Now Hiring: Research Assistant in Private International Law in Freiburg (Germany)

Are you looking for an academic stay in Germany's sunniest and most eco-friendly city? At the **Institute for Comparative and Private International Law** of the University of **Freiburg** (Germany), **a vacancy** has to be filled at the chair for civil law, private international law and comparative law (Prof. Dr. Jan von Hein), from April 1st, 2022 with

a legal research assistant (salary scale E 13 TV-L, personnel quota 25%).

The assistant is supposed to support the organizational and educational work of the chairholder, to participate in research projects of the chair as well as to teach their own courses (students' exercise). Applicants are offered the opportunity to obtain a doctorate.

The applicant is expected to be interested in the chair's main areas of research. They should possess an above-average German First State Examination (*vollbefriedigend*) or an equivalent foreign degree. A thorough knowledge of civil law and the German language is a necessity. Severely handicapped persons will be preferred if their qualification is equal.

Please send your application (Curriculum Vitae, certificates and, if available, further proofs of talent) to Prof. Dr. Jan von Hein, Albert-Ludwigs-Universität Freiburg, Institut für Ausländisches und Internationales Privatrecht, Abteilung III, Niemensstraße 10 (Peterhof), D?79098 Freiburg (Germany), no later than February 18th, 2022.

As the application documents will not be returned, we kindly request you to submit only unauthenticated copies. Alternatively, the documents may be sent as a pdf file via e-mail to ipr3@jura.uni-freiburg.de.

AG Maciej Szpunar on the interpretation of the ESR in relation to cross-border declarations of waiver of succession and on substitution and characterisation, Opinion of 20 January 2022, C-617/20 – T.N. et al. ./. E.G.

Yesterday, AG Maciej Szpunar delivered an Opinion (a French version is available, a German as well, not yet, however, an English one) that is of high relevance both to the practical application of the European Succession Regulation (ESR) as well as to issues of European choice of law methodology in relation to substitution and characterisation.

The case emerged from a preliminary reference by the German Higher Regional Court (Oberlandesgericht) Bremen of 11 November 2020 and involved the following facts:

The deceased person, a Dutch national, died in Bremen (habitual residence) on 21 May 2018. He left behind his widow (E.G.) and two descendants (T.N. and N.N.)

of his formerly deceased brother. His widow applied by notarial deed of 21 January 2019 for the issuance of a joint certificate of inheritance to the Local Court of Bremen, attributing to her ¾ of the estate and 1/8 to each of T.N. and N.N. The two descendants, however, having their habitual residence in the Netherlands, declared their waiver of succession before the Rechtbank Den Haag on 30 September 2019. In the proceedings before the Local Court of Bremen, T.N. and N.N. were heard, and by letter of 13 December 2019 in Dutch language they submitted copies of their declarations of waiver (as well in Dutch). The German court answered that it would not be able to take notice of these documents as long as it would not receive a translation into German. The two descendants thereupon declared in German to the court by letter of 15 January 2020 that they had waived, properly registered with the Dutch court, and that under European law there would be no need for translation. By decision of 27 February 2020, the Local Court issued the certificate as applied for by the applicant, i.e. certifying T.N. and N.N. as co-heirs. The latters appealed against this decision and, on 30 June 2020 submitted colour copies of the deeds they had used in the Netherlands as well as German translations, on 17 August 2020 they submitted the original deeds. The Local Court referred the case to the Higher Regional Court Bremen and stated that it considers the time limit for waiver under section 1944 (1) German Civil Code of six weeks after gaining knowledge about the inheritance elapsed, as a declaration of waiver would have required timely submission of the original deeds.

Thereupon, the Higher Regional Court of Bremen, in essence, referred the question to the ECJ whether a waiver in the Member State of habitual residence of the heir other than the Member State of habitual residence of the deceased would be capable of replacing the waiver required by the applicable succession law by way of substitution or whether additional requirements exist, such as that the waiving heir informs, with a view to Recital 32 Sentence 2, the competent court in the Member State of habitual residence of the deceased and if so whether the official language of that court must be used and whether the original deeds must be used in order to comply with time limits under the applicable law.

AG Maciej Szpunar reframed this question (para. 34): According to his subtle analysis, the question should be whether Articles 13 and 28 ESR are, of course autonomously (see para. 50), to be interpreted to the effect that the requirement to declare a waiver before the competent court („*Nachlassgericht*“) must be

characterised as a question of form rather than substance which would lead to the application of the law of the Member State of the waiving heirs on this point of form under Article 28 lit. b ESR. Whereas only if this question were to be characterised as a matter of substance, the question of substitution could at all be posed. It will not come as a surprise that with this point made, the result of the – careful and comprehensive – analysis of this issue of characterisation (paras. 45 – 69), including considerations on the effet utile of the ESR (para. 64), was that indeed the point must be considered as one of form. The consequence is that since the local form was complied with in the Netherlands, the waiver must be held valid as of 30 September 2019 and as such still in time under the applicable succession law – a result that indeed facilitates cross-border succession cases in an important aspect as it is the overall objective of the ESR.

Remains the problem of how to ensure that the competent court takes notice of such a waiver (paras. 70 et seq.). This is the issue of Recital 32 Sentence 2: „Persons choosing to avail themselves of the possibility to make declarations in the Member State of their habitual residence should themselves inform the court or authority which is or will be dealing with the succession of the existence of such declarations within any time limit set by the law applicable to the succession." However, as in the concrete case at hand the court definitively had knowledge about the waiver, the question was not relevant and thus remained expressly left open (para. 77). As it was expressly left open as irrelevant in the concrete case we may at least conclude that any kind of gaining knowledge must suffice. Then the only remaining question is what happens if the court did not gain any knowledge. From a practical point of view a party interested in bringing its waiver to the attention of the competent court, it seems that a letter (or even an email) to that court should suffice.

One last question. Could we not say: either it is "substance", then Article 13 refers to the lex causae (German law) or it is "form", then Article 28 refers to the same law (German law) under lit. a and then substitution comes up, or, alternatively, under lit. b, to the law for formal issues (Dutch law). And when further proceeding sub lit. a of Article 28, could not substitution provide for the same result, at least in this concrete case, than applying lit. b? If so, we might be tempted to add that two parallel avenues to the same result indicate quite reliably that the result must be the right one. It might have been for reasons of simplifying things that AG Maciej Szpunar did not fully map out these two avenues, all the

more because substitution is a technique that is little explored on the level of the EU's PIL. However, if even the referring national court directly asks about substitution, the ECJ should take the opportunity to give us a bit more insights on this classical concept of the general part of any PIL from the perspective of the EU's conflicts of law methodology.

Let's hope that the ECJ takes up the ball and discusses the theoretical connotations of this case on methodical questions of characterisation and substitution as precisely and subtly as it was done in the Opinion. The CoL community will certainly await the judgment with excitement.

