Norwegian Supreme Court of Appeals on the Lugano Convention Art 16(1)(a)

The Norwegian Supreme Court of Appeals has recently handed down a judgment on the Lugano Convention Art 16(1)(a). The decision (Norsk Höyesterett (kjennelse)) is dated 2006-09-07, was published in HR-2006-01547-U – case no. 2006/1310 and is retrievable from here.

Facts and contentions

The facts and contentions of the case were the following. In 2003, C and his cohabitant A bought a house in Spain. A died 15 January 2004. Serving the decedent estate on 21 June 2005 with a subpoena in the forum (Oslo tingrett) at the place of the decedent estate´s domicile in accordance with the Norwegian Civil Procedural Law of 13 August 1915 nr 6 (Lov om rettergangsmaaten for tvistemaal) § 30, C claimed the joint ownership dissolved in accordance with the Law of Joint Ownership of 18 June 1965 nr. 6 (Lov om sameige) § 15. C extended his claim on 29 September 2005 and contended to buy the decedent estate out of the joint ownership in accordance with an agreement between C and A of 14 August 1997. The decedent estate contended, first, there was no agreement on buy out, and, second, the forum (Oslo tingrett) at the place of the decedent estate lacked adjudicatory authority. Therefore, the decedent estate asserted the court must reject to hear the case and subsequently dismiss the case from becoming a member of the Norwegian adjudicatory law system.

Legal basis

The relevant provision for determining the adjudicatory authority of Norwegian Courts was the Lugano Convention Art 16(1)(a). That provision reads:

> *"The following courts shall have exclusive jurisdiction, regardless of domicile: (1) (a) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated;"*

In general, the legal basis for conferring, delimiting and thus both attribute and

exclude adjudicatory authority to Norwegian courts is regulated by chapter 2 of the Norwegian Civil Procedural Law of 13 August 1915 nr. 6 (Lov om rettergangsmaaten for tvistemaal) where § 36a decides that the Norwegian Civil Procedural Law Chapter 2 is limited by "agreements with a foreign state". Such an agreement is the Lugano Convention, which was ratified by Norway on 2 February 1993 and adopted and implemented by incorporation as law of 8 January 1993 nr. 21 (Luganoloven). The law entered into force on 1 May 1993 and regulates international civil and commercial matters between persons domiciled within EFTA-States, and between persons domiciled in an EFTA-State and an EU-State.

Court instances and conclusions

The decisions of the court of first and second instance as well as the Supreme Court of Appeals were as follows. The court of first instance ("Oslo tingrett"), in its decision on 14 October 2005, attributed adjudicatory authority to hear the case. The decedent estate appealed to the court of second instance ("Borgarting lagmannsrett"), which on 23 January 2006 decided, first, the decedent estate was obliged to pay C´s court costs only for the proceedings before the court of second instance, and, second, to attribute adjudicatory authority to Norwegian courts. Hence, the court of second instance sent the case back to the court of first instance to be heard. The decedent estate appealed to the Supreme Court of Appeals, which on 29 March 2006, rejected the judgement of the court of second instance and returned the case to that court for adjudication. The court of second instance decided on 30 June 2006, first, the decedent estate was not obliged to pay C´s court costs, and, second, to attribute adjudicatory authority to Norwegian courts and send the case back to the court of first instance to hear the case. The decedent estate appealed that decision to the Supreme Court of Appeals contending Norwegian courts lacked adjudicatory authority. The Supreme Court of Appeals was, in accordance with the Norwegian Procedural Law (tvistemålsloven) § 404, competent to hear questions pertaining to procedure and interpretation, and the appeal to the Supreme Court of appeals concerned the interpretation of the court of second instance on the Lugano Convention Art 16(1)(a). Hence, the Supreme Court of Appeals was competent to test the correctness of the interpretation of the court of second instance on the Lugano Convention Art 16(1)(a). The Supreme Court of Appeals agreed with the lower instances on adjudicatory authority being attributed to Norwegian courts, and subsequently rejected the appeal from decedent estate. Hence, the case was sent

back to the court of first instance.

Ratio decidendi of the Supreme Court of Appeals

In the following, the rationale of the Norwegian Supreme Court will be described.

