

## Summary

### *Confiscation by occupants and private international law* *by Prof. Eva Maria Kieninger, Würzburg*

1. Generally speaking, foreign confiscations and expropriations are governed, from a private international law point of view, by the principle of territoriality. In so far as the expropriation is limited to property situated within the territory of the expropriating state, the act will be recognised by foreign courts, provided it does not violate the public policy (*ordre public*) of the forum state.
2. As a general rule, public policy is rarely invoked against foreign expropriations by municipal courts (with the exception of French courts). German courts have found the necessary link with domestic interests only to be present when foreign confiscations affected German citizens.
3. The term „expropriation“ is used in this paper so as to include confiscations by occupants.
4. It is important to separate the question of nullity of an expropriation which violates principles of public international law, and the question of non-recognition by courts in third states.
5. A violation of humanitarian law, especially of Art. 46 section 2 of the Hague Convention concerning the Laws and Customs of War on Land renders the expropriation null and void.
6. For courts in third states, non-recognition of the expropriation is the proper sanction for a violation of humanitarian law. The third state's own political or economic interests, for example the interest to maintain good economic relationships with the expropriating state, cannot be weighed against a violation of humanitarian law.
7. In addition, an expropriation which extends beyond the competences of an occupying state conferred to the latter by the Hague Convention concerning the Laws and Customs of War on Land, also violates the principle of territoriality.
8. Moreover, an expropriation violating humanitarian law will always be contrary to the internal public policy (for German private international law see Art. 6 *Einführungsgesetz zum Bürgerlichen Gesetzbuch*). Because of the relative weight of such a violation, the international jurisdiction of the domestic courts should be held to provide a sufficiently close link with domestic interests.
9. The law applicable to rights and interests in the area of property law, including claims of an owner against the present possessor, is determined by the present *lex rei sitae* (the law at the place where the property is presently situated); however, expropriating legislation in violation of humanitarian law remains to be non-applicable.
10. Conflicts between an old and a new holder of a proprietary right are to be resolved on the basis of the private law rules applicable under the choice of law rules of the forum.

It is not necessary to take the interests of acquirers of confiscated property separately and additionally into account when deciding upon the (non-)recognition of foreign expropriations.