationship. Therefore, its persistence in relying on its national law to establish parenthood exclusively on the basis of biological ties appears to contradict the interpretation of EU law by the CJEU.

The Supreme Administrative Court of Bulgaria seems relieved to discover that the child probably has Spanish nationality. It can be doubted, however, at what conclusion the court would have arrived if the child were not recognized as Spanish under Spanish nationality laws, especially considering that the child was not granted nationality under UK legislation either. In such a scenario, the Supreme Court might have explored alternative outcomes to prevent the child from becoming stateless and to ensure that the child’s best interests are always protected.

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# Registration Open: Webinar Series on the Future of Cross-border Parenthood in the EU

As announced on this blog and on the blog of the EAPIL, a series of webinar has been organised under the title ***The Future of Cross-Border Parenthood in the EU – Analyzing the EU Parenthood Proposal***.

This is just a quick reminder for those who also read the EAPIL blog – and a new announcement for those who do not – that registration is open through the form available here.

The programme of the series is as follows:

- 3 May 2023, webinar chaired by Claire Fenton-Glynn: *Surrogacy in comparative perspective* (Jens Scherpe), and *What's in it? Subject matter, scope and definitions* (Cristina González Beilfuss)
- 10 May 2023, webinar chaired by Fabienne Jault-Seseke: *The EU Proposal and primary EU law: a match made in heaven?* (Susanne Gössl), and *The law governing parenthood: are you my father?* (Tobías Helms)
- 17 May 2023, webinar chaired by Nadia Rustinova: *The mutual recognition of decisions under the EU Proposal: much ado about nothing?* (Alina Ontanu), and *Who decides on parenthood? The rules of jurisdiction* (Maria Caterina Baruffi)
- 24 May 2023, webinar chaired by Steven Heylen: *Authentic documents and parenthood: between recognition and acceptance* (Patrick Wautelet), and *The European certificate of Parenthood: a passport for parents and children?* (Ilaria Pretelli)

The series of webinars is organized by Cristina González Beilfuss (Universitat de Barcelona), Susanne Gössl (Universität Bonn), Ilaria Pretelli (Institut Suisse de Droit Comparé), Tobias Helms (Universität Marburg) and Patrick Wautelet (Université de Liège) under the auspices and with the support of EAPIL, the European Association of Private International Law.

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# Save the Dates: EAPIL Webinar Series on the Proposal for an EU Regulation on Parenthood

As already reported here, the European Kommission adopted a Proposal for a Regulation in December 2022 which aims to harmonize at the EU level the rules of private international law with regard to parenthood. In May the EAPIL is organizing a series of four webinars to discuss the main elements of the proposal, find weaknesses and possibilities of improvement.

Each Wednesday, the webinar will start at 6 pm and end at 8 pm CET. It will focus on two topics, each presented by one expert, who will discuss the content of the proposal and examine the questions and possible improvement it raises. There will be ample room for discussion.

The programme of the series is as follows:

- 3 May 2023, chaired by Claire Fenton-Glynn:
  - The EU Proposal on Parenthood: lessons from comparative and substantive law (Jens Scherpe)
  - What's in it? Subject matter, scope and definitions (Cristina González Beilfuss)
- 10 May 2023, chaired by Fabienne Jault-Seseke:
  - The EU Proposal and primary EU law: a match made in heaven? (Susanne Gössl)
  - The law governing parenthood: are you my father? (Tobías Helms)
- 17 May 2023, chaired by Nadia Rustinova:
  - The mutual recognition of decisions under the EU Proposal: much ado about nothing? (Alina Ontanu)
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- 24 May 2023, chaired by Steven Heylen:
  - Authentic documents and parenthood: between recognition and acceptance (Patrick Wautelet)
  - The European certificate of Parenthood: a passport for parents and children? (Ilaria Pretelli)

For more information please visit the Website of the EAPIL.

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# The Dutch Supreme Court on how

# to deal with the CISG on appeal (Willemen Infra v Jura)

*On 24 February 2023, the Dutch Supreme court has ruled in the case Willemen Infra v Jura, ECLI:NL:HR:2023:313. The ruling clarifies the scope of the Dutch courts' duty to apply the CISG (UN Convention on Contracts for the International Sale of Goods, 1980) ex officio on appeal. The Dutch appellate courts shall not review of their own motion whether the first instance court had to apply the CISG to the dispute, if the question of governing law was not the subject of parties' objections on appeal and thus got "beyond the parties' dispute".*

**Facts**

The facts of this case related to a sale of gutters by a Dutch seller to a Belgian buyer. The gutters were to be used for the renovation of a runway at Zaventem airport. According to the seller's general terms and conditions, the disputes were to be resolved before a Dutch court on the basis of Dutch law.

