Court-to-court referrals and reciprocity between Chinese and Singapore courts

By Catherine Shen, Asian Business Law Institute

In 2023 Su 05 Xie Wai Ren No. 8 dated March 14, 2025, the Suzhou Intermediate People's Court of Jiangsu Province in China (**Suzhou Court**) recognized and enforced civil judgment HC/S194/2022 under file number HC/JUD47/2023 by the Supreme Court of Singapore (**Singapore Judgment**). The judgment by the Suzhou Court (**Suzhou Judgment**) was announced in September 2025 by the Supreme People's Court of China (**SPC**) as among the fifth batch of Belt and Road Initiative (**BRI**) model cases.

Background

The applicant, Company Golden Barley International Pte Ltd (legal representative Wu), requested the Suzhou Court to recognize and enforce the Singapore Judgment, including the obligations imposed on the respondent Xiao to make payment.

The applicant claimed, among others, that Xiao, a director of Company Ba, colluded with other defendants of the case and procured Company Golden Barley into signing contracts with Company Ba and another company and making prepayment, without delivering to Company Golden Barley the goods agreed under those contracts. The Singapore Judgement, among others, ordered Xiao to pay over $6.6 million plus interest to Company Golden Barley. The applicant based its application on China's *Civil Procedure Law*, the *Interpretations of the Supreme People's Court on the Application of Law to Interest Accrued on Debt during the Period of Delayed Performance during Enforcement* and the *Memorandum of Guidance between the Supreme People's Court of the People's Republic of China and the Supreme Court of Singapore on Recognition and Enforcement of Money Judgments in Commercial Cases* (**MOG**).

The respondent Xiao, on her part, made several counterclaims. Among others, she contended that service of the Singapore documents was defective as service was

forwarded by the International Cooperation Bureau of the SPC rather than the Ministry of Justice which is the competent authority designated by China to transmit foreign judicial documents under the 1965 HCCH Service Convention, and that the documents served on her were copies in the English language. Xiao also pointed out that the MOG is non-binding and that the treaty between China and Singapore on judicial assistance in civil and commercial matters does not cover judgments recognition and enforcement. Further, the respondent argued that the Singapore Judgment was not final and binding because it was pending appeal among some other defendants, making it ineligible for recognition and enforcement.

Decision

The Suzhou Court noted that courts in China and Singapore have recognized and enforced each other's civil and commercial judgments since the MOG was signed in August 2018. Reciprocity therefore exists between the two jurisdictions which is required under Chinese law for recognizing and enforcing foreign judgments in the absence of any international treaty on judgments recognition and enforcement signed by or acceded to by the jurisdictions concerned.

The Suzhou Court also found that service of the Singapore documents on Xiao was not defective. The Chinese embassy in Singapore had entrusted the International Cooperation Bureau of the SPC to assist with service for case HC/S194/2022 in July 2022. One month later, the Zhangjiagang People's Court in Jiangsu Province (**Zhangjiagang Court**) served those documents on Xiao who acknowledged receipt. Xiao then declined to take delivery of the originals of those documents when contacted again by the Zhangjiagang Court after the originals were subsequently forwarded by the Chinese embassy in Singapore.

Further, the Suzhou Court found that the Singapore Judgment is final and binding. Specifically, the Suzhou Court had requested the SPC to submit a Request for Assistance in Ascertaining Relevant Laws of Singapore to the Supreme Court of Singapore. In its reply issued in December 2024, the Supreme Court of Singapore explained the scope of application of Singapore's Rules of Court and the provisions therein on default judgments, which helped the Suzhou Court reach its conclusion.

The Suzhou Court accordingly recognized and enforced the Singapore Judgment.

Commentary

With this decision, the Suzhou Court continues the favorable momentum of the courts of China and Singapore recognizing each other's civil and commercial judgments and affirms the importance and practical application of the MOG despite its non-binding nature.

Further, according to the SPC, this is the first time that a Chinese court has activated the procedure for seeking assistance from a Singapore court to provide clarifications on relevant Singapore law. Article 19 of the MOG says Singapore courts may seek assistance from the SPC to obtain certification that the Chinese judgment for which enforcement is sought is final and conclusive. This "right" is not provided in the MOG for Chinese courts. According to the SPC, the Suzhou Court sought assistance from the Supreme Court of Singapore based on a separate instrument titled the Memorandum of Understanding on Cooperation between the Supreme People's Court of the People's Republic of China and the Supreme Court of the Republic of Singapore on Information on Foreign Law (**MOU**). This MOU provides a route for referrals between the courts of the two jurisdictions to seek information or clarifications on each other's relevant laws. Under the MOU, if it is necessary for courts in China or Singapore to apply the law of the other jurisdiction in adjudicating international civil and commercial cases, a request may be made to the relevant court in the other jurisdiction to provide information and opinions on its domestic law and judicial practice in civil and commercial matters, or matters relating thereto. The Supreme Court of Singapore and the SPC are the courts designated for transmitting, and for receiving and responding to, such requests in Singapore and China, respectively. Any request should be responded to as soon as possible, with notice to be given to the requesting court if the receiving court is unable to furnish a reply within 60 days. Further requests can also be made for more clarifications.

In Singapore domestic law, Order 29A of the Rules of Court 2021 empowers the Supreme Court of Singapore, on the application of a party or its own motion, to transmit to a specified court in a specific foreign country a request for an opinion on any question relating to the law of that foreign country or to the application of such law in proceedings before it. So far, China and the SPC are the only specified foreign country and specified court under Order 29A. Essentially, Order 29A has formalized the procedures under the MOU for Singapore.

This is different from Order 29 of the Rules of Court 2021 which currently lists New South Wales in Australia, Dubai of the United Arab Emirates and Bermuda as "specified foreign countries" and their relevant courts as "specified courts". Under Order 29, where in any proceedings before the Supreme Court of Singapore there arises any question relating to the law of any of those specified foreign countries or to the application of such law, the Supreme Court of Singapore may, on a party's application or its own motion, order that proceedings be commenced in a specified court in that specified foreign country seeking a determination of such question. The Supreme Court of Singapore has in place memoranda of understanding on references of questions of law with the Supreme Court of New South Wales, the Supreme Court of Bermuda and the Dubai International Financial Centre Courts. These memoranda of understanding all "direct" parties to take steps to have the contested issue of law determined by the foreign court.

This may explain why Order 29 is titled referrals on issues of law while Order 29A is titled requests for opinions on questions of foreign law. It should be noted that equivalent provisions are in place for referrals involving the Singapore International Commercial Court (SICC) (SICC Rules, Order 15 and Order 15A).

Finally, it may also be interesting to explain SPC's lists of model cases. As a civil law jurisdiction, China does not practice *Stare Decisis*. Nor does it formally recognize the binding effects of precedents. However, the SPC does publish different lists of judgments which it deems of guiding value from time to time. Those judgments can be "guiding cases" which, loosely speaking, are of the highest "precedent value" and are subject to the most stringent selection criteria. They can be "model cases" which are of significant importance but are subject to less stringent selection criteria. They may also be "gazetted cases" which are judgments published on the official SPC newsletter for wider reference (but not guidance). Model cases may also be released for specific subject matter areas, such as intellectual property, financial fraud, etc. The Suzhou Judgment here is among the BRI model cases which mostly concern commercial disputes involving jurisdictions along the route of China's BRI program.

This write-up is adaptation of an earlier post by the Asian Business Law Institute which can be found here.

CJEU, Case C-540/24, Cabris Investment: Jurisdiction Clause in Favour of EU Court is Subject to Art. 25 Brussels Ia even if both Parties are Domiciled in the Same Third State

By Salih Okur, University of Augsburg

On 9 October 2025, the CJEU, in Case C-540/24 (*Cabris Investment*), had to decide whether Art. 25 Brussels Ia applies to "an agreement conferring jurisdiction in which the contracting parties, who are domiciled in the United Kingdom and therefore (now) in a third State, agree that the courts of a Member State of the European Union are to have jurisdiction over disputes arising under that contract, falls within the scope of that provision, even if the underlying contract has no further connection with that Member State chosen as the place of jurisdiction."

Unsurprisingly, the Court held that it does.

Facts

The case concerned a consultancy contract entered into by Cabris Investments

and Revetas Capital Advisors in May 2020, both established in the United Kingdom, accompanied by a jurisdiction clause in favour of the *Handelsgericht Wien* in Austria. In June 2023 Cabris Investments brought proceedings against Revetas Capital Advisors before the *Handelsgericht Wien* seeking payment of EUR 360,000 in order to fulfil a contractual obligation relating to the role of Chief Financial Officer.

A similar case had already been referred to the CJEU in Case C-566/22 (*Inkreal*). The only (relevant) difference to the case at hand is the fact that the parties in *Inkreal* had both been established in the European Union when proceedings were brought against the defendant, which (due to the United Kingdom having left the European Union) was not the case here.

This seemingly significant difference to the case in *Inkreal* prompted Revetas Capital Advisors to challenge the international jurisdiction of the Vienna court, arguing that,

> ***(Para. 25)*** *"since the [Brussels Ia Regulation] has not been applicable in respect of legal relationships involving the [United Kingdom] since the end of the transition period provided for in the Withdrawal Agreement of 31 December 2020"*

the jurisdiction clause should not be subject to Art. 25 Brussels Ia as the action had been brought only after the end of said transition period in June 2023.

The Court's decision

As a preliminary point, the Court clarifies that

> ***(Para. 31)*** *"it must be borne in mind that since a jurisdiction clause is, by its very nature, a choice of jurisdiction which has no legal effect for so long as no judicial proceedings have been commenced and which takes effect only on the date on which the judicial action is set in motion, such a clause must be assessed as at the date on which the legal proceedings are brought."*

At first glance, this clarification seems important, given that the contract had been entered into in May 2020, but the action was only brought before the *Handelsgericht Wien* in June 2023 after the transition period between the United

Kingdom and the European Union had ended on 31 December 2020.

Actually, though, these facts would only be relevant if the action were brought before the courts of the United Kingdom, which is not the case here. If Art. 25 Brussel Ia's requirements are met, the Austrian courts must subject the jurisdiction clause to Art. 25 Ia Brussel Ia, regardless of whether or not the Brussel Ia Regulation is still applicable in the United Kingdom.

With regard to the international scope of the Brussels Ia Regulation, the question of whether the United Kingdom is a Member State or a third State is irrelevant, as the CJEU has of course already famously clarified, in Case C-281/02 (*Owusu*), that the required international element need not necessarily derive from the involvement of more than one Member State.

The Court then establishes the following:

> ***(Para. 32**) "Therefore, in order to answer the question referred, it is necessary to determine whether a dispute between two parties to a contract who are domiciled in the same third State, such as the United Kingdom since 1 February 2020, and have designated a court of a Member State to hear and determine that dispute, falls within the scope of the [Brussels Ia Regulation] and Article 25(1) thereof."*

As to the provision's applicability (which the Court only considers at later point, hence the confusing paragraph numbers), the Court holds:

> ***(Para. 40)** "Third, according to the case-law of the Court, in order for the situation at issue to come within the scope of the [Brussels Ia Regulation], it must have an international element. That international element may result both from the location of the defendant's domicile in the territory of a Member State other than the Member State of the court seised and from other factors linked, in particular, to the substance of the dispute, which may be situated even in a third State."*

This is in line with the Court's decision in *Owusu*, as laid out above.

> ***(Para. 41)** "Furthermore, the Court has already clarified that a situation in which the parties to a contract, who are established in the same Member State,*

agree on the jurisdiction of the courts of another Member State to settle disputes arising out of that contract, has an international element, even if that contract has no further connection to the other Member State. In such a situation, the existence of an agreement conferring jurisdiction on the courts of a Member State other than that in which the parties are established in itself demonstrates the international nature of the situation at issue."

Strictly speaking, this is irrelevant, as neither Cabris Investments nor Revetas Capital Advisors are domiciled in Austria. Just like in its earlier decision in *Inkreal*, to which the Court refers, this fact alone establishes the required international element.

With the applicability of the Brussels Ia Regulation established, the scope of Art. 25 Brussels Ia needs to be examined:

(Para. 35) *"It is clear from the very wording of that provision ["regardless of their domicile"] that the rule which it lays down applies regardless of the domicile of the parties. More particularly, the application of that rule shall not be subject to any condition relating to the domicile of the parties, or of one of them, in the territory of a Member State."*

(Para. 36)*"In the second place, as regards the context of Article 25(1) of the [Brussels Ia Regulation], it is important, first, to point out that that provision differs from the one which preceded it, namely Article 23(1) of the Brussels I Regulation, which, for its part, required, for the application of the rule of jurisdiction based on an agreement conferring jurisdiction, that at least one of the parties to that agreement be domiciled in a Member State."*

This is also confirmed by Art. 6(1) Brussels Ia (see **para. 39**).

These arguments (and some ancillary considerations) lead the Court to the answer that

(Para. 49) *"Article 25(1) [Brussels Ia Regulation] must be interpreted as meaning that that provision covers a situation in which two parties to a contract domiciled in the United Kingdom agree, by an agreement conferring jurisdiction concluded during the transition period, on the jurisdiction of a court of a Member State to settle disputes arising from that contract, even where that*

court was seised of a dispute between those parties after the end of that period."

