Foster care by same-sex registered partners in Greece

Following fierce consultations, deliberations and debates, a new law has been passed by the Hellenic Parliament on improving adoption and foster care procedures. The law introduces a new institution: The National Foster Care & Adoption Council, and contains provisions on the requirements and procedures for foster care, thus, enriching the existing landscape embedded in the Civil Code since 1996. It also establishes two national registries: The National Registry of adoptive applicants and the National Registry of adoptions.

The bone of contention was however the 'window' opened by the new legislation under Article 8, i.e. the right of same-sex partners to become foster parents. After a couple of weeks full of tension in the press and the Parliament, the Government moved on and secured the necessary majority for passing the provision.

This is yet another step towards full equivalence of same-sex with heterosexual couples. It was preceded by the introduction of same-sex partnerships in 2015, as an aftermath of the country's condemnation by the ECHR in the *Vallianatos* ruling. Still, same-sex marriage is not, and will seemingly not be allowed for quite some time in the future, given that the Supreme Court has ruled out this possibility end last year.

Finally, it should be noted that Greece has recently enacted legislation allowing the out of court dissolution of marriage in mutual consent, and abolished the compulsory application of Sharia law for Greek Muslims.

Torture, Universal Civil

Jurisdiction and Forum Necessitatis: Naït-Litman v. Switzerland before the ECtHR

On March 15 the ECtHR, sitting as the Grand Chamber,decided on the Naït-Litman v. Switzerland case (application no. 51357/07), against the applicant and his claim of violation of Article 6 ECHR. Independently on whether one agrees or not with the final outcome, for PIL lawyers and amateurs the judgment (for very busy people at least the press release) is certainly worth reading.

The case concerned the refusal by the Swiss courts to examine Mr Naït-Liman's civil claim for compensation for the non-pecuniary damage arising from acts of torture allegedly inflicted on him in Tunisia. According to the applicant, he was arrested in April 1992 by the police in Italy, and after being transferred to the Tunisian consulate in Genoa, he was taken to Tunis by Tunisian agents. Mr Naït-Liman alleges that, from 24 April to 1 June 1992, he was detained and tortured in Tunis in the premises of the Ministry of the Interior on the orders of A.K., the then Minister of the Interior. Following the alleged torture, Mr Naït-Liman fled Tunisia in 1993 for Switzerland, where he applied for political asylum; this was granted in 1995.

On 14 February 2001, having learnt that A.K. was being treated in a Swiss hospital, the applicant lodged a criminal complaint against him with the Principal Public Prosecutor for the Republic and the Canton of Geneva. He applied to join these proceedings as a civil party. The Prosecutor dropped the proceedings after finding out that A.K. had left the country some days earlier.

Several years later, on 8 July 2004, the applicant lodged a claim for damages with the Court of First Instance of the Republic and the Canton of Geneva against Tunisia and against A.K. The Court of First Instance declared the claim inadmissible on the ground that it lacked territorial jurisdiction and that the Swiss courts did not have jurisdiction under the forum of necessity in the case at hand, owing to the lack of a sufficient link between, on the one hand, the case and the facts, and, on the other, Switzerland. Mr Naït-Liman lodged an appeal with the Court of Justice of the Republic and the Canton of Geneva, which was rejected on

the grounds of immunity from jurisdiction of the defendants. The Federal Supreme Court dismissed the second appeal in 2007, considering that the Swiss courts in any event lacked territorial jurisdiction.

The ECtHR considered that international law had not imposed an obligation on the Swiss authorities to open their courts with a view to ruling on the merits of Mr Naït-Liman's compensation claim, on the basis of either universal civil jurisdiction in respect of acts of torture or a forum of necessity.

The case is without doubt of interest for CoL and beyond. To start with, the methodology employed by the Court is remarkable. A wide comparative legal analysis is conducted, which regarding universal civil jurisdiction encompasses the work of the Institute of International Law on the topic in 2015, and the report theretoby A. Bucher, and takes into account 39 member States of the Council of Europe (Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Turkey, Ukraine and the United Kingdom), as well as certain States which are not members of the Council of Europe. The forum necessitatis prong comprises: the works of both the Institute of International Law and the International Law Association -The Sofia Resolution, 2012, of its former Committee on International Civil Litigation and the Interests of the Public-; eleven European States (Austria, Belgium, Estonia, France, Germany, Luxembourg, the Netherlands, Norway, Poland, Portugal and Romania) which explicitly recognise either the forum of necessity, or a principle bearing another name but entailing very similar if not identical consequences (as in the case of France); Switzerland; and Canada (Quebec) as a non-member States of the Council of Europe. Finally, reference is also made to the forum necessitatis provisions in the EU maintenance, succession and matrimonial property regulations.

As to the merits, regarding universal civil jurisdiction the Strasbourg Court examined whether Switzerland was bound to recognise it for acts of torture by virtue of an international custom, or of treaty law. The Court concluded that those States which recognised universal civil jurisdiction beyond the acts of torture are currently the exception, hence evidence indicating the emergence of an international custom which would have obliged the Swiss courts to find that they

had jurisdiction to examine Mr Naït-Liman's action does not exist (and even less evidence of the consolidation of such custom). With regard to international treaty law, as it currently stands it also fails to recognise universal civil jurisdiction for acts of torture obliging the States to make available civil remedies in respect of acts of torture perpetrated outside the State territory by the officials of a foreign State.

On the forum necessitatis issue, the Court had to determine whether international law imposed an obligation on the Swiss authorities to make a forum of necessity available to Mr Naït-Liman. In light of the materials alluded to above, the Court could not find an international custom rule enshrining the concept of forum of necessity; it further noted that no international treaty obligation imposes on the States a duty to provide for a forum of necessity.

It followed that the Swiss authorities had enjoyed a wide margin of appreciation in this area. After examining section 3 of the Federal Law on Private International Law and the decisions issued by the Swiss courts, the Court concluded that neither the Swiss legislature nor the Federal Supreme Court had exceeded their margin of appreciation.

It is worth noting that Judge Wojtyczek expressed a partly dissenting opinion; that Judge Dedov and Judge Serghides each expressed a dissenting opinion; and that, being aware of the dynamic nature of this area, the Court expressly refrained from ruling out the possibility of developments in the future. As a consequence the Court (para. 220) "invites the States Parties to the Convention to take account in their legal orders of any developments facilitating effective implementation of the right to compensation for acts of torture, while assessing carefully any claim of this nature so as to identify, where appropriate, the elements which would oblige their courts to assume jurisdiction to examine it."