After the start of performance, the buyer had reasons to assume that that the seller was unable to timely supply the products of the required quality. The buyer refused to take all the purchased gutters.

**Proceedings**

The seller disagreed and claimed damages for the loss of profit caused by the breach of contract. In the proceedings, the buyer submitted a counterclaim, invoking partial avoidance of contract and, alternatively, nullity of contract due to vitiation of consent. The buyer submitted namely that it had concluded the contract based on misrepresentation relating to the products' quality (the certificates which the products should have) and the delivery time.

The seller relied on both the CISG and Dutch law in its written submissions, including the statement that the choice for Dutch law in the general terms and conditions should be interpreted as excluding the application of the CISG. During the oral hearing, both parties referred to Dutch law only (see on this the Conclusion of the Advocate General, at [3.4]). The first instance court ruled as follows in relation to applicable law: '*According to the [seller], the contract is*

*governed by Dutch law. (…) 'The court contends that [the buyer] also relies on Dutch law in its arguments, and thus follows [the seller's] reasoning. The court follows the parties in this and shall apply Dutch law*." (the formulation is quoted in *Willemen Infra* v *Jura* at [4.3.1], compare to Advisory Council's Opinion nr 16). The court has then applied the Dutch civil code, not the CISG, to the dispute.

The seller appealed against the decision, but not against the applicable law. Nevertheless, the appellate court considered of its own motion, whether the contract was governed by the CISG. It ruled that the contract fell under the CISG's scope; the Convention was directly applicable on the basis of article 1(1)(a) CISG, as both Belgium and the Netherlands are Contracting States to CISG. Furthermore, the parties to the dispute have not explicitly excluded the CISG's application based on article 6. The appellate court has applied the CISG to the contractual claim, and Dutch law – to the claim relating to the vitiation of consent, as this matter falls outside the Convention's scope. The buyer has labelled the application of the CISG 'surprising', because no claim in appeal targeted applicable law.

In cassation, the Dutch Supreme has ruled that applicable law was indeed "beyond the parties' dispute" on appeal. Therefore, the appellate court was neither free to determine applicable law anew nor free to apply CISG of its own motion (*Willemen Infra* v *Jura* at [2.1.2]- [3.1.6]).

**CISG and procedural ordre public?**

The ruling is logical from the point of view of civil procedure. Appellate review follows up on – and is limited by – the points invoked on appeal. Issues "beyond the parties' dispute" are not reviewed, unless these issues fall under the rules of procedural ordre public, which the appellate courts must apply of their own motion. While there is no unanimously accepted definition of the Dutch procedural ordre public, the cassation claim explicitly suggested that 'the CISG is not of ordre public' (see Conclusion of the Advocate General, at [3.3.]). Whereas this element of the cassation claim has been satisfied, neither the Advocate General nor the Court have engaged with the discussion whether procedural ordre public covers direct application (or applicability) of the Convention's uniform substantive sales law, even if it would be confined to establishing whether the parties have opted-out the CISG based on its article 6.

# European Commission Proposal for a Regulation on Private International Law Rules Relating to Parenthood

*This piece was written by Helga Luku, PhD researcher at the University of Antwerp*

On 7 December 2022, the European Commission adopted a Proposal for a Regulation which aims to harmonize at the EU level the rules of private international law with regard to parenthood. This proposal aims to provide legal certainty and predictability for families in cross-border situations. They currently face administrative burdens when they travel, move or reside in another Member State (for family or professional reasons), and seek to have parenthood recognised in this other Member State. The proposal follows on a declaration two years ago by the Commission President von der Leyen in her State of the Union address that **"If you are a parent in one country, you are a parent in every country".**

How will this proposal change the current situation?

In line with the case law of the Court of Justice of the EU, Member States are required to recognise parenthood for the purpose of the rights that the child derives from Union law, permitting a child who is a Union citizen, to exercise without impediment, with each parent, the right to move and reside freely within the territory of Member States. Thus, parenthood established in one Member State should be recognised in other Member States for some (limited) purposes. There is currently no specific EU legislation that requires Member States to recognise parenthood established in other Member States for all purposes.

