SUMMA

CODIFYING THE "GENERAL PART" OF THE EU PRIVATE INTERNATIONAL LAW?

László Burián

One of the major changes in the area of the conflict of laws in the Member States of the EU in the last decade is the rapid unification of most parts of the topics belonging traditionally to the "Special Part" of that branch of law. The paper puts the question whether there is a need of unifying the "General Part" of the conflict of laws, and tries to identify those institutions which could possibly be objects of an EU regulation often referred to as "Rome 0". The conclusion of the author is that at present there is no reality behind this plan and it is not even clear whether it could ever be realised.

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JUDICAL PRACTICE OF DISPUTES HAVING CROSS-BORDER IMPLICATIONS

Katalin Gombos

A cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seized. But we do not know what does it mean 'cross border' implication in generally. We do not find a homogeneous answer in the secondary legislation and in the case-law.

One approach is to provide more definitions in legislation and to use standardised terms and expressions. If we made a chart of steps needed to ensure the proper application of EU law, the first step would be providing more definitions of legal terms, which would avoid many problems of interpretation. The second step could be making a greater effort to standardise private EU law, which could go a long way towards creating a consistent, general and self-contained body of EU legal terms and concepts.

The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice, inter alia, by facilitating access to justice, in particular through the principle of mutual trust and mutual recognition. In order to establish progressively such an area, the European Union should adopt, amongst other things, the measures relating to judicial cooperation in civil matters having

cross-border implications which are necessary for the sound operation of the internal market. Civil judicial cooperation provides a framework to help relevant parties, legal representatives and national courts know which Member State's jurisdiction is responsible for determining cases, know which Member State's law applies, have effective mechanisms to allow judgments from one Member State to be recognised and enforced in another and ensure effective cooperation between courts in different Member States.

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ESTABLISHING THE CONTENT OF FOREIGN LAW – ISSUES FOR HARMONIZATION

János Bóka

The article charts the different theoretical and practical issues related to the pleading and proof of foreign law in civil litigation. The author pays particular attention to Hungarian judicial practice with a view to identify legal and extra legal obstacles to the actual application of foreign law. The article suggests a dual approach by the European Union: besides further development of an accessible online infrastructure for reliable information on foreign law and jurisprudence a limited harmonization of procedural rules also seems inevitable. It is submitted that the guiding principle and objective for such harmonization should not be procedural harmonization *per se* but the facilitation of the actual application of laws designated by EU conflict of laws regulations. This calls for an *ex officio* notice of foreign elements in a civil litigation by the courts and the *ex officio* application of EU conflict of laws regulations as well as the restriction of tacit or implied agreements by the parties during litigation to apply the *lex fori* in parallel with more comprehensive appeal or review options concerning both the identification of the applicable law and the ascertainment or interpretation of its content.

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THE (DIRECT) EFFECT OF DIRECTIVES AND THE APPLICABLE LAW

Mátyás Császár

The present article elaborates on two well-known European Court cases demonstrating the intersection between EU public law, EU material private law and private international law. The two cases illustrate the fact that often a vertical and horizontal conflict of laws presents itself in real life cases. The solution of these is rendered difficult by the specialties of directives as legal sources. The directives

- fundamentally because of their lack of horizontal direct effect - impact the determination of applicable law in a wide range of ways, and in an increasingly unpredictable manner. In Ingmar GB Ltd. v Eaton the ECJ substituted the horizontal direct effect of directives with the declaration of mandatory character of the provision of a directive influencing the designation of applicable law. In eDate Advertising GmbH v X the horizontal exclusionary effects of directives influences the applicable law.

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PROTECTION OF FUNDAMENTAL RIGHTS AND EU PRIVATE INTERNATIONAL LAW

Sarolta Szabó

This comparative study offers an overview of the common doctrines and selected case law on EU Private International Law (PIL) with special focus on the protection of fundamental rights in Europe. The first and second parts examine mutual links between the EU PIL and the EU Charter of Fundamental Rights and the case law of the Court of the European Union. The last part includes brief analyses of selected case patterns in PIL, which have been adjudicated with reference to fundamental rights by the European Court of Human Rights emphasizing the eclectic and contradictory character of the child abduction cases.