Relevant provisions of the ESR

Article 13: Acceptance or waiver of the succession, of a legacy or of a reserved share

In addition to the court having jurisdiction to rule on the succession pursuant to this Regulation, the courts of the Member State of the habitual residence of any person who, under the law applicable to the succession, may make, before a court, a declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person concerned in respect of the liabilities under the succession, shall have jurisdiction to receive such declarations where, under the law of that Member State, such declarations may be made before a court.

Article 28: Validity as to form of a declaration concerning acceptance or waiver

A declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person making the declaration, shall be valid as to form where it meets the requirements of: (a) the law applicable to the succession pursuant to Article 21 or Article 22; or (b) the law of the State in which the person making the declaration has his habitual residence.

Recital 32:

In order to simplify the lives of heirs and legatees habitually resident in a Member State other than that in which the succession is being or will be dealt with, this

Regulation should allow any person entitled under the law applicable to the succession to make declarations concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or concerning the limitation of his liability for the debts under the succession, to make such declarations in the form provided for by the law of the Member State of his habitual residence before the courts of that Member State. This should not preclude such declarations being made before other authorities in that Member State which are competent to receive declarations under national law. Persons choosing to avail themselves of the possibility to make declarations in the Member State of their habitual residence should themselves inform the court or authority which is or will be dealing with the succession of the existence of such declarations within any time limit set by the law applicable to the succession

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Court of Justice of the EU on the recognition of parentage

After the Coman judgment of 2018, the Grand Chamber of the Court of Justice of the European Union (CJEU) has again rendered a judgment in the field of free movement of citizens that is of importance for private international law. Like in Coman, the judgment in V.M.A. of 14 December 2021 concerned a non-traditional family of which the members sought to make use of their right to free movement in the EU under the Treaty on the Functioning of the European Union (TFEU) and Directive 2004/38. The Charter of Fundamental Rights of the EU (Charter) was also pertinent, particularly its Article 7 on respect for private and family life, Article 9 on the right to marry and the right to found a family, Article 24 on the rights of the child, and Article 45 on freedom of movement and of residence.

While Coman concerned the definition of “spouse” under Article 2 of the Directive, in V.M.A. the CJEU addressed the definition of “direct descendants” in the same provision.

Two women, V.M.A., a Bulgarian national, and K.D.K., a national of the United Kingdom, were married and lived in Spain. A daughter, S.D.K.A., was born in Spain. Her Spanish birth certificate indicated V.M.A. as "mother A" and K.D.K. as "mother". V.M.A. applied to the Sofia municipality for a birth certificate for S.D.K.A. in order to obtain a Bulgarian identity document for her. She submitted a legalised and certified translation into Bulgarian of the extract from the civil register of Barcelona.

The Sofia municipality refused this application, due to the lack of information on S.D.K.A.'s biological mother and because the reference to two mothers was contrary to Bulgarian public policy.

The Administrative Court of the City of Sofia, to which V.M.A. appealed the municipality's decision, posed four questions to the CJEU. It sought to know whether Articles 20 and 21 of the TFEU and Articles 7, 24 and 45 of the Charter oblige Bulgaria to recognise the Spanish birth certificate despite its mentioning two mothers and despite the fact that it was unclear who the biological mother of the child was. It also questioned EU Member States' discretion regarding rules for the establishment of parentage. A further relevant point was Brexit and the fact that the child would not be able to get EU citizenship through the other mother, who is a UK citizen.

The Grand Chamber ruled as follows:

Article 4(2) TEU, Articles 20 and 21 TFEU and Articles 7, 24 and 45 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 4(3) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, must be interpreted as meaning that, in the case of a child, being a minor, who is a Union citizen and whose birth certificate, issued by the competent authorities of the host Member State, designates as that child's parents two persons of the same sex, the Member State of which that child is a national is obliged (i) to issue to that child an identity card or a passport without requiring a birth certificate to be drawn up beforehand by its national authorities, and (ii) to recognise, as is any other Member State, the document from the host

Member State that permits that child to exercise, with each of those two persons, the child's right to move and reside freely within the territory of the Member States.

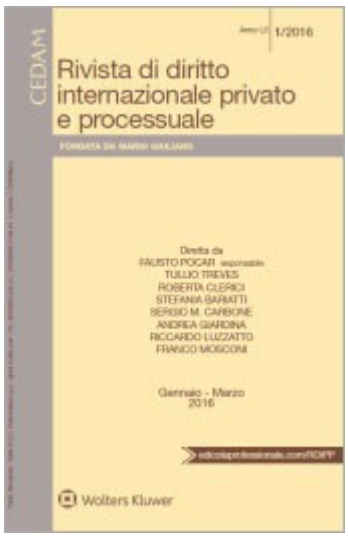
The CJEU thus obliges Bulgaria, through EU law, to recognise the Spanish birth certificate. The CJEU is not concerned with the issue of a birth certificate in Bulgaria, but rather with the identity document (the requirements under national law for the identity document cannot be used to refuse to issue such identity document – see para 45).

The parentage established lawfully in Spain has the result that the *parents of a Union citizen who is a minor and of whom they are the primary carers, be recognised by all Member States as having the right to accompany that child when her right to move and reside freely within the territory of the Member States is being exercised* (para 48)

The CJEU refers to the identity document as the document that permits free movement. This wording seems, on a first reading, to be broader than the ruling in Coman, where the CJEU ruled on the recognition of the same-sex marriage only for purposes of the right to residence. However, in para 57 the Court seems to include the Coman limitation: *Such an obligation does not require the Member State of which the child concerned is a national to provide, in its national law, for the parenthood of persons of the same sex, or to recognise, for purposes other than the exercise of the rights which that child derives from EU law, the parent-child relationship between that child and the persons mentioned on the birth certificate drawn up by the authorities of the host Member State as being the child's parents.*

But I'm sure much debate will follow about the extent of the obligation to recognise. As readers might be aware, the European Commission earlier this year set up an Expert Group on the Recognition of Parentage between Member States.

Rivista di diritto internazionale privato e processuale (RDIPP) No 3/2021: Abstracts



The third issue of 2021 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released. It features:

Cristina Campiglio, Professor at the University of Pavia, **Conflitti positivi e negativi di giurisdizione in materia matrimoniale** (Positive and Negative Conflicts of Jurisdiction in Matrimonial Matters)

> Regulation (EC) No 2201/2003 (Brussels II-bis) provides for a range of alternative grounds for jurisdiction in matrimonial matters and is strongly marked by the *favor actoris* principle. The system sets the scene not only for forum shopping but also for a rush to the court. However, spouses who have the nationality of different Member States and reside in a Third State remain deprived of the right to an effective remedy before an EU court. Taking a cue from a case currently pending before the Court of Justice of the European Union, this article examines the possible avenues to address these cases of denial of justice, also in light of Art. 47 of the EU Charter of Fundamental Rights. This analysis is conducted, in particular, with the overarching goal of

launching, at a political level, a general reflection on the question of conflicts of jurisdiction and on the opportunity to create a coherent, unified "European system" in which general and special regulations operate in a coordinated manner.