- First, the Supreme Court of Appeals concluded, with support from the judgement of the Norwegian Supreme Court in Rt-2000-654, the Lugano Convention in material scope was applicable to the dissolution of the joint ownership in accordance with article 1 since the dissolution of joint ownership would entail a sale of the property in question, which did not fall under the scope of article 1 nr. (1), where rights arising out of wills and succession are excluded from the material scope of the Lugano Convention.

- Second, the Supreme Court of Appeals introduced the wording of the Lugano Convention Art 16, which, first, the court stressed, concerns exclusive jurisdiction for certain courts, and, second, the courts of the Contracting State in which the property is situated have such exclusive jurisdiction in accordance with that article paragraph (1)(a) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property.

- Third, the Supreme Court of Appeals stated that the notion "rights in rem" is to be interpreted autonomously, and independent from national conceptions of that notion in each Contracting State. On the concept of autonomous interpretation, the Supreme Court of Appeals referred to its judgement in Rt-2006-391, paragraph 20 and 21, and also to the judgement of 18 May 2006, case C-343/04, Land Oberösterreich vs EZ as by the European Court of Justice.

- Fourth, the Supreme Court of Appeals accentuated the importance of Art 16 as being an exception to the main rule in Art 2, the article must not be interpreted wider than the limits of its aim and purpose. In that respect, the Supreme Court of Appeals referred to the judgement of 5 April 2001, case C-518/99 Gaillard vs Chekili and the judgement of 18 May 2006, case C-343/04, Land Oberösterreich vs EZ as by the European Court of Justice on the corresponding article in the Brussels Convention. Thereupon, the Supreme Court of Appeals inserted paragraph 28 of the Danish version of the latter judgement, which in English reads:

"as regards the objective pursued by Article 16(1)(a) of the Brussels Convention, it is clear both from the Jenard Report on the Brussels Convention (OJ 1979 C 59, p. 1) and the consistent case-law of the Court that the essential reason for the exclusive jurisdiction of the courts of the Contracting State where the property is situated is that the court of the place where property is situated is best placed to deal with matters relating to rights in rem in, and tenancies of, immovable property (see, in particular, Case 73/77 Sanders [1977] ECR 2383, paragraphs 11 and 12)."

- Fifth, the Supreme Court of Appeals inserted the Danish version of paragraph 29 and 30 of the judgement of 18 May 2006, case C-343/04, Land Oberösterreich vs EZ as by the European Court of Justice. Those paragraphs read in English:

"29 As regards, in particular, disputes concerning rights in rem in immovable property, they must generally be decided by applying the rules of the State where the property is situated, and the disputes which arise frequently require checks, inquiries and expert assessments which have to be carried out on the spot, so that the assignment of exclusive jurisdiction to the court of the place where the property is situated, which for reasons of proximity is best placed to ascertain the facts satisfactorily, satisfies the need for the proper administration of justice (see, in particular, Sanders, paragraph 13, and Reichert and Kockler, paragraph 10)."

"30 It is in the light of the interpretative principles thus recalled that the Court held that Article 16(1)(a) of the Brussels Convention must be interpreted as meaning that the exclusive jurisdiction of the courts of the Contracting State in which the property is situated does not encompass all actions concerning rights in rem in immovable property, but only those which both come within the scope of the Brussels Convention and are actions which seek to determine the extent, content, ownership or possession of immovable property or the existence of other rights in rem therein and to provide the holders of those rights with protection for the powers which attach to their interest (Reichert and Kockler, paragraph 11)."

- Sixth, the Supreme Court of Appeals quoted paragraph 17 of the

judgement of 5 April 2001, case C-518/99 Gaillard vs Chekili as by the European Court of Justice where it is stated that:

"the difference between a right in rem and a right in personam is that the former, existing in an item of property, has effect erga omnes, whereas the latter can only be claimed against the debtor (see the judgment in Lieber, paragraph 14)."

- Further, The Supreme Court of Appeals clarified that the Chekili-case concerned an action for rescission of a contract of sale of immovable property and claim for damages for rescission, which clearly did not concern rights in rem in accordance with the Brussels Convention Article 16(1)(a).
- Furthermore, the Supreme Court of Appeals referred to the judgement of 17 May 1994, case C-294/92 Webb vs Webb as by the European Court of Justice, which concerned proceedings to obtain a declaration that a son holding the flat for the exclusive benefit of the father and that in that capacity he is under a duty to execute the documents necessary to convey ownership of the flat to the father. The Supreme Court of Appeals inserted the Danish version of paragraph 15 of that judgement, which in English reads:

"The father does not claim that he already enjoys rights directly relating to the property which are enforceable against the whole world, but seeks only to assert rights as against the son. Consequently, his action is not an action in rem within the meaning of Article 16(1) of the Convention but an action in personam."