Commentary

Overall, the Court's decision is hardly surprising. In fact, the decisions in *Owusu* and *Inkreal* could well have allowed the *Handelsgericht Wien* to consider its question *acte eclairé* and assume its international jurisdiction on the basis of the unambiguous wording of Art. 25(1) Brussels Ia.

What is surprising, though, is that the Court did not address the relationship between Art. 25(1) Brussels Ia and the Hague Convention on Choice of Court Agreements (HCCCA) at all. According to Art. 71(1) Brussels Ia, the latter takes precedent where it is applicable. For this, at least one of the parties must be a resident of a Contracting State of the Hague Convention that is not a Member State of the European Union, Art. 26(6) lit. a) HCCCA. This seems debatable given that the jurisdiction clause in question was entered into during the transition period. However, even if the Hague Convention were applicable, its application would be precluded as the case does not fall within its international scope of application (Art. 1(1) HCCCA). As set out in Art. 1(2) HCCCA, contrary to the Brussels Ia Regulation's international scope as established in *Inkreal*, a case is considered international under the Hague Convention unless the parties are resident in the same Contracting State and the relationship of the parties and all other elements relevant to the dispute, regardless of the location of the chosen court, are connected only with that State.

Accordingly, the Court's decision is consistent with its previous rulings on international jurisdiction clauses and does not conflict with other international instruments on the subject. To put it in the words of Geert Van Calster: "A very open door kicked open by the CJEU".

Pre-print article on SSRN on “Mirin” and the Future of Cross-Border Gender Recognition

I recently published the pre-print version of an article on SSRN that was accepted by the *International Journal of Law, Policy and the Family*. The article is called “**“Mirin” and Beyond: Gender Identity and Private International Law in the EU“**. The article is part of a special issue dealing with questions of gender identity that (probably) will come out at the beginning of 2026.

As it deals with matters of private international law (regarding gender identity) and the CJEU decision **“Mirin”**, I thought it might be interesting for the readers of this blog to get a short summary of the article. If it sparks your interest, of course, I would be glad if you consider reading the whole text – and to receive feedback and further thoughts on this topic.

I. Divergence in National Gender Determination Systems as Starting Point

National legal systems display significant divergence in how legal gender is determined and changed. Approaches vary widely, covering systems where the **self-determination** of the individual is largely sufficient, sometimes requiring only a self-declaration (e.g., Germany, Iceland, Ireland, Malta, and Spain). Furthermore, some jurisdictions have adopted non-binary gender options (e.g., Austria, Germany, Iceland, Malta, and the Netherlands).

However, this liberal trend is countered by explicitly restrictive systems. For example, in Spring 2025, Hungary introduced its 25th constitutional amendment, which stipulates that Hungarian citizens are solely male and female.

This fragmented legal landscape is not just a theoretical issue. It is the direct cause of profound practical and legal problems for individuals who live, work, and travel within the supposedly borderless European Union. Thus, questions of PIL become paramount for the individual concerned.

II. The Private International Law Framework: Choice of Law vs. Recognition

In international situations concerning gender determination, PIL distinguishes between two scenarios: determining the **applicable law** (Choice of Law rules) when a person seeks to change or register their legal gender, and addressing the **recognition or acceptance** of a legal situation already created abroad. Both scenarios have in common that the public policy exception can restrict the application or recognition/acceptance of foreign law. The article will deal with all three considerations separately.

A. Applicable Law and Party Autonomy

Legal gender is often categorized as part of a person's **personal status**. In traditional conflict of laws regimes, this translates into a connecting factor referring to the individual's nationality. However, recent legislative developments exhibit a tendency toward **limited party autonomy**. E.g., the Swiss PIL Code, since 2022, applies the law of residence but grants the individual the option to choose the law of their nationality. Similarly, the new German PIL rule on gender identity primarily refers to nationality but allows a choice for German law if the person has their habitual residence in Germany. This incorporation of choice is coherent in systems prioritizing individual self-determination, as the person is viewed as responsible and capable of making decisions regarding their own gender identity, and, subsequently, the law applicable to this question.

B. Recognition/Acceptance and Portability of Status

The recognition or acceptance of a gender status established abroad is crucial for ensuring the **continuity and stability of the status**. Recognition or acceptance, as everybody here will know, generally follows two paths:

1. **Procedural Recognition:** This traditionally applies to foreign judgments but has been extended in some jurisdictions (like Malta) to cover other acts by public authorities, such as a foreign registration of status. Furthermore, in general we can see a tendency to expand the notion of "judgment" due to the decreasing role of judges in status questions and the increasing involvement of registries and notaries.
2. **Non-procedural Recognition:** This involves either reviewing the status using the domestic conflict of laws rules (the "PIL test") or utilizing separate rules designed explicitly to enhance the portability and acceptance of a status established abroad. Such separate rules typically

require only minimum standards and a public policy control. There seems to be a general tendency within PIL to enhance the recognition or acceptance of foreign gender determination, as stability and continuity of status are primary interests. It might be feasible that countries using the PIL test reconsider whether this test is necessary or whether the introduction of separate, easier rules might be possible. Private International Law logic does not require such a test.

C. Public Policy Restrictions and the ECHR

Any recognition or acceptance of a legal situation created abroad can be refused in case of a public policy (*ordre public*) violation. Regarding gender identity, public policy issues usually arise either due to radical differences in approach (e.g., self-determination vs. biological focus) or the acceptance of gender options unknown to the forum (non-binary gender in a binary system). The article looks at different national approaches how to handle public policy considerations. It discusses briefly – and very critically – the Swiss Court decision regarding the (non-)recognition of a non-binary gender registration. Since gender forms part of an individual's identity, personality, and dignity, reasons for refusal must be balanced against the individual's interest in the continuity of status and avoiding disadvantages caused by having different genders in different jurisdictions. This reasoning is supported by the case law of the European Court of Human Rights (ECtHR). According to this case law, a refusal based on public policy must remain a **rare exception** and requires a manifest violation. "Mere administrative reasons" or "certain inconveniences" are insufficient to justify the denial of recognition.

III. The "Mirin" Effect: EU Law and Human Rights Synergy

After setting the scene, the article now looks at the CJEU decision "Mirin". Crucially, "Mirin" combined EU primary law with the protection afforded by the EU Charter of Fundamental Rights (Article 7), interpreting it in line with the ECtHR's jurisprudence under Article 8 ECHR

As we all probably know, the CJEU has already established a long tradition of using Article 21TFEU to ensure (to a certain limit) status portability within the EU regarding names, marriage, and filiation.

The **"Mirin" ruling** (C-4/23) applied the same logic to gender identity. The case

involved a Romanian citizen who obtained a gender reassignment in the UK (then still an EU Member State) but was denied registration in Romania because Romanian law required a new proceeding according to Romanian law.

A. Recognition/Acceptance of a Binary Gender Status

The synthesis of EU Free Movement and Fundamental Rights led the CJEU to conclude that the Romanian State must acknowledge or accept a gender validity established in another Member State. As earlier decided by the ECtHR, the proceedings provided under Romanian law violate Article 8 ECHR, thus, referring the Romanian citizen to these proceedings cannot be a means to justify the impediment of the right derived from Article 21 TFEU.

What does this mean for other Member States?

Other Member States, which provide different national proceedings to adapt the legal gender, *could* theoretically refer the individual to a quick, transparent, and accessible domestic reassignment procedure. Nevertheless, this is only permitted if it does not place an "excessive burden" on the individual.

Therefore, recognition, in my opinion, can be obligatory also in cases where a national proceeding is less burdensome than the Romanian one. The CJEU indicated that a new domestic proceeding is too burdensome if the lack of immediate recognition jeopardizes the continuity of **other essential statuses**—such as filiation or marriage—that depend on the gender recorded abroad. For instance, if a person is registered as a "mother" in the first state, a requirement to undergo a new gender registration procedure that temporarily destabilizes that parental status might, in my opinion, necessitate **direct recognition** of the status acquired abroad to comply with EU law.

B. Recognition/Acceptance of a Non-binary Gender Status

The situation regarding non-binary gender markers, which the ECtHR has previously stated remain within the discretion of each State to introduce, is more nuanced, as the ECtHR left it to the discretion of the Member States whether to introduce a non-binary gender. However, in my opinion, the "Mirin" principles severely restrict a Member State's ability to invoke *ordre public* to deny recognition of an unknown non-binary status.

Member States can only deny recognition/acceptance if the refusal is based on **fundamental, constitutional-level values** that would be manifestly violated by recognition/acceptance. The state cannot justify denial by citing "mere administrative reasons" or "certain inconveniences" related to their civil status system. In accordance with the ECtHR and CJEU case law, the Member States have to prove that recognition of a non-binary gender would genuinely disrupt their constitutional orders. The Hungarian constitutional amendment limiting citizens to male and female might serve as an attempt to establish such a constitutional value, though its legal scope is restricted to Hungarian citizens

IV. Final Conclusions

My final conclusions read as follows:

1. Applicable law to determine or change the gender in a domestic case with an international element requires a rule different from private international law rules dealing with the recognition/acceptance of a gender determination from abroad. Systems that focus on gender identity and self-determination should allow individuals a choice of law between at least nationality and habitual residence. One might also consider extending that choice to the *lex fori*.
2. If a procedural recognition of a court decision is not possible, jurisdictions should provide a rule allowing acceptance of a gender registered correctly abroad if certain minimum standards are fulfilled.
3. Recognition/acceptance of a gender reassignment or an unknown non-binary gender determination should only be refused for public policy reasons in very exceptional cases, esp. in those of abuse of the law or force against the individual.
4. Following the CJEU's latest decision, "Mirin", EU Member States have to recognise or accept a gender that has been validly established in another Member State within the binary gender system. Under rare circumstances, it might be possible to refer the individuals to a quick and transparent national proceeding.
5. Recognition/acceptance of a non-binary gender in an EU Member State that follows the binary gender system can only be refused for public policy reasons if the recognising Member State provides sufficient proof that the recognition would not only constitute "certain inconveniences" in the recognising Member State.

Draft General Law on Private International Law aims to bring Brazil from the 19th into the 21st century

Guest post by Gustavo Ferraz de Campos Monaco, Full Professor of Private Internacional Law – University of São Paulo

In Brazilian law, the regulation of conflicts of laws is still based on a legislation from 1942, during a dictatorial regime, which explains its inspiration from the Italian fascist regime. The values prevailing in Brazilian society back then were quite different from those we hold today, especially in matters concerning family relationships. At that time, the family unit was viewed as having a single domicile, and questions related to the definition of parenthood were unthinkable outside traditional presumptions.

On at least two occasions over the past 83 years, attempts to draft new regulations were undertaken by leading figures in the field – Haroldo Valladão, Jacob Dolinger, and João Grandino Rodas – but both initiatives failed during the process, without the Plenary of the Legislative Houses having expressed an opinion on the merits of the projects.

In a context like this, embarking on a new attempt could easily seem discouraging from the start. However, the Secretariat for Institutional Relations, through the Council for Sustainable Economic and Social Development, linked to the Presidency of the Republic, decided in December 2024 to appoint a large commission composed of representatives from the Executive, the Judiciary, the Public Prosecutor's Office, public and private legal professions, and the Academy. Through its Drafting Committee, this commission was entrusted with the task of preparing a new proposal.

After two public hearings, and the collection of around one hundred suggestions

for improving the proposed articles, the Preliminary Draft, prepared by the appointed general rapporteurs, is now ready for analysis by the Executive Branch, which is responsible for transforming it into a Project to be submitted to the Legislative.

The proposal aims to address Private International Law in its essence, covering procedural and conflicts of laws issues. Regarding procedural matters, the Committee chose to make only minimal changes, since these provisions are already contained in the Code of Civil Procedure, enacted by Congress in 2015 and in force since 2016, less than a decade ago. In this regard, much of the proposed legislation refers back to the 2015 Code.

It is, therefore, in the field of conflicts of laws that the proposed amendments are truly innovative. With a focus on legal certainty, the text clarifies the function and scope of the main institutions of Private International Law, while updating the selected choice-of-law elements and connecting factors. It also strengthens the principle of party autonomy, giving individuals and entities greater freedom to determine the applicable law in contractual, family, and inheritance matters.

As the saying goes" self-praise is no recommendation". Thus, the reader may wish to take any enthusiasm in this assessment with a grain of salt, as I had the honor of serving on the Drafting Committee and sharing the role of General Rapporteur with Professor Carmen Tiburcio. Still, I am convinced that one of the project's greatest merits, should it become law, will be to bring Brazil, long anchored in 19th-century values, decisively into the 21st century. It will ensure the inclusion of Brazil's many private actors, both in the global economic arena and within the complex web of transnational relationships, on equal terms and with wide autonomy.

As to the contents of the draft general law, there are three main chapters (after introductory and final provisions), dealing with jurisdiction and evidence, applicable law, and international cooperation in civil and commercial matters.

The longer Chapter (III) deals with conflict of laws. It starts by addressing general questions such as characterization or public policy, also adding a rule invested rights and a general escape clause. Then, special conflicts rules are to be found namely on personal and family law, including maintenance and successions, as well as rights in rem, intellectual property, and companies. Contracts are dealt

with in several rules, where – unlike in the previous law, currently in force – it is made clear that choice of law by the parties is accepted, "except in cases of abuse". Special contracts, such as the ones concluded with consumers and workers, benefit from rules favorable to the weaker party.

Readers may find below the full content of the draft (in Portuguese).

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PROJETO DE LEI

Dispõe sobre as relações e as situações jurídicas com elementos estrangeiros.

