AG Wahl on the localisation of damages suffered by the relatives of the direct victim of a tort under the Rome II Regulation

This post has been written by Martina Mantovani.

On 10 September 2015, Advocate General Wahl delivered his opinion in Case C-350/14, *Florin Lazar*, regarding the interpretation of Article 4(1) of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II). Pursuant to this provision, a non-contractual obligation arising out of a tort is governed, as a general rule, by the law of "the place where the damage occurred", irrespective of the country in which the event giving rise to the damage occurred "and irrespective of the country or countries in which the indirect consequences of that event occur".

The case concerns a fatal traffic accident occurred in Italy.

Some close relatives of the woman who died in the accident, not directly involved in the crash, brought proceedings in Italy seeking reparation of pecuniary and non-pecuniary losses personally suffered by them as a consequence of the death of the woman, *ie* the moral suffering for the loss of a loved person and the loss of a source of maintenance. Among the claimants, all of them of Romanian nationality, some were habitually resident in Italy, others in Romania.

Before the Tribunal of Trieste, seised of the matter, the issue arose of whether, for the purposes of the Rome II Regulation, one should look at the damage claimed by the relatives in their own right (possibly to be localised in Romania) or only at the damage suffered by the woman as the immediate victim of the accident. Put otherwise, the question was whether the prejudice for which the claimants were seeking reparation could be characterised as a "direct damage" under Article 4(1), or rather as an "indirect consequence of the event", with no bearing on the identification of the applicable law.

According to AG Wahl, a "direct damage" within the meaning of Article 4(1) does

not cover the losses suffered by family members of the direct victim.

In the opinion, the Advocate General begins by acknowledging that, under the domestic rules of some countries, the close relatives of the victim are allowed to seek satisfaction in their own right (*iure proprio*) for the pecuniary and non-pecuniary losses they suffered as a consequence of the fatal (or non-fatal) injury suffered by the victim, and that, in these instances, a separate legal relationship between such relatives and the person claimed to be liable arises and co-exists with the one already set in place between the latter and the direct victim.

In the Advocate General's view, however, domestic legal solutions on third-party damage should not have an impact on the interpretation of the word "damage" in Article 4(1), which should rather be regarded as an autonomous notion of EU law. The latter notion should be construed having due regard, *inter alia*, to the case law of the ECJ concerning Article 5(3) of the 1968 Brussels Convention and of the Brussels I Regulation (now Article 7(2) of the Brussels I*a* Regulation), in particular insofar as it excludes that consequential and indirect (financial) damages sustained in another State by either the victim himself or another person, cannot be invoked in order to ground jurisdiction under that provision (see, in particular, the judgments in *Dumez and Tracoba, Marinari* and *Kronhofer*).

That solution, the Advocate General concedes, has been developed with specific reference to conflicts of jurisdictions, on the basis of considerations that are not necessarily as persuasive when transposed to the conflicts of laws. The case law on Brussels I, with the necessary adaptation, must nevertheless be treated as providing useful guidance for the interpretation of the Rome II Regulation.

Specifically, AG Wahl stresses that the adoption of the sole connecting factor of the *loci damni* in Article 4(1) of the Rome II Regulation marks the refutation of the theory of ubiquity, since, pursuant to the latter provision, torts are governed by one law. The fact of referring exclusively to the place where the damage was sustained by the direct victim, regardless of the harmful effects suffered elsewhere by third parties, complies with this policy insofar as it prevents the splitting of the governing law with respect to the several issues arising from the same event, based on the contingent circumstance of the habitual residence of the various claimants.

The solution proposed would additionally favour, he contends, other objectives of the Regulation. In particular, this would preserve the neutrality pursued by the legislator who, according to Recital 16, regarded the designation of the *lex loci damni* to be a "fair balance" between the interests of all the parties involved. Such compromise would be jeopardised were the victim's family member systematically allowed to ground their claims on the law of the place of their habitual residence. The preferred reading would moreover ensure a close link between the matter and the applicable law since, while the place where the initial damage arose is usually closely related to the other components of liability, the same cannot be said, generally, as concerns the domicile of the indirect victim.

In the end, according to AG Wahl, Article 4(1) of Regulation No 864/2007 should be interpreted as meaning that the damages suffered, in their State of residence, by the close relatives of a person who died as a result of a traffic accident occurred in the State of the court seised constitute "indirect consequences" within the meaning of the said provision and, consequently, the "place where the damage occurred", in that event, should be understood solely as the place in which the accident gave rise to the initial damage suffered by the direct victim.