- Seventh, against the preceding considerations, the Supreme Court of Appeals concluded that the claim for dissolution of the joint ownership did not fall under the scope of the Lugano Convention Art 16(1)(a) as conceived as a right in rem under that article. The Supreme Court of Appeals defined the question before the court as a question of whether or not the conditions for dissolution of the agreement on joint ownership were fulfilled, which in turn may be regulated by a contract or by law. Hence, that claim must be directed against those taking over the part of

the joint ownership previously held by the deceased. Therefore, the Supreme Court of Appeals held that the claim could not be directed against anyone since the claim for dissolution of the joint ownership did not follow from the rights of ownership of the property, which if it did, could be directed against anyone. Reiterating the relatively narrow scope of the exclusive jurisdiction of courts in accordance with the Brussels Convention Art 16(1)(a), the Supreme Court of Appeals reaffirmed that article, and also the parallel article in the Lugano Convention, being an exception to the main rule laid down in Art 2, must not be interpreted wider than the limits of its aim and purpose, as follows by case-law of the European Court of Justice and by legal theory.

- Hence, the Supreme Court of Appeals agreed with the lower instances that the Lugano Convention Art 16 was inapplicable (and therefore not attributing adjudicatory authority to Spanish courts), and attributed adjudicatory authority to Norwegian courts at the place of the domicile of the defendant. Subsequently, the Supreme Court of Appeals rejected the appeal from decedent estate and sent the case back the court of first instance.

The court decision (Norsk Höyesterett (kjennelse)) is dated 2006-09-07, was published in HR-2006-01547-U – case no. 2006/1310 and is retrievable from here.

The American Journal of Comparative Law, 2006 American National Report

The 2006 American National Report, published yearly by the The American Society of Comparative Law, is now in print. The Society has as its laudable goal to "promote the comparative study of law and the understanding of . . . private international law," and the recent Report is no exception. In pertinent part, the Table of Contents is as follows:

American Law in the 21st Century: U.S. National Reports to the XVIIth International Congress of Comparative Law
Edited by John C. Reitz and David S. Clark

Preface by John C. Reitz & David S. Clark

American Participation in the Development of the International Academy of Comparative Law and Its First Two Hague Congresses by David S. Clark

SECTION II: Civil Law, Procedure, and Private International Law

- *New Developments in Succession Law* by Ronald J. Scalise, Jr.
- *Parenthood in a Time of Transition: Tensions between Legal, Biological, and Social Conceptions of Parenthood* by David D. Meyer
- *The Boundaries of Property Rights: La Notion de Biens* by Alain A. Levasseur
- *Estoppel and Textualism* by Gregory E. Maggs
- *Pure Economic Loss in American Tort Law: An Unstable Consensus* by David Gruning
- *Contracts Subject to Non-State Norms* by Symeon C. Symeonides
- *New Experiences of International Arbitration in the United States* by Christopher R. Drahozal
- *Recognition of Same-Sex Legal Relationships in the United States* by Peter Hay
- *The Civil, Criminal and Disciplinary Liability of Judges* by John O. Haley
- *Access to Justice, Costs, and Legal Aid* by James P. George
- *Agriculture and the Polluter Pays Principle* by Ved P. Nanda

Information on how to order a copy, or to obtain information about the Society's other publications, seminars and activities, is available on its website.

The Impact of Mutual Recognition and the Country of Origin Principle on the Internal Market

There is a French article in the new issue of the Journal du Droit International by Mathias Audit (*University of Caen, France*) entitled, ""**Régulation du marché intérieur et libre circulation des lois**". Professor Audit has kindly summarised the thrust of the article for us:

> *Since the Cassis de Dijon case, an original regulatory tool of the internal market has been developed in EU Law. It is founded on the idea that an economic activity developed on the ground of the law of a member state could be extended in other member states' territory following provisions of its law of origin. In other words, free movement of goods, services or capitals should imply a similar transborder movement of rules belonging to the state they come from.*
>
> *Freedom of movement would therefore be extended to legal rules. The mutual recognition principle is the first illustration of this particular kind of regulatory tool. More recently, it also appeared in the so-called country of origin principle.*
>
> *This study tends to evaluate the regulatory impact of these two principles on the internal market. This implies to examine the relations between them and private international law. The important function given to the law of origin by the two European law principles should either disrupt or revitalize classical mechanisms of conflict of laws.*

Those of you with LexisNexis access should be able to download it from there.