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THE IMPACT OF THE UNION LAW TO THE CROSS-BORDER FAMILY LAW CASES – CONCEPTUAL CONFUSIONS

Zsuzsa Wopera

Within the study we concentrated on problems concerning concepts relevant to cross border family law matters, primarily marriages. The study also addresses habitual residence and the problems of dual nationality in the field of cross border family dispute.

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JURISDICTIONAL RULES UNDER THE EU REGULATION ON COMMUNITY DESIGNS

Réka Somssich

In July 2012 the Regional Court of Düsseldorf decided to grant a preliminary injunction against Samsung Ltd and prohibited the sale of Samsung Galaxy tab. 7.7 in the European Union for reasons of having infringed the registered Community design of Apple. The decision of the German court was taken only two weeks after an English patent court of first instance ruled in favour of Samsung concerning the same products and same Community design. How could it happen that the provisions on international jurisdiction of the Design Regulation could not prevent forum shopping and simultaneous procedures? And how could two courts of different Member States come to different conclusions on the basis of the same EU provisions concerning the same design and same products? This article makes an attempt to answer the above questions.

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THE IMPACT OF ELECTRONIC COMMERCE ON THE DEVELOPMENT OF EU RULES ON JURISDICTION CONCERNING CONSUMER CONTRACTS

István Erdős

One of the legal questions regarding electronic commerce transaction is the problem concerning the identification of the factor that connects a particular online transaction to the territory and so to the law of a given country. From the perspective of private international law, the proper identification of the sufficient connecting factor is crucial since that will serve as the basis for the determination of which court might have jurisdiction and what law might be the governing law. In my contribution through the analysis of the relevant pieces of EU law and the case law of the CJEU I investigate and examine the special jurisdiction rules that were adopted in the European Union in the area of consumer contracts to promote the development of electronic commerce.

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CONSUMER PROTECTION AND THE ONLINE DISPUTE RESOLUTION PROCEDURE

László Milassin

In 2010 the United Nation Commission on Trade Law (UNCITRAL) established a Working Group to undertake work in the field of online dispute resolution (ODR) relating to cross border electronic commerce transactions, including B2B and B2C transactions as well. The Working Group considered also the impact of its deliberation on consumer protection. The aim of the work of UNCITRAL is to prepare rules for the future global cross border ODR for dispute arising from e-commerce transactions. Such rules will include ODR Rules as well as associated documents like guidelines for ODR providers and neutrals, criteria for the accreditation of ODR providers and neutrals, substantive legal principles for deciding cases and enforcement protocol.

During the UNCITRAL negotiations there were two perspectives relating to the question whether or not the ODR Rules should be designed so as to end in an arbitration phase. In that context, it was also discussed whether a potential arbitration process could be designed on the assumption that relevant arbitration agreements – when concluded at the time of the transaction, i.e. before the dispute has arisen – would in all instances be binding on both parties. The further negotiations were based on a two – track system – one track of which would end in binding arbitration (that was the US position supported by the African and South American countries) and one that would not (that was the position of the EU countries). The EU supports the second standard, namely the pre-dispute arbitration agreements are considered not binding on the consumer or can be invalidated by him. However, consumer arbitration agreements are considered binding on both parties when they are entered into after the dispute has arisen. The EU stick to this second solution because according to the EU Directive 2013/11/EU on alternative resolution for consumer disputes (Directive on consumer ADR) Member States shall ensure that an agreement between a consumer and trader to submit complaints to an ADR entity is not binding on the consumer if it was concluded before the dispute has materialized and if it has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute. (Article 10 (1) Liberty).

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EVALUATION OF THE RULES OF APPLICABLE LAW IN INSOLVENCY REGULATION

Adrienn Nagy

In accordance with Article 46 of Council Regulation (EC) 1346/2000 on insolvency proceedings the European Commission adopted a Report [COM(2012) 743 final] on the application of Insolvency Regulation. The Report aims to present to the European Parliament, the Council and the European Economic and Social Committee an assessment of the application of the Regulation. It had taken into account a comparative legal study on the evaluation of the Regulation in 26 Member States, a study for an impact assessment of an amendment of the Regulation and the results of a web-based public consultation. The Commission considered that there was a need to bring forward necessary modification.

The Report evaluated the rules of applicable law, so this study aims to present the working the rules of applicable law in practice emphasizing the need of the reform in this field.