Krombach: The Final Curtain

Readers of this blog may be interested to learn that the well-known (and, in many ways, quite depressing) *Krombach/Bamberski* saga appears to have finally found its conclusion with a decision by the European Court of Human Rights (*Krombach v France*, App no 67521/14) that was given yesterday.

Krombach – who, after having been convicted for killing his stepdaughter, had successfully resisted the enforcement of the French civil judgment in Germany (Case C-7/98 *Krombach*) and, equally successfully, appealed the criminal sentence (*Krombach v France*, App no 29731/96), before he had famously been kidnapped, brought to France, and convicted a second time – had brought a new complaint with regard to this second judgment. He had argued that his conviction in France violated the principle of *ne bis in idem* (as guaranteed in Art 4 of Protocol No 7) since he had previously been acquitted in Germany with regard to the same event.

Yesterday, the Court declared this application inadmissible as Art 4 of Protocol No 7, according to both its wording and the Court's previous case law, 'only concerned "courts in the same State"' (see the English Press Release).

> *[35.] … [L]a Cour constate que cette thèse [du requérant] se heurte aux termes mêmes de l'article 4 du Protocole no 7, qui renvoient expressément au « même État » partie à la Convention plutôt qu'à tout État partie à la Convention. …*
>
> *[36.] La Cour a ainsi jugé avec constance que l'article 4 du Protocole no 7 ne visait que les « juridictions du même État » et ne faisait donc pas obstacle à ce qu'une personne soit poursuivie ou punie pénalement par les juridictions d'un État partie à la Convention en raison d'une infraction pour laquelle elle avait été acquittée ou condamnée par un jugement définitif dans un autre État partie … .*

It also pointed out that 'the fact that France and Germany were members of the European Union did not affect the applicability of Article 4 of Protocol No. 7' (ibid).

> *[38.] La Cour estime par ailleurs que la circonstance que la France et*

> *l'Allemagne sont membres de l'Union Européenne et que le droit de l'Union européenne donne au principe ne bis in idem une dimension trans-étatique à l'échelle de l'Union européenne … est sans incidence sur la question de l'applicabilité de l'article 4 du Protocole no 7 en l'espèce.*

The Strasbourg Court thus appears to have added the final chapter to a case that has occupied the courts in Germany, France, and Luxembourg for almost 35 years, raising some pertinent questions as to mutual trust and judicial corporation in the process.

A European Law Reading of Achmea

Written by Prof. Burkhard Hess, Max Planck Institute Luxembourg.

An interesting perspective concerning the *Achmea* judgment of the ECJ[1] relates to the way how the Court addresses investment arbitration from the perspective of European Union law. This paper takes up the judgment from this perspective. There is no doubt that *Achmea* will disappoint many in the arbitration world who might read it paragraph by paragraph while looking for a comprehensive line of arguments. Obviously, some paragraphs of the judgment are short (maybe because they were shortened during the deliberations) and it is much more the outcome than the line of arguments that counts. However, as many judgments of the ECJ, it is important to read the decision in context. In this respect, there are several issues to be highlighted here:

First, the judgment clearly does not correspond to the arguments of the German Federal Court (BGH) which referred the case to Luxembourg. Obviously, the BGH expected that the ECJ would state that intra EU-investment arbitration was compatible with Union law. The BGH's reference to the ECJ argued in favor of the compatibility of intra EU BIT with Union law.[2] In this respect, the *Achmea* judgment is unusual, as the ECJ normally takes up positively at least some parts

of the questions referred to it and the arguments supporting them. In contrast, the conclusion of AG Wathelet were much closer to the questions asked in the preliminary reference.

Second, the Court did not follow the conclusions of Advocate General Wathelet.[3] As the AG had pushed his arguments very much unilaterally in a (pro-arbitration) direction, he obviously provoked a firm resistance on the side of the Court. In the *Achmea* judgment, there is no single reference to the conclusions of the AG[4] – this is unusual and telling, too.

Third, the basic line of arguments developed by the ECJ is mainly found in paras 31 – 37 of the judgment. Here, the Court sets the tone at a foundational level: the Grand Chamber refers to basic constitutional principles of the Union (primacy of Union law, effective implementation of EU law by the courts of the Member States, mutual trust and shared values). In this respect, it is telling that each paragraph quotes Opinion 2/13[5] which is one of the most important (and politically strongest) decisions of the Court on the autonomy of the EU legal order and the role of the Court itself being the last and sole instance for the interpretation of EU law.[6] *Achmea* is primarily about the primacy of Union law in international dispute settlement and only in the second place about investment arbitration. *Mox Plant*[7] has been reinforced and a red line (regarding concurrent dispute settlement mechanisms) has been drawn.

Although I don't repeat here the line of arguments developed by the Grand Chamber, I would like to invite every reader to compare the judgment with the Conclusions of AG Wathelet. In order to understand a judgment of the ECJ, one has to compare it with the Conclusions of the AG – also in cases where the Court does (exceptionally) not follow the AG. In his Conclusions, AG Wathelet had tried to integrate investment arbitration into Union law and (at the same time) to preserve the supremacy of investment arbitration over EU law even in cases where only intra EU relationships were at stake. Or – to put it the other way around: For the ECJ, the option of investors to become quasi-international law subjects and to deviate of mandatory EU law by resorting to investment arbitration could not be a valuable option – especially as their home states (being EU Member States) are not permitted to escape from mandatory Union law by resorting to public international law and affiliated dispute resolution mechanisms. Therefore, from a perspective of EU law the judgment does not come as a surprise.

Finally, this judgment is not only about investment arbitration, its ambition goes obviously further: If one looks at para 57 the perspective obviously includes future dispute settlement regimes under public international law and their relationship to the adjudicative function of the Court. One has to be aware that Brexit and the future dispute resolution regime regarding the Withdrawal Treaty is in the mindset of the Court. In this respect the wording of paragraph 57 seems to me to be telling. It states:

"It is true that, according to settled case-law of the Court, an international agreement providing for the establishment of a court responsible for the interpretation of its provisions and whose decisions are binding on the institutions, including the Court of Justice, is not in principle incompatible with EU law. The competence of the EU in the field of international relations and its capacity to conclude international agreements necessarily entail the power to submit to the decisions of a court which is created or designated by such agreements as regards the interpretation and application of their provisions, *provided that the autonomy of the EU and its legal order is respected*[8]."