O CONGRESSO NACIONAL decreta:

CAPÍTULO I

DO ÂMBITO DE INCIDÊNCIA

Objeto e âmbito de aplicação

Art. 1º Esta Lei dispõe sobre as relações e as situações jurídicas com elementos estrangeiros.

Prevalência dos tratados

Art. 2º As relações e as situações jurídicas que apresentem vínculos com mais de um ordenamento jurídico serão regidas pelo disposto nesta Lei e pelas demais normas de direito internacional privado de fonte nacional, observada a prevalência das disposições contidas em tratados de que a República Federativa do Brasil seja parte.

Parágrafo único. Para fins do disposto no *caput*, as autoridades brasileiras competentes poderão considerar, como meio de sua interpretação e integração, instrumentos normativos não vinculantes, como princípios compilados ou guias de boas práticas, elaborados por organismos internacionais.

CAPÍTULO II

DA JURISDIÇÃO E DA PROVA EM MATÉRIA INTERNACIONAL

Limites da jurisdição

Art. 3º A autoridade judiciária brasileira terá jurisdição nas hipóteses previstas na lei processual e nos tratados de que a República Federativa do Brasil seja parte.

- 1º As autoridades judiciárias brasileiras terão jurisdição para conhecer e julgar medidas de urgência quando tiverem jurisdição para a ação principal ou quando tais medidas forem necessárias à preservação de situações ou direitos a serem exercidos no País, ainda que a ação principal tenha sido ou venha a ser proposta perante jurisdição estrangeira.
- 2º As autoridades brasileiras, nas hipóteses em que detenham jurisdição, estarão autorizadas, mediante requerimento da parte, a decidir sobre questões relativas a bens móveis ou imóveis situados no exterior e a proceder à partilha de bens do casal ou do autor da sucessão hereditária desses bens, desde que inexista jurisdição exclusiva das autoridades estrangeiras.
- 3º Caso a autoridade judiciária brasileira não possua jurisdição nos termos da lei processual ou dos tratados de que a República Federativa do Brasil seja parte, a demanda poderá ser excepcionalmente proposta, desde que:

I – a situação tenha conexão suficiente com a jurisdição brasileira; e

II – a propositura ou a condução da demanda perante autoridade estrangeira com a qual possua vínculos estreitos revele-se impossível.

Escolha de jurisdição

Art. 4º A escolha inequívoca de jurisdição nacional ou estrangeira em contratos internacionais não dependerá de vinculação prévia com a jurisdição eleita, nem exigirá a indicação das razões que a justifiquem.

- 1º O direito do local de celebração do contrato ou do domicílio de quaisquer das partes, ou, ainda, da jurisdição eleita, será aplicado à

validade formal da escolha, e o direito da jurisdição eleita será aplicado à validade substancial.

- 2º A escolha de jurisdição estrangeira será inválida quando a disputa se enquadrar em hipótese de jurisdição exclusiva da autoridade judiciária brasileira, observado o disposto na lei processual e nos tratados de que a República Federativa do Brasil seja parte.
- 3º A invalidade do negócio jurídico principal não comprometerá, necessariamente, a validade da escolha de jurisdição nele contida.
- 4º A cláusula atributiva de jurisdição não será oponível a terceiros.
- 5º A escolha de jurisdição será transferida conjuntamente com os direitos na hipótese de cessão de crédito, sub-rogação, transmissão patrimonial ou cessão da posição contratual.
- 6º Em contratos internacionais de consumo, a escolha de jurisdição será ineficaz, exceto se o consumidor for o autor da demanda ou se suscitar, como réu, a ausência de jurisdição da autoridade judiciária brasileira.

Produção de provas

Art. 5º A forma de produção de provas, judiciais ou extrajudiciais, observará o direito do foro responsável por sua colheita.

- 1º As provas colhidas no País obedecerão ao direito brasileiro, admitida a observância às formalidades e aos procedimentos especiais adicionais a pedido da autoridade judiciária estrangeira, desde que compatíveis com a ordem pública internacional brasileira.
- 2º As provas colhidas no exterior por meios não admitidos no direito brasileiro poderão ser utilizadas em processos em trâmite no País, desde que compatíveis com a ordem pública internacional brasileira.
- 3º A admissibilidade da prova e o ônus de sua produção serão regidos pelo direito aplicável ao mérito da demanda.
- 4º A valoração da prova será efetuada de acordo com as regras vigentes no foro competente para a análise do mérito.
- 5º Serão admissíveis, no País, as provas emprestadas de natureza civil e comercial produzidas em processos judiciais ou extrajudiciais em trâmite perante foro estrangeiro, observados os princípios do contraditório e da ampla defesa.
- 6º Poderão ser utilizados recursos compatíveis para a compreensão de documentos em língua estrangeira, se:

I – o documento for produzido por pessoa beneficiária de assistência judiciária gratuita; e

II – a demora na apresentação da versão juramentada comprometer a efetividade da prestação jurisdicional.

- 7º A testemunha a ser ouvida no País poderá recusar-se a depor quando amparada por prerrogativa legal prevista no direito brasileiro, no direito do Estado requerente ou no direito aplicável ao mérito da causa.

CAPÍTULO III

DA DETERMINAÇÃO DO DIREITO APLICÁVEL

Seção I

Dos princípios e da aplicação do direito estrangeiro

Qualificação

Art. 6º A qualificação destinada à determinação do direito aplicável será feita de acordo com o ordenamento jurídico brasileiro.

Parágrafo único. Estabelecido o direito aplicável, este determinará a natureza jurídica da relação ou situação jurídica para fins de aplicação das normas aos fatos.

Questões prévias e questões incidentais

Art. 7º As questões prévias e as questões incidentais serão reguladas pelo direito aplicável a cada uma delas, observadas as normas de direito internacional privado brasileiro.

Reenvio

Art. 8º Quando o direito internacional privado brasileiro determinar a aplicação do direito estrangeiro, será considerado apenas o direito material estrangeiro, exceto se as partes determinarem em sentido contrário, expressamente, por escrito.

Fraude à lei

Art. 9º Para fins de aplicação das regras de conflito, são ineficazes as situações de fato ou de direito simuladas com o intuito de evitar a aplicação do direito que seria aplicável caso não tivesse havido a simulação.

Instituição desconhecida

Art. 10. Caso o direito estrangeiro indicado pelas regras de direito internacional privado brasileiro contiver instituição que não encontre correspondência direta no direito brasileiro, a autoridade judiciária, ainda assim, aplicará o direito estrangeiro, desde que sua incidência não contrarie a ordem pública internacional brasileira.

- 1º Caso o direito estrangeiro desconheça a instituição pretendida pelas partes, a autoridade judiciária brasileira deverá identificar instituição análoga naquele direito.
- 2º Na hipótese de impossibilidade de aplicação por analogia, a autoridade judiciária brasileira deverá aplicar o direito nacional.

Ordem pública

Art. 11. As leis, os atos públicos e os privados, e as decisões judiciais ou extrajudiciais de outro Estado não terão eficácia na República Federativa do Brasil quando sua incidência produzir resultados potencialmente contrários à ordem pública internacional brasileira.

Parágrafo único. Será considerada contrária à ordem pública internacional brasileira, sem prejuízo de outras situações assemelhadas, a norma estrangeira que importe violação grave a princípios fundamentais consagrados pela Constituição ou por tratados internacionais de direitos humanos ratificados pela República Federativa do Brasil, especialmente em situações de discriminação baseada em raça, gênero, etnia, orientação sexual, nacionalidade, deficiência ou pertencimento a povos e comunidades tradicionais.

Direitos adquiridos em outras ordens jurídicas

Art. 12. Os direitos adquiridos no exterior em conformidade com direito estrangeiro terão eficácia na República Federativa do Brasil, exceto se produzirem resultado gravemente contrário à ordem pública internacional brasileira.

Aplicação do direito estrangeiro

Art. 13. O direito estrangeiro indicado pelo direito internacional privado brasileiro será aplicado de ofício pelas autoridades judiciais ou extrajudiciais brasileiras.

- 1º A aplicação e a interpretação do direito estrangeiro serão feitas em conformidade com o ordenamento a que pertencem.
- 2º A autoridade judiciária poderá determinar à parte interessada na aplicação do direito estrangeiro que comprove seu teor, sua vigência e seu sentido.
- 3º A autoridade judiciária deverá facultar à parte contrária, em prazo idêntico ao da parte interessada, a possibilidade de colaborar na formação de seu convencimento quanto ao sentido do direito estrangeiro aplicável.
- 4º Em matéria de cooperação jurídica internacional, as informações sobre o direito estrangeiro poderão ser obtidas por meio da atuação das autoridades administrativas ou das autoridades judiciais brasileiras com seus congêneres.

Meio de prova do direito estrangeiro

Art. 14. A prova ou a contraprova do teor, da vigência e do sentido do direito estrangeiro será feita por qualquer meio idôneo, preferencialmente por mecanismos públicos oficiais disponibilizados pelo Estado de cujo direito se trata.

Parágrafo único. Se o Estado estrangeiro não dispuser de mecanismos públicos oficiais para a comprovação do teor, da vigência e do sentido da norma a ser aplicada, a prova poderá ser feita pela juntada de opinião legal firmada por advogado habilitado naquele Estado.

Ordenamento jurídico plurilegislativo

Art. 15. Caso o direito internacional privado brasileiro determine a incidência de ordenamento jurídico plurilegislativo, serão observadas as disposições estabelecidas pelo direito desse Estado quanto à definição da legislação aplicável.

Parágrafo único. Se não houver, no ordenamento jurídico do Estado a que se refere o *caput*, disposição quanto à definição da legislação aplicável, o juiz brasileiro deverá aplicar aquela que possuir conexão mais estreita com o caso

concreto.

Cláusula de exceção

Art. 16. Em situações excepcionais, o direito indicado por esta Lei não será aplicável se, considerado o conjunto das circunstâncias, for evidente que o caso concreto possui conexão frágil com esse direito e manifestamente mais estreita com o direito de outro Estado.

Parágrafo único. O disposto no *caput* não se aplica na hipótese de o direito a ser aplicado ter sido indicado pelas partes.

Seção II

Das regras de conflito

Estatuto pessoal

Art. 17. A capacidade e os direitos da personalidade serão regidos pelo direito do domicílio da pessoa física.

- 1º Na ausência de domicílio estabelecido ou na impossibilidade de sua identificação, serão aplicados, sucessivamente, o direito da residência habitual e o direito da residência atual.
- 2º Na hipótese de múltiplos domicílios, a autoridade brasileira competente deverá aplicar o direito do domicílio com maiores vínculos com a questão em julgamento.
- 3º As crianças, os adolescentes e as demais pessoas com incapacidade civil serão regidos pelo direito do domicílio de seus pais ou responsáveis.
- 4º Na hipótese de a criança, o adolescente ou a pessoa incapaz ter domicílio diverso de seus pais ou responsáveis, regerá o direito que resulte em seu melhor interesse, dentre os direitos da nacionalidade, do domicílio ou da residência habitual de quaisquer dos envolvidos.

Relações familiares

Art. 18. As relações familiares serão regidas pelo direito do domicílio comum dos membros da família.

- 1º Na hipótese de inexistência de domicílio comum, será aplicado o direito estabelecido previamente pelas partes em documento escrito.
- 2º Na hipótese de inexistência de documento escrito, será aplicado o direito do último domicílio comum das partes.
- 3º Caso nunca tenha existido domicílio comum ou seja impossível a sua identificação, será aplicado o direito brasileiro.

Casamento

Art. 19. A forma, a existência e a validade do casamento serão regidas pelo direito do local em que for celebrado.

- 1º A capacidade matrimonial de cada um dos nubentes será regida pelo direito do local do seu domicílio, nos termos do disposto no art. 17.
- 2º Os casamentos de brasileiros ou estrangeiros celebrados perante autoridade estrangeira poderão ser levados a registro no País, hipótese em que será expedida a certidão de casamento para fins eminentemente probatórios.
- 3º O casamento entre brasileiros no exterior poderá ser celebrado perante a autoridade consular brasileira.
- 4º O casamento entre estrangeiros da mesma nacionalidade poderá ser celebrado no País perante a autoridade diplomática ou consular respectiva.

Regime matrimonial de bens

Art. 20. O regime de bens entre os cônjuges será determinado pelo regime indicado no registro de casamento, cuja certidão será emitida pela autoridade competente do local em que for celebrado.

- 1º Na ausência de indicação do regime na certidão, este será determinado por convenção das partes por meio de pacto antenupcial válido, celebrado de acordo com os requisitos de forma e de substância do local em que for celebrado.
- 2º Na ausência de indicação do regime na certidão e de convenção das partes, o regime será determinado pelo direito do domicílio dos nubentes no momento da celebração do casamento.
- 3º Na hipótese de o domicílio dos nubentes ser distinto, o regime será determinado pelo direito do primeiro domicílio conjugal.

- 4º Os cônjuges que transferirem seu domicílio para a República Federativa do Brasil poderão adotar, na forma e nas condições da lei civil brasileira, resguardados os interesses de terceiros, quaisquer dos regimes de bens admitidos no País.

Uniões estáveis ou entidades equivalentes de direito estrangeiro

Art. 21. O disposto nos art. 18 a 20 aplica-se às uniões estáveis ou às entidades equivalentes de direito estrangeiro, com as devidas adaptações à natureza das convivências.

