

INTERNATIONAL CIVIL PROCEDURAL LAW

Ioannis Delikostopoulos

Materials and Cases. Pointers

- I. **Recommended reading:** Hartley, *Civil Jurisdiction and Judgments in Europe*, OUP 2017, Dickinson/Lein, *The Brussels I Regulation Recast*, OUP 2015, Penades Fons, 'The Effectiveness of EU Law and Private Arbitration', *CMLR* 2020, at 1069-1106, Delikostopoulos, 'Towards European Procedural Primacy in national legal systems', *European Law Journal* 2003, at 599-613, Nielsen, 'The New Brussels I Regulation', *CMLR* 2013, at 503-528, Fouchard/Gaillard/Goldman on *International Commercial Arbitration*, edited by Gaillard/Savage, Kluwer 1999, Δελικωστόπουλος, *Ζητήματα από την εφαρμογή του κανονισμού 1215/2012 για τη διεθνή δικαιοδοσία και την εκτέλεση αποφάσεων*, 3^η έκδοση 2022, εκδόσεις Σάκκουλα.
- II. **Topics:**
1. **Jurisdiction, recognition and enforcement of decisions in divorces in the EU, matters of parental responsibility and matters relating to maintenance obligations.**
 Pointers: Regulation 2019/1111, Maintenance Regulation 4/2009, ('forum actoris', 'forum necessitatis'), Hague Convention, Regulations 2016/1103 and 2016/1104.

 Cases: July 16, 2015, C-184/14, A v B, September 5, 2019, C-468/18, R v P.
 2. **Private arbitration and EU law.**
 Pointers: Recital 12 of Regulation 1215/2012, articles 1(2)(d) and 72 of Regulation 1215/2012, New York Convention 1958, LCIA Arbitration Rules, ICC Rules.
 Primacy of New York Convention of 1958. EU law does not apply to arbitration. Still, can it affect arbitration? Who decides jurisdiction? Arbitrability, anti-suit injunctions, review of the validity of an arbitration agreement by an EU Member State court, international public policy (for EU competition law, but no revision au fond, extremely limited in scope review of arbitration awards, not for errors in the application of EU law alone), provisional measures, concurrent proceedings, entering appearance and raising the 'exceptio arbitri', court proceedings ancillary to arbitration including interim orders,

conflict between an arbitration clause and a choice-of-court provision, recognition of judgments.

Cases: Marc Rich, C-190/89, Allianz v. West Tankers, C-185/07, November 17, 1998, Van Uden, C-391/95, Eco Swiss, C-126/97, CDC C-352/13, Achmea, C-284/16, Asturcom, C-40/08, Renault, C-38/98, Apostolides, C-420/07, Diageo Brands, C-681/13 (errors in the application of EU rules that are not part of public policy cannot be reviewed by the courts of the Member States and do not amount to a ground for refusing recognition – Penades Fons).

English High Court, Riverrock, September 23, 2020.

3. **Choice-of-court agreements in commercial matters (Regulation 1215/2012).**

Pointers: Articles 25, 26, 31 par. 2, 3 and 4, Recitals 19 and 20 of Regulation 1215/2012

'Italian torpedoes' (see Gasser case, C-116/02), new lis pendens provision in Regulation 1215/2012 ensuring the effectiveness of choice-of-court agreements, reversal: court first seized must now stay its proceedings in favor of the designated court, issue: defendant enters an appearance before the court first seized without contesting its jurisdiction, concurrent jurisdictions, doctrine of separability (see Nielsen as per above), the designated court decides on the validity of the choice-of-court agreement, asymmetric choice-of-court agreements allowed, forms of choice-of-court agreements, choice-of-court agreements and third parties, choice-of-court provision in the constitution of a company, carriage of goods by sea, choice-of-court clauses in contracts purchasing bonds.

Cases: March 8, 2018, Saye Home, November 9, 2000, Coreck Maritime, C-387/98, Tilly Russ, C-71/83, April 20, 2016, Profit Investment, C-366/13, February 7, 2013, Refcomp, C-543/10 (exception or rule?), May 21, 2015, CDC, C-352/13, June 28, 2017, Leventis/Malcon Navigation, C-436/16, February 20, 1997, MSG, May 21, 2015, El Majdoub, C-322/14, June 24, 1986, Anterist, 22/85, October 24, 2018, Apple Sales, C-595/17, January 25, 2018, Schrems/Facebook, C-498/16, Gothaer, C-456/11.

4. Jurisdiction to grant provisional measures and enforcement of provisional measures in the European legal order.

Pointers: Regulation 655/2014, Article 35 Regulation 1215/2012: provisional measures by a court whilst another Member State court has jurisdiction as to the substance of the matter, Ex parte provisional measures, automatic right to any protective measures in the Member State of execution if there is an enforceable judgment as per article 40 of Regulation 1215/2012, article 42 par. 2 Regulation 1215/2012 for the purposes of enforcement of a judgment ordering provisional measures. Asset-freezing orders, stay of execution as per article 44 par. 1c of Regulation 1215/2012

Cases: November 17, 1998, Van Uden, C-391/95, July 12, 2012, Solvay, C-616/10.

5. Grounds for refusal of recognition and enforcement of judgments in the EU in civil and commercial matters.

Pointers: article 45 Regulation 1215/2012, stay of execution as per article 44 par. 1c of Regulation 1215/2012, Article 45 reasons are not numerus clausus.

6. Jurisdiction relating to tort, product liability, defamation and intellectual property infringements in the EU.

Pointers: Article 7 (2) Regulation 1215/2012, delimitation from art. 7(1) on jurisdiction on matters relating to contracts (is it necessary to interpret the contract to establish the unlawful nature of the conduct in question?), place where the event occurred, place where the event resulted in damage, territorial character of IP rights infringements, 'Mosaic theory' when torts in different States (print media, online publications – see Fiona Shevill, eDate Advertising, Bolagsupplysningen), 'centre of interest' of the victim, the issue of co-perpetrators, territorial limitation of jurisdiction to the damage occurring in the forum state for trademarks and copyrights.

Cases: September 27, 1988, Kalfelis/Schoeder, 189/87, October 27, 1998, Réunion européenne, C-51/97, March 13, 2014, Brogsitter, C-548/12, October 25, 2012, Folien Fisher, October 4, 2018, Feniks, C-337/17, April 3, 2014, Hi Hotel, C-387/12, July 5, 2018, Fly Lal-Lithuanian Airlines, C-27/17, October 3, 2013, Peter Pinckney, C-170/12, January 22, 2015, Hedjuk, C-441/13, December 21, 2016,

Concurrence, C-618/15, April 19, 2012, Wintersteiger, C-523/10, July 16, 2009, Zuid Chemie, C-189/08, May 21, 2015, CDC, C-352/13, January 28, 2015, Kolassa Barclays, C-375/13, September 12, 2018, Helga Löber/Barclays, C-304/17, March 7, 1995, Fionna Shevill, C-68/93, October 25, 2011, eDate Advertising, C-509/09, October 17, 2017, Bolagsupplysningen, C-194/16.

III. 20-25 minutes oral presentations.