Against this background of European Union law, the *Achmea* judgment appears less surprising than the first reactions of the "arbitration world" might have implied. Furthermore, the (contradictory[9]) statement in paras 54 and 55 should be read as a sign that the far reaching consequences with regard to investment arbitration do not apply to commercial arbitration (*Eco Swiss*[10] and *Mostaza Claro*[11] are explicitely maintained).[12] Finally, it is time to start a discussion about the procedural and the substantive position of individuals in investment arbitration in the framework of Union law. As a matter of principle, EU investors should not expect to get a better legal position as their respective home State would get in the context of EU law. Investment arbitration does not change their status within the Union. In this respect, *Achmea* is simply clarifying a truism. And, as a side effect, the disturbing *Micula* story should now come to an end, too.[13]

Footnotes

[1] ECJ, 3/6/2018, case C-284/16, *Slovak Republic v. Achmea BV*, EU:C:2018:158.

[2] BGH, 3/3/2016, ECLI:DE:BGH:2016:030316BIZB2.15.0

[3] Conclusions of 9/19/2017, EU:C:2017:699. The same outcome had occured in case C-536/13, *Gazprom*, EU:C:2015:316, which was also related to investment

arbitration.

[4] The Court only addresses the issue whether the hearing should be reopened because some Member States had officially expressed their discomfort with the AG's Conclusions, ECJ, 3/6/2018, case C-284/16, *Amchea*, EU:C:2018:158, paras 24-30.

[5] ECJ, 12/18/2014, Opinion 2/13 (*Accession of the EU to the ECHR*), EU:C:2014:2454.

[6] For the political connotations of Opinion 2/13, cf. *Halberstam*, "'It's the Autonomy, Stupid!' A Modest Defense of Opinion 2/13 on EU Accession to the ECHR, and a Way Forward." German L.J. 16, no. 1 (2015): 105 ff.

[7] ECJ, 5/30/2015, case C-459/03 *Commission v Ireland,* EU:C:2006:345.

[8] Highlighted by B.Hess.

[9] Both, commercial and investment arbitration are primarily based on the consent of the litigants, see *Hess*, The Private Public Divide in International Dispute Settlement, RdC 388 (2018), para 121 – in print

[10] ECJ, 6/1/1999, case C?126/97, *Eco Swiss*, EU:C:1999:269.

[11] ECJ, 10/26/2006, case C?168/05, *Mostaza Claro*, EU:C:2006:675.

[12] It is interesting to note that the concerns of the ECJ (paras 50 ss) regarding the intervention of investment arbitration by courts of EU Member States did not apply to the case at hand as German arbitration law permits a review of the award (section 1059 ZPO). The concerns expressed relate to investment arbitration which operates outside of the NYC without any review of the award by state court, especially in the context of articles 54 and 55 ICSID Convention.

[13] According to the ECJ's decision in *Achmea*, the arbitration agreement in the *Micula* case must be considered as void under EU law. However, Micula was given by an ICSID arbitral tribunal and, therefore, there is no recognition procedure open up a review by state courts of the arbitral award, see articles 54 and 55 ICSID Convention.

The ECtHR rules on the compatibility with the right to respect for private and family life of the refusal of registration of same-sex marriages contracted abroad

By a judgment *Orlandi and Others v. Italy* delivered on December 14 the ECtHR held that the lack of legal recognition of same sex unions in Italy violated the right to respect of private and family life of couples married abroad.

The case concerned the complaint of six same sex-couples married abroad (in Canada, California and the Netherlands). Italian authorities refused to register their marriages on the basis that registration would be contrary to public policy. They also refused to recognize them under any other form of union. The complaints were lodged prior to 2016, at a time when Italy did not have a legislation on same-sex unions.

The couples claimed under articles 8 (right to respect of private and family life) and 14 (prohibition of discrimination) of the Convention, taken in conjunction with article 8 and 12 (right to marry), that the refusal to register their marriages contracted abroad, and the fact that they could not marry or receive any other legal recognition of their family union in Italy, deprived them of any legal protection or associated rights. They also alleged that "*the situation was discriminatory and based solely on their sexual orientation*" (§137).

Recalling that States are still free to restrict access to marriage to different sex-couples, the Court indicated that nonetheless, since the *Oliari and others v. Italy* case, States have an obligation to grant same-sex couples "*a specific legal framework providing for the recognition and the protection of their same-sex*

unions" (§192).

The Court noted that the "*the crux of the case at hand is precisely that the applicants' position was not provided for in domestic law, specifically the fact that the applicants could not have their relationship – be it a de facto union or a de jure union recognized under the law of a foreign state – recognized and protected in Italy under any form*" (§201).

It pointed out that although legal recognition of same-sex unions had continued to develop rapidly in Europe and beyond, notably in American countries and Australia, the same could not be said about registration of same-sex marriages celebrated abroad. Giving this lack of consensus, the Court considered that the State had "*a wide margin of appreciation regarding the decision as the whether to register, as marriage, such marriages contracted abroad*" (§204-205).

Thus, the Court admitted that it could "*accept that to prevent disorder Italy may wish to deter its nationals from having recourse in other States to particular institutions which are not accepted domestically (such as same-sex marriage) and which the State is not obliged to recognize from a Convention perspective*" (§207).

However, the Court considered that the refusal to register the marriages under any form left the applicants in "*a legal vacuum*". The State has failed "*to take account of the social reality of the situation*" (§209). Thus, the Court considered that prior to 2016, applicants were deprived from any recognition or protection. It concluded that, "*in the present case, the Italian State could not reasonably disregard the situation of the applicants which correspond to a family life within the meaning of article 8 of the Convention, without offering the applicants a means to safeguard their relationship*". As a result, it ruled that the State "*failed to strike a fair balance between any competing interests in so far as they failed to ensure that the applicants had available a specific legal framework providing for the recognition and the protection of their same-sex union*" (§ 210).

Thus, the Court considered that there had been a violation of article 8. It considered that, giving the findings under article 8, there was no need to examine the case on the ground of Article 14 in conjunction with article 8 or 12. (§212).