Fabrizio Marrella, Professor at the Ca' Foscari University of Venice, **Forza maggiore e vendita internazionale di beni mobili in un contesto di pandemia: alcune riflessioni** (*Force Majeure* and International Sales of Goods in the Context of a Pandemic: Some Remarks)

> For centuries, national legal systems have recognised both the principle *pacta sunt servanda* and its exceptions, *i.e*. the *rebus sic stantibus* and *ad impossibilia nemo tenetur* principles. However, the manner in which these basic rules operate varies in the landscape of comparative law. The unforeseeable change of circumstances is among the most relevant issues for international contracts. For this reason, international commercial practice has provided some standard solutions. The Vienna Convention on the International Sale of Goods (CISG) of 11 April 1980 is among the instruments that provide some uniform law solutions: however, these are not satisfactory when compared to modern commercial practice and the potential litigation arising from the Covid-19 pandemic crisis. In this context, legal doctrine on the private international law aspects of *force majeure* also seems scarce. This article explores some of the most pressing private international law issues arising from the impact of the Covid-19 pandemic on cross-border B2B contracts. Notably, it analyses the choice of the *lex contractus* and its scope in relation to *force majeure*, addressing issues of causation, penalty clauses, evidence (with particular reference to "*force majeure* certificates" imposed by some governments), payment, and overriding mandatory rules.

The following comments are also featured:

Marco Argentini, PhD Candidate at the University of Bologna, **I criteri di radicamento della giurisdizione italiana nei contratti di trasporto aereo transnazionale** (The Criteria for Establishing Italian Jurisdiction in Contracts for International Carriage by Air)

> This article analyses the rules to identify the competent courts, in the field of international air carriage contracts, for passenger claims aimed at obtaining

the flat-rate and standardised rights provided for in Regulation No 261/2004 and the compensation for further damage under the Montreal Convention. In particular, the jurisdiction over the former is governed by the Brussels I-bis Regulation, whereas the one over the latter is governed by the Convention itself. Since passengers are the weaker contractual party, the article also addresses some remedies to avoid fragmentation of legal actions between courts of different States, as well as the particular case, tackled by the Court of Justice of the European Union, of a flight forming part of a broader package tour.

Claudia Cantone, PhD Candidate at the University "Luigi Vanvitelli" of Campania, **Estradizione e limiti all'esercizio della giurisdizione penale extraterritoriale nel diritto internazionale: riflessioni a margine della sentenza della Corte di cassazione n. 30642/2020** (Extradition and Limits to the Exercise of Extraterritorial Criminal Jurisdiction in International Law: Reflections on the Court of Cassation's Judgment No 30642/2020)

This article builds upon the judgment of the Court of Cassation 22 October 2020 No 30642, delivered in an extradition case towards the United States of America. The decision of the Supreme Court is noteworthy since, for the first time, the Court examines the restrictions imposed by public international law on States in the exercise of criminal jurisdiction outside their territory. Notably, it states that the existence of a "reasonable connection" could justify the exercise of extraterritorial jurisdiction under international law. In this regard, the Author also analyses the emerging principle of jurisdictional reasonableness in the theory of jurisdiction under international law. Finally, the paper focuses on whether, in extradition proceedings, the judicial authority of the requested State might ascertain the basis of jurisdiction upon which the request is based, taking into consideration the absence of any provision in extradition treaties allowing such assessment.

Curzio Fossati, PhD Candidate at the University of Insubria, **Le azioni di private enforcement tra le parti di un contratto: giurisdizione e legge applicabile** (Private Enforcement Actions between Parties to a Contract: Jurisdiction and Applicable Law)

This article deals with the main private international law issues of antitrust damage claims between contracting parties, according to the latest rulings of

the Court of Justice of the European Union. In particular, these issues concern (a) the validity and the scope of jurisdictions clauses, (b) the determination of jurisdiction under the Brussels I-bis Regulation, and (c) the applicable law under the Rome I and the Rome II Regulations. The article aims at demonstrating that the analysis of these aspects should be preceded by the proper characterization of the damage action for breach of competition law between contracting parties. The conclusion reached is that the adoption of a univocal method to characterize these actions as contractual or non-contractual fosters coherent solutions.

In addition to the foregoing, this issue features the following book review by *Francesca C. Villata*, Professor at the University of Milan: Matthias HAENTJENS, ***Financial Collateral: Law and Practice***, Oxford University Press, New York, 2020, pp. XXXIX-388.

Indonesia deposits its instrument of accession to the HCCH 1961 Apostille Convention

Guest post by Priskila P. Penasthika, Ph.D. Researcher at Erasmus School of Law – Rotterdam and Lecturer in Private International Law at Universitas Indonesia.

Indonesian Accession to the HCCH 1961 Apostille Convention

After almost a decade of discussions, negotiations, and preparations, Indonesia has finally acceded to the HCCH 1961 Apostille Convention. In early January this year, Indonesia enacted Presidential Regulation Number 2 of 2021, signed by President Joko Widodo, as the instrument of accession to the HCCH 1961 Apostille Convention. The HCCH 1961 Apostille Convention is the first HCCH Convention to which Indonesia became a Contracting Party.

In its accession to the HCCH 1961 Apostille Convention, Indonesia made a

declaration to exclude documents issued by the Prosecutor Office, the prosecuting body in Indonesia, from the definition of public documents whose requirements of legalisation have been abolished in accordance with Article 1(a) of the HCCH 1961 Apostille Convention.

In accordance with Article 12 of the Convention, Indonesia deposited its instrument of accession to the HCCH 1961 Apostille Convention with the Ministry of Foreign Affairs of the Netherlands on 5 October 2021. The ceremony was a very special occasion because it coincided with the celebration of the 60th anniversary of the Convention. Therefore, the ceremony was part of the Fifth Meeting of the Special Commission on the practical operation of the HCCH 1961 Apostille Convention and witnessed by all Contracting Parties of the Convention.

The Minister of Law and Human Rights of the Republic of Indonesia, Yasonna H. Laoly, joined the ceremony and delivered a speech virtually via videoconference from Jakarta. Minister Laoly voiced the importance of the HCCH 1961 Apostille Convention for Indonesia and underlined Indonesia's commitment to continue cooperating with the HCCH.

