



INTERNATIONAL LAW ASSOCIATION
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**COMMITTEE ON THE PROTECTION OF PRIVACY
IN PRIVATE INTERNATIONAL AND PROCEDURAL LAW**

Chair: Prof. Dr. Dr. h.c. Burkhard Hess

Activity Update

1. From 18 to 19 January 2016, the ILA Committee on the Protection of Privacy in Private International and Procedural Law (the Committee) met at the Max Planck Institute Luxembourg for Procedural Law for its third meeting under the chairmanship of Prof. Dr. Dr. h.c. Burkhard Hess.

2. In accordance with the mandate given to the Committee in 2013 by the International Law Association, the Committee's activity focuses on the promotion of international co-operation and the contribution to predictability on issues of jurisdiction, applicable law, and circulation of judgments in privacy matters, taking into account, *i.a.*, human rights, data protection, legislation and recent case-law of national and supra-national courts.

3. The Committee includes experts from Australia, Belgium, Brazil, France, Germany, Greece, Italy, Japan, Korea (Republic of), Luxembourg, Spain, United Kingdom, and United States of America.

Synopsis of the Committee's Earlier Activity

4. At its first meeting on 29 September 2014, the Committee had a lively and fruitful discussion on its future actions and methodological approach. With a view to examining the concrete problems regarding privacy protection, the Committee decided to undertake a comparative analysis of the different concepts of privacy in the various legal systems by circulating a questionnaire that led to the drafting of the Committee's Interim Report 'The Concept of Privacy in The National Systems'. In the framework of the Committee, a conference was hosted on 30 September 2014 the proceedings of which have been published in B. Hess and C.M. Mariottini (eds), *Protecting Privacy in Private International and Procedural Law and by Data Protection. European and American Developments* (Nomos-Ashgate, 2015).

5. At its second meeting from 26 to 27 February 2015 the Committee commenced discussion on the different concepts of privacy (addressing, *i.a.*, the legal framework of the protection of privacy, its constitutional dimension, its material and personal scope, the competing interests involved in the protection of privacy, and the available remedies). In its discussion, the Committee envisaged to extend the scope of its activity also to the protection of privacy in the new social media.

Report of the Third Committee Meeting

6. At its third meeting, on 18 January 2016 the Committee addressed the scope of its activity. It took note of the fact that, while the approaches and the solutions adopted in the different legal systems with respect to privacy matters appear to differ considerably, the underlying problems are functionally very similar.



7. The Committee also took note of the high degree of interaction between the protection of privacy and constitutional and fundamental values and their impact on the solutions adopted not only by substantive law but also by private international and procedural law.

8. There was consensus that the Committee should draft guidelines and principles (as opposed to rules) providing a sense of the problems and the available solutions with regard to the protection of privacy.

9. There was also consensus that the Committee should address issues of jurisdiction, applicable law, and recognition and enforcement of judgments with respect to:

- the protection of personality rights against violations between private parties and by mass media, especially with regard to non-contractual claims, also taking into account the question of the liability of Internet service providers and intermediaries;
- the protection of privacy in social media, especially with regard to contractual and quasi-contractual claims. A report on these matters will be circulated by the French branch;
- data protection.

10. Questions of consumer protection and protection of minors, as well as alternative dispute resolution mechanisms will also be included in the Committee's activity.

11. With a view to developing guidelines that take into account the inherent complexities of privacy protection, but that are also sufficiently flexible to deal with different approaches adopted by the various legal systems, a questionnaire will be circulated on the issues of jurisdiction and applicable law in privacy matters, and a report will be subsequently drafted addressing these issues from a comparative standpoint.

12. The Committee also discussed the general structure of its guidelines. It started to draft the guidelines, in particular with respect to the notion of privacy, remedies, and jurisdiction.

13. Within the Committee's framework, on 19 January 2016 Mr Peter Trooboff delivered a guest lecture at the Max Planck Institute Luxembourg on 'Conflicts over Extraterritoriality: U.S. Government Search Warrants for Content of Emails Stored in Other Nations – The *Microsoft* Case'.

Upcoming Activities

14. On 8 August 2016, the Committee will hold its Open Working Session at the 77th ILA Biennial International Conference in Johannesburg. On that occasion, the Committee will report on its activity.

15. A closed meeting will also be held on 9 August 2016, to discuss the report that will be prepared on privacy matters from a private international law comparative perspective, the report on the protection of privacy in social media, and the Committee's future activities.