Different substantive and conflict-of-law rules of Member States on the establishment and recognition of parenthood can lead to a denial of the rights

that children derive from national law, such as their succession or maintenance rights, or their right to have any one of their parents act as their legal representative in another Member State on matters such as medical treatment or schooling. Thus, the proposal aims to protect the fundamental rights of children and as it is claimed by the Commission, to be in full compliance with the UN Convention on the Rights of the Child. Through the proposed Regulation, the Commission intends to enable children, who move within the Union to benefit from the rights that derive from national law, **regardless of**:

- **the nationality of the children or the parents** (on the condition that the document that establishes or proves the parenthood is issued in a Member State);
- **how the child was conceived or born** (thus including conception with assisted reproductive technology);
- **the type of family of the child** (including e.g. the recognition of same-sex parenthood or parenthood established through adoption).

In principle, the proposal does not interfere with substantive national law in matters related to parenthood, which are and will remain under the competence of Member States. However, by putting the children's rights and best interests in the spotlight of the proposal, the Commission is requiring Member States to disregard their reluctance toward the recognition of some types of parenthood.

As the Union aspires an area of freedom and justice, in which the free movement of persons, access to justice and full respect of fundamental rights are guaranteed, the Commission proposes the adoption of Union rules on international jurisdiction and applicable law in order to facilitate the recognition of parenthood among the Member States. It covers not only the recognition of judgments but also the recognition and acceptance of authentic instruments. In this sense, the proposal covers the three main pillars of private international law and it will also introduce a European Certificate on Parenthood.

The main aspects of this proposal include:

- **Jurisdiction**: jurisdiction shall lie alternatively with the Member State of habitual residence of the child, of the nationality of the child, of the habitual residence of the respondent (e.g. the person in respect of whom the child claims parenthood), of the habitual residence of any one of the

parents, of the nationality of any one of the parents, or of the birth of the child. Party autonomy is excluded. (Chapter II, articles 6-15)

- **The applicable law**: as a rule, the law applicable to the establishment of parenthood should be the law of the State of the habitual residence of the person giving birth. If the habitual residence of the person giving birth cannot be established, then the law of the State of the birth of the child should apply. Exceptions are foreseen for the situation where the parenthood of a second person cannot be established under the applicable law. (Chapter III, articles 16-23).
- **Recognition**: the proposal provides for the recognition of court decisions and authentic instruments with binding legal effects, which establish parenthood, without any special procedure being required. However, if one of the limited grounds for refusal is found to exist, competent authorities of Member States can refuse the recognition of parenthood established by a court decision or an authentic instrument with binding effects. (Chapter IV, articles 24-43)
- **Acceptance:** the proposal also provides for the acceptance of authentic instruments with no binding legal effect. These instruments do not have a binding legal effect because they do not establish parenthood, but they refer to its prior establishment by other means or to other facts, thereby having only evidentiary effects. It may be a birth certificate, a parenthood certificate, an extract of birth from the register or any other form. The acceptance of these instruments with evidentiary effects can be refused only on public policy grounds. (Chapter V, articles 44-45)
- **Creation of a European Certificate of Parenthood**: children or their legal representatives can request it from the Member State in which the parenthood was established. This Certificate will be issued in a uniform standard form and will be available in all Union languages. It is not mandatory but children or their legal representatives have the right to request it and have it recognised in all Member States (chapter VI, articles 46-57).

What is next?

Since the current proposal concerns family law issues with cross-border implications, under Article 81(3) of the Treaty on the Functioning of the European Union, the Council shall act unanimously via a special legislative procedure after

consulting the European Parliament. Besides the sensitive area the proposal regulates, it also adopts a pro-diversity and non-discrimination policy, including the recognition of same-sex parenthood and surrogacy. Thus, considering the different approaches and national identities of Member States, often associated with their more conservative or liberal convictions, unanimity will not be easy to reach. However, if unanimity cannot be reached, a number of Member States can still adopt the proposal in enhanced cooperation (see: Article 20 Treaty on European Union). This is not an uncommon procedure for Member States when they have to adopt legislation that concerns family law issues, e.g. Regulation 1259/2010 on the law applicable to divorce and legal separation (Rome III) and Regulation 2016/1103 on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. However, if it happens that the proposal is adopted in enhanced cooperation, it is doubtful whether its objective to provide the same rights for all children is truly achieved. Additionally, the participating Member States will probably include those that did not impose very restrictive requirements with regard to the recognition of parenthood in their national laws, even before the adoption of the Regulation in enhanced cooperation.