Jurisdiction over Defences and Connected Claims

There is a case note in the latest issue of the *Lloyd's Maritime & Commercial Law Quarterly* (L.M.C.L.Q. 2006, 4(Nov), 447-452) by Adrian Briggs (*Oxford University*) on "**Jurisdiction over Defences and Connected Claims**", which:

> *Criticises the interpretation by the European Court of Justice of the provisions of Council Regulation 44/2001 allowing similar cases to be heard together to avoid irreconcilable differences in precedent, where they refused to hear claims together in the cases of Gesellschaft fur Antriebstechnik mbH & Co KG (GAT) v Lamellen und Kupplungsbau Beteiligungs KG (LuK) (C-4/03) and Roche Nederland BV v Primus (C-539/03).*

German Federal Supreme Court: Ban on Divorce may infringe German Public Policy

The German Federal Supreme Court has held in its judgment of 11 October 2006 (XII ZR 79/04) that the non-availability of divorce under the applicable law may violate Art. 6 Basic Law which protects marriage and the family, and therefore German public policy (Art. 6 Introductory Act to the Civil Code (EGBGB)). With this decision the Federal Supreme Court set aside the judgment of the lower court (Court of Appeal Karlsruhe, judgment of 23 April 2004 – 5 UF 205/03)) which did not regard public policy as violated, thereby departed from its own former case law.

The Court sets forth *inter alia* that the public policy clause was not immutable, but had rather to be seen in the context of the contemporary legal order.

Therefore it was subject to the transition of moral concepts. The Court refers for supporting the theory that value propositions had changed to the fact that hardly any State does not provide for the possibility of divorce nowadays (in the European Union the only State not allowing divorce is Malta). Further the Court stresses that the German Basic Law proceeds on the concept of a secular marriage subjected to civil law. Part of this marriage concept was also the possiblity to reattain one's freedom to remarry – by divorce.

The full judgment is available on the Federal Supreme Court's website. The judgment of the Court of Appeal Karlsruhe can be found in IPRax 2006, 181 including an annotation by *Thomas Rauscher* at p. 140.

A Farewell to Cross-Border Injunctions?

Annette Kur (Max Planck Institute for Intellectual Property, Competition and Tax Law) has written an article in the latest issue of the International Review of Intellectual Property and Competition Law (IIC 2006, 37(7), 844-855) entitled, "**A Farewell to Cross-Border Injunctions? The ECJ Decisions GAT v. LuK and Roche Nederland v. Primus and Goldenberg**". The abstract states [links to the judgments have been inserted]:

> *The two ECJ judgments of 13 July 2006 – GAT v. LuK and Roche Nederland – have stirred much concern in the patent community. On the basis of its reasoning, which is amazingly brief both in view of the complexity of the issues decided and the length of the time it has taken the court to ponder about its decisions, it was ruled that contrary to practice presently established in some Member Countries, the courts in the country of registration are exclusively competent to adjudicate validity, even when it only arises as an incidental matter. It is also not possible to join claims against affiliated companies for coordinated infringement of European bundle patents before the courts in the country where the principal office steering the activities has its seat.*

You can see our summary of GAT v Luk here. You may also be interested in reading the contemporary ECJ case of Reisch Montage AG v Kiesel Baumaschinen Handels GmbH (13 July 2006), which is summarised here.

Federal Council of Germany adopts Resolution on Rome III Proposal

The Federal Council of Germany (*Bundesrat*) has adopted a resolution on the Proposal for a Council Regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters ("**Rome III**").

The Federal Council adopts – in contrast to the UK and Ireland (see our older post) – in principle a positive attitude towards the proposal and welcomes the harmonisation of choice of law rules on divorce. However, the Federal Council makes also some reservations concerning the concrete approach. In particular there are criticisms that the proposal did not facilitate sufficiently a synchronism between jurisdiction and choice of law rules. Such a synchronism, which should be achieved by choosing the same connecting factors as well as the same hierarchy with regard to jurisdiction rules as well as choice of law rules, is regarded as a possibility to enhance the quality of judicature since then the *lex fori* would be applied in all cases which would lead to a speeding up of proceedings due to the fact that expert opinions would not be necessary anymore.