Filiação

Art. 22. Nas ações referentes à constituição ou desconstituição de relações de filiação, o juiz aplicará, dentre os direitos dos domicílios das partes, aquele que se mostrar mais favorável à parte vulnerável.

Obrigações alimentares

Art. 23. As obrigações alimentares, a qualidade de credor e a qualidade de devedor de alimentos serão reguladas pelo direito mais favorável ao credor, dentre os direitos da nacionalidade, do domicílio ou da residência habitual de quaisquer dos envolvidos.

Sucessões

Art. 24. A sucessão por morte ou ausência será regida pelo direito do Estado do domicílio do falecido à data do óbito ou do ausente à data da ausência, independentemente da natureza e da situação dos bens.

- 1º O autor da sucessão hereditária poderá optar para regência de sua sucessão, em testamento ou termo declaratório firmado diretamente no registro civil e averbado, pelo direito de quaisquer de seus domicílios ou de quaisquer de suas nacionalidades.
- 2º A sucessão de bens de pessoas domiciliadas no exterior será regulada pela lei brasileira em benefício do herdeiro necessário brasileiro ou domiciliado no País, sempre que não lhes seja mais favorável a lei pessoal do *de cujus*.
- 3º Os testamentos serão válidos quando observarem as formalidades previstas no direito do local de sua celebração ou do domicílio do

testador, ou, ainda, de sua nacionalidade.

- 4º Será aplicado o direito que rege a sucessão quanto ao conteúdo material das disposições testamentárias.

Bens e direitos reais

Art. 25. Os bens imóveis, os bens móveis corpóreos, os direitos reais a eles relativos e a posse serão regidos pelo direito do local em que estiverem situados.

Parágrafo único. Os bens móveis que o proprietário trouxer consigo e os direitos reais a eles relativos serão regidos pelo direito do domicílio de seu proprietário.

Embarcações, aeronaves e carregamentos

Art. 26. As embarcações e as aeronaves que estejam em águas ou espaços não jurisdicionais reputam-se situadas no local de matrícula, enquanto o carregamento que nelas se encontre reputa-se situado no local de destino efetivo das mercadorias, exceto se as partes escolherem de forma diversa.

Direitos de propriedade intelectual

Art. 27. Os direitos patrimoniais de autor serão determinados pelo direito do local de sua publicação ou veiculação.

- 1º Os direitos de propriedade industrial registrados no País ou, quando ainda não registrados, cujo registro tenha sido solicitado perante as autoridades brasileiras, serão regidos pela lei brasileira, ressalvadas as hipóteses previstas em lei especial.
- 2º As obrigações decorrentes da prática da concorrência desleal ou da violação do segredo industrial serão regidas pelo direito do local em que o dano for verificado.

Forma de atos e negócios jurídicos

Art. 28. Os atos e os negócios jurídicos respeitarão as formalidades previstas no direito do local de sua celebração, ou do domicílio de quaisquer das partes ou do local de sua execução, ou, ainda, do direito aplicável ao mérito da situação ou da relação jurídica.

Parágrafo único. Os atos e os negócios jurídicos entre ausentes poderão ser

firmados isoladamente, hipótese em que poderão ser utilizados meios eletrônicos para sua comprovação.

Obrigações contratuais

Art. 29. Exceto se houver abuso, as obrigações decorrentes de contratos internacionais serão regidas pelo direito escolhido pelas partes.

- 1º A escolha do direito poderá ser:

I – expressa ou tácita, desde que inequívoca; e

II – alterada a qualquer tempo, respeitados os direitos de terceiros.

- 2º A escolha do direito pelas partes não afasta a incidência de normas de aplicação necessária e imediata do direito brasileiro.
- 3º Consideram-se normas de aplicação necessária e imediata aquelas cujo respeito é considerado tão fundamental para a salvaguarda do interesse público nacional, incluída a organização política, social ou econômica nacional, e cuja observância é exigida em qualquer situação abrangida por seu âmbito de incidência, independentemente do direito que, de outro modo, seria aplicável ao contrato por força do disposto nesta Lei.
- 4º As autoridades brasileiras competentes poderão aplicar os usos e os princípios do comércio internacional compilados por organismos internacionais intergovernamentais ou entidades privadas, quando incorporados ao contrato por vontade das partes, desde que não contrariem normas cogentes do direito escolhido pelas partes ou, em sua ausência, do direito indicado nesta Lei.
- 5º A escolha de jurisdição não implicará, por si só, a escolha de direito aplicável coincidente.
- 6º Na hipótese de não haver escolha, as obrigações contratuais e os atos jurídicos em geral serão regidos pelo direito do local em que forem celebrados.
- 7º Os contratos celebrados a distância serão regidos pelo direito do domicílio do proponente da oferta aceita, exceto se as partes escolherem de modo diverso.
- 8º O disposto no § 7º aplica-se aos contratos celebrados, de modo síncrono, por meio eletrônico.
- 9º As partes poderão escolher o direito aplicável à totalidade ou apenas à

parte do contrato, hipótese em que será permitida a designação de diferentes direitos para a regência de partes específicas do contrato.

Contratos de trabalho

Art. 30. Exceto se houver abuso, os contratos individuais de trabalho serão regidos pelo direito escolhido pelas partes.

- 1º Na hipótese de não haver escolha, aplica-se o direito mais favorável ao trabalhador, dentre os referentes ao:

I – local de prestação de sua atividade laboral;

II – domicílio do trabalhador;

III – domicílio ou do estabelecimento do empregador, conforme o caso; ou

IV – local de celebração do pré-contrato, quando houver.

- 2º Caberá ao trabalhador indicar, na petição inicial da ação trabalhista proposta perante a jurisdição brasileira, o ordenamento que pretende que seja aplicado pelo juízo; em caso de omissão, o juiz poderá presumir que a legislação brasileira é a mais favorável.
- 3º Em qualquer hipótese, o direito aplicável regerá todos os aspectos do contrato de trabalho.

Contratos de consumo

Art. 31. Os contratos internacionais de consumo, entendidos como aqueles realizados entre consumidor, pessoa física, com fornecedor de produtos e serviços, cujo domicílio ou estabelecimento envolvido na contratação esteja situado em Estado distinto do domicílio do consumidor, serão regidos pelo direito do domicílio do consumidor ou do local em que forem celebrados, desde que mais favorável ao consumidor.

- 1º Nas contratações a distância realizadas por meios eletrônicos ou similares pelos consumidores domiciliados no País, sem sair do território nacional, será aplicado o direito brasileiro ou o direito escolhido pelas partes em contrato, desde que seja mais favorável ao consumidor.
- 2º Aos contratos de fornecimento de produtos e serviços que forem celebrados pelo consumidor que estiver fora de seu Estado de domicílio

ou de residência habitual e forem executados integralmente no exterior, será aplicado o direito do local em que forem celebrados ou o direito escolhido pelas partes, dentre o do local da execução ou do domicílio do consumidor.

- 3º Os contratos de pacotes de viagens internacionais, com grupos turísticos ou com serviços de hotelaria e turismo, ou de viagens combinadas com transporte e mais de um serviço, com cumprimento fora do País, que forem contratados com agências de turismo e operadoras situadas no País, serão regidos pelo direito brasileiro.
- 4º Aos contratos celebrados no País, em especial se forem precedidos de qualquer atividade negocial ou de propaganda, do fornecedor ou de seus representantes, dirigida ao ou realizada no território brasileiro, notadamente envio de publicidade, correspondência, *e-mails*, mensagens comerciais, convites, prêmios ou ofertas, serão aplicadas as disposições do direito brasileiro quando revestirem caráter imperativo, sempre que forem mais favoráveis ao consumidor.

Obrigações por atos ilícitos

Art. 32. As obrigações resultantes de atos ilícitos serão regidas pelo direito do local em que o dano for verificado.

Parágrafo único. Na hipótese de o dano ocorrer em múltiplos locais, o juiz brasileiro poderá, no exercício de sua jurisdição, aferir os danos verificados em outros Estados e determinar a sua reparação integral, hipótese em que se aplicam os direitos de cada Estado para quantificar o montante devido.

Pessoas jurídicas

Art. 33. As pessoas jurídicas serão regidas pelo direito do Estado em que tiverem sido constituídas.

- 1º Para funcionar no País, por meio de quaisquer estabelecimentos, as pessoas jurídicas estrangeiras deverão obter a autorização que se fizer necessária, e ficarão sujeitas ao direito e à jurisdição brasileiros.
- 2º O disposto no § 1º não se aplica à prática de atos esporádicos ou sem a intenção de habitualidade.
- 3º Os acordos de acionistas e os acordos parassociais referentes a empresas brasileiras serão regidos pelo ordenamento jurídico brasileiro.

Ações e valores mobiliários

Art. 34. As ações e os valores mobiliários serão regidos pelo direito do local de constituição da pessoa jurídica que os tiver emitido.

Parágrafo único. As obrigações pecuniárias constantes de debêntures ou outros valores mobiliários representativos de dívida emitidos no exterior, caso tenha havido escolha pelas partes, poderão ser regidas pelo direito do local da emissão, respeitados os requisitos de registro previstos no local de constituição da pessoa jurídica que os tiver emitido.

Prescrição e decadência

Art. 35. A prescrição e a decadência serão regidas pelo direito aplicável ao mérito do litígio.

Aquisição de imóveis por pessoas jurídicas de direito público externo

Art. 36. As pessoas jurídicas de direito público externo e as entidades de qualquer natureza por elas constituídas ou dirigidas não poderão adquirir no País bens suscetíveis de desapropriação ou direitos reais a eles relativos.

- 1º Com base no princípio da reciprocidade e mediante concordância prévia e expressa do Governo brasileiro, os Estados estrangeiros poderão adquirir os prédios urbanos destinados às chancelarias de suas missões diplomáticas e repartições consulares de carreira, além daqueles que servirem como residências oficiais de seus representantes diplomáticos e agentes consulares nas cidades das respectivas sedes.
- 2º As organizações internacionais intergovernamentais sediadas no País ou nele representadas poderão adquirir, mediante concordância prévia e expressa do Governo brasileiro, os prédios destinados aos seus escritórios e às residências de seus representantes e funcionários nas cidades das respectivas sedes, nos termos estabelecidos nos acordos pertinentes.

CAPÍTULO IV

DA COOPERAÇÃO JURÍDICA INTERNACIONAL EM MATÉRIA CIVIL E COMERCIAL

Cooperação jurídica internacional

Art. 37. A cooperação jurídica internacional em matéria civil e comercial deverá ser prestigiada e poderá se valer de qualquer meio em direito admitido, nos termos dos tratados em vigor na República Federativa do Brasil e dos direitos dos Estados envolvidos, inclusive quanto ao uso de mecanismos tecnológicos e comunicação direta entre as autoridades, desde que não ofendam a ordem pública internacional brasileira.

Homologação de decisão estrangeira

Art. 38. As decisões oriundas de Estado estrangeiro que, no País, demandem a intervenção indispensável do Poder Judiciário, observarão, para sua homologação, o disposto na legislação brasileira, nos tratados em vigor na República Federativa do Brasil e, quando aplicáveis, no regimento interno do Superior Tribunal de Justiça.

- 1º As decisões estrangeiras de natureza meramente declaratória produzirão efeitos no País independentemente de homologação, desde que não contrariem gravemente a ordem pública internacional brasileira.
- 2º O disposto no § 1º não se aplica às decisões que impliquem no cumprimento de obrigação de dar, fazer ou não fazer.

Medidas de urgência em homologação

Art. 39. A autoridade judiciária brasileira poderá deferir pedidos de urgência e realizar atos de execução provisória no processo de homologação de decisão estrangeira, observadas as disposições da legislação brasileira, dos tratados em vigor na República Federativa do Brasil e, quando aplicáveis, do regimento interno do Superior Tribunal de Justiça.

Demais atos de cooperação

Art. 40. Os demais atos de cooperação jurídica internacional, tais como as cartas rogatórias e os pedidos de auxílio direto, obedecerão às disposições da legislação brasileira, dos tratados em vigor na República Federativa do Brasil e, quando aplicáveis, do regimento interno do Superior Tribunal de Justiça.

CAPÍTULO V

DISPOSIÇÕES FINAIS

Revogação

Art. 41. Ficam revogados os art. 7º a art. 19 do Decreto-Lei nº 4.657, de 4 de setembro de 1942.

Vigência

Art. 42. Esta Lei entra em vigor cento e oitenta dias após a data de sua publicação.

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Brazilian Supreme Court on the Hague Child Abduction Convention

Guest post by Janaína Albuquerque, International Family Lawyer; Research Associate at the NOVA Centre for the Study of Gender, Family and the Law; Legal Coordinator at Revibra Europa. Janaína represented Revibra, Instituto Maria da Penha and Instituto Superação da Violência Doméstica as amici curiae in the cases discussed below.

