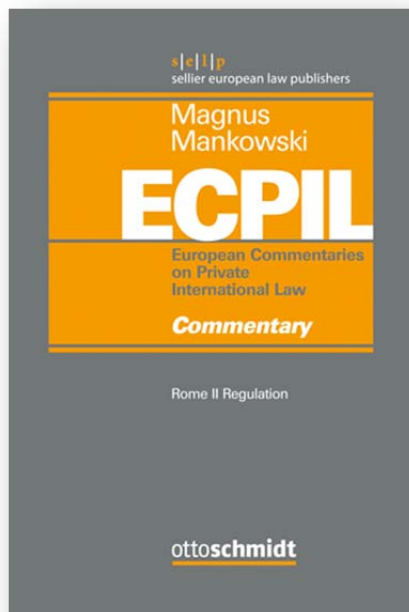


Leseprobe zu



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Such *actions civiles* are particularly prominent and commonplace in Romanic legal orders<sup>33</sup> (whereas the *Adhäsionsklage* in Germany is a dormant beauty<sup>34</sup>). Secondly, expropriation by the State might lead to actions before administrative or civil courts as the case might be under the respective legal order.<sup>35</sup> Having recourse to the kind of jurisdiction before which a matter has to be tried would be recourse to national law and would thus collide with the need for an autonomous interpretation.

#### d) Creditorship of the State not *per se* sufficient

It is not *per se* sufficient (and not even indicative) that a State is the creditor.<sup>36</sup> If the State defends its property like any other owner would do and based on property as such, this is a civil matter.<sup>37</sup> Ownership of property is nothing specifically germane to a State but conversely some epitome of what everyone could enjoy. But if the State takes measures based on rules which are only open to the State and to private actors, this is not a civil matter anymore. The same applies to claims for the reimbursement of costs incurred by the State performing and complying *en lieu* of the addressee of administrative acts.<sup>38</sup> Even in environmental affairs a “green interpretation”, allegedly friendly to, and in favour of, the environment<sup>39</sup> is not sustainable.<sup>40</sup> Generally, claims against the State and its officials might be excluded from the Rome II Regulation whereas claims by the State are included where they are claims of a kind which any claimant might have.<sup>41</sup> 11

#### e) Public authority acting

The formal status of the subject acting cannot be all-decisive. A functional approach pierces any veil of a formally private nature if the respective subject performs public tasks. The State might be free in which means he uses to organise the performance of its tasks. But generally, functionally interchangeable means of organisation have to be treated as equivalent. By mere delegation to formally independent bodies the State cannot switch the very nature of its activities. This applies for instance to formally independent agencies or Central Banks. 12

<sup>33</sup> See only *Hardt*, in: Kühne (ed.), *Opferrechte im Strafprozess – Ein europäischer Vergleich* (1988), p. 64; *Gewaltig*, *Die action civile im französischen Strafprozess* (1990) pp. 94 *et seq.*; *Prinz v. Sachsen Gessaphe*, ZJP 112 (1999), 3; *Geimer*, in: *Studia in honorem Németh János* (2003), p. 229, 232.

<sup>34</sup> See only *Schoibl*, in: FS Rainer Sprung (2001), p. 321, 323; *Hans-Heiner Kühne*, *Strafprozessrecht* (8<sup>th</sup> ed. 2010) paras. 1136–1137; *Meyer-Gofner/Bertram Schmitt*, StPO (60<sup>th</sup> ed. 2017) Vor § 403 StPO note 1; *KMR/Stöckel*, *Kommentar zur StPO* (looseleaf) Vor § 403 dStPO note 2 (August 2005); *Mankowski*, in: FG Rudolf Machacek und Franz Matscher (2008), p. 785, 786. For (slightly dated) empirical data see *Hans-Heiner Kühne*, MSchrKrim 1986, 98, 102; *Schöch*, in: AK StPO (1996) Vor § 403 dStPO note 3.

<sup>35</sup> See for instance Art. 14 (3) 4<sup>th</sup> sentence GG in Germany referring disputes for compensation following an expropriation to the civil courts.

<sup>36</sup> *Junker*, in: FS Peter Salje (2013), p. 243, 249.

<sup>37</sup> *Junker*, in: FS Peter Salje (2013), p. 243, 249.

<sup>38</sup> *Junker*, in: FS Peter Salje (2013), p. 243, 250.

<sup>39</sup> As advocated for by *Betlem/Bernasconi*, (2006) 122 L.Q.Rev. 124, 136.

<sup>40</sup> *Junker*, in: FS Peter Salje (2013), p. 243, 251.

<sup>41</sup> *Briggs*, *Private International Law in English Courts* (2014) para. 8.55.