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of
Private International Law

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Edited by: Petar Šarčević, Paul Volken,
Andrea Bonomi

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YEARBOOK OF PRIVATE INTERNATIONAL LAW

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VOLUME VI – 2004

EDITORS

PETAR ŠARČEVIĆ
*Professor at the
University of Rijeka*

PAUL VOLKEN
*Professor at the
University of Fribourg*

ANDREA BONOMI
*Professor at the
University of Lausanne*

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ADDRESS FOR
MANUSCRIPTS AND CORRESPONDENCE

Swiss Institute of Comparative Law
Dorigny, CH-1015 Lausanne

ENGLISH REVISION

SUSAN ŠARČEVIĆ
Professor at the
University of Rijeka

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FOREWORD

Although published in a different country and under the aegis of a new publisher, the *Yearbook of Private International Law* retains its original philosophy. As in the past, our goal is to offer readers an international forum for discussing general issues and recent developments at the national and international level worldwide.

Compared to previous years, Volume VI looks rather ‘Euro-centric’. The main reason is the impressive and continuous rhythm at which the creation of a European system of private international law is progressing at Community level. After the adoption of several regulations dealing with various aspects of international civil procedure, the EC institutions are planning to introduce uniform choice-of-law rules in several important fields, including contract, torts, succession and even in certain areas of family law. The European Court of Justice also appears to be taking increased interest in PIL issues.

This development is reflected in several contributions to this volume. An article in the ‘Doctrine’ section discusses the proposal for a ‘Rome II’ regulation on conflict of laws in torts, while another one analyses the interesting ‘Avello’ decision by the ECJ, which could create a new framework for the development of PIL in Europe. Moreover, a special section is devoted to the discussion of general PIL issues (‘allgemeine Lehren’, as the Germans say), namely characterization and public policy, from the perspective of a European PIL system *in fieri*, a topic that has captured the attention particularly of Italian scholars.¹ Finally, although the two articles of the ‘Forum’ section deal with specific topics from a national point of view – company law and transnational pollution, they inevitably include an analysis of the impact of relevant European case law and legislation.

Another group of articles focuses on the national conflict systems of some European States. An important comparative study based on a legal opinion prepared by the Max-Planck-Institute of Hamburg for the European Commission discusses the treatment of foreign tax laws and judgments in four major European countries (United Kingdom, Germany, France and Italy). Another contribution contains a general description of the PIL system in Poland, one of the new EU Member States. The actual and controversial issue of registered partnership is discussed from the perspective of Spanish law. An English translation of the latest national PIL codification, the recent Belgian Code, is published in the section on ‘Texts, Materials and Recent Developments’.

Although 2004 did not bring many developments in the field of uniform law, the *Yearbook* remains faithful to its commitment to report on the elaboration of relevant international instruments. Three articles of this volume are devoted to current endeavours under the auspices of the Hague Conference of PIL and the

¹ See PICONE P. (ed.), *Diritto internazionale e diritto comunitario*, Padua 2004.

American Law Institute, in particular in the field of choice of courts, maintenance obligations and intellectual property. Believing that the increasing internationalization of social and economic relationships requires adequate legal responses at a global level, we are confident that new important achievements in some of these areas will be covered in future volumes.

Petar Šarčević

Paul Volken

Andrea Bonomi

ABBREVIATIONS

| | |
|----------------------------|---|
| Am. J. Comp. L. | American Journal of Comparative Law |
| Am. J. Int. L. | American Journal of International Law |
| Clunet | Journal de droit international |
| ECR | European Court Reports |
| I.C.L.Q. | International and Comparative Law Quarterly |
| I.L.M. | International Legal Materials |
| id. | idem |
| IPRax | Praxis des internationalen Privat- und Verfahrensrechts |
| OJ | Official Journal |
| PIL | Private International Law |
| RabelsZ | Rabels Zeitschrift für ausländisches und internationales Privatrecht |
| Recueil des Cours | Recueil des Cours de l'Académie de la Haye de droit international = Collected Courses of The Hague Academy of International Law |
| Rev. crit. dr. int. pr. | Revue critique de droit international privé |
| REDI | Revista española de derecho internacional |
| Riv. dir. int. priv. proc. | Rivista di diritto internazionale privato e processuale |
| Riv. dir. int. | Rivista di diritto internazionale |
| RIW | Recht internationaler Wirtschaft |
| RSDIE | Revue suisse de droit international et européen = Schweizerische Zeitschrift für internationales und europäisches Recht |