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# Call for applications: Professorship for UK Politics, Law, and Economy at Humboldt University Berlin

The interdisciplinary Zentralinstitut Centre for British Studies at Humboldt-Universität zu Berlin is seeking to fill a **tenured W3 Professorship for UK Politics, Law, and Economy.**

The Institute is looking for an interdisciplinary scholar from Politics, Law or Economics, with a significant and proven UK-related profile and interest in

political, legal, and economic research questions.

The postholder is expected to represent the subjects of UK politics, law and economy in teaching, research, and in terms of knowledge exchange, also for the general public. Teaching duties have to be fulfilled mainly at the Centre for British Studies as part of the MA British Studies and mainly in English.

Broad research areas, methodological openness and versatility are expected as well as the willingness to connect with UK-related research networks and academics in Berlin, Potsdam, and with Anglophone partners elsewhere. Furthermore, the institutes expects the postholder to enhance and renew existing networks within the Berlin University Alliance, that they will help modernise the Graduate School for British Studies, apply for large-scale UK-related funding and lead on them and that the postholder will represent the Centre in all respects. Near-native spoken and written English and C1 level German are a requirement and active participation in all GBZ and HU committees is also expected.

Furthermore, the institute expects UK teaching, research, publishing and knowledge exchange as well as research leadership experience; proven experience / activities in public relations and outreach.

The applicants must meet the legal requirements for professorial appointments in accordance with § 100 of the `Berliner Hochschulgesetz´.

HU is seeking to increase the proportion of women in research and teaching, and specifically encourages qualified female scholars to apply. Researchers from abroad are welcome to apply. Severely disabled applicants with equivalent qualifications will be given preferential consideration. People with an immigration background are specifically encouraged to apply.

Applications including a CV, copies of certificates and diplomas, detailed information on teaching experience, a teaching policy (max. 2 pages), past, present and future interdisciplinary research projects (max. 2 pages), and an outline for the next 10 years of the GBZ (max. 2 pages), a list of publications within three weeks (16 December 2022) together with the code number **PR/012/22** should be sent to the following address:

*Humboldt-Universität zu Berlin*

*An die stellvertretende Direktorin des GBZ*

*Prof. Dr. Gesa Stedman*

*Mohrenstr. 60*

*10117 Berlin*

In addition, the application should be sent as a single PDF to the following email address: gbz@gbz.hu-berlin.de. Applications will not be returned. Therefore only copies (and no original documents) should be handed in.

Any queries can be addressed to gesa.stedman@hu-berlin.de.

For more details please visit www.hu-berlin.de/stellenangebote, which gives you access to the legally binding German version of the call for applications.

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# The Greek Supreme Court on the date of service of documents abroad: The end of a contemporary Greek tragedy

The Greek Supreme Court of Cassation (Areios Pagos) rendered a very important decision at the end of June, which is giving the final blow to a period of procedural insanity. A provision in force since the 1st of January 2016 is forcing claimants to serve the document instituting proceedings abroad within 60 days following filing. Failure to abide by the rule results to the deletion of the claim as non-existent. As a consequence, the claimant is obliged to file a new claim, most probably being confronted with the same problem.

[Supreme Court of Cassation (Areios Pagos) nr. 1182/2022, available **here.**

## Facts and judgment in first instance

The dispute concerns two actions filed on 31.01.2017 and 31.03.2017 against defendants living in Monaco and Cyprus respectively. The claimant served copies of the action by using the main channels provided for by the 1965 Hague Service Convention (for Monaco; entry into force: 1-XI-2007) and the Service of Process Regulation nr. 1393/2007. Service to the defendant in Monaco was effected on 08.05.2017, whereas service to the defendant in Cyprus on 19.06.2017. Both actions were dismissed as non-existent (a verbatim translation would be: non-filed) due to the belated service to the countries of destination [Thessaloniki Court of 1st Instance 2013/2019, unreported]. The claimant filed a second (final) appeal, challenging the judgment's findings.