Jurisdiction, Conflict of Laws and Data Protection in Cyberspace

Report on the Conference held in Luxembourg on 12 October 2017, by Martina Mantovani, Research Fellow MPI Luxembourg

On 12 October 2017, the Brussels Privacy Hub (BPH) at the Vrije Universiteit Brussel and the Department of European and Comparative Procedural Law of the Max Planck Institute Luxembourg held a joint conference entitled "Jurisdiction, Conflicts of Law and Data Protection in Cyberspace". The conference, which was attended by nearly 100 people, included presentations by academics from around the world, as well as from Advocate General Henrik Saugmandsgaard Øe of the Court of Justice of the European Union. The entire conference was filmed and is available for viewing on the YouTube Channel of the Max Planck Institute Luxembourg (first and second parts)

Participants were first welcomed by Prof. Dr. Burkhard Hess, Director of the MPI, and Prof. Dr. Christopher Kuner, Co-Director of the BPH. Both highlighted the importance of considering each of the discussed topics from both a European and a global perspective.

The first panel was entitled "Data Protection and Fundamental Rights Law: the example of cross-border exchanges of biomedical data – the case of the human genome". The speaker was Dr. Fruzsina Molnár-Gábor of the Heidelberg Academy of Sciences and Humanities, who discussed the regulatory challenges arising in connection to the processing and transfer of biomedical data, including data exchanges between research hubs within the EU and to third-countries (namely the US). The need for innovative regulatory solutions, originating from a bottom-up approach, was discussed against the backdrop of the impending entry into

force of the new EU General Data Protection Regulation (GDPR), whose Article 40 encourages the adoption of Codes of Conduct intended to contribute to the proper application of the Regulation in specific sectors. According to Dr. Molnár-Gábor, however, in order to establish an optimal normative framework for biomedical research, the regulatory approach should be combined with appropriate privacy-enhancing technologies and privacy-by-design solutions (such as the emerging federated clouds, the European Open Science Cloud, and data analysis frameworks bringing analysis to the data). This approach should also be paired with the development of adequate incentives prompting non-EU established companies to express binding and enforceable commitments to abide by EU-approved Codes of Conduct. Her presentation demonstrated the basic problem of data protection and data transfer: The creation of appropriate and applicable legal frameworks often lags behind the necessarily more rapid pace of data exchange seen in successful scientific research.

The second panel was entitled "Territorial Scope of Law on the Internet". According to Prof. Dr. Dan Svantesson of Bond University in Australia, the focus on territoriality, which characterises contemporary approaches to the solution of conflicts of laws, is the result of an inherent "territorial bias" in legal reasoning. A strict application of territoriality would however be destructive when dealing with cyberspace. Here, the identification of the scope of remedial jurisdiction should follow a more nuanced approach. Prof. Svantesson specifically focused on Article 3 of the new GDPR, which he deemed "too unsophisticated" for its intended purposes as a result of its "all-or-nothing approach" In other words, either a data controller is subject to the Regulation in its entirety, or it is totally excluded from its scope of application. As an alternative, he proposed a layered approach to its interpretation, grounded in proportionality. The GDPR, he contended, should be broken down into different sets of provisions according to the objectives pursued, and each of these sets should be assigned a different extraterritorial reach. Against this backdrop, the spatial scope of the application of provisions pertaining to the "abuse prevention layer" may, and should, be different from that of the provisions pertaining to the "rights layer" or "the administrative layer".

A response was made by Prof. Dr. Gerald Spindler of University of Göttingen, who conversely advocated the existence of an ongoing trend toward a "reterritorialization" of the Cyberspace, favoured by technological advance (geo-blocking, Internet filtering). This segmentation of the Internet is, in Prof.

Spindler's opinion, the result of a business strategy that economic operators adopt to minimise legal risks. As specifically concerns private international law rules, however, a tendency emerges towards the abandonment of "strict territoriality" in favour of a more nuanced approach based on the so-called market principle or "targeting", which is deemed better adapted to the more permeable borders that segment cyberspace.

The third panel was entitled "Contractual Issues in Online Social Media". The speaker was Prof. Dr. Alex Mills of University College London. A thorough analysis of Facebook's and Twitter's general terms and conditions brought to light private international law issues stemming from "vertical contractual relationships" between the social media platform and final users. Professor Mills highlighted, in particular, the difficult position of social media users within the current normative framework. In light of the ECJ case-law on dual purpose contracts, in fact, a characterisation of social media users as "consumers" under the Brussels I bis and the Rome I Regulations may be difficult to support. Against this backdrop, social media users are left at the mercy of choice of court and choice of law clauses unilaterally drafted by social media providers. In spite of their (generally) weaker position vis-à-vis social media giants, European social media users will in fact be required to sue their (Ireland-based) contractual counterpart in Californian courts, which will then usually apply Californian substantive law. In addition to generating a lift-off of these transactions from EU mandatory regulation, these contractual clauses also result in an uneven level of protection of European social media users. In fact, Germany-based social media users seem to enjoy a higher level of protection than those established in other EU countries. Since the contract they conclude with the social media provider usually encompass a choice of law clause in favour of German substantive law, they may in fact benefit from the European standard of protection even before Californian courts.

Prof. Dr. Heike Schweitzer of Freie Universität Berlin, highlighted a fundamental difference between E-Commerce and social media platforms. While the former have an evident self-interest in setting up a consumer-friendly regulatory regime (e.g., by introducing cost-efficient ADR mechanisms and consumer-oriented contractual rights) so as to enhance consumer trust and attract new customers, the latter have no such incentive. In fact, competition among social media platforms is essentially based on the quality and features of the service provided

rather than on the regulatory standard governing potential disputes. This entails two main consequences. On the one hand, from the standpoint of substantive contract law, "traditional" contractual rights have to adapt to accommodate the need for flexibility, which is inherent to the new "pay-with-data" transactions and vital to survival in this harshly competitive environment. On the other hand, from the standpoint of procedural law, it must be noted that within a system which has no incentive in redirecting disputes to consumer-friendly ADR mechanisms (Instagram being the only exception), private international law rules, as applied in state courts, still retain a fundamental importance.