Indonesia's accession to the HCCH 1961 Apostille Convention brings good news for the many parties concerned. The current process of public document legalisation in Indonesia still follows a traditional method that is highly complex, involves various institutions, and is time-consuming and costly. Because of the accession to the Convention, the complicated and lengthy procedure will be simplified to a single step and will involve only one institution – the designated Competent Authority in Indonesia. Referring to Article 6 of the HCCH 1961 Apostille Convention, in its accession to the Convention, Indonesia designated the Ministry of Law and Human Rights as the Competent Authority. When the HCCH 1961 Apostille Convention enters into force for Indonesia, this Ministry will be responsible for issuing the Apostille certificate to authenticate public documents in Indonesia for use in other Contracting Parties to the Convention.

A Reception Celebrating the 60th Anniversary of the HCCH 1961 Apostille Convention and Indonesian Accession

To celebrate the 60th anniversary of the HCCH 1961 Apostille Convention and Indonesia's accession to it, an evening reception was held on 5 October 2021 at

the residence of the Swiss ambassador to the Kingdom of the Netherlands in The Hague. The reception was organised at the invitation of His Excellency Heinz Walker-Nederkoorn, Swiss Ambassador to the Kingdom of the Netherlands, His Excellency Mayerfas, Indonesian Ambassador to the Kingdom of the Netherlands, and Dr Christophe Bernasconi, Secretary-General of the HCCH. Representatives of some Contracting Parties to the HCCH 1961 Apostille Convention attended the reception; among other attendees were the representatives from recent Contracting Parties such as the Philippines and Singapore, as well as some of the earliest signatories, including Greece, Luxembourg, and Germany.

The host, Ambassador Walker-Nederkoorn, opened the reception with a welcome speech. It was followed by a speech by Ambassador Mayerfas. He echoed the statement of Minister Laoly on the importance of the HCCH 1961 Apostille Convention for Indonesia, especially as a strategy to accomplish the goals of Vision of Indonesia 2045, an ideal that is set to commemorate the centenary of Indonesian independence in 2045. Ambassador Mayerfas also emphasised that Indonesia's accession to the HCCH 1961 Apostille Convention marked the first important step for future works and cooperation with the HCCH.

Thereafter, Dr Christophe Bernasconi warmly welcomed Indonesia as a Contracting Party to the HCCH 1961 Apostille Convention in his speech at the reception. He also voiced the hope that Indonesia and HCCH continue good cooperation and relations, and invited Indonesia to accede to the other HCCH Conventions considered important by Indonesia.

The Entry into Force of the HCCH 1961 Apostille Convention for Indonesia

Referring to Articles 12 and 15 of the HCCH 1961 Apostille Convention, upon the deposit of the instrument of accession, there is a period of six months for other Contracting Parties to the Convention to raise an objection to the Indonesian accession. The HCCH 1961 Apostille Convention will enter into force for Indonesia on the sixtieth day after the expiration of this six-month period. With great hope that Indonesia's accession will not meet any objection from the existing Contracting Parties to the Convention, any such objection would affect only the entry into force of the Convention between Indonesia and the objecting Contracting Party. The HCCH 1961 Apostille Convention will therefore enter into force for Indonesia on 4 June 2022.

A more in-depth analysis (in Indonesian) concerning the present procedure of public document legalisation in Indonesia and the urgency to accede to the HCCH 1961 Apostille Convention can be accessed here. An article reporting the Indonesian accession to the HCCH 1961 Apostille Convention earlier this year can be accessed here.

Call for Papers and Panels: "Identities on the move – Documents cross borders" Final Conference

by **Paul Patreider**

The European Project "***DXB – Identities on the move – Documents cross borders***" aims at facilitating the dissemination and implementation of Regulation (EU) 2016/1191 in the everyday practice of several EU Member States, improve the knowledge of the links between circulation of public documents, fundamental rights and freedom of movement, ensure a sound implementation of the Regulation for "hard cases" and raise awareness among registrars and legal practitioners. The partnership is supported by a consortium of academic institutions and associations of registrars. More information on the Project and its partners on the official website.

DxB's Final Conference takes place on **23–24 June 2022** at the premises of A.N.U.S.C.A.'s **Academy in Castel San Pietro Terme, Bologna (Italy)**. The conference will offer a unique opportunity to take stock of the implementation status of Regulation (EU) 2016/1191. The event will also launch the Commentary and the EU-wide comparative survey placing the Regulation in the context of daily national practice.

The Conference will be a truly international event, gathering scholars, registrars,

public administrators, political scientists, judges, PhD students and practitioners from all over Europe. Translation services are offered in **English**, **Italian and German**. To ensure wide participation as well as the variety of topics and viewpoints, we are pleased to announce a **Call for Papers & Panels**.

CONFERENCE TOPICS

Regulation (EU) 2016/1191 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents has so far gone largely unnoticed in scholarly debates and practitioners' discussions. As issues related to the circulation and mutual recognition of authentic instruments in civil status and criminal matters are becoming more and more pressing, the Regulation represents a great opportunity to strengthen the principles and values of the European Union.

Given the strict connection between the scientific and practical dimension of Regulation 2016/1191, authors are invited to examine how this act is currently implemented in the context of national civil status systems and fundamental rights. They should explore the potential positive impact on the freedom of movement of European citizens and on the enjoyment of their fundamental rights as well as focus on critical aspects and deficiencies of the current legal framework.

We encourage applicants to submit proposals for papers and panels related to the Regulation and its context. Possible topics include:

- The creation of a common European civil status framework;
- The **notion of "public document"** under the Regulation and similar instruments (e.g. formal and substantial requirements) and under domestic law;
- The circulation of **criminal records**;
- Problems arising from the lack of standardized definitions shared by all Member States (e.g. **"crime", "sex", "intended parent", "intersex"**);
- The impact of the Regulation on the effective exercise of the **freedom of movement**;
- Connections between **EU citizenship**, national citizenship status, and circulation of public documents;

- Case-law of the Court of Justice influencing the interpretation and implementation of the Regulation, with special regard to the Charter of Fundamental Rights and the ECHR;
- Exercise of **electoral rights** and the circulation of public documents under Article 2.2. of the Regulation;
- Analysis of "**hard cases**" when applying the Regulation (e.g. marriages celebrated by religious authorities as third-country public documents etc.);
- The Regulation in comparison to the **ICCS Conventions** and other relevant international conventions (e.g. the Hague Apostille Convention (1961));
- **E-Justice Portal tools** (e.g. the multilingual form-filling system) and the efficiency of the Internal Market Information System (IMI) in the event of doubts as to the veracity of the documents, or the authenticity of the authority that signed them;
- The **digitalization of documents** and their circulation; how to ensure the authenticity of digital documents (both native digital size or digital copies of a paper original); forms of electronic signature or seals, with special regard to electronic signatures governed by the **eIDAS Regulation** and country-specific standards;
- Extension of the scope of the Regulation to public documents relating to, among others, the **legal status and representation of a company or other undertakings**, diplomas, certificates and other evidence of formal qualifications, officially recognised disabilities, etc. (see article 23 of the Regulation);
- Critical issues related to **multilingual standard forms** (**regional/local linguistic minorities**; public documents for which multilingual standard forms are not yet established by the Regulation etc.).