DOCTRINE

FOREIGN REVENUE CLAIMS IN EUROPEAN COURTS

Jürgen BASEDOW / Jan VON HEIN / Dorothee JANZEN /
Hans-Jürgen PUTTFARKEN †*

- I. Introduction
- II. United Kingdom
 - A. Chronological Survey of Cases
 - B. The Private International Law (Miscellaneous Provisions) Act 1995
 - C. Does English Law Prohibit English Courts from Enforcing Foreign Tax Judgments?
 - D. Does English Law Allow English Courts to Refuse to Enforce Foreign Tax Judgments, i.e., Are English Courts Granted Discretion in this Respect?
 - E. Is There a Broader Rule in English Law Providing that English Courts Must not or Need not Enforce Foreign Revenue Laws?
 - F. Are There – Even Broader – Rules in English Law According to Which English Courts Must not Apply or May Refuse to Apply Foreign Tax or Other Revenue Laws?
 - G. Outside the Specific Context of Revenue Laws, What Is the Current State of the Law or Legal Discussion in England Concerning the Existence of a Frequently Cited General Rule that Courts Must not, Should not, or Need not Apply or Recognize a Rule of Public Law of Another State? Are Distinctions Made as to Whether the Foreign Legal Rule Directly Controls the Suit or Concerns Only an Incidental / Preliminary Question, or Whether the Claim Arises from Private or Public Law?
 - H. To the Extent that the Above Questions Have Traditionally Found Restrictive Answers, Have Such Answers Been Questioned or Reversed in More Recent Legal Thinking?
 - I. Summary

* Max Planck Institute for Foreign Private Law and Private International Law, Hamburg. The national reports on the United Kingdom and Germany were written by *Jan von Hein*, the French report by *Hans-Jürgen Puttfarken* †, and the Italian report by *Dorothee Janzen*. *Jürgen Basedow* was responsible for the introduction and the comparative conclusions.

- III. Germany
 - A. Does German Law Prohibit Courts from Enforcing Foreign Tax Judgments?
 - B. Does German Law Allow German Courts to Refuse to Enforce Foreign Tax Judgments, i.e., Are German Courts Granted Discretion in this Respect?
 - C. Is There a Broader Rule in German Law Providing that German Courts Must not/Need not Enforce Foreign Tax or Other Revenue Laws?
 - D. Are There – Even Broader – Rules in German Law According to Which German Courts Must not Apply or May Refuse to Apply Foreign Tax or Other Revenue Laws?
 - E. Outside the Specific Context of Revenue Laws, What Is the Current State of the Law or Legal Discussion in Germany Concerning the Existence of a Frequently Cited General Rule that German Courts Must not, Should not, or Need not Apply or Recognize a Rule of Public Law of Another State? Are Distinctions Made as to Whether the Foreign Legal Rule Directly Controls the Suit or Concerns Only an Incidental/Preliminary Question, or Whether the Claim Made Arises from Private or Public Law?
 - F. To the Extent that Restrictive Answers Have Traditionally Been Given to the Above Questions, Have Such Answers Been Questioned or Reversed in More Recent Legal Thinking?
 - G. Summary
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 - A. Introductory Remarks
 - B. Basic Doctrine and Terminology
 - C. Case Law Prior to 1990
 - D. The 1990 Supreme Court Decision in *Guatemala*
 - E. The 1990 Supreme Court Decision in *Duvalier*
 - F. Guatemala and Duvalier Today
 - G. Exercise of Public Power
 - H. Exception of International Solidarity or Converging Interests
 - I. Summary
- V. Italy
 - A. Recognition and Enforcement of Foreign Tax Judgments by Italian Courts
 - B. Application of Foreign Public Law by Italian Courts
 - C. Summary
- VI. Comparative Conclusions
 - A. General Observations
 - B. Common Principles
 - C. Enforcement of Foreign Tax Judgments
 - D. Some Leeway for the Enforcement of Foreign Revenue Laws