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COLLISION ASPECTS OF FINANCIAL RELATED INTERNATIONAL CONTRACTS

Judit Glavanits

The study analyses specified types of international contracts, which contain financial-related issues. We can divide these contacts into two groups: one is a group of contracts contains financial services on international level, the other group is that contains money or asset transfer as obligation of a party. The study analyses how the EU law regulations, especially the Brussels I. and Rome I. regulation is applicable to these contracts. As a result, we state that it is not obvious to apply these rules to certain affairs, even if we take into consideration the jurisdiction of the Court of the European Union. As a de lege ferenda suggestion, it could be useful to extend the effect of the mentioned regulations to a wider range of securities, as the contacts made through a Multilateral Trading Platform are already under the effect of Rome I.

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ARÁNYOSSÁG A VÉGSZÜKSÉG JOGINTÉZMÉNYÉBEN

Belovics Ervin

A végszükség az egyik legrégibb jogintézménye a büntetőjognak. A Gratianustól származó alapelv szerint „a szükség nem tűri a törvényt" és bár a kánonjog megítélése szerint a végszükség a cselekmény jogellenességét nem zárta ki, de az ilyen szituációt rendkívül jelentős enyhítő körülményként értékelték. A XIX. század végére, illetve a XX. század elejére azonban már mind a jogirodalomban, mind a jogalkalmazói gyakorlatban kizárólagossá vált az a felfogás, amely szerint a végszükség a tényállásszerű cselekmény jogtalanságát zárja ki, amennyiben a veszélyhelyzetből mentés során okozott sérelem és a veszélyhelyzet által a bekövetkezéssel fenyegetett következmény arányban áll egymással. Ez a felfogás tükröződik a magyar jogi szabályozás történetében is. A proporcionalitás valamennyi büntető törvénykönyvünkben megfogalmazást nyert, annak mértéke azonban többször is változott. A problémakörön belül kiemelkedő súllyal bírnak az úgynevezett veszélyközösségek esetei, azaz teret engedhet-e a jog az életek közötti választás lehetőségének. Jelen írás az ezzel kapcsolatos nézeteket mutatja be. A szerző egyértelműen úgy foglal állást, hogy az önfeláldozást a jog senkitől sem várhatja el és annak hiányát pedig nem büntetheti.

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A KINCS KIFEJEZÉS JELENTÉSE A MODERN SZABÁLYOZÁSOK ALAPJÁUL SZOLGÁLÓ RÓMAI JOG FORRÁSAIBAN

Erdődy János

A Polgári Törvénykönyvéről szóló 2013. évi V. törvény vonatkozó rendelkezéseinek (vö. 5:64. §) vizsgálata nyomán érdekes lehet a kincstalálásra, különösen pedig a kincs mibenlétére vonatozó szabályoknak az összehasonlító áttekintése. Minthogy a kontinentális Európában a római jogi hagyomány igen erős, így nem alap nélküli egy olyan törekvés, hogy a kincs fogalmára vonatkozó fejtegetéseket római jogi alapokból kiindulva vizsgáljuk meg. Eme fogalom tisztázása nyomán megválaszolható az a kérdés is, hogy van-e egyáltalán mainapság létjogosultsága a kincsre, illetőleg a kincstalálásra vonatkozó szabályoknak egy XXI. századi polgári törvénykönyvben. A vizsgálódás nyomán megállapítható, hogy a rómaiak megközelítése szerint a kincs egy régen elrejtett értékes dolog, amelyre már vélhetően senki sem emlékszik, ekként alapos okkal feltehető, hogy tulajdonosa sincsen. Ezen túlmenően ahhoz, hogy valamely régen elrejtett értékes dolgot kincsnek tekinthessünk, szükséges még az is, hogy a szerencse ajándékaként leljünk a dologra, valamint hogy az ne legyen elveszített, vagy tévedésből otthagyott. Bár a klasszikus fogalmi elemek aligha tekinthetők kimerítőnek, a jelenkori hatályos polgári törvénykönyvek szabá-

lyai jobbára a római jogi *responsum*ok nyomán alakultak ki, akárcsak az új magyar Polgári Törvénykönyv szabályai. A tanulmány a Salzburgban 2013. szeptember 10-15. között megrendezésre került 67e Session de la Société Internationale Fernand de Visscher pour l'Histoire des Droits de l'Antiquité (SIHDA) nemzetközi római jogász és jogtörténész konferencián elhangzott előadás írott, és bővített változata.