WHO SHOULD PARTICIPATE

Participation is not restricted to **lawyers** or to **established scholars**. We welcome **registrars, public administrators, professionals, practitioners, doctoral students**. We welcome proposals that offer multi-disciplinary perspectives from various areas of law (including European, civil, administrative, comparative, international, criminal, and labour law), as well as from scholars in

the humanities and the social sciences (e.g. history, economics, political science, sociology) with an interest in the Conference's themes. We also welcome submissions from both senior and junior scholars (including doctoral students) as well as interested practitioners.

PAPER AND PANEL SUBMISSIONS

- Submit your **PAPER proposal** with an **abstract of a maximum of 500 words** and **5 keywords**. The abstract must also contain **Title**, **Name**, **Affiliation** (e.g. university, institution, professional association), **Country** and **E-mail address**.
- Submit your **PANEL proposal** with an **abstract of a maximum of 800 words** and **5 keywords**. We welcome a state-of-the art symposium or a round-table providing on key issues. Fully formed panel proposals should include at least three and no more than five presentations by scholars or practitioners who have agreed in advance to participate. Panel proposals should also identify **one panel chair/moderator**. Include: **title of the panel**, **names of speakers** and of the **chair/moderator** and their **affiliation** (e.g. university, institution, professional association), t**itle of each presentation** (if applicable), e**-mail address** of panel participants, **language**(s) to be used.

We encourage submissions in **English**. However, as part of the vision of a truly European conference, paper and panel proposals will also be **accepted in Italian and German**.

Selected paper authors will receive further information on the publication of the proceedings.

Submission templates for paper & panel proposal are available on the DXB website.

HOW AND WHEN TO SUBMIT

Send proposals to: info@identitiesonthemove.eu. Indicate in the e-mail subject line: *"Conference call – name of the (lead) author (or moderator) – Title of the*

paper or panel proposal".

The deadline for submitting the paper or panel abstract proposal is 22 December 2021.

Applicants will be informed about the outcome of the abstract selection process no later than **15 January 2022**. If successfully selected, full papers must be submitted by **15 April 2022**.

PROGRAMME AND REGISTRATION

The draft of the **Conference Programme** will be published on 1st March 2022. The final Conference Programme with all panel sessions will become available on 25 April 2022.

Registration for the Conference opens on the DXB website on 15 January and **closes on 20 May 2022**.

The event will be held in person, in compliance with the current health safety regulations, and will also be **broadcast online via live streaming with free access**.

Onsite participants will need a **Covid-19 digital certificate** (Green Pass), or equivalent certificate recognized under Italian law, if still so required by the Authorities at the time of the conference.

N.B. All speakers and moderators, including those invited under the call, are required to attend the event in person.

Registration fee: it includes conference materials, shuttle service (see website for details), tea/coffee and lunch refreshments as well as the certificate of attendance.

Ordinary fee: 80 Euros

Reduced student fee (including Ph.D. students): 40 Euros

Check the Project website for updates.

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The Nigerian Court of Appeal recognises the Immunity of the President of the Commission of ECOWAS from being impleaded in Nigerian courts

This is a case note on the very recent Nigerian Court of Appeal's decision that recognised the immunity of the President of the Commission of ECOWAS (Economic Community of West African States) from being impleaded in Nigerian courts.[1]

In Nigeria, the applicable law in respect of diplomatic immunities and privileges is the Diplomatic Immunities and Privileges Act, which implements aspects of the Vienna Convention on Diplomatic Relations 1961 (the "Vienna Convention"). Under the Diplomatic Immunities and Privileges Act, foreign envoys, consular officers, members of their families, and members of their official and domestic staff are generally entitled to immunity from suit and legal process.[2] Such immunities may also apply to organisations declared by the Minister of External Affairs to be organisations, the members of which are sovereign powers (whether foreign powers or Commonwealth countries or the Governments thereof).[3]

Where a dispute arises as to whether any organisation or any person is entitled to immunity from suit and legal process, a certificate issued by the Minister stating any fact relevant to that question shall be conclusive evidence of that fact.[4]

In a very recent case the claimant/respondent who was a staff of the Commission of ECOWAS sued the defendant/appellant in the National Industrial Court in Nigeria for orders declaring his suspension from office by the Commission unlawful and a violation of ECOWAS Regulations, and damages from the defendant/appellant for publishing what the claimant/respondent considered a "libelous" suspension letter. The defendant/appellant responded to the suit with a statement of defence and equally filed a motion of notice objecting to the jurisdiction of the National Industrial Court on grounds of diplomatic immunity he enjoys from proceedings in municipal courts of Nigeria by virtue of the Revised Treaty of ECOWAS, General Convention on Privileges and Immunities of ECOWAS and the Headquarters Agreement between ECOWAS and the Government of the Republic of Nigeria. He also placed reliance on Principles of Staff Employment and ECOWAS staff Regulations. In addition he attached a certificate from Nigeria's Minister of Foreign Affairs which acknowledged his diplomatic immunity.

The trial court (Haastrup J) held that it had jurisdiction and dismissed the preliminary objection of the defendant/appellant. It relied on Section 254C (2)[5] of the 1999 Constitution (as amended in 2011) and Order 14A Rule 1 (1)[6] of the National Industrial Court of Nigeria(Civil Procedure) Rules, 2017 to hold that the National Industrial Court had jurisdiction to resolve all employment matters in Nigeria, including cases that have an international element.