## The overall picture before the decision of the Supreme Court

So far, the vast majority of Greek courts was following the rule in exactly the same fashion as the first instance court. Article 215 Para 2 of the Greek Code of Civil Procedure reads as follows: *… the claim is served to the defendant within a term of 30 days after filing; if the defendant resides abroad or is of unknown residence, the claim is served within 60 days after filing*. The rule applies exclusively to ordinary proceedings, i.e., mostly civil and commercial matters, with the exception of some pertinent disputes, which are regulated under a special Book of the Code of Civil Procedure [Book 4, Articles 591-465: Special Proceedings]

A countless number of motions were dismissed as a result of this rule since 2016. Courts were refusing claims even when the defendants were appearing before the court, submitting pleadings and raising their defense. Only claims addressed to defendants living in countries which are neither EU member states nor Hague Convention signatories, are 'saved'. Article 134, in connection with Article 136 Greek of Code of Civil Procedure has established half a century ago the notorious system of fictitious service, akin to the French system of remis au parquet (Article 683 Code de Procédure Civile). This system still applies for countries such as the United Arab Emirates or Madagascar, however not for Cyprus or Monaco, due to

the prevalence of the EU Regulation and the Hague Convention, anchored in the Constitution (Article 28). Hence, the non- production of a service certificate is no obstacle for the former, whereas any service certificate dated after the 60 days term is not considered good service for the latter, leading to the dismissal of the claim.

**The decision of the Supreme Court**

Against this background, the Supreme Court was called to address the matter for the first time after nearly six years since the introduction of the new provision.

The Supreme Court began with an extensive analysis of the law in force (Article 134 Code of Civil Procedure; EU Service Regulation; Hague Service Convention, and Article 215 Para 2 Code of Civil Procedure). It then pointed out the repercussions of the latter rule in the system of cross-border service, and interpreted the provision in a fashion persistently suggested by legal scholarship: The 60 days term should be related with the notification of the claim to the Transmitting Authority, i.e., the competent Prosecutor's office pursuant to Article 134 Code of Civil Procedure and the declarations of the Hellenic Republic in regards to the EU Service Regulation and the Hague Service Convention.

The date of actual service should be disconnected from the system initiated by Article 215 Para 2 Code of Civil Procedure. The Supreme Court provided an abundance of arguments towards this direction, which may be summarized as follows: Violation of Article 9 Para 2 Service Regulation 1393/2007 (meanwhile Article 13 Para 2 Service Regulation 2020/1784); contradiction with the spirit of Article 15 of the Hague Service Convention, despite the lack of a provision similar to the one featured in the EU Regulation; violation of the right to judicial protection of the claimant, enshrined in the Greek Constitution under Article 20; violation of Article 6 (1) of the European Convention of Human Rights, because it burdens the claimant with the completion of a task which goes beyond her/his sphere of influence.

For all reasons above, the Supreme Court overturned the findings of the Thessaloniki 1st Instance court, and considered that service to the defendants in Monaco and Cyprus was good and in line with the pertinent provisions

aforementioned.

**The takeaways and the return to normality**

The judgment of the Supreme Court has been expected with much anticipation. It comes to the rescue of the claimants, who were unjustly burdened with an obligation which was and still is not under their controlling powers. The judgment returns us back to the days before the infamous provision of Article 215 Para 2, where the domestic procedural system was impeccably finetuned with the EU Regulation and the Hague Service Convention.

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# Date change: AMEDIP’s annual seminar to take place from 23 to 25 November 2022


The Mexican Academy of Private International and Comparative Law (AMEDIP) will be holding its annual XLV Seminar entitled “Private International Law in the conformation of a new international order” (el derecho internacional privado en la conformación de un nuevo orden internacional) from 23 to 25 November 2022.

This will be a hybrid event. The seminar will take place at the Escuela Libre de Derecho (Mexico City). The registration fee is $300 MXN for students and $500 MXN for general public.

This event will be streamed live on AMEDIP’s social media channels and Zoom (see below for details). Participation is free of charge but there is a fee of $500

MXN if a certificate of attendance is requested (80% of participation in the event is required).

Zoom details:

https://us02web.zoom.us/j/5554563931?pwd=WE9uemJpeWpXQUo1elRPVjRMV0tvdz09

ID de reunión: 555 456 3931

Código de acceso: 00000

For more information, click here.

The program is available below.