The final roundtable dealt with "Future Challenges of Private International Law in Cyberspace". Advocate General Saugmandsgaard Øe discussed the delicate balance between privacy and security in the light of the judgment of the Court of Justice in the case C-203/15, *Tele2 Sverige*, as well as the specifications brought to the protective legal regime applicable to consumers by case C-191/15, *Verein für Konsumenteninformation v Amazon EU Sarl.* Prof. Kevin D. Benish of New York University School of Law illustrated the US approach to extraterritoriality in the protection of privacy, having particular regard to the recent *Microsoft* case (the U.S. Supreme Court recently granted certiorari). Prof. Dr. Gloria Gonzalez Fuster of Vrije Universiteit Brussels pointed to a paradox of EU data protection legislation, which, on the one hand, regards the (geographic) localisation of data as irrelevant for the purpose of the applicability of the GDPR and, on the other hand, establishes a constitutive link with EU territory in regulating data transfers to third countries. Finally, Dr. Cristina Mariottini, Co-Rapporteur at the ILA Committee on the Protection of Privacy in Private International and Procedural Law, provided an overview of the European Court of Human Rights' recent case-law on the interpretation of Article 8 ECHR. Specific attention was given to the conditions of legitimacy of data storage and use in the context of criminal justice and intelligence surveillance, namely with respect to the collection of biological samples in computerised national databases (case *Aycaguer v. France*), the use as evidence in judicial proceedings of video surveillance footage (*Vukota-Bojic v. Switzerland*) and the telecommunication service providers' obligation to store communications data (case Breyer v. Germany and case C?alovic? v. Montenegro, concerning specifically the police's right to access the stored data).

Overall, the conference demonstrated the growing importance of private international and procedural law for the resolution of cross-border disputes

related to data protection. The more regulators permit private enforcement as a complement to the supervisory activities of national and supranational data protection authorities, the more issues of private international law become compelling. As of today, conflict of laws and jurisdictional issues related to data protection have not been sufficiently explored, as the discussion on private law issues related to the EU General Data Protection Regulation demonstrates. With this in mind, both Brussels Privacy Hub and MPI have agreed to regularly organize conferences on current developments in this expanding area of law.

Privatizing Dispute Resolution and its Limits.Third IAPL-MPI Luxembourg Summer-School

It is our pleasure to announce the third edition of the **International Association of Procedural Law (IAPL) – Max Planck Institute Luxembourg Summer-School,** which will take place in Luxembourg from the 1st to the 4th of July 2018.

The 3rd edition of the Summer School has chosen to explore the topic of "Privatizing Dispute Resolution and its Limits", where "privatizing" is understood in a broad sense. Different avenues can be envisaged thereto related. The first one focuses on the defense of public interests by means of private litigation; a second comprises the mechanisms for dispute resolution alternative to State justice; the third one deals with the commercialization of the judicial system. Applications under the first prong shall address the case of litigation in the interest of the broader (public) interest of the law: a regulatory approach that in Europe has been adopted in the context of competition law, intellectual property law, consumer protection, data protection and to some extent, also for the defense of the environment, in the search of avenues for the extraterritorial application of mandatory law. Under the second prong applications shall refer to commercial and investment arbitration, sports arbitration, consumer ADR, online dispute resolution for domain names controversies and the like. The third prong

candidates shall focus on the development of private access to justice (litigation insurance, third party funding, etc), ”marketization” of the bar activity, emergence of new private actors with the legaltech, etc. Proposals must take into account that for different reasons all the phenomena alluded to are subject to limits: to be feasible, the extraterritorial application of mandatory national or regional law requires procedural and substantial preconditions such as international jurisdiction over the defendant, or the support of an appropriately designed choice of law rule. As for alternative mechanisms of dispute resolution, in spite of their detachment from the control of State courts important interfaces remain, as demonstrated by the possibilities to apply for the annulment of the arbitral award or its non-recognition; or by the on-going contestation of CAS decisions before the ECHR. Finally, although schemes of third party funding and the like facilitate access to justice for single claims that wouldn’t be brought individually to the court, they raise many controversies and challenges while remaining unregulated.

All papers submitted to the 2018 Summer School should delve into one or several of these issues.

Up to 20 places will be available for applicants having procedural law and/or dispute resolution mechanisms as their main field of academic interest and meeting the conditions explained in the dedicated website.

Please follow this link for the online application.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 6/2017: Abstracts

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

P. Mankowski: **The German Act on Same-Sex Marriages, its consequences and its European vicinity in private international law**

Finally, Germany has promulgated its Act on Same-Sex Marriages. In the arena of private international law the Act calls for equal treatment of same-sex marriages and registered partnerships whereas in German substantive law it aligns same-sex marriages with traditional marriages and institutionally abandons registered partnerships pro futuro. In private international law the Act falls short of addressing all issues it should have addressed in light of its purpose. In particular, it lacks provisions on the PIL of kinship and adoption – and does not utter a single word on jurisdiction or recognition and enforcement of foreign judgments. In other respects it is worthwhile to have a closer look at its surroundings and ramifications in European PIL (Brussels IIbis, Rome III, Matrimonial Property, and Partnership Property Regulations), i.e. at the coverage which European PIL exacts to same-sex marriages.

P.F. Schlosser: **Brussels I and applications for a pre-litigation preservation of evidence**

The judgement is revealing a rather narrow finding. An application for a pre-litigation preservation of evidence is within the meaning of Art. 32 Brussels Ia Regulation not tantamount to "the document instituting the proceedings or an equivalent document". The commentator is emphasizing that this solution cannot be subject to any reasonable doubt. He further explains, however, that the Regulation is applicable to such applications and the ensuing proceedings to the effect that the outcome of such a preservation of evidence must be recognized to the same degree as a domestic preservation is producing effects in the main proceedings. In particular is it clear for him, that such recognition must not be restricted by the German numerus clausus of legally recognized means of evidence.

T. Lutzi: **Jurisdiction at the Place of the Damage and Mosaic Approach for Online Acts of Unfair Competition**

Once again, the Court of Justice was asked to determine the place of the damage under Art. 5 No. 3 Brussels I (now Art. 7(2) Brussels Ia) for a tort committed online. The decision can be criticised both for its uncritical reception of the mosaic approach and for the way in which it applied the latter to the present case

of an infringement of competition law through offers for sale on websites operated in other member states. Regardless, the decision confirms the mosaic approach as the general rule to identify the place of the damage for torts committed through the internet.

K. Hilbig-Lugani: **The scope of the Brussels IIa Regulation and actions for annulment of marriage brought by a third party after the death of one of the spouses**

The ECJ has decided that an action for annulment of marriage brought by a third party after the death of one of the spouses falls within the scope of Regulation (EC) No 2201/2003. But the third party who brings an action for annulment of marriage may not rely on the grounds of jurisdiction set out in the fifth and sixth indents of Art. 3(1)(a) of Regulation No 2201/2003. The ECJ does not differentiate between actions for annulment brought after the death of one of the spouses and an action for annulment brought by a third party. The decision raises several questions with regard to the application of Art. 3 of Regulation No 2201/2003.