The Nigerian Court of Appeal unanimously allowed the appeal. Ugo JCA in his leading judgment held as follows:

"So this Certificate of the Minister of Foreign Affairs of Nigeria attached to the affidavit of Chika Onyewuchi in support of appellant's application/objection before the trial National Industrial Court for the striking out of the suit is sufficient and in fact conclusive evidence of the immunity claimed by appellant. That also includes the statement of the Minister in paragraph 2 of the same certificate that the ECOWAS Revised Treaty of 1993 was *"ratified by the Federal Republic of Nigeria on 1st July, 1994,"* thus, putting paid to the trial Judge's contention that appellant needed to prove that the said treaty was ratified by Nigeria for him to

properly claim immunity.
Even Section 254C(2) of the 1999 Constitution of the Federal Republic of Nigeria which states that 'Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith,' does not by any means have the effect of conferring jurisdiction on the National Industrial Court over diplomats. In fact Section 254C(2) of the 1999 Constitution, as was correctly argued by Mr. Obi, only confers on the National Industrial Court power to apply international conventions, protocols and treaties ratified by Nigeria relating to labour, employment, workplace, industrial relations and matters connected therewith while exercising its jurisdiction over persons subject to its jurisdiction. Diplomats who enjoy immunity from Court processes from municipal Courts in Nigeria like the Respondent are not such persons. Incidentally, the apex Court in *African Reinsurance Corporation v. Abate Fantaye* (1986) 3 NWLR (PT 32) 811 in very similar circumstances conclusively put to rest this issue of immunity from proceedings in municipal Courts enjoyed by persons like appellant. That case was cited to the trial Judge so it is surprising that she did not make even the slightest reference to it in expanding her jurisdiction to appellant who has always insisted, correctly, on his immunity. In truth, the lower Court did not simply expound its jurisdiction but attempted to expand it too. A Court is competent when, among others, the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction…
Appellant's diplomatic status and his consequent immunity from proceedings in the Courts of this country was such a feature that prevented the National Industrial Court from exercising jurisdiction over him and Suit No. NICN/ABJ/230/2019 of respondent; it was therefore wrong in holding otherwise and dismissing his preliminary objection…"[7]

Adah JCA in his concurring judgment held as follows:

"The Appellant, being an international organization enjoys immunity from suit and legal process, both by virtue of Section 11 and 18 of the 1962 Act, and Certificate issued by the Minister of External Affairs. Where a sovereign or International Organization enjoys immunity from suit and legal process, waiver of such

immunity is not to be presumed against it. Indeed, the presumption is that there is no waiver until the contrary is established. Thus, waiver of immunity by a Sovereign or International Organization must be expressly and positively done by that Sovereign or International Organization.

In the instant case, the appellant from the record before the Court is an international organization. The Foreign Affairs Minister of Nigeria had given a certificate to indicate the immunity of the appellant. Exhibit CA issued by the Ministry of Foreign Affairs on 16th January, 2020 in paragraphs 2 and 3 thereof state as follows:

"2. The ministry of Foreign Affairs wishes to reaffirm the status of the ECOWAS Commission as an international organization and the immunity and privileges of the Commission and its staff members with exception of Nigerians and holders of Nigeria permanent residency from Criminal, Civil and Administrative proceedings by virtue of ECOWAS Revised Treaty by of 1993, which was ratified by the Federal Republic of Nigeria on 1st July, 1994.
3. The Headquarters Agreement between the ECOWAS Commission and the Federal Republic of Nigeria also confers immunity on officials and other employees of ECOWAS by virtue of Article VII (3) (C) of the Agreement."

It is very clear therefore, that the appellant is covered by the Diplomatic Immunities and Privileges Act and is not amenable to the jurisdiction of the Municipal Courts. The fact that their base is in Nigeria or that Nigeria is the Host Country of the appellant does not make the appellant subserviate to the jurisdiction of Nigerian Courts. It is therefore, the law as stated lucidly in the leading judgment of my learned brother that the lower Court has no jurisdiction to entertain the claim against the appellant…"[8]

This is not the first time Nigerian courts have dealt with the issue of impleading a diplomat or foreign sovereign before the Nigerian court.[9] The decision of the trial judge was surprising in view of the weight of authorities from the Nigerian Supreme Court and Court of Appeal on the concept of diplomatic immunities in Nigeria. The claimant/respondent may have argued that matters of employment qualify as waiver of diplomatic immunity, but this position has never been explicitly endorsed by Nigerian courts. The Supreme Court of Nigeria has only accepted the concept of waiver in situations where the person claiming immunity entered into commercial transactions with the claimant.[10]

Looking at the bigger picture how does an employee who has been unfairly dismissed by a diplomatic organisation gain access to justice in Nigerian and African courts? Should the law be reformed in Nigeria and African countries to take into account the interest of employees as weaker parties?

[1] *President of the Commission of ECOWAS v Ndiaye* (2021) LPELR-53523(CA).

[2]Diplomatic Immunities and Privileges Act, Cap D9 LFN 2004 ss 1, 3-6.

[3]ibid, ss 11 and 12.

[4]ibid, s 18.

[5] 'Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.'

[6] It provides that:

1.—(1) Where an action involves a breach of or non-compliance with an international protocol, a convention or treaty on labour, employment and industrial relations, the Claimant shall in the complaint and witness statement on oath, include,

(a) the name, date and nomenclature of the protocol, convention or treaty ; and

(b) proof of ratification of such protocol, convention or treaty by Nigeria.

(2) In any claim relating to or connected with any matter, the party relying on the International Best Practice, shall plead and prove the existence of the same in line with the provisions relating to proof of custom in the extant Evidence Act."

[7] *President of the Commission of ECOWAS v Ndiaye* (2021) LPELR-53523(CA) 19-20.

[8] *Ibid* 24-26.

[9] See generally CSA Okoli and RF Oppong, *Private International Law in Nigeria* (Hart, Oxford, 2020) (chapter 7).

[10]*African Reinsurance Corporation v JDP Construction (Nig) Ltd* (2007) 11 NWLR 224, 234-5 (Akintan JSC)..

CJEU on donation mortis causa under the Succession Regulation in the case UM, C-277/20

This Thursday, the Court of Justice delivered its judgment in the case UM, C-277/20, where it clarifies whether a donation mortis causa may fall within the scope of the notion of "agreement as to succession" in the sense of the Succession Regulation.

The request for a preliminary ruling in this case arises out of proceedings in Austria on the inscription in the land registry of the property right to real estate situated in that Member State. The requested inscription is supposed to be made on the basis of a contract of donation mortis causa in respect to that real estate, entered into between two German nationals habitually resident in Germany. Prior to the request for the inscription, the succession proceedings have been opened before a German court for the last place of residence of the donor.

Before the Austrian courts, the request for the inscription of the propriety right have been already rejected by two instances and ultimately the Oberster Gerichtshof referred to the Court the preliminary questions that read as follows:

> *Is Article 3(1)(b) of [the Succession Regulation] to be interpreted as meaning that a contract of donation mortis causa entered into between two German nationals habitually resident in Germany in respect of real estate located in*

> *Austria, granting the donee a right having the character of an obligation against the estate to registration of his title after the donor's death pursuant to that contract and the donor's death certificate, that is without the intervention of the probate court, is an agreement as to succession within the meaning of that provision?*
>
> *If the answer to the above question is in the affirmative: Is Article 83(2) of [The Succession Regulation] to be interpreted as meaning that it also regulates the effect of a choice of applicable law made before 17 August 2015 for a contract of donation mortis causa that is to be qualified as an agreement as to succession within the meaning of Article 3(1)(b) of [the Succession Regulation]?*

In his Opinion presented this July, AG Richard de la Tour considered that Article 3(1)(b) of the Succession Regulation must be interpreted to the effect that the notion of "agreement as to succession" includes donation contracts inter vivos, by which, in favor of the donee, the transfer of the ownership of one or several assets even only partially accounting for the hereditary estate of the donor does not take place until the death of the donor.