The Brazilian Supreme Court has recently delivered a landmark judgment in two Direct Actions of Unconstitutionality (*Ações Diretas de Inconstitucionalidade*, or ADIs), namely ADI 4245 and ADI 7686, concerning the application of the 1980 Hague Convention on the Civil Aspects of International Child Abduction(1980HC). Despite their denomination, these actions did not aim to invalidate the

Convention, but rather to harmonize its interpretation with the principles enshrined in the Brazilian Federal Constitution.[1]

The full written judgment has not yet been published. What follows is the official summary, which consolidates the main points reached by the Justices:[2]

"The Court unanimously ruled partially in favor of the requests made in ADI 4.245 and, by majority vote, ruled partially in favor of the requests made in ADI 7.686, on the following grounds:

1. To interpret Art. 13(1)(b) of the 1980 Hague Convention in conformity with the Constitution, recognizing that the exception to the immediate return of the child due to grave risk to his or her physical or psychological integrity or intolerable situation applies in cases of domestic violence, even if the child is not a direct victim, provided that objective and concrete indications of the risk situation are demonstrated, in accordance with the principle of the best interests of the child (Art. 227, CF/1988) and under a gender-based perspective (Arts. 1, III, and 226, § 8, CF/1988);
2. To determine that the National Council of Justice (CNJ) should establish an inter-institutional working group to prepare, within 60 (sixty) days, a proposed resolution aimed at increasing the speed and efficiency of international child abduction return proceedings, ensuring, through adversarial proceedings and full defense, that the final decision on the return of the child is made within a period not exceeding 1 (one) year;
3. The resolution, which will bring CNJ Resolution No. 449/2022 into line with the terms of this decision, will establish the duty of the respondent to report the existence of any ongoing child custody proceedings in the national territory and will assign the management of such proceedings in the country to the CNJ's National Forum for Children and Youth (Foninj). The requirement for adversarial proceedings and full defense applies both in the cases of Art. 1 and Art. 12 of the Convention. Public and notorious facts and rules of experience (Civil Procedure Code, Arts. 374 and 375) will also serve as elements of conviction;
4. To determine that the Federal Regional Courts issue normative acts to promote the concentration of jurisdiction to process and judge actions related to the 1980 Hague Convention, with regard to restitution proceedings, in one or more courts in the capital and judging chambers, based on Art. 96, I, "d," CF/1988, aiming at procedural uniformity and

celerity;

5. To determine the establishment of specialized support centers within the Federal Regional Courts to encourage conciliation, the adoption of restorative practices and methodologies, to qualify and coordinate the performance of psychosocial assessments, and to act as a source of technical and methodological support for judges;
6. To determine that the bodies of the Judiciary Branch, with the support of the CNJ, adjust the electronic case management systems to enable the inclusion of preferential processing tags for all cases that receive the subject code "10921 Child Restitution, 1980 Hague Convention," as established in Art. 27 of CNJ Resolution No. 449/2022;
7. To determine that the Executive Branch adopt structural and administrative measures to strengthen the work of the Federal Central Administrative Authority (ACAF), with the definition of goals, timelines, and performance indicators;
8. To determine that the Executive Branch evaluates the convenience of Brazil's accession to the 1996 Hague Convention (on jurisdiction, applicable law, recognition, enforcement, and cooperation in matters of parental responsibility and protection measures for children), with the preparation of a technical report to be forwarded to the heads of the three branches of the government;
9. To determine that the Executive Branch, through the Ministry of Foreign Affairs, shall prepare, within six months, a protocol for assisting women and children who are victims of domestic violence, to be adopted in all Brazilian consular units abroad, taking as a reference the pilot project developed by the Consulate General of Brazil in Rome;
10. To call on the Legislative Branch, in dialogue with the Executive Branch, to assess the need for specific legislation to regulate the 1980 Hague Convention, particularly with regard to the procedural and evidentiary aspects of its application;
11. To determine that Federal Regional Courts and Courts of Justice enter into judicial cooperation agreements to establish protocols for coordinated action in cases of international child abduction, including, among other measures, the sharing of information relating to custody actions and actions based on the 1980 Hague Convention and the joint use of multidisciplinary structures and teams, especially for the production of expert reports;

12. Once it is recognized that the conditions set forth in the Convention for determining return are not met, that the Brazilian courts' jurisdiction, as the forum of the taking parent's domicile, is established to decide on the substantive issues involved in the case, including the custody of the child.

Finally, the following judgment thesis[3] was established:

1. *The 1980 Hague Convention on the Civil Aspects of International Child Abduction is compatible with the Federal Constitution and has supra-legal status in the Brazilian legal system due to its nature as an international treaty for the protection of children's rights.*
2. *The application of the Convention in Brazil, in light of the principle of the best interests of the child (Art. 227, CF), requires the adoption of structural and procedural measures to ensure the swift and effective processing of actions for the international restitution of children.*
3. *The exception of grave risk to the child, provided for in Art. 13 (1)(b) of the 1980 Hague Convention, must be interpreted in a manner consistent with the principle of the best interests of the child (Art. 227, CF) and under a gender-based perspective, so as to allow its application when there are objective and concrete indications of domestic violence, even if the child is not a direct victim.*

All in accordance with the vote of Justice Luís Roberto Barroso (President and Rapporteur). Justice Dias Toffoli was partially defeated in ADI 7.686, as he considered the action to be entirely well founded. Plenary session, August 27, 2025."

The judgment introduced three important innovations that will standardize and shape the interpretation of the Convention going forward. First, by recognizing domestic violence as an arguable exception under Art. 13(1)(b), the Court established that this ground can no longer be dismissed on the basis that it is not expressly mentioned in the Convention. Second, the clarification that children need not be the primary victims ensures that courts cannot disregard evidence showing that they merely witnessed the violence, since such exposure also constitutes harm. Third, the instruction to evaluate abduction cases through a gender-based lens acknowledges the multiple and intersecting vulnerabilities faced by migrant women and requires a contextual assessment of each situation.

Nevertheless, the central unresolved issue concerns the evidentiary threshold. While the Court established that proof is required, it also indicated that the standard should be lower, without clarifying what qualifies as objective and concrete indications of violence sufficient to configure grave risk. Given the repeated acknowledgment of the obstacles faced by migrant mothers, it seems evident that demanding criminal convictions would set the bar far too high. What remains uncertain is whether police complaints, medical records, social service evaluations, psychological reports, or even documented but unsuccessful attempts to obtain assistance in the State of origin will suffice. This definition can only be built with time and through the practical application by domestic federal courts.

The timing of the judgment coincides with the organization of the Second Forum on Domestic Violence and the 1980 Child Abduction Convention, scheduled for October 2025 in Fortaleza, Brazil. Building on the discussions initiated at the first meeting in Sandton, South Africa, in 2024, the Forum will once again convene experts from around the world to reflect on the persistent challenges posed by cases involving allegations of domestic and family violence. In this setting, the recent decision of the Brazilian Supreme Court will likely serve as a point of reference for its methodological contribution to advancing a gender-sensitive and human rights-based approach.

Background of the Actions

ADIs are a special kind of proceedings that may only be introduced by the President of the Republic; the President of the Senate, the Chamber of Deputies, or state legislative assemblies; the Brazilian Bar Association; the Attorney General; political parties; or national unions. Unlike ordinary judicial proceedings, whose effects only extend to the parties, ADI rulings have *erga omnes* effect and are endowed with binding force, compelling compliance by the Judiciary, the Legislature, and the Executive at all levels.

The first ADI (4245) was filed in 2009 by the now-dissolved Democratas party (DEM), less than a decade after Brazil’s ratification of the Convention and against the backdrop of the *Sean Goldman case*.[4] The dispute concerned the wrongful retention in Brazil of a 4 year-old child habitually resident in the United States, leading to lengthy proceedings under the 1980HC. Although lower courts initially

concluded that Sean had become settled in the new environment, the Supreme Court ultimately ordered his return 5 years later following the death of the taking parent. The litigation attracted intense media scrutiny and sustained significant political and diplomatic pressure. Its repercussions also contributed to the enactment of the *Sean and David Goldman International Child Abduction Prevention and Return Act of 2014****[5]*** in the United States, a statute designed to strengthen governmental responses to abduction cases and to oversee compliance by other Contracting States.

Prompted by these circumstances, the DEM party brought the matter before the Supreme Court to assess whether the manner in which the Convention was being applied was compatible with the constitutional framework. Their concern was that, following the damaging repercussions of the Goldman case, domestic authorities had adopted an automatic-return approach without sufficient consideration of the specific circumstances of each case, thereby infringing fundamental principles such as human dignity and the best interests of the child.

The initiating application requested that return orders and urgent measures be issued only after due process and a case-specific assessment; that the one-year time limit not prevail over the best interests of the child; and that the grave risk exception be interpreted broadly. It further sought to limit the Attorney General's Office's legitimacy to initiate return proceedings, to condition the effectiveness of foreign custody decisions on recognition by the Superior Court of Justice, and to preserve the validity of domestic custody rulings. The main legal basis invoked was Art. 227 of the Constitution, which enshrines the principle of 'integral protection' and imposes on the family, society, and the State the duty to ensure, as an absolute priority, children's rights to life, health, education, dignity, and protection against neglect, exploitation, and violence.

ADI 4245 remained without significant developments for 15 years, until a hearing was scheduled for the presentation of oral arguments in May 2024. The judgment was set to take place in August 2024, yet, the Socialism and Liberty party (PSOL) filed another ADI (7686) in July of the same year, which led to the suspension of the first so that both could eventually be judged together.

The circumstances surrounding the second ADI differed, despite being similarly propelled by not one, but numerous widely covered cases, which were further amplified through social media. Most involved mothers who had fled to Brazil

after experiencing discrimination and domestic violence abroad, yet, whose children were nevertheless ordered to return. Public pressure and social mobilization were decisive in bringing these issues to the forefront and making them the central focus of the proceedings.

As regards the merits, ADI 7686 contained only one request: that suspicion or indications of domestic violence in the foreign country be taken into account when assessing the grave risk standard and the applicability of the exception under Art. 13(1)(b) of the 1980HC, so that children would not have to be returned The legal basis rested primarily on Art. 226 (8) of the Constitution, which explicitly establishes the State's positive obligation to 'ensure assistance to the family in the person of each of its members, creating mechanisms to suppress violence within the family'.

Oral arguments in ADI 7686 were presented in February 2025, but the rendering of the Justices' votes only began in August. The case was considered by the Plenary of the Supreme Federal Court, composed of eleven Justices, of whom a single member is a woman. Three sessions were needed to conclude, and a decision was finally reached on 27 August 2025. Although the written judgment has not yet been released, the hearings were televised, and each Justice presented at least a summary of their vote. For clarity, the following account is organized thematically rather than chronologically, highlighting the main strands of reasoning that emerged.

(i) Gender, domestic violence and the reframing of the best interests principle

The deliberations revealed a broad consensus that gender inequalities are central to the evaluation of return requests under the Convention, particularly where domestic violence is raised. Justice Barroso, rapporteur of the case, underscored that most taking parents are mothers fleeing from abandonment or abuse, cautioning that automatic returns in such circumstances risk perpetuating cycles of violence. Justices Mendonça and Cármen Lúcia echoed this concern, stressing that intimate-partner violence destabilizes the family environment and thereby places the child in danger.

Justice Moraes added that the prevalence of taking mothers reflects structural patriarchy, requiring an interpretation of the Convention consistent not only with

the standards inscribed in domestic law but also with international human rights instruments such as the UNCRC and the Convention of Belém do Pará. Justice Dias Toffoli supported this approach by grounding it in the Convention's own architecture, highlighting a combined interpretation of Arts. 13(1)(b) and 20, insofar as the latter provides that courts may refuse the return when such an order would conflict with the fundamental principles and freedoms of the requested State.

Taken together, these positions signalled a jurisprudential shift: the Convention's effectiveness in Brazil will henceforth be measured not solely by the speed of returns but by its capacity to reconcile international cooperation with the substantive protection of women and children.

(ii) Procedural and evidentiary standards

A central aspect of the debate revolved around the difficulties faced by migrant women and their intersecting vulnerabilities. Justice Barroso argued that imposing a standard of irrefutable proof in cases involving domestic violence is both inconsistent with the Convention's requirement of urgency and detrimental to the best interests of the child. He stressed that migrant mothers are frequently cut off from institutional resources and isolated from their support networks, which, compounded by linguistic and cultural obstacles, place them at a significant disadvantage in producing evidence. Justice Toffoli further developed this argument, insisting that courts must apply a gender-based perspective and give decisive weight to victims' testimonies, precisely because these structural barriers cannot be overcome through procedural formalities.

Alongside evidentiary issues, the Justices devoted close attention to procedural safeguards. Justice Flávio Dino criticised the privileged role of the Attorney General's Office, noting that its authority to initiate proceedings produces inequality of arms. While the interests of left-behind parents are defended, even if representation is for the State, taking parents are not ensured access to legal aid. Building on this concern, Justice Cristiano Zanin drew attention to the absence of a specific law governing Hague cases in Brazil. In his view, this vacuum not only generates procedural uncertainty but also creates room for jurisdictional conflicts, especially when custody proceedings are initiated domestically in parallel with return requests.

Other votes highlighted the persistent tension between efficiency and fairness. Justice Nunes Marques stressed that the Convention's effectiveness depends on swift decisions and suggested technology and mediation as tools to accelerate outcomes. Justice Barroso, however, set this pursuit for speed against the structural reality of Brazil's civil procedure, which, though intended to protect due process, is overly complex and has become a recurrent source of delay. Justice Dino noted that, as a result, courts frequently resort to urgent measures, granting return orders without analysing the case in depth and even without hearing the taking parents, a practice he considered incompatible with constitutional guarantees. Justice Luiz Fux disagreed with Dino on this point, resisting the view that judicial discretion should be in any way limited.