J. Pirrung: **Forum (non) conveniens – Application of Article 15 of the Brussels IIbis Regulation in Proceedings Before the Supreme Courts of Ireland and the UK**

On a reference submitted by the Irish Supreme Court, the ECJ ruled that Art. 15 of Council Regulation (EC) No 2201/2003 (Brussels IIa) is applicable where a child protection application brought under public law concerns the adoption of measures relating to parental responsibility, (even) if it is a necessary consequence of a court of another Member State assuming jurisdiction that an authority of that other State thereafter commence proceedings separate from those brought in the first State, pursuant to its own domestic law and possibly relating to different factual circumstances. In order to determine that a court of another Member State with which the child has a particular connection is better placed, the court having jurisdiction must be satisfied that the transfer of the case to the other court is such as to provide genuine and specific added value to the examination of the case, taking into account the rules of procedure applicable in the other State. In order to determine that such a transfer is in the best interests of the child, the court having jurisdiction must be satisfied that the transfer is not liable to be detrimental to the situation of the child, and must not take into account, in a given case relating to parental responsibility, the effect of a possible

transfer of the case to a court of another State on the right of freedom of movement of persons concerned other than the child, or the reason why the mother exercised that right, prior to the court being seised, unless those considerations are such that there may be adverse repercussions on the situation of the child. The judgment is juxtaposed to the decision of the UK Supreme Court – pronounced some months before that of the ECJ – in re N, an Art. 15 case concerning a different situation without freedom of movement questions. Both jurisdictions have found acceptable results, the UKSC, though happily much faster than the ECJ, perhaps not entirely without one or the other risk concerning its treatment of procedural questions

A.-R. Börner: **News on the competence-competence of arbitral panels under German law – Simultaneously a note on the Federal High Court decision of August 9, 2016, I ZB 1/15**

The Federal Court of Justice of Germany has decided that the arbitration clause even survives the insolvency of a party (severability), unless stipulated to the contrary or in case of the existence of reasons for the nullity or termination of the arbitral agreement, such reasons either existing separately or resulting from the main contract. Under the German Law of Civil Procedure, the challenge to the state court that – contrary to an early decision of the arbitration panel affirming its competency – the panel has no competency, must be raised within the very short timeframe of one month, otherwise the judicial review will be forfeited. The Federal Court of Justice had held until now that in case of a (supervening) final award the state court procedure ended and that the arguments against the competency had to be raised anew in the procedure on the enforceability of the award. The Court has now accepted the criticism by the scientific literature that this places an undue burden on the challenging party. So it now holds that the second procedure (on enforceability) will be stayed until the first procedure (on competency) is terminated, as its result takes precedence.

B. Köhler: **Dual-use contracts as consumer contracts and no attribution of consumer status of a third party to the proceedings under Brussels-I Regulation**

The determination of the scope of the provisions on jurisdiction over consumer contracts in Art. 15 to 17 Brussels I Regulation is one of the most controversial problems in international procedural law. The German Federal Supreme Court’s

decision raises two interesting questions in this respect. The first controversial issue concerns the classification of contracts for both professional and private purposes as consumer contracts. In its judgment Gruber, the European Court of Justice had held that such a dual-purpose contract can only be considered a consumer contract if the role of the professional purpose is marginal. However, the European legislator adopted the criterion of predominant purpose in recital 17 to the Consumer Rights Directive (2011/83/EU). Regrettably, the German Federal Supreme Court missed an opportunity to clarify the classification of dual-purpose contracts within the Brussels I Regulation. The Court applied the criterion laid down by the ECJ in Gruber without further discussion. In a second step, the Court held – convincingly – that Art. 16 (2) Brussels I Regulation presupposes that the consumer is a party to the proceedings. The capacity of consumer of a third party cannot be attributed to a defendant who, him- or herself, is not a consumer.

L. Hübner: **The residual company of the deregistered limited**

The following article deals with the consequences of the dissolution of companies from a common law background having residual assets in Germany. The prevailing case law makes use of the so-called "Restgesellschaft" in these cases. By means of three judgments of the BGH and the Higher Regional Court of Brandenburg, this article considers the conflicts of laws solutions of these courts and articulates its preference for the application of German company law on the "Restgesellschaft". It further analyses the subsequent questions as regards the legal form and the representation of the "Restgesellschaft", and the implications of the restoration of the foreign company.

D. Looschelders: **Temporal Scope of the European Succession Regulation and Characterization of the Rules on the Invalidity of Joint Wills in Polish Law**

Joint wills are not recognized in many foreign legal systems. Therefore, in cross-border disputes the use of joint wills often raises legal problems. The decision of the Schleswig-Holstein Higher Regional Court concerns the succession of a Polish citizen, who died on 15 October 2014 and had drawn up a joint will along with his German wife shortly before his death. The problem was that joint wills are invalid under Polish law of succession. First, the court dealt with the question whether the case had to be judged according to the European Succession Regulation or

according to the former German and Polish private international law. The court rightly considered that in Germany the new version of Art. 25 EGBGB does not extend the temporal scope of the European Succession Regulation. Hereafter the court states that the invalidity of joint wills under Polish law is not based on a content-related reason but is a matter of form. Therefore, the joint will would be valid under the Hague Convention on the Form of Testamentary Dispositions. This decision is indeed correct, but the court's reasoning is not convincing in all respects.

C. Thomale: **The anticipated best interest of the child – Strasburgian thoughts of season on mother surrogacy**

The ECtHR has reversed its opinion on Art. 8 ECHR. The protection of private and family life as stipulated therein is subject to a margin of appreciation far wider than hitherto expected. In stating this view, the ECtHR also takes a critical stand towards mother surrogacy: Restricting the human right to procreate, national legislators are given room to protect the child's best interest inter alia through deterrence against surrogacy. The article investigates some implications of this new landmark decision, which is being put into the context of ongoing debates on international surrogacy.

K. Thorn/P. Paffhausen: **The Qualification of Same-sex Marriages in Germany under Old and New Conflict-of-law Rules**

In its decision in case XII ZB 15/15 (20th April 2016) the German Federal Court of Justice recognized the co-motherhood of a female same-sex couple, registered in South Africa, for a child born by one of the women. While underlining that the result of the decision – the legal recognition of the parenthood – is right, the authors point out the methodological weaknesses of the reasoning. In their opinion, a same-sex marriage celebrated abroad had to be qualified as a "marriage" in Art. 13 EGBGB and not – as the Court held – as a "registered life partnership" in Art. 17b EGBGB (old version). Also, they demonstrate that the Court's interpretation of Art. 17b para. 4 EGBGB (old version) as well as the reasoning for the application of Art. 19 para. 1 s. 1 EGBGB are not convincing. Following the authors' opinion, the right way to solve the case would have been the legal recognition of the parenthood (as an individual case) because of Art. 8 ECHR. As Germany recently legalized same-sex marriage, the authors also show which impacts the new law will have on Germany's international matrimonial law.