With regard to the individual provisions of the proposal the Federal Council took *inter alia* the following points of view:

1.) Art. 1 (2) Proposal (Art. 3a (1) new Regulation)

- The possibility of choice of court agreements is welcomed.
- With regard to the possibility to choose a court of the place which has

been the spouses' last common habitual residence for a minimum period of three years it is remarked critically that in come cases a sufficient link to the present situation of the spouses might be lacking.

- In general Art. 3a (1) is criticised for not facilitating a sufficient synchronism with the rules on jurisdiction.

2.) Art. 1 (2) Proposal (Art. 3a (2) new Regulation)

- The possibility to conclude a jurisdiction agreement simply in written form is criticised. For the sake of legal certainty and the protection of the weeker party a notarial documentation of the choice of court agreement is suggested.

3.) Art. 1 (7) Proposal (Art. 20a (1) new Regulation)

- The possibility of choice of law agreements is welcomed.
- The importance of a synchronism between jurisdiction rules and choice of law rules is stressed.
- Art. 20a (1) (d): Since the applicable law was unclear if the spouses choose the law of the Member State "where the application is lodged" at the beginning of their marriage, the possibility to choose the law of this State should be restricted to a specified time.

4.) Art. 1 (7) Proposal (Art. 20b new Regulation)

- According to the Federal Council, priority should be given to "nationality" as the connecting factor since it was more stable than "habitual residence" and easier to ascertain – in particular in view of the increasing international mobility.
- Further it is noted critically that, according to the wording of Art. 20b, the applicable law is mutable – even after the divorce proceeding has been instituted – which was contrary to legal certainty. Therefore it is suggested that the applicable law should be immutable as soon as the divorce proceeding has been instituted. Concerning the question when a court shall be deemed to be seised a reference to Art. 16 Brussels II *bis* is suggested.

5.) Art. 1 (7) Proposal (Art. 20e new Regulation)

- The inclusion of a public policy reservation is supported.

The full resolution (Drs. 531/06) of 3 November 2006 is available here.

Norwegian Supreme Court on the Lugano Convention Art 5.1.

The Norwegian Supreme Court has recently handed down a judgment on the Lugano Convention art 5.1. The judgment (Norsk Höyesterett (kjennelse)) is dated 2006-08-29 and was published in HR-2006-01492-U – Rt-2006-1008.

The facts of the case were the following. Hüttlin GmbH and Pharma-Food AS entered into an agent agreement in May 1995, which attributed Pharma-Food AS exclusive agent´s rights in Norway, Sweden and Denmark. Hüttlin GmbH was domiciled in Germany. Pharma-Food AS was domiciled in Norway. There was controversy regarding Pharma-Food AS´ commission for a concrete and individuated sale of goods delivered from Germany to Switzerland. Pharma-Food AS chose court litigation as instrument to redress and sued Hüttlin GmbH in September 2005 in Norway. Pharma-Food AS claimed 320.000 EUR with interest and expenses and asserted the case be adjudicated by a Norwegian court. Hüttlin GmbH denied the correctness of the claim and asserted the case to be dismissed due to the Norwegian court´s lack of adjudicatory authority. Since the parties had neither agreed on which court was to have adjudicatory authority to settle disputes arising in connection with their contractual relationship, nor on the place of performance of obligation, the relevant provision for determining the adjudicatory authority of Norwegian Courts was the Lugano Convention Article 5.1. That provision reads:

> *"A person domiciled in a Contracting State may, in another Contracting State, be sued: 1. in matters relating to a contract, in the courts for the place of performance of the obligation in question; in matters relating to individual*

contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, this place shall be the place of business through which he was engaged;

In general, the legal basis for conferring, delimiting and thus both attribute and exclude adjudicatory authority to Norwegian courts is regulated by chapter 2 of the Norwegian civil procedural law (the Civil Procedural Act of 13 August 1915 nr 6 om rettergangsmaaten for tvistemaal) where § 36a decides that the Norwegian civil procedural law chapter 2 is limited by "agreements with a foreign state". Such an agreement is the Lugano Convention, which was ratified by Norway on 2 February 1993 and adopted and implemented by incorporation as law on 8 January 1993 nr. 21 (Luganoloven). The law entered into force on 1 May 1993 and regulates international civil and commercial matters between persons domiciled within EFTA-States, and between persons domiciled in an EFTA-State and an EU-State.