In its judgments, the Court also **pronounces itself in favour of the interpretation according to which a contract of donation mortis causa is to be qualified as an "agreement as to succession".**

The reasoning of the Court commences with the juxtaposition of exclusion from the scope of the application of the Succession Regulation provided for in its Article 1(2)(g) ["shall be **excluded (…) property rights (…) created or transferred otherwise than by succession, for instance by way of gifts**"], on the one hand, and definition of the notion of "agreement as to succession" in the sense of Article 3(1)(b) of the Succession Regulation ["an agreement resulting from mutual wills, which, with or without consideration, **creates, modifies or terminates rights to the future estate or estates** (…)], on the other hand (paragraph 27).

The Court stresses then the importance of **autonomous and uniform interpretation** of the notions of the Succession Regulation (paragraph 29) and contends that the very wording of the definition of the notion of "agreement as to succession" indicates that this notion covers also transfers relating to **future estates** (paragraph 30).

By contrast, the second preliminary question is answered in the negative. For the Court, as nothing indicates that a choice of law applicable have been made to succession as a whole, Article 83(2) of the Succession Regulation is not applicable to the case at hand. As such, the choice made solely with regards to the agreement as to succession is not governed by Article 83(2) (paragraph 39).

The judgment can be found here (in German and French so far).

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 5/2021: Abstracts

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

B. Heiderhoff: **International Product Liability 4.0**

While the discussion on how liability for damages caused by autonomous systems, or “artificial intelligence”, should be integrated into the substantive law is well advanced, the private international law aspect has, so far, been neglected. In this contribution, it is shown that unilateral approaches – such as the EU Parliament has suggested (P9_TA-PROV(2020)0276) – are unnecessary and detrimental. It is preferable to develop a classical conflict of laws rule with connecting factors, which mirror the assessments of the substantive law. It is shown that a mere reinterpretation of the existing Article 5 Rome II Regulation might lead to legal insecurity, and that an addition of the provision is preferable. In particular, the notion of marketing, and its importance as a connecting factor, should be revised.

K. Vollmöller: **The determination of the law applicable on claims for infringement of trade secrets in contractual relationships**

Subject of the article is the determination of the applicable law in cross-border situations when a lawsuit is based on the violation of trade secrets within a contractual relationship. According to German Law, claims for infringement of trade secrets are regulated in the German Trade Secrets Act (Geschäftsgeheimnisgesetz – GeschGehG) that has implemented the European Directive 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure. The focus is on the question how tort claims are connected if the contracting partners have agreed on confidentiality terms, in particular under a non-disclosure agreement. In case the agreement of the parties is ruled by the laws of a Non-European state, it is doubtful whether the harmonized European trade secret law is applicable. The author comes to the conclusion that a secondary connection to the jurisdiction governing the agreement according to Art. 4 Paragraph 3 Rome II Regulation should be limited to relationships where the parties have assumed further contractual obligations beyond confidentiality. In this case, the law applicable on the contract overrides the harmonized European trade secret law regulations which cannot be considered as mandatory rules either.

T. Lutzi: **Ruth Bader Ginsburg – Internationalist by Conviction**

In Ruth Bader Ginsburg, the Supreme Court has not only lost an icon of gender equality and towering figure, but also a great internationalist. Ginsburg's jurisprudence was characterised by her own academic background as a proceduralist and comparativist, a decidedly international perspective, and a firm belief in a respectful and cooperative coexistence of legal systems. An English version of this text can be found at www.iprax.de/de/dokumente/online-veroeffentlichungen/

C. Kohler: **Dismantling the „mosaic principle": defining jurisdiction for violations of personality rights through the internet**

In case C-194/16, Bolagsupplysningen, the ECJ ruled that, according to Article 7(2) of Regulation (EU) No 1215/2012, a legal person claiming that its personality rights have been infringed by the publication of incorrect information on the

internet and by a failure to remove comments relating to it can bring an action for rectification of that information, removal of those comments and compensation in respect of all the damage sustained before the courts of the Member State in which its centre of interests is located. On the other hand, an action for rectification of that information and removal of those comments cannot be brought before the courts of each Member State in which the information published on the internet is or was accessible. Thus, the ECJ's decision in case C-509/09 and C-161/10, eDate Advertising a.o., also applies where the aggrieved party is a legal person. However, the "mosaic principle" defined in that judgment is inapplicable because an action for rectification and removal of information on the internet is "single and indivisible" and can, consequently, only be brought before a court with jurisdiction to rule on the entire damage. The author welcomes this limitation and advocates that the mosaic principle be given up entirely, particularly as it does not find resonance on the international level.

P. Mankowski: **Consumer protection under the Brussels Ibis Regulation and company agreements**

Company agreements pose a challenge to Arts. 17–19 Brussels Ibis Regulation; Arts. 15–17 Lugano Convention 2007 since these rules are designed for bipolar contracts whereas the formers typically are multi-party contracts. This generates major problems, amongst them identifying the "other party" or answering how far a quest for equal treatment of shareholders might possibly carry. Arguments from the lack of a full-fledged forum societatis might weigh in, as do arguments from the realm of European private law or possible consequences for jurisdiction clauses in company statutes. The picture is threefold as to scenarios: founding and establishing a company; accession to an already established company; and derivative acquisition of a share in an already established company.

W. Wurmnest/C. Grandel: **Enforcement of consumer protection rules by public authorities as a „civil and commercial matter"**

In case C-73/19 (Belgische Staat ./. Movic) the European Court of Justice once again dealt with the delineation of "civil and commercial matters" (Art. 1(1) of the Brussels Ibis Regulation) when public authorities are involved. The Court

correctly classified an action brought by Belgian authorities against Dutch companies seeking a declaration as to the unlawfulness of the defendants' business practices (selling tickets for events at prices above their original price) and an injunction of these practices as a "civil and commercial matter", as the position of the authorities was comparable to that of a consumer protection association. Furthermore, the Court clarified its case law on the thorny issue as to what extent evidence obtained by public authorities based on their powers may turn the litigation into a public law dispute. Finally, the judgment dealt with the classification of various ancillary measures requested by the Belgian authorities. Most notably, a request by the authorities to be granted the power to determine future violations of the law simply by means of a report "under oath" issued by an official of the authorities was not a "civil- and commercial matter" as private litigants could not be granted similar powers under Belgian law.