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KÉPVISELETI KORMÁNYZÁS ÉS KÖZVETLEN DEMOKRÁCIA

Itália és a főbb európai közvetlen demokratikus hagyományok a 19–20. században

Komáromi László

A konferenciatanulmány a népszavazásoknak a 19. századi itáliai egységfolyamatban játszott szerepét tárgyalja. Az ún. szuverenitás-kérdések közvetlen demokratikus eldöntésének korai előképei között említi a Francia Forradalom idején, majd közvetlenül azt követően Franciaország határvidékén lezajlott egyes területi plebiszcitumokat. Az 1848-ban itáliai területen tartott, az osztrák katonai beavatkozás miatt végül eredménytelen szavazások rövid összefoglalása után áttekinti az egységfolyamat második fázisában, 1860 és 1870 között sorra került referendumokat, párhuzamot vonva a Napóleonok franciaországi ún. plebiszcitárius (felülről irányított népszavazások) gyakorlatával. Ezt követően, az egyidejűleg kibontakozó svájci közvetlen demokratikus népjogi hagyományt, mint alulról jövő kezdeményezések által uralt ellenpéldát említve jut el a népszavazási intézmények két világháború közötti első komolyabb európai elterjedéséig, az olasz fasiszta és más autoriter rezsimek általi visszaélésszerű felhasználásáig. Végül röviden kitér a II. Világháborút követő olasz népszavazások alapját képező alkotmányos intézményekre és gyakorlatra, amely utóbbi Európában – Svájc és Liechtenstein után – a harmadik legintenzívebbnek mondható.

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SPANISH ECCLESIASTICAL LAW – NEW EMPHESES

Szabolcs Anzelm Szuromi

There are numerous laws within the Spanish legal system which give guarantees on different levels to prevail the religious freedom. The last concordat between the Holy See and the Spanish Kingdom (January 3rd 1979) covers four fields: 1) Regulates the competence limits of both parties; 2) Speaks about the principles of the field of education and culture; 3) Lists the criteria of the military ordinary's activity; 4)

Fixes the maxims of financial support of the Catholic Church. The state has regulated subsequently the right of religious freedom and parity regarding the other – not Catholic – religious denominations too – on the level of their legal status – by bilateral agreements. Essential change had happened in the Spanish marriage law on July 29th 2005 by a *Resolución-circular* which has taken out from the list of matrimonial impediments the same-sex orientation, moreover in expressive form has accepted the same-sex marriage, fundamentally changing by this legislation the classical meaning of the juridical technical term of "matrimonio" (*marriage*). We must also emphasize that considerable modification which was done in 2012 concerning dues-paying in relation to donations received by the Church, Church's bank-transfers and alienation of ecclesiastical goods, additionally particular new norms on the acquiring temporal goods by denominations. This modified norm declares dues-free status for the Church in the above indicated financial actions. Recently the Spanish legislation regarding the religious denominations – including the Catholic Church – is expresses well that the religious attitude belongs to the citizens natural human peculiarity, therefore the official recognition of this and also appreciating of its value cannot ignore by the state legislation. Nevertheless, these state legislations must keep the particular autonomy the single denominations internal norms based on the principle of religious freedom.

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THE CASE OF THE BASALT OF SOMOSKŐ

The Genevese Protocol No.2. in the light of the international law servitudes

Gábor Hollósi

The study is about the Genevese Protocol No.2. of the Peace Treaty of Trianon, which was signed between Hungary and Czechoslovakia on the 20th of February, 1924. The antecedent of this protocol was the decision of the League of Nations on the 23th of April, 1923, which returned the villages of Somoskő and Somoskőújfalu to Hungary. Because the new border crossed the territory of the Somoskő Basalt Mine Corporation, Hungary ensured for itself the mining production of the basalt from the Czechoslovakian territory by this supplement of the Treaty. The present study examines the Genevese Protocol No.2. in light of the international law servitudes and presents its historical background with special regard to its colourful history after 1945. The research was conducted in the contemporary records of the Ministry of Foreign Affairs, which are currently in the possession of the National Archives of Hungary.