The judgments in the court of first and second instance as well as the Supreme Court were as follows. Lack of Norwegian adjudicatory authority was the result of the judgements of both the court of first and second instance (titled respectively "Asker og Bærum tingrett" and "Borgarting lagmannsrett") of respectively 14 February 2006 and 23 June 2006, whereas Norwegian adjudicatory authority was the result of the judgement of the Norwegian Supreme Court of 29 August 2006.

The rationale of the Norwegian Supreme Court was thus:

- First, the Supreme Court identified the legal basis for the case and the legal question in issue. The legal basis for determining the place of performance of the obligation in question in accordance with the Lugano Convention Article 5.1 was the Norwegian rules of private international law, which specify the Irma-Mignon formula as the relevant choice-of-law rule. According to the Irma-Mignon formula, the legal question in issue was which country the obligation in question, and in particular the agent agreement, had its most significant connection to. That question was, in accordance with the Irma-Mignon formula, to be answered by an assessment of several relevant components.
- Second, the Supreme Court rejected the judgement of the court of second

instance where upon the Supreme Court first succinctly described that court´s assessment and thereafter presented its own view.

The court of second instance found, in accordance with the Irma-Mignon formula, the case to have most significant connection to Germany so that German law was the proper law to determine the place of performance of the obligation in question (and the court found German law to designate the place for performance of money claims at the place where the debtor was domiciled).

In favour of connection to Norway, the court of second instance attached importance to the agent being Norwegian, the geographical scope of the agent agreement comprising Norway, the 12-year duration and practice of the agreement and the commission having been paid to a Norwegian bank account.

Weakening the connection to Norway, the court of second instance attached importance to the geographical scope of the agent agreement, which also comprised Denmark and Sweden.

In favour of most significant connection to Germany, the court of second instance attached conclusive weight to the assignor being a German company, the agent agreement formulated in German language, the assignor delivering its goods directly to clients abroad and usually under contracts governed by German law, either formulated in German or English.

- The Supreme Court identified the place where the agent had its main office as the most important component in the assessment of which State the agent agreement had its most significant connection. That view was justified by the following considerations.

First, the agent is the contractual party who is to perform the non-monetary and real obligation, which also in the Rome Convention Article 4, number 2, is formulated as "the performance which is characteristic of the contract".

Second, the agent´s principal place of business is normally carried out at the agent´s main office.

Third, in accordance with Norwegian law, if there is no agreement on the place of performance of the obligation, the creditor´s domicile or place of business is a significant connecting factor for monetary claims in that it is the place of performance of the obligation, which also in this case accorded with practices which the parties had established between themselves.

Four, in accordance with Norwegian private international law, agent agreements have, as a starting point, closest connection to the State where the agent carries out its operations in accordance with the agent agreement. This view is strengthened if the agent agreement has a long-term duration and actual practice, which in this case were 12 years. The legal sources supporting this view were two former Supreme Court judgements contained in Rt. 1980, p. 243 and Rt. 1982, p. 1294. In the first case, a claim for ex post commission after performance of the obligation had its most significant connection to Norway as the Supreme Court attached major importance to the agent being Norwegian, the long-term duration of the agreement, which also regulated the agent´s rights and obligations in Norway. The second case, which involved an agent agreement between a Norwegian wholesaler of flashes for photography and a German company, was for the same reasons viewed as having its most significant connection to Norway. Further, the Supreme Court attached importance to a judgement by the Swedish Supreme Court (Högsta Domstolen i Sverige av 18. desember 1992), contained in "Nytt Juridisk Arkiv 1992 page 823" which stated that in a dispute pertaining to an agent agreement, where the parties neither had agreed on forum nor on the place of performance of the obligation, the dispute would normally be determined by the law in the State where the agent had its place of business, especially if the agent mainly carried out its operations in that State. The Swedish Supreme Court emphasized that such a rule is motivated not only by the agent´s connection to that State, but also out of social policy considerations, but that, as a main rule, it could be departed from if the legal relationship clearly had a stronger connection to another State. Finally, the Norwegian Supreme Court referred to Joseph Lookofsky´s publication "International privatret på formuerettens område", 3rd edition 2004, p. 55, where the author had stated that the assessment pursuant to the requirements in the Rome Convention Article 4.1 was the same as the assessment in the Norwegian Irma-Mignon formula, where upon the Supreme Court added the text of Article 4.1.