**Programa.**

**MIÉRCOLES 23 DE NOVIEMBRE DE 2022.**

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|---|---|
| **10:10 a 10:20 HRS.** | **INAUGURACIÓN**.<br>Mario Héctor Blancas Vargas<br>Vocal de la Junta Directiva<br>Escuela Libre de derecho<br><br>Elí Rodríguez Martínez.<br>Presidente de la Academia Mexicana de Derecho Internacional Privado y Comparado (AMEDIP). |
| **10:20 a 11:00 HRS** | **CONFERENCIA MAGISTRAL** |
| | Leonel Pereznieto Castro<br>“El Pluralismo de Leyes frente al Derecho Internacional Privado” |

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| **receso**<br>**11:00 – 11:10 hrs.** | |
| **11:10 a 12:10 HRS.** | **MESA I**<br><br>**“COOPERACIÓN PROCESAL INTERNACIONAL Y EL PROYECTO DE CÓDIGO NACIONAL DE PROCEDIMIENTOS CIVILES Y FAMILIARES”** |
| Moderadora: Ligia C. González Lozano<br>Miembro de Número | |
| **<u>Ponente</u>** | **<u>Tema</u>** |
| 1. José Roberto de Jesús Treviño Sosa.<br>(México) | *“La Cooperación Procesal Internacional en el marco del Proyecto de código Nacional de Procedimientos Civiles y Familiares”.* |
| 2. Carlos e. Odriozola Mariscal.<br>(México) | *“La regulación de la cooperación procesal internacional en el próximo Código Nacional de Procedimientos Civiles y Familiares: Reflexiones sobre su eficacia”.* |

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| 3. Jorge Alberto Silva Silva.<br>(México) | *"Cláusula de reciprocidad en el Proyecto de Código Nacional de Procedimientos Civiles y Familiares".* |
| 4. Nuria Marchal Escalona.<br>(España) | *"Hacia la digitalización en el ámbito de la cooperación transfronteriza en la justicia civil".* |
| Preguntas y Respuestas<br>(20 mins). | |
| **receso**<br>**12:30 – 12:50 hrs.** | |
| **12:50 a 13:40 HRS.** | **Mesa II**<br><br>**"CONTRATACIÓN INTERNACIONAL"** |
| Moderadora: María Mercedes Albornoz.<br>Miembro de Número | |
| **<u>Ponente</u>** | **<u>Tema</u>** |
| 1. James A. Graham/Christian López Martínez.<br>(México) | *"La Ley Aplicable a la Autonomía de la Voluntad en materia contractual".* |

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| 2. Diego Robles Farías.<br>(México) | *“El desarrollo de la Cláusula ‘Rebus Sic Stantibus’ en el Derecho Comparado y en los instrumentos de Derecho Uniforme que regulan los contratos internacionales.”.* |
| 3. Alfonso Ortega Giménez.<br>(España) | *“Derecho Internacional Privado de la unión Europea y ‘Smart Contracts’ (contratos Inteligentes): Problemas de Competencia Judicial Internacional y de Determinación de la Ley Aplicable”.* |
| Preguntas y Respuestas<br>(20 mins). | |
| **receso**<br>**14:00 – 16:00 hrs.** | |
| **16:00 – 17:00 HRS.** | **“PRESENTACIÓN DEL LIBRO: La Gestación por Sustitución en el Derecho Internacional Privado y Comparado”** |
| Moderadora: Nuria González Martín.<br>Secretaria General de la Junta de Gobierno | |
| Participan: | Adriana Dreyzin de Klor<br>(Argentina) |

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| | Rosa Elvira Vargas Baca (México) |
| | María Mercedes Albornoz (México) |
| | Nuria González Martín (México) |
| Preguntas y Respuestas (20 mins). | |
| **receso 17:20 – 17:30 hrs.** | |
| **17:30 a 18:00 HRS.** | **Entrega de Constancias a Miembros Eméritos y de Número** |
| Moderador: Elí Rodríguez Martínez. Presidente de la Junta de Gobierno | |

**JUEVES 24 DE NOVIEMBRE DE 2022.**

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| **10:00 a 10:40 HRS.** | **CONFERENCIA MAGISTRAL** Miguel Ángel Reyes Moncayo Consultor Jurídico Adjunto "A" Secretaría de Relaciones Exteriores |
| Moderadora: Rosa Elvira Vargas Baca. Vicepresidente de la Junta de Gobierno | |