In particular, they point out the new (constitutional) questions risen by the new conflict-of-law-rule for same-sex marriages in Art. 17b EGBGB (new version).

D. Martiny: **Modification and binding effect of Polish maintenance orders**

The two decisions of the German Courts of Appeal concern everyday problems in modifying maintenance orders given in the context of Polish divorce decrees. In both cases the Polish district courts ordered the fathers to pay child maintenance. At that point in time, the children already lived in Germany. The foreign orders did not state the grounds for the decision in respect of either the conflict-of-law issue or the substantive law issue. The recognition of the orders under the Maintenance Regulation in the framework of the German modification proceedings (§ 238 Family Proceedings Act – Familienverfahrensgesetz; FamFG) did not pose any difficulty. However, according to established German practice, foreign decisions have a binding effect as to their factual and legal basis. Whereas the Frankfurt court's interpretation of the Polish decision concluded that it was based on German law, the Bremen court assumed in its proceedings that the foreign decision was based on Polish law. The Bremen court stated a binding effect existed even if the foreign decision applied the incorrect law. The Bremen court then gave some hints as to how the assessment of maintenance should be made in the German proceedings under Polish substantive law.

Codification in International and EU Law – Call for Papers

The XXIII Annual Conference of the Italian Society of International and EU Law (SIDI-ISIL) will take place at the University of Ferrara on 7 and 8 June 2018.

The conference's theme is *Codification in International and EU Law*.

One session of the Conference will deal with *The coordination between different codification instruments* (8 June 2018, 9 am – 1 pm). Speakers will be selected through a call for papers.

Scholars of any affiliation and at any stage of their career are invited to submit proposals relevant to the session topic, including (but not limited to) the following:

- Relationship between codification instruments covering the same topics and promoted by different organizations or entities (e.g., the ECHR and the EU Charter of Fundamental Rights; uniform private international law instruments promoted by the Hague Conference on Private International Law and by the European Union; international environmental law and transnational criminal law instruments promoted at UN and regional levels)
- Relationship between codification instruments covering different fields (eg, human rights and other areas of international or EU law; law of international responsibility and other areas of international law)
- Succession of codification instruments in the same field.

The deadline for submitting proposals is 10 January 2018.

First and Second Issues of 2017's Rivista di diritto internazionale privato e processuale

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

The first and second issues of 2017 of the Rivista di diritto internazionale privato e processuale (RDIPP, published by CEDAM) were just released.

The first issue features three articles, one comment, and two reports.

- *Franco Mosconi*, Professor Emeritus at the University of Pavia, and *Cristina Campiglio*, Professor at the University of Pavia, **'Richiami**

interni alla legge di diritto internazionale privato e regolamenti comunitari: il caso dei divorzi esteri' ('Effects of EU Regulations on Domestic Private International Law Provisions: The Case of Foreign Divorces'; in Italian).

This paper inquires whether Article 65 (Recognition of foreign rulings) and the underlying private international law reference are still applicable to foreign divorces after Regulations No 2201/2003 and No 1259/2010 replaced Article 31 of Law No 218/1995 and after the recent provision submitting the dissolution of same-sex partnerships to Regulation No 1259/2010.

- *Peter Kindler*, Professor at the University of Munich, **'La legge applicabile ai patti successori nel regolamento (UE) n. 650/2012'** ('The Law Applicable to Agreements as to Successions According to Regulation (EU) No 650/2012'; in Italian).

Under Italian substantive law agreements as to succession are not admitted. The same is true, inter alia, for French and Spanish law. The idea behind this rule is deeply rooted in the dignity of the de cuius. The freedom to dispose of property upon death is protected until the last breath and any speculation on the death of the disponent should be avoided. Other jurisdictions such as German or Austrian law allow agreements as to succession in order to facilitate estate planning in complex family situations. This is why the Succession Regulation (650/2012/EU) could not ignore agreements as to succession. Article 25 of the Regulation deals with the law applicable to their admissibility, their substantive validity and their binding effects between the parties. The Regulation facilitates estate planning by introducing the freedom of the parties to such an agreement to choose the applicable law (Article 25(3)). The Author favours a wider concept of freedom of choice including (1) the law of the State whose nationality the person whose estate is involved possesses at the time of making the choice or at the time of death and (2) the law of the habitual residence of that person at the time of making the choice or at the time of death. As to the revocability of the choice of the lex successionis made in an agreement as to succession, the German legislator has enacted a national norm which allows the parties to an agreement as to succession to establish the irrevocability of the choice of law. This is, according to the Author, covered by Recital No 40 of the Succession Regulation. The Regulation has adopted a wide notion of agreements as to succession, including, inter alia, mutual wills and the Italian patto di famiglia. The Author

welcomes that, by consequence, the advantages of Article 25, such as the application of the hypothetical lex successionis and the freedom of choice, are widely applicable.

The Regulation did not (and could not) introduce the agreement as to succession at a substantive law level. It does not interfere with the legislative competence of the Member States. According to the author this is why member states such as Italy are free to consider their restrictive rules on agreements as to succession as part of their public policy within the meaning of Articles 35 e 40 litt. a of the Regulation.

- *Cristina Campiglio*, Professor at the University of Pavia, **'La disciplina delle unioni civili transnazionali e dei matrimoni esteri tra persone dello stesso sesso'** ('The Regulation of Cross-Border Registered Partnerships and Foreign Same-Sex Marriages'; in Italian).

With Law No 76/2016 two new types of pair bonds were regulated: civil unions between same-sex persons and cohabitation. As for transnational civil unions, the Law merely introduced two provisions delegating to the Government the amendment of Law No 218/1995 on Private International Law. The change is laid down in Legislative Decree 19 January 2017 No 7 which, however, has not solved all the problems. The discipline of civil unions established abroad is partial, being limited to unions between Italian citizens who reside in Italy. Some doubt remains moreover in regulating the access of foreigners to civil union in Italy as well as in identifying the law applicable to the constitution of the union, its effects and its dissolution; finally, totally unresolved – due to the limitations of the delegation – remains the question of the effect in Italy of civil unions established abroad between persons of opposite sex. With regard to same-sex marriages celebrated abroad the fate of Italian couples is eventually clarified but that of mixed couples remains uncertain; in addition, no information is provided as to the effects of marriages between foreigners.