Five, the Supreme Court did not attach any weight to the language of the agent agreement, the relation between the assignor and the (end) buyers and visits to fairs.

Six, since the geographical scope of the agent agreement was not confined to Norway, but also included Sweden and Denmark, the Supreme Court inquired whether the connection to Norway was sufficiently weakened so as the connection to Germany could be justified to be the strongest. The Supreme Court based its conclusion on two considerations. First, the main rule was well founded. Second, fairly weighty grounds are required for departing from the main rule. The Supreme Court found the geographical scope of the agent agreement extending also to Sweden and Denmark insufficient to justify strongest connection to Germany, and attached minor importance to the fact that the monetary claim arose from a delivery carried out from Germany to Switzerland.

- Hence, the Supreme Court concluded that the dispute had its strongest connection to Norway.

The case (Norsk Höyesterett (kjennelse)) is dated 2006-08-29 and was published in HR-2006-01492-U – Rt-2006-1008.

Council Meeting on Rome I: A Live Webcast

The Council of the European Union (Justice and Home Affairs) will hold their 2768th meeting on Monday 4th – Tuesday 5th December 2006. **Item 4** on the agenda is:

Proposal for a Regulation of the European Parliament and of the Council on the

*law applicable to contractual obligations (Rome I) (debate on certain issues) (LA) (**public deliberation**)*

Thanks to the wonder of modern technology, that public deliberation should be available to watch as a **live webcast** on the Finnish Presidency's website. You will need to download and install RealPlayer, if you don't already have it. The website contains archives of the webcasts, so those that are busy on 4th – 5th December will be able to watch it after the event; we will link to the specific webcast when it becomes available.

Update: it seems as though the version of the agenda on the Finnish Presidency's website may now be a little out of date. The press office at the Council of the European Union have produced a a new version of the agenda today (1st December 2006), and it makes no mention of Rome I. We will keep you informed of further developments.

Finnish EU Presidency calls for Streamlining of Instruments in the Field of Civil Procedural Law

The Finnish EU Presidency has published a document from their Informal JHA Ministerial Meeting on 20-22 September 2006. Their concern is "**Facilitating access to justice and better regulation in civil justice.**" At present, the Presidency argues, there is a lack of coherence caused by differences in the substance of those instruments that regulate civil procedure. They give an example:

Let us assume that someone would like to recover a debt of 2,000 Euros in another Member State with the expectation that the claim will not be contested. The claimant may choose between the European Enforcement Order, the Payment Order, the Small Claims instrument, and the Brussels I Regulation.

The procedure that has to be followed will differ depending on his or her choice. From the point of view of the claimant, it would surely be better if there was only one single application form for starting a recovery procedure in another Member State. De facto, approximately the same basic information is needed for the commencement of each procedure: the parties, the amount of the claim, the reasons for the claim, etc. It is only when we know the reaction of the defendant that we are in a position to decide which type of procedure should be used to continue. It may also be noted that the methods in the service of documents differ according to which instrument is selected. Why should we accept differences in this regard?

The Presidency goes on to state their vision for an improved regime:

The Finnish Presidency is of the view that it is time to consider streamlining existing instruments in the field of civil procedural law. This work should be based on minimum standards and the aim should be to ensure the consistency and user-friendliness of the relevant provisions. Reducing the number of instruments and integrating different approaches would help practitioners and citizens in applying this legislation and thus enhance access to justice. Such benefits would clearly justify the effort that would have to be invested in negotiations aiming at streamlining the already existing substantive provisions.

The Presidency then poses two questions for discussion:

1. Do the Ministers ***agree with the conclusion that there is a lack of coherence and consistency in the instruments already adopted in the field of civil procedural law***? Could the ***extent of fragmentation of the Community legislation be lessened*** and the ***degree of user-friendliness be improved*** by taking a ***more systematic overview*** of the cooperation in civil law?
2. Do the Ministers ***agree on the advisability of streamlining the instruments on cross-border litigation in the EU into one single instrument based on consistent/common minimum standards***? Should this instrument consist of, in particular, rules covering the provisions on jurisdiction, the service of documents, the taking of evidence, the use of languages and translations, legal aid, special rules on payment and small claims procedures, and in addition, rules covering

recognition and enforcement of different types of judgments?

The document can be found in full here. What do you think about the Presidency’s conclusions? Comments very welcome.