(iii) Measures to strengthen the application of the Convention

Apart from the interpretative parameters and procedural elucidations, a series of proposals were advanced to reinforce the Convention's operation through systemic measures and reforms. Consensus emerged around the need for standardized protocols in embassies and consulates to ensure consistent assistance and reliable mechanisms for processing reports of abuse. In addition, the Justices addressed the domestic judicial structure, calling for stronger coordination between federal and family courts and for the use of liaison judges to improve communication with foreign authorities. The Court also encouraged studies to support legislative initiatives, including the prospect of Brazil's accession to the 1996 HCCH Child Protection Convention as part of a broader effort to align institutional practice with international standards.

A final strand of discussion was dedicated to the participation of children. Justice Cármen Lúcia stressed that they must be recognised as rights-bearing subjects and that procedural mechanisms should be developed to secure their direct involvement in return proceedings. At present, the law provides only for the hearing of children from the age of 12 and contains no guidance on the manner in which their statements are to be obtained. Ensuring that children's perspectives are effectively taken into account was thus deemed essential to aligning the Convention's operation with the principle of integral protection enshrined in the Constitution.

[1] Available in English at: <https://www.oas.org/es/sla/ddi/docs/acceso_informacion_base_dc_leyes_pais_b_1

_en.pdf>.

[2] Available, only in Portuguese, at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=2679600>.

[3] In the context of Direct Actions for the Declaration of Unconstitutionality (ADIs) before the Brazilian Supreme Federal Court, the term 'thesis' refers to the authoritative interpretative statement of the Constitution that distills the complex reasoning into a concise and binding formula. Arising from the abstract constitutional review of statutes, such theses clarify the constitutional meaning of contested provisions and ensure that the decision extends beyond the specific case at hand. By consolidating the practice of formulating theses at the end of landmark rulings, the Court provides clarity, consistency, and general applicability, thereby guiding judges, public administration, and society as a whole while establishing constitutional standards for future cases.

[4] Brazilian Supreme Federal Court, 2009 Activities Report. Available in Portuguese at: <https://www.stf.jus.br/arquivo/cms/principaldestaque/anexo/relatorio_stf_2009__18032010__qualidade_web__orcamento.pdf>.

[5] Available at: <https://www.congress.gov/bill/113th-congress/house-bill/3212>.

EU modernises consumer dispute resolution: An overview of the new ADR Directive

By Alexia Kaztaridou (Linklaters)

On 25 September 2025, the Internal Market and Consumer Protection Committee (IMCO) of the European Parliament approved the text of the political agreement on the Alternative Disputes Resolution for Consumer Disputes Directive. This

Directive establishes a framework for resolving through ADR procedures contractual domestic and cross-border consumer disputes arising from the sale of goods or provision of services between consumers and traders within an EU context. The amendments to the prior Directive aim to modernise the existing framework in light of new consumer trends, such as the growth of e-commerce, and bring significant changes across several areas, enhancing the protection for consumers and clarifying obligations for traders and ADR entities. The Directive maintains its minimum harmonisation approach, allowing Member States to provide for stronger consumer protection.

Key changes introduced

Enhanced obligations for traders

- **Geographical scope:** The Directive's scope is extended to traders established in third countries who are willing to participate in an ADR procedure and direct their activities towards consumers in one or more Member States, within the meaning of the Rome I Regulation and the Brussels I bis Regulation (recast). To determine if a trader's activities are directed to a Member State, factors such as the language or currency used, the ability to order products, or the availability of an application in a national app store may be considered. Member States can also set conditions for the participation of these traders in ADR procedures, such as requiring the trader's consent for the dispute to be resolved based on the law of the Member State where the consumer resides.
- **Duty to reply:** Traders established in the Union will have a duty to reply within, in principle, 20 working days when contacted by an ADR entity, stating whether they will participate in a procedure. This is not required where participation is mandatory by law, to fulfil a contractual obligation or when the ADR entity is entitled to reach an outcome even if the trader did not participate in the procedure. This period may be extended to a maximum of 30 working days for complex disputes, provided the consumer is informed of the extension. If a trader fails to reply within the prescribed deadline, the ADR entity may consider the non-reply as a refusal of the trader to participate and should inform the consumer accordingly.
- **Information and transparency:** To improve consumer awareness,

traders must provide clear information about ADR, including on their websites.

Expanded material scope

- **Pre-contractual and post-contractual phases:** The Directive's material scope is extended to cover disputes arising from obligations in the pre-contractual and post-contractual phases. Examples include disputes related to misleading advertising, a failure to provide compulsory pre-contractual information required by the Consumer Rights Directive, or issues concerning the use of consumer-provided digital content after a contract has terminated.
- **Contracts paid for with personal data:** The scope now includes contracts for the supply of digital content or services where the consumer provides or undertakes to provide personal data instead of making a payment.
- **Member State discretion:** Member States are authorised to make trader participation in ADR procedures mandatory in sectors they deem fit, such as transport and tourism. They can also extend ADR procedures to other types of disputes under Union and national law, for instance in relation to competition law.

New requirements for ADR entities

- **Accessibility and fairness:** ADR procedures must be made accessible to all, including vulnerable consumers, through 'easily accessible and inclusive tools'. If a procedure uses automated means, both parties have the right to have the process reviewed by a natural person. Furthermore, ADR entities should not refuse to deal with a dispute where a trader has established disproportionate rules for their own internal complaint handling systems that must be completed before the case can be referred to the ADR entity.
- **Bundling of cases:** To promote efficiency, Member States are to allow ADR entities to bundle similar cases into a single procedure where it may lead to a faster or more coherent resolution. Member States may require explicit consumer consent for this.
- **Training and transparency:** ADR entities must ensure that the natural persons in charge of dispute resolution have the necessary expertise,

including a general understanding of private international law. They must also inform consumers in advance if non-high-risk automated means are used in the decision-making process.
- **Publication of reports:** ADR entities are required to publish activity reports to enhance transparency at least every two years. Therein, ADR entities must include information about traders who systematically refuse to comply with the outcomes of ADR procedures.

Promoting participation to the procedures

In principle, the Directive provides that the ADR procedures should be free of charge for consumers. In the event that costs are applied, those costs should not exceed a nominal fee. Member States should encourage ADR entities to reimburse consumers the nominal fee paid where and to the extent that their complaint is justified.

In that context, the Directive requires Member States to implement measures that promote participation in ADR procedures from both traders and consumers. These measures can be either financial or non-financial in nature.

A new role for ADR contact points

Following the discontinuation of the Online Dispute Resolution (ODR) platform, the tasks previously handled by ODR contact points will be taken over by newly established ADR contact points. These contact points will be, *inter alia*, responsible for:

- Providing assistance and guidance to consumers and traders on accessing the competent ADR entity, particularly in cross-border disputes.
- Explaining the procedural rules of relevant ADR entities.

The ADR contact point is to be determined by the consumer's place of residence. Member States can choose to extend the mandate of these contact points to cover domestic disputes as well.

Consumer assistance and new digital tools

Consumers will have the right to be assisted by third parties, such as consumer organisations or businesses that specialise in claims management, though transparency must be ensured.

In addition, the Commission is mandated to develop a digital interactive tool to guide consumers to the correct ADR entity.

Next steps and national transposition

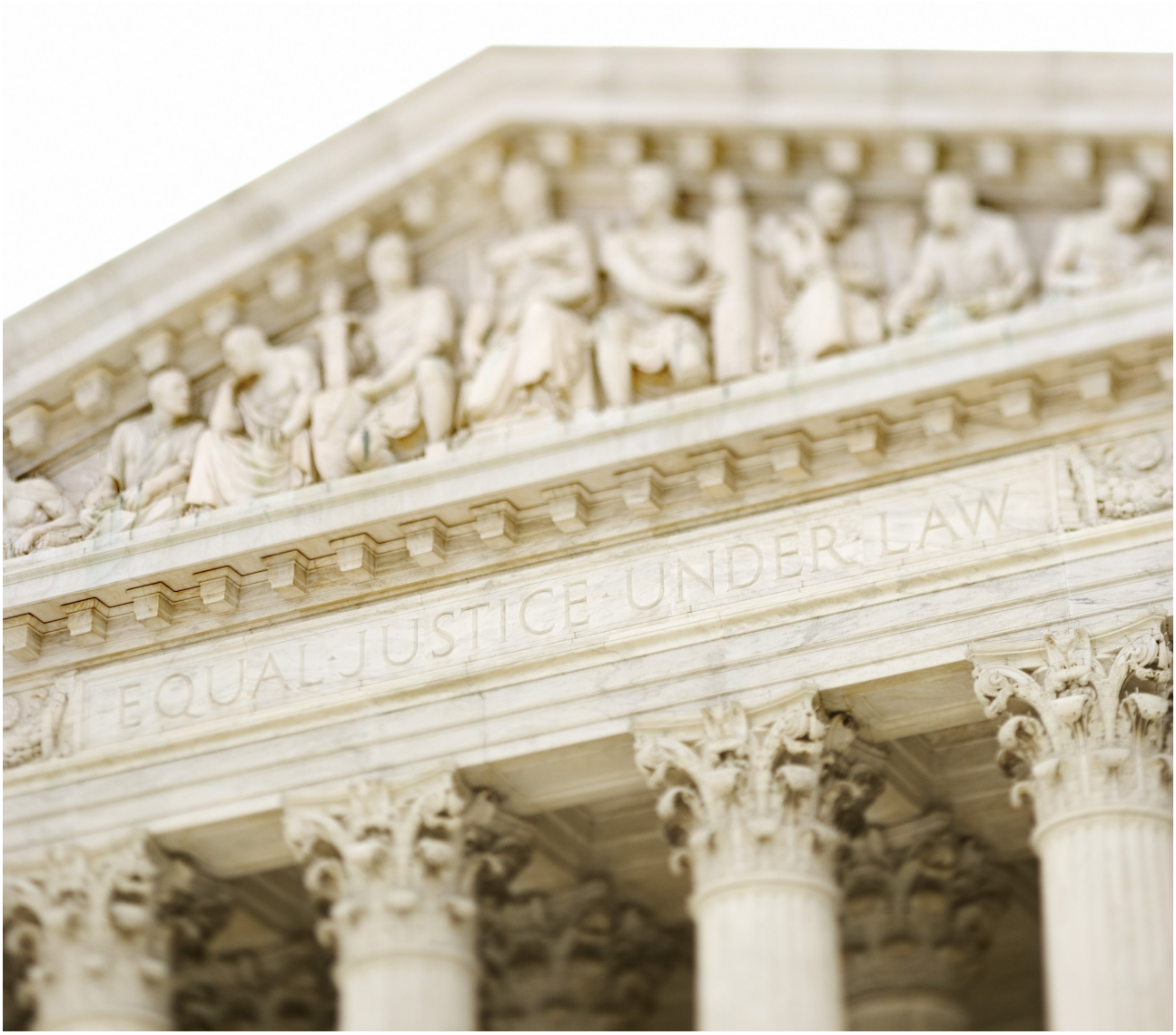
The next step is the formal adoption of the text by the European Parliament's plenary, which is expected to take place between 15 and 18 December. Following this, the text must also be formally adopted by the Council. Once the Council has formally adopted the text, it will be published in the Official Journal of the European Union. The Directive will then enter into force 20 days after its publication.

The timeline for the Directive's implementation is set out in Article 5. Specifically, Member States are required to adopt and publish the national laws necessary to comply with the Directive by 26 months after its entry into force. These new national measures must then be applied starting from 32 months after the Directive's entry into force.

Given this is a minimum harmonisation Directive, Member States retain discretion to introduce measures that empower consumers even further. For example, they may make ADR mandatory for certain disputes or further extend the material scope. It will therefore be crucial to monitor the national transposition of the Directive to understand how the legal framework will evolve in each Member State.

US Supreme Court: Judgment in Smith & Wesson Brands, Inc. et al. v. Estados Unidos Mexicanos

(Mexico) – A few takeaways



Written by Mayela Celis, Maastricht University

In June 2025, the US Supreme Court delivered its opinion in Smith & Wesson Brands, Inc. et al. v. Estados Unidos Mexicanos (Mexico) 605 U.S. 280 (2025). The Opinion is available here. We have previously reported on this case here, here and here (on the hearing).

As previously indicated, this is a much-politicized case brought by Mexico against US gun manufacturers, alleging *inter alia* negligence, public nuisance and defective condition. The basic theory laid out was that defendants failed to exercise reasonable care to prevent the trafficking of guns to Mexico causing harm and grievances to this country. In this regard, the complaint focuses on aiding and abetting of gun manufacturers (rather than of independent

commission).

In a brilliant judgment written by Justice Kagan, the Court ruled that PLCAA bars the lawsuit filed by Mexico. Accordingly, PLCAAS's predicate exception did not apply to this case.

This case has attracted wide media attention and a great number of amici curiae briefs was filed urging both reversal and affirmance or being neutral. Those urging reversal far outnumbered the other two categories, some of which were filed by Attorney Generals of numerous US states, American Constitutional Rights Union, American Free Enterprise Chamber of Commerce, Chamber of Commerce of the United States of America, Firearms Regulatory Accountability Coalition, Inc., National Association for Gun Rights, Inc., National Rifle Association of America, Product Liability Advisory Council, Second Amendment Foundation, Sen. Ted Cruz and others, Gun Owners of America, Inc., etc.

