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Overriding Mandatory Provisions in Private International Law and Arbitration

Introduction by the Guest Editor

The Young European Union Private International Law Research Network was established in 2019 in order to promote academic cooperation within the young generation of private international lawyers in the European Union. The activity of the Network centres around projects and the project theme for 2020 was the application of overriding mandatory norms.

Overriding mandatory norms are beloved subjects for private international lawyers. Most often, however, they are analysed in the context of EU private international law, and principally in contract law, without due regard to other situations where overriding mandatory provisions may equally claim application. Therefore, the primary goal of the project was to reveal whether and to what extent overriding mandatory provisions are applied in the autonomous private international law of the Member States, i.e. outside the scope of application of the EU private international law regulations. Some findings have been made in the general report prepared in the framework of the project, based on the contributions of national reporters from seventeen Member States. The report, however, clearly demonstrates that the application or consideration of overriding mandatory rules is also admitted in the autonomous private international law of the Member States, and most notably they involve rules on personal status and family law, property law and company law.

This enquiry on the application of overriding mandatory provisions in autonomous private international law is supplemented by the discussion of topics related to the application of overriding mandatory rules in private international law and arbitration. Martina Melcher examines which substantive law rules of EU law may qualify as overriding mandatory provisions under the Rome I and Rome II Regulations. Katažyna Bogdzevič puts the application of overriding mandatory provisions in family law and regarding names under scrutiny. Markus Petsche addresses the application of mandatory rules in international commercial arbitration. Uglješa Grušić discusses the implications of some recent English conflict-of-laws cases concerning the application of overriding mandatory provisions, such as *Lilly Icos LLC v 8PM Chemists Ltd* and *Les Laboratoires Servier v Apotex Inc*. Finally, the approach of the new Hungarian Private International Law Act towards overriding mandatory norms is presented by Csenge Merkel and Tamás Szabados.

The recent COVID-19 pandemic sadly enlightens a further category of overriding mandatory norms: public health measures. Measures related to the prevention of the spread of the coronavirus, introduced by many states around the world, can be considered as

overriding mandatory norms.¹ They include closing borders, cities and workplaces, ordering the cancellation of large-scale events, such as theatre and cinema shows or concerts, a mandatory ban on flights or road transport and the expropriation of local face masks production and stocks.

It was planned to hold a conference at ELTE Eötvös Loránd University with the participation of the project participants in March 2020 to discuss the research outcomes. The coronavirus epidemic interfered with this plan. However, academic cooperation continued without interruption. The conference has been scheduled for a later date and moved to the online space. Moreover, the written versions of the planned conference lectures can now be published in the ELTE Law Journal. The disease could reimpose borders across Europe, but this cannot prevent scholarly exchange. This is proved in this issue of the ELTE Law Journal.

Tamás Szabados
Guest editor

¹ See in particular Ennio Piovesani, 'Italian Self-Proclaimed Overriding Mandatory Provisions to Fight Coronavirus' conflictoflaws.net <<https://conflictoflaws.net/2020/italian-self-proclaimed-overriding-mandatory-provisions-to-fight-coronavirus/>> accessed 7 June 2020.

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