Comparative Law in Action at the European Court of Justice, and other Developments in European Law

The latest issue of the Zeitschrift für Europäisches Privatrecht (ZEuP 2/2019) features a very interesting article by the former president of the Groupe Européen de Droit International Privé (GEDIP), *Christian Kohler*, on "Comparative Law in Action at the Court of Justice of the European Union – European Conflict of Laws in Theory and Practice" (p. 337). In this autobiographical essay, *Kohler* traces his professional career from studying at the Free University of Berlin under the supervision of his academic teacher, the legendary *Wilhelm Wengler*, to becoming General Director at the European Court of Justice while also being part of European academia as an honorary professor for private international law, European civil procedural law and comparative law at the University of Saarbrücken. In particular, *Kohler* elucidates the practical working of the CJEU and the very important role that comparative legal research plays in preparing the Court's rulings. Although, seen from the outside, the influence of comparative considerations is frequently not discernible in the Court's decisions themselves – which, following the French style in this regard, contain neither footnotes nor lengthy doctrinal discussion –, *Kohler* vividly describes the enormous amount of work that was put into building a world-class legal library in Luxembourg and the intense use that the Advocates General and their scientific staff make of its resources. A fascinating read – highly recommended!

In the editorial of the same issue (p. 249), *Alexandre Biard* and our fellow conflictoflaws.net co-editor *Xandra Kramer* (Erasmus University Rotterdam) give a critical comment on "The EU Directive on Representative Actions for Consumers: a Milestone or Another Missed Opportunity?". This article intends to contribute to ongoing policy discussions at the EU level by pointing out several loopholes in the current Commission's proposal. After highlighting a few key elements of the proposed representative action, the authors focus on selected issues. They submit that first, in view of the ever-increasing globalisation of goods

and services, a revision of European private international law rules is urgently needed for resolving cross-border mass claims. Secondly, they argue that the Commission's proposal fails to fully consider new actors and new forms of mass litigation that are now emerging, in particular the rise of mass dispute entrepreneurs who are using online platforms and digital tools to structure and to create mass claims. Thirdly, the authors elaborate that the Commission's proposal leaves several questions relating to the financing of mass litigation still unanswered.

In addition, the issue contains three case-notes on recent important decisions:

Wolfgang Hau (University of Munich) analyses the decision of CJEU in the case C-467/16, ECLI:EU:C:2017:993 ? Brigitte Schlömp ./. Landratsamt Schwäbisch Hall, in which the Court decided that Articles 27 and 30 of the Lugano Convention must be interpreted as meaning that, in the case of *lis pendens*, the date on which a mandatory conciliation procedure was lodged before a conciliation authority under Swiss law is the date on which a "court" is deemed to be seized (p. 384).

Anton S. Zimmermann (University of Heidelberg) deals with the ruling of the CJEU in the case C-210/16, ECLI:EU:C:2018:388 – Wirtschaftsakademie Schleswig-Holstein GmbH ./. Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein, in which the Court decided that European data protection rules must be interpreted as meaning that the concept of "controller" within the meaning of those provisions encompasses the administrator of a fan page hosted on a social network. In addition, the Court gave further guidance on the applicability of European data protection rules to international cases (p. 395).

Finally, Kasper Steensgaard (University of Aarhus) comments on a judgment of the Danish Supreme Court of 6 December 2016, case no. 15/2014 (p. 407). In this judgment, the Danish Supreme Court reaffirmed an interpretation of § 2a of the Danish Law on salaried employees (LSE) that the CJEU had found to be precluded by EU law. Whereas the CJEU had instructed the Danish Supreme Court to either change the interpretation or to disapply the provision as barred by the general principle of non-discrimination on grounds of age, the Danish judges found it impossible to change the interpretation, and the majority decided to apply the controversial understanding of § 2a LSE, despite the CJEU's ruling to the contrary.

For the further content of the same issue of the ZEuP, see last week’s selection of other no less interesting articles here.