In addition to the foregoing, the following comment is featured:

- *Domenico Damascelli*, Associate Professor at the University of Salento, **'Brevi note sull'efficacia probatoria del certificato successorio europeo riguardante la successione di un soggetto coniugato o legato da unione non matrimoniale'** ('Brief Remarks on the

Evidentiary Effects of the European Certificate of Succession in the Succession of a Spouse or a Partner in a Relationship Deemed to Have Comparable Effects to Marriage'; in Italian).

This article refutes the doctrinal view according to which the European Certificate of Succession (ECS) would not produce its effects with regard to the elements referred to therein that relate to questions excluded from the material scope of Regulation EU No 650/2012, such as questions relating to matrimonial property regimes and property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage. This view is rejected not only on the basis of its paradoxical practical results (namely to substantially depriving the ECS of any usefulness), but mainly because it ends up reserving the ECS a pejorative treatment compared to that afforded to the analogous certificates issued in accordance with the substantive law of the Member States (the effects of which, vice versa, have to be recognized without exceptions under Chapter IV of the Regulation). The rebuttal is strengthened considering the provisions contained in Chapter VI of the Regulation, from which it emerges that, apart from exceptional cases (related, for example, to the falsity or the manifest inaccuracy of the ECS), individuals to whom is presented cannot dispute the effects of ECS.

Finally, the first issue of 2017 of the *Rivista di diritto internazionale privato e processuale* features the following reports:

- *Katharina Raffelsieper*, Attorney at Thewes & Reuter Avocats à la Cour, '**Report on Recent German Case-Law Relating to Private International Law in Civil and Commercial Matters'** (in English).
- *Stefanie Spancken*, Associate at Freshfields Bruckhaus Deringer LLP, Düsseldorf, **'Report on Recent German Case-Law Relating to Private International Law in Family Law Matters'** (in English).

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The second issue of 2017 of the *Rivista di diritto internazionale privato e processuale* features three articles and one report.

- *Costanza Honorati*, Professor at the University of Milan-Bicocca, **'La proposta di revisione del regolamento Bruxelles II-*bis*: più tutela per i minori e più efficacia nell'esecuzione delle decisioni'** ('The

Proposal for a Recast of the Brussels IIa Regulation: More Protection for Children and More Effectiveness in the Enforcement of Decisions'; in Italian).

The present essay is a first assessment of the Proposal for a recast of the Brussels IIa Regulation (COM(2016)211). After a short explanation of the reasons for not touching on the highly controversial grounds for divorce, the essay develops on the proposed amendments in the field of parental responsibility and international abduction of children. It further analyses the amendments proposed to the general criterion of the child's habitual residence and to prorogation of jurisdiction (par. 3) and the new provision on the hearing of the child (par. 4). Major attention is given to the new chapter on abduction of children, that is assessed into depth, also in regard of the confirmation of the much-discussed overriding mechanism (par. 5-7). Finally, the amendment aiming to the abolition of exequatur, counterbalanced by a new set of grounds for opposition, is assessed against the cornerstone of free circulation of decision's principle. Indeed, new Article 40 will allow to refuse enforcement when the court of the state of enforcement considers this to be prejudicial to the best interest of the child, thus overriding basic EU principles (par. 8-9).

- *Lidia Sandrini*, Researcher at the University of Milan, **'Nuove prospettive per una più efficace cooperazione giudiziaria in materia civile: il regolamento (UE) n. 655/2014'** ('New Perspectives for a More Effective Judicial Cooperation in Civil Matters: Regulation (EU) No 655/2014'; in Italian).

Regulation (EU) No 655/2014 – applicable from 18 January 2017 – established a European Account Preservation Order procedure (EAPO) to facilitate cross-border debt recovery in civil and commercial matters. In order to give a first assessment of the new instrument, the present contribution aims at identifying the peculiarity that could make the EAPO preferable to the creditor vis-à-vis equivalent measures under national law. It then scrutinizes the enactment of this new piece of European civil procedure law in light of the principles governing the exercise of the EU competence in the judicial cooperation in civil and commercial matters as well as its compliance with the standard of protection of the creditor's and debtor's rights resulting from both the EU Charter of Fundamental Rights and the ECHR. Finally, it analyses the rules on jurisdiction as well as on the applicable law, provided for by the Regulation, in order to identify hermeneutical solutions

to some critical issues raised by the text and clarify its relationship with other EU instruments.

- *Fabrizio Vismara*, Associate Professor at the University of Insubria, **'Legge applicabile in mancanza di scelta e clausola di eccezione nel regolamento (UE) n. 2016/1103 in materia di regimi patrimoniali tra i coniugi'** ('Applicable Law in the Absence of a Choice and Exception Clause Pursuant?to Regulation (EU) No 2016/1103 in Matters of Matrimonial Property Regimes'; in Italian).

This article analyzes the rules on the applicable law in the absence of an express choice pursuant to EU Regulation No 2016/1103 in matters of matrimonial property regimes. In his article, the Author first examines the connecting factors set forth under Article 26 of the Regulation, with particular regard to the spouses' first common habitual residence or common nationality at the time of the conclusion of the marriage and the closest connection criteria, then he proceeds to identify the connecting factors that may come into play in order to establish such connection. The Author then focuses on the exception clause under Article 26(3) of the Regulation by highlighting the specific features of such clause as opposed to other exception clauses as applied in other sectors of private international law and by examining its functioning aspects. In his conclusions, the Author underlines some critical aspects of such exception clause as well as some limits to its application.

Finally, the second issue of 2017 of the *Rivista di diritto internazionale privato e processuale* features the following report:

- *Federica Favuzza*, Research fellow at the University of Milan, **'La risoluzione n. 2347 (2017) del Consiglio di Sicurezza e la protezione dei beni culturali nei conflitti armati e dall'azione di gruppi terroristici'** ('Resolution No 2347 (2017) of the Security Council on the Destruction, Smuggling of Cultural Heritage by Terrorist Groups'; in Italian).

Indexes and archives of RDIPP since its establishment (1965) are available on the website of the Rivista di diritto internazionale privato e processuale.