Primary holding

Held: *Because Mexico's complaint does not plausibly allege that the defendant gun manufacturers aided and abetted gun dealers' unlawful sales of firearms to Mexican traffickers, PLCAA bars the lawsuit.*

Main federal statutes applicable and case law cited

The Protection of Lawful Commerce in Arms Act (PLCAA), 119 Stat. 2095, 15 U. S. C. §§ 7901–7903

18 U. S. C. § 2(a) – Principals

Direct Sales Co. v. United States, 319 U. S. 703 (1943)

Twitter, Inc. v. Taamneh, 598 U. S. 471 (2023)

Rosemond v. United States, 572 U.S. 65 (2014)

United States v. Peoni, 100 F. 2d 401, 402 (CA2 1938)

For further information (incl. PLCAA's predicate exception), please refer to the previous post on the hearing, here.

A few takeaways from the judgment are the following:

Plausibility

The Court clarified that *plausibly* "does not mean 'probably,' but 'it asks for more than a sheer possibility that a defendant has acted unlawfully.'" And Mexico did not meet that threshold (p. 291). Indeed, the Court goes even further and speaks of mere speculation as regards some of Mexico's allegations (p. 296).

Aiding and Abetting

The Court stated the requirements of aiding and abetting derived from criminal law (as coined by Learned Hand): "an aider and abettor must 'participate in' a crime 'as in something that he wishes to bring about' and 'seek by his action to make it succeed.'" The Court said that Mexico failed to properly plead this to the level required (p. 294).

Considering that Mexico based its claims on aiding and abetting liability, the Supreme Court begins by setting forth the three ancillary principles: 1) Citing *Twitter*, the Court notes that aiding and abetting is a rule of secondary liability for specific wrongful acts. In the case of a broad category of misconduct, the participation must be pervasive, systematic and culpable; 2) Aiding and abetting usually requires misfeasance rather than nonfeasance (such as failure to act or an omission when there is no independent duty to act); 3) Incidental activity is unlikely to count as aiding and abetting (p. 292).

In this regard, the Supreme Court ruled that Mexico's allegations only refer to nonfeasance (or indifference) (p. 297). The Court also noted that contrary to normal practice in this type of cases, Mexico does not pinpoint any specific criminal transactions that the defendants allegedly assisted. And at the same time, Mexico sets the bar very high by alleging that all manufacturers assist a number of identified rogue dealers in their illegal pursuits (p. 294).

Importantly, the Court noted that "Mexico never confronts that the manufacturers do not directly supply any dealers, bad-apple or otherwise." (p. 295) Indeed, they supply to middleman distributors that are independent. It is the conduct of rogue dealers, two levels down, that causes Mexico's grievance and Mexico does not name them (there is only a reference to a Washington Post article, see our previous post).

A note to the reader: Mexico did identify a distributor in its complaint (Witmer

Public Safety Group, Inc., which does business as Interstate Arms), however its complaint barely mentioned it, that is why the Court decided for simplicity's sake to focus only on manufacturers (see footnotes 1 and 4 of the judgment).

The Supreme Court also dismissed Mexico's allegations that the industry had failed to impose constraints on their distribution chains to reduce unlawful actions (*e.g.* bulk sales or sales from homes), which the court considers as "passive nonfeasance" in the light of *Twitter*. Nor were the allegations regarding the design and marketing decisions of guns accepted as these products may also appeal to law-abiding citizens.

History of PLCAA

The Court ends with some analysis of PLCAA's purpose and the kind of suits it intended to prevent. The Court concludes that Mexico's suit closely resembles those suits and if it were to fall in the predicate exception, it would swallow the entire rule.

Comments

At the outset, please note that the comments already made regarding the hearing of this case apply to a large extent to the final judgment.

The Supreme Court rendered a judgment that is clear, logical and addresses key matters of the litigation, without testing the troubled waters of proximate cause. In particular, it avoids departing from previous precedents such as *Direct Sales* and *Twitter*, which in my view set clear standards with regard to aiding and abetting liability. It also helpfully stated the requirements of aiding and abetting derived from criminal law (as coined by Learned Hand) and applicable to the case at hand.

During the hearing of this case, there was much uncertainty regarding the different federal statutes applicable, as well as the relationship between the different actors in the distribution chain of weapons. None of that confusion is seen in this judgment, which is extremely clear and well-thought through.

As regards the liability of merchants and their products (as referred to in my previous post, such as baseball bats and knives), the Supreme Court helpfully clarified that: "So, for example, an "ordinary merchant[ ]" does not "become

liable" for all criminal "misuse[s] of [his] goods," even if he knows that in some fraction of cases misuse will occur. Twitter, 598 U. S., at 489; see id., at 499. The merchant becomes liable only if, beyond providing the good on the open market, he takes steps to "promote" the resulting crime and "make it his own." United States v. Falcone, 109 F. 2d 579, 581 (CA2) (L. Hand, J.), aff'd, 311 U. S. 205 (1940)." (p. 292)

Justices Thomas and Jackson (coincidentally the two black justices of the Court, a conservative and a liberal justice, respectively) filed Concurrent Opinions, which blurs the line between the two camps. In my view, these Opinions are more restrictive than the majority decision and make it more difficult to file a suit, requiring an *earlier finding* of guilt or liability in an adjudication regarding the violation (Thomas) or making non-conclusory allegations about a *particular* statutory violation under PLCAA (Jackson). In my view, the majority decision does not require either.

In sum, the majority Opinion greatly clarifies this area of law. A positive development, amid the tumultuous docket of the Court in this era of great uncertainty.

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French Supreme Court upholds

asymmetric jurisdiction clauses in Lastre follow-up

by Jean-Charles Jais, Guillaume Croisant, Canelle Etchegorry, and Alexia Kaztaridou (all Linklaters)

On 17 September 2025, the French *Cour de cassation* handed down its decision on the *Lastre* case. This followed a landmark preliminary ruling of February 2025 from the CJEU, which laid out the conditions for a valid asymmetric jurisdiction clause under article 25 of the Brussels I recast regulation.

Asymmetric jurisdiction clauses allow one party to initiate proceedings in multiple courts or any competent court, while the other party has fewer options or is restricted to a specific jurisdiction. Such clauses are common in financial agreements (read more in our previous blog post here).

In the latest development of the *Lastre* case in France, the French Supreme Court opted for a pro-contractual autonomy stance, favouring the validity of asymmetric jurisdiction clauses.

Background to the decision

A French company had entered into a contract for the supply of cladding panels for a construction project with an Italian supplier. The supplier's general terms and conditions provided for the jurisdiction of the Italian court of Brescia but reserved its right to proceed against the buyer before "another competent court in Italy or abroad".

Following defects in the works in late 2019, proceedings were initiated before French courts against all contractors, including the Italian supplier. The latter challenged the jurisdiction of the French courts, relying on the above-mentioned jurisdiction clause.

Consistent with previous precedents, the French First Instance Court and Court of Appeals dismissed the objection. These courts found that the clause granted the Italian supplier discretionary authority to select jurisdiction, rendering it invalid due to its failure to satisfy the foreseeability criterion outlined in article 25 of the Brussels I recast regulation.

The case was further appealed before the French Supreme Court, which referred preliminary questions to the CJEU. In its preliminary ruling, the CJEU clarified that the validity of asymmetric clauses was to be assessed using autonomous criteria derived from article 25 of the Regulation and set out the conditions for such clauses to be valid.

A pragmatic application of the CJEU's three-fold approach to "any other competent court" clauses

In last week's ruling, the French Supreme Court sought to follow the CJEU's three-fold approach in examining the validity of asymmetric clauses and recalled that such clause must (i) designate courts competent under the Brussels I recast regulation and/or the Lugano Convention; (ii) identify sufficiently precise objective criteria to allow the court seized to determine its competence; and (iii) not conflict with special or exclusive jurisdiction rules set out in the Brussels I recast regulation or the Lugano Convention.

The French Supreme Court then held that the CJEU leaves it to national courts to interpret asymmetric clauses which allow one party to initiate proceedings before "any other competent court", in accordance with the principles of party autonomy and practical effectiveness (*effet utile*).

On this basis, the French Supreme Court concluded that, in a case where the contractual relationship has no objective connecting factor with non-EU and non-Lugano States (*i.e.*, third-party states), the jurisdiction clause designating "any other competent court" must be interpreted as referring to competent courts under the general rules of jurisdiction laid out in the Brussels I recast Regulation and the Lugano Convention. The clause thus complied with the first condition set by the CJEU, even if it did not expressly refer to these two instruments.

Accordingly, the French Supreme Court overturned the Court of Appeals' decision and upheld the validity of the asymmetric jurisdiction clause.

Practical implications for asymmetric jurisdiction clauses

What does this ruling imply for parties wishing to rely or already relying on asymmetric jurisdiction clauses, particularly in cross-border contracts within the EU?

A more favourable treatment of asymmetric clauses

The French Supreme Court's *Lastre* decision illustrates the Court's pro-contractual autonomy approach to jurisdiction clauses. This will reassure parties seeking flexibility in drafting these clauses, particularly in light of certain earlier decisions which adopted a more cautious approach towards one-sided jurisdiction clauses.

The French Supreme Court's contractual autonomy stance also appears in three decisions issued on the same day.

In one case, the Court followed its *Lastre* reasoning and upheld a bank's clause granting exclusive jurisdiction to Luxembourg courts, while allowing the bank to bring proceedings at the client's domicile or "other competent courts".

In two other cases, the Court found that the clauses which designated a specific EU court and provided an objective criterion for determining the alternative jurisdiction available to one of the parties were sufficiently precise. These criteria were the location of the guarantor's assets (case no. 23-18.785) and one of the parties' registered office or that of its branch (case no. 23-16.150). This is in line with previous decisions validating asymmetric clauses, such as, for instance, the *eBizcuss decision*, which rely on objective criteria and generally supports the enforceability of asymmetric clauses.

Limitations for clauses with links to third-party states

While the French Supreme Court's decision is a positive development for legal certainty and party autonomy, limitations and uncertainties remain.

First, the clause reviewed in the *Lastre* case conferred jurisdiction to the courts of a *Member State* (Brescia, in Italy), while reserving the possibility for one party to start proceedings before "any other competent courts". As a result, the French Supreme Court did not address the validity of clauses that would also include the possibility for one party or both of them to start proceedings before one or several

third-party state court(s), such as London or New York, a common feature in finance and banking contracts. The position on this remains uncertain.

Second, the ruling reinforces the material risk, stemming from the CJEU's *Lastre* decision, that a clause designating "any competent court" could be deemed invalid where the contract has significant objective connecting factors with third-party states.

Third, the French Supreme Court's interpretation is not binding on the courts of third-party states. However, in the scenario considered by the court (where there are no objective connecting factors to a third-party state), it is unlikely that a court in, for example, London or New York would accept jurisdiction. It would probably decline to hear the case under its own private international law rules.

Finally, this judgement does not guarantee a harmonised EU approach. It remains to be seen whether other Member State courts will adopt the same interpretation.

Using Foreign Choice-of-Law Clauses to Avoid U.S. Law

Can private actors utilize choice-of-law clauses selecting the laws of a foreign country to avoid laws enacted by the United States? In this post, I argue that the answer is a qualified yes. I first examine situations where the U.S. laws in question are not mandatory. I then consider scenarios where these laws are mandatory. Finally, the post looks at whether private parties may rely on foreign forum selection clauses and foreign choice-of-law clauses—operating in tandem—to avoid U.S. law altogether.

Non-Mandatory Federal Laws

There are a handful of non-mandatory federal laws in the United States that may be avoided by selecting foreign law to govern a contract. Contracting parties may, for example, opt out of the CISG by choosing the law of a nation that has not

ratified it. (The list of non-ratifying nations includes the United Kingdom, India, Ireland, South Africa, and—maybe—Taiwan.) Contracting parties may also avoid some parts of the Federal Arbitration Act via a choice-of-law clause selecting the law of a foreign country.

Mandatory Federal Laws

Foreign choice-of-law clauses are sometimes deployed in an attempt to evade mandatory *state laws*. In these cases, the courts will generally apply Section 187 of the *Restatement (Second) of Conflict of Laws* to determine whether the choice-of-law clause should be given effect.

When a foreign choice-of-law clause is deployed in an attempt to avoid mandatory *federal laws,* the courts have taken a very different approach. In such cases, the courts will not apply Section 187 because state choice-of-law rules do not apply to federal statutes. Instead, the courts will typically look at the foreign choice-of-law clause, shrug, and apply the federal statute. A foreign choice-of-law clause—standing alone—cannot be used to avoid a mandatory rule contained in a federal statute. In such cases, the only question is whether the statute applies extraterritorially.

There is, however, an important exception. When the federal courts are applying federal common law—rather than a federal statute or a federal treaty—they will sometimes engage in a traditional choice-of-law analysis. They may look to Restatement (Second) of Conflict of Laws, for example, to determine whether it is appropriate to apply foreign law to the exclusion of federal common law in cases involving international transportation contracts or airplane crashes occurring outside the United States. When the case arises under federal maritime law—a species of federal common law—the courts will apply the test for determining whether a choice-of-law clause is enforceable articulated the Supreme Court in *Great Lakes Insurance SE v. Raiders Retreat Realty Company, LLC.* Even in maritime cases, however, a foreign choice-of-law clause will not be enforced when applying the chosen law would "contravene a controlling federal statute" or "conflict with an established federal maritime policy." This restriction means that, in practice, foreign choice-of-law clauses will rarely prove effective at avoiding mandatory federal laws even in the maritime context.

