

Private International Law, Labour conditions of Hungarian truck drivers, and beyond

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On 23 November 2018 the Dutch Supreme Court referred a question for preliminary ruling to the CJEU in a case with regard to labour conditions of Hungarian truck drivers, particularly with regard to the Posting of Workers Directive, 96/71/EC (see here for the Dutch version, see here for the decision of the same day).

The preliminary question will certainly attract the attention of many who have a particular interest in the specific theme of labour conditions of mobile East European workers - a theme in which rules of Private International Law matter.

The case, and its theme, might also be significant in a broader sense: it could be seen as taking place against the backdrop of discussions about the status quo of Private International Law, about current evolutions within Private International Law and the future of Private International Law, about the so-called “neutrality” of Private International Law.

These current evolutions and discussions might be analysed from the perspective of the “instrumentalization” of Private International Law. Questions about the instrumentalization of Private International Law might, ultimately, be framed as questions about the role and potential of the discipline of Private International Law with regard to social justice and global justice. Such questions arise with regard to the regulation of themes that are often put forward as hot topics in discussions about globalization (global / transnational) and social justice. Various case studies could illustrate this, in particular the theme of Corporate Social Responsibility, the theme of labour migration/labour exploitation, the theme of migration law (in the broad sense of the word - including e.g. also social security claims) in its interaction with Private International Law. The cases might concern both the regional-European setting (where legal arguments such as European freedoms arise) and the global setting (where legal arguments such as European freedoms do not arise as such).

When carrying out such an analysis, current developments - such as: recent developments regarding employee protection (recent revision of the Posting Directive, "Ryanair", ...), recent developments regarding consumer protection (in various shapes and forms), recent attention for the interaction between migration law/refugee law and Private International Law, etc. - might be taken into account. Such an analysis could be placed in a context of current calls to the discipline of Private International Law to play a more prominent role or to exercise the role it deserves or should exercise or "to do its bit" (see here for more on this).

Put this way, the preliminary question of the Dutch Supreme Court interests the European road transport, but the interest for this case might also go beyond the particular characteristics and merits of this case and might even go beyond the specific theme.

On 13 December Fieke van Overbeeke will defend her phd thesis at the University of Antwerp on the exact topic of this preliminary question (under the supervision of Thalia Kruger and Herwig Verschueren). Fieke analysed the law applicable to the employment contracts of lorry drivers in the light of the Rome I Regulation and the Posting of Workers Directive.