R. Wagner: **Jurisdiction in a dispute with defendants in different member states of the European Union**

The article discusses a court ruling of the Higher Regional Court of Hamm on jurisdiction concerning the "Diesel emission scandal". The plaintiff had his domicile in Bielefeld (Germany). He bought a car in Cologne (Germany) where the seller had his domicile. Later on, the plaintiff brought an action for damages and for a declaratory judgment against the seller, the importer of the car (domicile: Darmstadt, Germany) and the producer of the car (domicile: in the Czech Republic) before the District Court of Bielefeld. The plaintiff argued that the producer of the car had used illegal software to manipulate the results of the emissions tests. He based his claim on tort. Against the first defendant he also claimed his warranty rights. In order to sue all three defendants in one trial the plaintiff requested the District Court of Bielefeld to ask the Higher Regional Court of Hamm to determine jurisdiction. In its decision the Court in Hamm took into account Article 8 No. 1 of the Brussels Ibis Regulation and § 36 I No. 3, II of the German Code of Civil Procedure.

J. Wolber: **Jurisdiction for an Application opposing Enforcement in cross-border Enforcement of a Maintenance Decision**

The question, whether the maintenance debtor should be entitled to raise the objection that he has predominantly discharged his debt in the Member State of enforcement is highly relevant in practice and disputed in the scientific literature. The European Court of Justice (ECJ) has decided on this question – upon a request for a preliminary ruling by a German court – in the case FX ./. GZ with judgment of 4th June 2020. The ECJ confirms the jurisdiction of the German court based on Article 41 of Regulation No 4/2009. This judgment has effects beyond the enforcement of maintenance decisions on other instruments of European Law of Civil Procedure. While this judgment deserves approval in the result, the reasoning of the court is not convincing. The ECJ judgment does not cover the question of the territorial scope of such a judgment.

P. Schlosser: **Clarification of the service of documents abroad**

In extending the term "demnächst" ("soon") the judgment of the Bundesgerichtshof ruled that a person interested in serving a document to somebody (in particular the initial claim) must only request the court to care for the translation and pay immediately thereafter the estimated costs of the translation for correctly initiating the litigation and thus meeting the term of limitation. The rest of time needed for the translation is irrelevant. The author is developing the impact of this decision for the three variants of serving a document to someone abroad in the European Union:

(1) Serving the document spontaneously in time together with the translation,

(2) Serving the document belated together with the translation after

the court has asked whether the respective person wants a translation,

(3) Serving initially without a translation but serving the document again together with a translation after the addressee has refused to accept service without any translation.

A. Dutta: **European Certificate of Succession for administrators of insolvent estates?**

German law provides for a special insolvency procedure for insolvent estates (Nachlassinsolvenzverfahren) which is subject to the European Insolvency Regulation. The Oberlandesgericht Frankfurt am Main came to the conclusion that nevertheless the liquidator of such an insolvency procedure can apply for a European Certificate of Succession under the Succession Regulation being an "administrator of the estate". The case note argues that the German Nachlassinsolvenzverfahren falls within the scope of the Insolvency and the Succession Regulation (section II & III) and that issuing a Certificate causes only indirect frictions between both instruments which are not grave enough to invoke the conflict rule in Article 76 of the Succession Regulation (section IV). The case shows that the model of the Certificate could be extended to other areas (section V).

E. Jayme: **The restitution of the „Welfenschatz" before the U.S. Supreme Court**

The US Supreme Court, in a case involving the restitution of the treasure of the Guelphs and the question of state immunity of the Federal Republic of Germany, decides that the FSIA's exception concerning property taken in violation of the international law of expropriation does not refer to property owned by German nationals ("domestic takings rule"). The heirs of German Jewish Art dealers who had acquired a large part of the art treasure of the Guelphs from the Ducal family of Braunschweig asked for the restitution of such parts of the treasure which they had sold to Prussia in 1935 alleging that they had been unlawfully coerced to sell the pieces for a third of its value. The defendants were the Federal Republic of Germany and the Stiftung Preußischer Kulturbesitz. The plaintiffs argued inter alia that the forced purchase of the treasure had been an act of genocide in violation of international law and, therefore, justified an exception to State immunity. The District Court denied Germany's motion to dismiss, and the D.C. Circuit Court affirmed. The Supreme Court held that the phrase "rights in property taken in violation of international law" refers to violations of the international law of expropriation and thereby incorporates the domestic takings rule. The case was remanded to the D.C. Circuit Court of Appeals for further proceedings which inter alia will concern the question whether the Jewish art dealers were German nationals at the time of the sale of the treasure (1935).

Online seminar on Private International Law in Islamic Countries – Developments and Challenges

The Faculty of Law, Brawijaya University, Indonesia is organizing a one-day international online seminar on *Private International Law in Islamic Countries – Developments and Challenges.* The main purpose of the seminar is to examine and discuss the current situation of private international law in Islamic countries especially from the point of view of the influence of religion (Sharia/Islamic law) on the regulation of private international relationships.

Participation is free but online registration (here) is kindly requested to receive the link to the conference, which will be emailed shortly before the event.

After registering, attendees will receive a confirmation email containing information about joining the webinar. The event will also be live streamed via YouTube (here). E-certificate for attendance will also be issued for attendees to prove that they joined the online seminar.

Details about the forthcoming seminar are as follows:

Date: 24 August 2021

Time: 13:00 (Western Indonesia Time); 14:00 (Brunei & Hong Kong Time); 15:00 (Japan Time)

Program (details can be found here):

1. Admittance for Key-note Speaker, Invited Speakers, and Seminar
2. Opening Ceremony by the Dean of the Faculty of Law, Brawijaya
3. Keynote Speech by Professor Yun Zhao, Representative of the HCCH Regional Office for Asia and the Pacific
4. Seminar Presentation (Moderator: Cyndiarnis, SH. MKn)
    - a. Associate Professor Béligh Elbalti, Ph.D., Graduate School of Law and Politics, Osaka University (*The Influence of Islamic Law Principles on the Treatment of International Private Relationships – Family Law as Example*)
    - b. Nobumichi Teramura, Assistant Professor of the Institute of Asian Studies, and University of Brunei Darussalam (*Shariah as the Law Applicable to an International Commercial Contract: Challenges and Opportunities in Australia and Brunei*)
    - c. Afifah Kusumadara, SH. LL.M. SJD., Faculty of Law, Brawijaya University (*The connecting factors to determine the applicable law and the court jurisdiction in Indonesia: The interference of religion*)
5. Question and Answer
6. Photo Session and Closing
7. Announcement by the M.C. concerning:
    - Certificates of Participation
    - Seminar materials

Any enquiries should be directed to seminar_pil@ub.ac.id. The organisers are looking forward to having fruitful discussion with and exchange of ideas among all participants.