Finally, it is worth noting that U.S. courts generally will not apply the public laws

of other countries due to the public law taboo. Even if a U.S. court were to conclude that a foreign choice-of-law clause was enforceable, that court is unlikely to apply the criminal, tax, antitrust, anti-discrimination, or securities laws of another nation.

Choice-of-Law Clauses + Forum Selection Clauses

Although mandatory federal laws cannot be evaded by foreign choice-of-law clauses in isolation, they may be avoided—at least sometimes—by adding a foreign forum selection clause to the agreement. If the defendant can persuade a U.S. court to enforce the forum selection clause, the question of whether the choice-of-law clause is enforceable will be decided by a court in a foreign country. In cases where the choice-of-law clause selects the law of that country, the chosen court is likely to enforce the clause regardless of whether enforcement will lead to the non-application of mandatory federal laws.

The U.S. Supreme Court, to its credit, has long been aware of the possibility that foreign forum selection clauses might be used as a backdoor way of enforcing foreign choice-of-law clauses. As early as 1985, it noted that "in the event the choice-of-forum and choice-of-law clauses operated in tandem as a prospective waiver of a party's right to pursue [federal] statutory remedies . . . we would have little hesitation in condemning the agreement as against public policy." The Court has never, however, held that a foreign forum selection clause was unenforceable for this reason.

The lower federal courts have been similarly chary of invalidating foreign forum selection clauses on this basis. In a series of cases involving Lloyd's of London in the 1990s, several circuit courts of appeal enforced English forum selection clauses notwithstanding the argument that this would lead to the enforcement of English choice-of-law clauses and, consequently, to the waiver of non-waivable rights conferred by federal securities laws. In each instance, the court held that no waiver of rights would occur because the securities laws of England offered protections that were equivalent to their U.S. counterparts.

In a similar line of cases involving cruise ship contracts, the Eleventh Circuit has enforced forum selection clauses choosing the courts of Italy even when it seems clear that this will lead to the enforcement of Italian choice-of-law clauses and,

ultimately, to the waiver of mandatory federal laws constraining the ability of cruise ships to limit their liability for their passengers' personal injury or death. The Second Circuit has also enforced an English forum selection clause over the plaintiff's objection, first, that the anti-discrimination laws of England were less protective than those in the United States, and, second, that the English court would apply English laws because the agreement contained an English choice-of-law clause.

Conclusion

If the goal is to evade mandatory federal laws in the United States, a foreign choice-of-law clause is not enough to get the job done. A foreign choice-of-law clause and a foreign forum selection clause operating in tandem, by contrast, stand a fair chance of realizing this goal. While the U.S. Supreme Court has stated that foreign forum selection clauses should not be enforced when this will lead to the waiver of non-waivable federal rights, the lower federal courts have been reluctant to find a waiver even in the face of compelling evidence that the foreign laws are less protective than federal laws enacted by Congress. The foreign forum selection clause, as it turns out, may the most powerful choice-of-law tool in the toolbox.

Civil Personal Status Law Litigation in the UAE – Between Lofty Ideals and Sour Realities

I. Introduction

It is not uncommon for scholars to debate whether private international law is needed as a distinct discipline, and whether it is truly indispensable. After all, could one not save the effort and complexity of applying foreign law by simply treating all cases as purely domestic? From a theoretical standpoint, the answer is yes, since no State is under an inherent obligation to apply foreign law. Yet, such an approach entails serious shortcomings, particularly when it comes to respecting vested or acquired rights, meeting the legitimate expectations of the parties, and fostering cross-border commerce. It follows that the costs of refusing to recognize and apply foreign law are far greater than the difficulties associated with maintaining a system of private international law. It is therefore unsurprising that private international law has established itself as a common language for managing the legal diversity inherent in transnational relations.

However, private international law is not uniform across jurisdictions. In some States, its operation may be severely constrained by the temptation to treat cases involving foreign elements as purely domestic. The situation becomes even more delicate when such an approach is not merely a matter of judicial practice but is elevated to explicit State policy. This is precisely the issue raised by the UAE's civil personal status legislations and related court practice, where the very *raison*

d'être of the new system appears to be the avoidance of the applying foreign law. Indeed, since the application of foreign law "in practice … could be costly, time consuming and complex", the lawmakers chose to (quasi) *substitute* it with a new system of civil personal status, described as "a better cultural fit for the expatriate community, particularly those who are non-Muslim." (Abu Dhabi Judicial Department, *Civil Marriage Law and Its Effect in the Emirate of Abu Dhabi (Q & A)*, 1st ed. 2023, p. 4).

This raises important questions about the balance between the "lofty ideals" that inspired the introduction of the civil personal status legislations and the "sour realities" of legitimate expectations being overlooked, or, at times, entirely disregarded.

II. Lofty Ideals …

In what can surely be considered an iconoclastic initiative in the region, the Emirate of Abu Dhabi introduced in 2021 a new system regulating civil marriage and its effects ("2021 ADCML") in parallel to the existing system of personal status based on and influenced by Islamic rules and principles (the 2024 Federal Decree Law No 41 on Personal Status ("2024 PSL"), which replaced the 2005 Federal Act on Personal Status as subsequently amended). The latter constitutes the *droit commun* (*lex generalis*), codifying various aspects of Islamic family law, whereas the former operated as a special law (*lex specialis*) entirely grounded in secular, non-religious values, most notably equality and non-discrimination between the parties regardless of gender, nationality, or religion; at least insofar as parties are non-Muslims, or if foreign Muslims, are nationals of countries that do not primarily apply Islamic sharia in matters of personal status (Article 5 of the 2022 Procedural regulation concerning the Marriage and Civil Divorce Procedures in the Emirate of Abu Dhabi). The system was later extended to the entire federation through the adoption in 2022 of Federal Decree-Law No. 41 on Civil Personal Status) ("2022 CPSL"), with the notable difference that the 2022 CPSL is strictly limited to non-Muslims, whether UEA citizens or foreigners (Article 1 of the 2022 CPSL; for a comparison between the two legislations, see my comments here).

The newly introduced system has been praised as one that "acknowledges the

complexities of [the UAE's] global population", provides " a comprehensive legal framework addressing family law matters through a lens of inclusivity and equality", and "[w]hile maintaining respect for cultural sensitivities", "embrace[s] principles long associated with international human rights and progressive family law: gender and parental equality, the imposition of greater financial consequence and obligation in divorce and the prioritisation of children's welfare" (Byron James, United Arab Emirates: Family Law).

Indeed, as explicitly stated in Article 2 of the 2021 ADCML, the system aims to "provide a flexible and elaborate judicial mechanism for resolving family disputes" that is "in line with international best practices," and which guarantees litigants "to be subject to an internationally recognised law that is close to them in terms of culture, customs and language." The law also seeks to "consolidate the Emirate's position and global competitiveness as one of the most attractive destinations for human talent and skills." These ideals are reflected, *inter alia*, in article 16 of the 2021 ADCML, echoed by Article 4 of the 2022 CPSL, concerning "equality between men and women as to rights and duties" in matters of testimony evidence, inheritance, right to request (unilateral) no-fault divorce and joint custody.

In a nutshell, the newly adopted legislations, which are "specifically designed to assist the expatriate community", strive to provide "tourists and residents" a "simple", "effective" "modern and flexible judicial mechanism" regulating their family relationships in the UAE "in accordance with civil principles as opposed to religious principles" and "protect the rights of all individuals by providing family law principles that are in line with best international practices as well as an accessible and straightforward judicial process" (Abu Dhabi Judicial Department, *Civil Marriage Law and Its Effect in the Emirate of Abu Dhabi (Q & A)*, 1st ed. 2023, pp. 3, 5).

III. … Sour Realities

1) Regarding the avoidance of applying foreign law

As I noted in earlier posts (see here and here), doubts remain as to whether relying almost entirely on a substantive law approach that is based on the direct

application of the civil personal status legislations in disputes involving foreign elements can truly achieve the objectives of the newly introduced family law system.

In practice, this approach risks being disruptive, undermining the ideals of private international law, namely decisional harmony and respect for the parties' legitimate expectations, regardless of how well-crafted the applicable substantive law may be. Under the new framework, it is often enough for judges to assume jurisdiction on tenuous grounds (see my comments here) for the civil personal status legislations to be applied almost automatically. It makes no difference whether, under the parties' *lex patriae* or the law normally applicable according to UAE choice of law rules (the *lex loci celebrationis* according to article 13 of the 1985 Federal Act on Civil Transactions), divorce is not permitted (as in the Philippines or certain Christian communities in the Middle East), or whether divorce would not be recognized unless the parties' personal law were applied (as in India).

It is true that under the federal law (though not in Abu Dhabi, as the wording of the law suggests), either party may request the application of their own law (Article 1 of the 2022 CPSL, on this provision see my comments here). In practice, however, this mechanism has rarely proved effective, as courts not only treat foreign law as a matter of fact whose content must be established by the party invoking it, but also impose onerous requirements, rendering the application of foreign law almost illusory (see my comments here).

2) Regarding the subsidiary application of the general law based on Islamic Sharia

The lofty ideals of the newly introduced civil personal status legislations also fade when the legal issue to be addressed is not covered by them. In such cases, the matter has to be governed by "the laws and legislation in force in the State" (Article 15 of the 2022 CPSL). In other words, the legal issue falls back on the general law of personal status (the 2024 PSL), which is based – as explained above – on Islamic rules and principles. This creates an extremely intricate situation: while the very purpose of the civil personal status law is to prevent non-Muslims from being subjected to the local Sharia-based legislation, and instead to

provide them with a "an internationally recognised law that is close to them in terms of culture, customs and language" (Article 2 of the 2021 ADCML), certain matters nonetheless remain governed by the local legislation in its subsidiary application.

The question of is guardianship (*wilaya*) provides a quintessential example. The civil personal status legislation regulates only custody (*hadhana*) but says nothing about guardianship (*wilaya*). In the absence of relevant rules, UAE judges turn to the general personal status law (the 2024 PSL) to fill the gap. The problem, however, is that under this law – which reflects Islamic law principles – guardianship (*wilaya*) is mainly the father's prerogative. As a result, the combined application of the civil personal status law and the general personal status law often leads UAE judges to grant joint custody (*hadhana mushtarika*) to both parents under the civil personal status laws, while conferring sole guardianship (*wilaya*) over the person and property of the child to the father in application of the general personal status law.

Again, these provisions apply automatically, irrespective of the parties' *lex patriae* or the law normally applicable according to UAE choice-of-law rules.

IV. Reactions Abroad

The experience of many litigants, mainly wives, with civil personal status litigation in the UAE has left them with bitter memories, as the lofty ideals of the newly adopted legislations did not meet their legitimate expectations. This is particularly true when their efforts to invoke and apply their national law, permitted in principle under Article 1 of the 2022 CPSL, proved futile for the reasons mentioned above (III(1)). Many have shared their stories on social media, including dedicated Facebook accounts. Recently, local media such as newspaper articles or radio podcasts have begun to shed light on the practice of civil personal status litigation in the UAE, drawing attention to the negative aspects of litigating personal status disputes in the UAE. For instance, a recent article published in the French newspaper *Le Parisien*, titled " *Dubaï, nouvel eldorado des divorces express* (Dubai, the new haven for first-track divorces)" describes the experiences and hardships of several women who went through such proceedings. Similar reports have also been broadcasted on radio programs

in France and Switzerland. More importantly, the phenomenon risks taking a political turn, as the question of the application of civil personal status law and the protection of the rights of French citizens in the UAE has been formally brought to the attention of the French authorities through a parliamentary question addressed to the Government by a member of the Senate, concerning international divorce proceedings in the UAE involving French couples.

Last but not least, reactions from some European courts were not long in coming: they have refused to recognize divorces issued in the UAE under the civil personal status legislation on the grounds of procedural irregularities (see Alejandra Esmoris, Recognition of Abu Dhabi divorce ruling in Switzerland: Case Law Analysis). Similar reactions are likely to multiply as more parties voice dissatisfaction with the system, particularly when its operation fails to meet the procedural guarantees and substantive safeguards expected under the standards of their personal (European) law. For instance, the *Le Parisien* article mentioned above, refers to petition filed in France by a French lawyer to bar the recognition of a Dubai court's divorce decision rendered in application of the 2022 CPSL. This trend may signal the beginning of broader scrutiny, and perhaps resistance, to the recognition of judgments rendered under the UAE's civil personal status framework.

V. Way forward

Several measures are needed to improve the current situation, the most important of which are a reconsideration of the role that private international law can play and the facilitation of the application of foreign law.

In addition, other procedural aspects require attention. These include the overly broad grounds for taking international jurisdiction, the complete disregard of parallel proceedings (see example, Abu Dhabi Civil Family Court, Judgment No. 86/2024 of 17 May 2024), the refusal to recognize foreign judgments and decrees unless they are first declared enforceable (see my comment here), and the practice of indiscriminately serving notifications via SMS in Arabic without English translation. The way cases are conducted online as reported in the abovementioned *Le Parisien* article (which described a party being represented

by her lawyer while seated in her car with her seatbelt on, during a trial conducted by a judge who had not turned on his camera) also raises concerns. Unless such issues are addressed, judgments rendered under the civil personal status legislations will continue to face denial of recognition and enforcement abroad (see Esmoris, *op. cit.*).