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| Preguntas y Respuestas<br>(20 mins). | |
| **receso**<br>**11:00 – 11:10 hrs.** | |
| **11:10 a 12:10 HRS.** | **MESA III**<br>**“DERECHO INTERNACIONAL DE LA FAMILIA”** |
| Moderadora: Martha Álvarez Rendón.<br>Vínculo Institucional con S.R.E. | |
| **Ponente** | **Tema** |
| 1. María Mayela Celis Aguilar.<br>(Países bajos) | *“La implementación del Convenio de la Haya de 1980 sobre los Aspectos Civiles de la Sustracción Internacional de Menores en los regímenes nacionales: el caso de América Latina y México”.* |
| 2. Manuel Hernández Rodríguez.<br>(México) | *“Los retos en México de la Adopción Internacional”.* |

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| 3. María Virginia Aguilar. (México) | *“La Convención sobre los Derecho de las Personas con Discapacidad, un buen documento con ausencia de efectividad, errores y posibilidades”.* |
| 4. Jorge Orozco González. (México) | *“Consideraciones en torno a la compensación conyugal por causa de muerte. Análisis de la sentencia de amparo directo en revisión 3908/2021”.* |
| Preguntas y Respuestas (20 mins). | |
| **receso 12:30 – 12:45 hrs.** | |
| **12:45 – 13:40 HRS** | **MESA IV “NACIONALIDAD/PROTECCIÓN DEL PATRIMONIO CULTURAL EN EL DERECHO INTERNACIONAL PRIVADO”** |
| Moderadora: Yaritza Pérez Pacheco Coordinadora Editorial | |
| **Ponente** | **Tema** |

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|---|---|
| 1. Pedro Carrillo Toral<br>(México) | *"La doble Nacionalidad en México: Privilegio o Restricción"* |
| 2. Lerdys Saray Heredia Sánchez<br>(España) | *"La inadecuada regulación de los supuestos de plurinacionalidad en Derecho Internacional Privado Español"* |
| 3. Ana Elizabeth Villalta Vizcarra<br>(El Salvador) | *"La protección de los Bienes Culturales en el Derecho Internacional Privado"* |
| 4. Rosa Elvira Vargas Baca<br>(México) | *"La protección de bienes culturales de conformidad con el Convenio de UNIDROIT de 1995".* |
| Preguntas y Respuestas<br>(20 mins). | |
| **receso**<br>**14:00 – 16:00 hrs.** | |

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| **16:00 a 17:00 HRS.** | **MESA V**<br>**"Responsabilidad Civil Extracontractual/ Temas Selectos de Derecho Internacional Privado-I"** |
| Moderadora: Anahí Rodríguez Marcial.<br>Coordinadora de Seminario | |

| **Ponente** | **Tema** |
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| 1. Francisco de Jesús Goytortúa Chambón. (México) | *“Criterios del Derecho Aplicable en la Responsabilidad Extracontractual”* |
| 2. Mario de la Madrid Andrade. (México) | *“La responsabilidad de la empresa en los Principios de Derecho Europeo sobre la Responsabilidad Civil Extracontractual”* |
| 3. Carlos Gabuardi. (México) | *“Nuevos desarrollos evolutivos del Derecho Internacional Privado”.* |
| 4. Adriana Patricia Guzmán Calderón/ Sara Ximena Pinzón Restrepo. *(Colombia)* | *“¿Cuáles son los desafíos de la normatividad de la propiedad intelectual frente al surgimiento de los NFTs? Análisis de los NFTs en el Marco de la Propiedad Intelectual en Colombia”.* |

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| Preguntas y Respuestas (20 mins). |
| **receso** **17:20 – 17:30 hrs.** |

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| **17:30 a 18:00 HRS.** | **Entrega de Constancias a Miembros Supernumerarios** |
| Moderador: Elí Rodríguez Martínez.<br>Presidente de la Junta de Gobierno | |

**VIERNES 25 DE NOVIEMBRE DE 2022.**

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| **10:00 a 10:30 HRS.** | **CONFERENCIA MAGISTRAL**<br>Roberto Ruíz Díaz Labrano<br>“Las fuentes del Derecho Internacional Privado en la Actualidad”.<br>(Paraguay) |
| Moderadora: Wendolyne Nava gonzález<br>Coordinadora Editorial | |
| **Preguntas y Respuestas**<br>**(20 mins).** | |
| **receso**<br>**10:50 – 11:00 hrs.** | |

