

Article on Passengers' Rights

Jens Karsten (Brussels/Oslo) has written a paper on recent developments in the field of European passenger law with references to PIL issues. "Im Fahrwasser der Athener Verordnung zu Seereisenden: Neuere Entwicklungen des europäischen Passagierrechts" has been published in the German law journal "Verbraucher und Recht" (VuR) vol. 6/2009, pp. 213 et seq.

The article mainly deals with Regulation (EC) No. 392/2009 on the liability of carriers of passengers by sea in the event of accidents. The Athens Regulation incorporates most of the Athens Convention 2002 (www.imo.org) into the *acquis communautaire* but postpones the implementation of its Articles 17 and 17bis on jurisdiction and enforcement (deviating from 'Brussels I') until such time as the EC has acceded to the Convention.

Beyond the discussion of the Athens Regulation, the paper also presents new references for preliminary rulings and recent decisions of the ECJ linking travel law and PIL. The author refers *inter alia* to the "Rehder" case (which in the meantime – as we have reported – has been decided). It also introduces the Austrian reference on Art. 15(3) 'Brussels I' in the "Pammer" case (now also Case C-144/09, *Alpenhof v. Heller*).

Most significant for the development of EU-PIL, the paper raises the question of the interaction of the European Commission proposal of 8 October 2008 for a Directive on Consumer Rights (COM(2008) 614 final) with the 'Rome I'-Regulation (first discussed in this forum by Giorgio Buono on 9 October 2008: "EC Commission Presents a Proposal for a Directive on Consumer Rights"). The proposal aims at merging four existing directives on consumer rights: Directive 85/577/EEC on contracts negotiated away from business premises; Directive 93/13/EEC on unfair terms in consumer contracts; Directive 97/7/EC on distance contracts; and Directive 1999/44/EC on consumer sales and guarantees. Three of these directives provide for conflict-of-law clauses concerning the scope of EC consumer law (scope clauses). Those clauses, where applicable, have the effect of making, for instance, unfair term control as foreseen in EC law under Directive 93/13/EEC on Unfair Terms in Consumer Contracts possible even when the law of a third country is chosen. Somewhat hidden in its provisions, the proposal would abolish the scope clauses of its predecessor directives. The author assesses the

impact of this change in EC-PIL de lege ferenda, taking in particular into account Article 5 and Article 3(4) of 'Rome I', both new provisions compared to the Rome Convention. The choice of law of a third, non-EU-country for seat-only sales would consequently be possible also in those areas of EC consumer law whose application is so far guaranteed by the scope clauses. This significant change is welcomed; however, uncertainty remains whether this consequence has been properly considered in the proposal. The author encourages therefore a discussion on the territorial scope of EC consumer law with regard to passengers' rights.