German Annotation on “Facts of Multiple Relevance”

Peter Mankowski (Hamburg) takes the occasion of a judgment of the District Court Tübingen (judgment of 30.3.2005 – 5 O 45/03) to reveal weaknesses of the theory of "facts of multiple relevance” (IPRax 2006, 454 et seq.). According to the theory of "facts of multiple relevance” which is rather popular in German – but also Swiss and Swedish – courts, facts which are relevant with regard to jurisdiction as well as the substance of the case do not have to be proved in order to assume jurisdiction. It is sufficient if they are alleged by the claimant – they are examined only in the context of the substance of the case. This theory might be compared with the English approach to allow a lesser burden of proof to assume jurisdiction which is satisfied by a showing of probability ("good arguable case"). *Mankowski* reveals in his comment *inter alia* that the theory of "facts of multiple relevance" leads to difficulties if the term in question becomes relevant for the second time only in the context of the applicable law – and not in the context of conflict of law rules. This is problematic since then the question whether it is examined at all if the conditions of the respective term are met, depends on whether the applicable law knows this term. If a law is declared to be applicable which does not know the respective term, it might happen that the term in question is not examined at all: Neither with regard to jurisdiction – due to the theory of "facts of multiple relevance" which shifts the examination to the substance of the case – nor with regard to substantive law.

In the case in question (District Court Tübingen) the "fact of multiple relevance” was, whether the transaction was a door-to-door-selling. This term was relevant with regard to jurisdiction as well as the substance of the case. Since in this case German substantive law – which knows the term “door-to-door-selling” – was applicable, the problem described above did not occur. However, *Mankowski* points out rightly that this judgment reveals one weakness of the theory of "facts of multiple relevance". This is true because if, in the concrete case, Turkish substantive law – which does not know the term of "door-to-door-selling" – would have been applicable, this term would have been relevant only with regard to jurisdiction, but would not have appeared again with regard to the substance of the case. Therefore the question whether the transaction in question could be

classified as a door-to-door-selling would not have been examined at all.