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| **11:00 – 12:00HRS**. | **Mesa VI**<br>**“TECNOLOGÍA Y DERECHO INTERNACIONAL PRIVADO/TEMAS SELECTOS DE DERECHO INTERNACIONAL PRIVADO-II”** |
| Moderadora: Martha Karina Tejada Vásquez.<br>Prosecretaria de la Junta de Gobierno | |
| **<u>Ponente</u>** | **<u>Tema</u>** |
| 1. Roberto Antonio Falcón Espinosa.<br>(México) | *“Los datos personales biométricos y el Derecho Internacional Privado”* |
| 2. Nayiber Febles Pozo<br>(España) | *“Desafío del Derecho Internacional Privado ante las relaciones en el ciberespacio: Relación de continuidad o cambio de paradigma”.* |
| 3. Francisco José Contreras Vaca.<br>(México) | *“Conflicto de Leyes en materia del Trabajo”.* |
| 4. Wendolyne Nava González.<br>(México) | *“Justicia Descentralizada: Obstáculos y Consideraciones Jurídicas”* |

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| Preguntas y Respuestas<br>(20 mins). | |
| **receso**<br>**12:20 – 12:40** | |
| **12:40 – 13:25 HRS.** | **Mesa VII**<br><br>**“TEMAS SELECTOS DE DERECHO INTERNACIONAL PRIVADO-III”** |
| Moderadora: Mónica María Antonieta Velarde Méndez.<br>Consejera de la Junta de Gobierno | |
| 1. Juan Manuel Saldaña Pérez.<br>(México) | *“Cooperación Procesal Internacional en Materia Aduanera”.* |
| 2. Máximo Romero Jiménez<br>(México) | *“Implementación del Anexo 31-A del T-MEC”.* |
| 3. Vladia Ruxandra Mucenic.<br>(Rumania) | *“Participación de Accionistas Extranjeros en Asambleas Virtuales de Sociedades Mexicanas”.* |
| Preguntas y Respuestas<br>(10 mins). | |

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| **receso**<br>**13:35 – 13:45** |

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| **13:45 a 14:00 HRS.** | **Entrega de Constancias a Miembros Asociados** |
| Moderador: Elí Rodríguez Martínez.<br>Presidente de la Junta de Gobierno | |

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| **14:00 HRS.** | **CLAUSURA.**<br><br>*Por definir<br>Escuela Libre de Derecho (ELD)<br><br>Elí Rodríguez Martínez.<br>Presidente de la Academia Mexicana de Derecho Internacional Privado y Comparado (AMEDIP). |

# Job Vacancy at the University of Bonn, Germany: Researcher in Private International Law, International Civil Procedural Law, and/or International Commercial Arbitration

The **Institute for German and International Civil Procedure** at the Rheinische Friedrich Wilhelms University of Bonn, Germany, is looking for a **highly skilled and motivated PhD candidate and fellow (Wissenschaftliche/r Mitarbeiter/in)** to work in the fields of Private International Law, International Civil Procedural Law and/or International Commercial Arbitration on a part-time basis **(50%) as of 1 April 2023.**

The successful candidate must hold the First or Second German State Examination in law with distinction ("*Prädikat*") and is interested in the international dimensions of private law, in particular private international law, international civil procedural law, and/or international commercial arbitration.

The successful candidate will be given the opportunity to conduct her/his PhD project (according to the Faculty's regulations) under the supervision of the Director of the Institute Prof Dr Matthias Weller, Mag.rer.publ. (https://www.jura.uni-bonn.de/professur-prof-dr-weller/professor-dr-weller-magrer publ/). The position is paid according to the German public service salary scale E-13 TV-L, 50%. The initial contract period is one year at least and up to three years, with an option to be extended. Responsibilities include supporting research and teaching on Private International Law, International Civil Procedure and/or International Commercial Arbitration as well as a teaching obligation of two hours per week during term time.

If you are interested in this position, please send your application (cover letter in German; CV; and relevant documents and certificates, notably university

transcripts and a copy of the German State Examination Law Degree) to Prof Dr Matthias Weller (weller@jura.uni-bonn.de). The University of Bonn is an equal opportunity employer.