EU & national case-law in motor vehicle accidents

Rajko Knez (rajko.knez@um.si)
Pure national law: only outside the scope of MID, no interstate element, questions of liability

National law + MID: when dealing with coverage issues, (in)direct effect, interpretation europea...

MID alone: exclusive jurisdiction of the EUCJ (Art. 267 TFEU, case C-366/10)

National law & Hague Convention: when dealing with questions of appl. law outside MID, inter. cases, unif. clause, no appl. of Rome II

Mixed issues: dealing with MID, conflict of law rules, jurisdic. rules etc. Only one claim can join all these instruments

International jurisdiction: mostly BR I, also in cases with non-EU citizens, statutory assignments, etc

MID and Rome II: conflicts of laws, to some extent covered by both instruments; no case law of EUCJ
Part I - National law and MID

- **direct effect v. interpretatio europea v. incidental horizontal effects**
  - „usually“ no vertical relation
  - nevertheless: EUCJ: „... Art. X precludes a national rule which ....“
  - Case C-129/94, Ruiz Bernáldez
  - Landgericht Saarbrücken, Beschluss vom 22/06/2012 – direct effect of Art. 21.5 – individual against the insurance firm (?!)... (Case C-306/12)

- **taking into account the objectives**
  - **objectives**: part of social policy; minimise impact on victims, protection of a weaker party, free movement of persons, compensation regardless of where in the Union the accident occurs, internal market for insurance services, ...overriding imperatives
    - C-518/06, Commission v. Italy
  - **the role of the preamble** (express instruction to the courts of the Member States, although as a Recital it does not carry the weight of a legal rule)
    - C-166/02, Daniel Fernando (the directive‘s focus is also focus of national rules)
    - C-409/09, José Mari Ambrósio Lavrador, par. 26-29
• **principle of effectiveness**
  – close relation to aims and objectives of the directive...
    that serves as *the lighthouse*
  – *effet utile*
  – C-537/03, *Katja Candolin*, par. 27, 28

• **principle of proportionality**
  – C-409/09, *José Mari Ambrosio Lavrador*, par. 29, 30
• **national substantive law**
  – C-537/03, *Candolin and others*
  – C-348/98, *Mendes Ferreira*
  – C-484/09, *Carvalho Ferreira Santos*
  – **example from GB**
    • *Churchill Insurance Company Ltd v Fitzgerald and Wilkinson; Evans v Cockayne and Equity Claims Ltd* [24.08.12]
      – **Preliminary ruling EUCJ C-442/10**
        • Court of Appeal confirms that insurers cannot reclaim compensation paid to an injured insured passenger who permitted non-insured driver to drive; s. 151(8) of the Road Traffic Act 1988 **contravenes** Community law.
• **national procedural law and MID:**
  – C-447/04, *Autohaous Ostermann GmbH*
When (not) to ask for preliminary ruling?

- „relevant“ questions that concern the scope of MID (direct & indirect)
- Lord Denning M.R.: »The judge must have got to the stage when he says to himself: »This clause of the Treaty is capable of two or more meanings. If it means this, I give judgment for the plaintiff. If it means that, I give judgement for the defendant«. In short, the point must be such that, whichever way the point is decided, it is conclusive of the case. Nothing more remains but to give judgement.«
- acte clair / acte éclairé doctrine
- question of facts...
- legal issues... open to different interpretation
- EUCJ has exclusive competence under TFEU (Art. 267); (ref. to other MS‘s courts is not the path to be followed)
- any court (also criminal court; C-129/94, Rafael Ruiz Bernáldez)
- questions, dealing only indirectly with certain directive‘s rule (C-447/04, Autohaous Ostermann GmbH)
- Tribunale di Tivoli, Sezione civile, ordinanza del 20/06/2012 - legislation limiting the compensation in respect of non-pecuniary damage and, in particular, physical injury - Whether admissible - Request for interpretation (Case C-371/12)
Part II – beyond the MID

One thing is to be acquainted with the rules of MID (and national implementation rules), the other thing is to know:

**when and how to apply it**

when in comes to international cases (where also of other legal instruments are applicable - *tangle of three regimes*)
International jurisdiction

- Applicability of Brussels I Reg.
  - criteria for its applicability (inter. case; lex specialis; rationae: temporis, teritorie, personae, materiae)
  - hierarchy of jurisdictions (exclusive, submissio, mandatory jurisdictions, perpetuatio, general juris., special jurisdictions

- Insurance cases: in favorem – mandatory – jurisdiction

- Arts. 8-14 BR I
  - Case C-463/06, FBTO Schadeverzekeringen NV
    - is „a o directa“ part of tort or insurance in terms of a jurisdiction (Art. 11)?
The relationship – in a nutshell

Hague C. (1971) law applicable

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Rome II (2009) law applicable

National law

MID (2009) insurance coverage (C-409/09)
Applicable law

- the relationship among international law, EU law and national law
  - application of the Hague C. v. Rome II v. MID v. national law
    - French case Kieger v. Amigues,
Order of preference of legal instruments in inter. cases:

1. if possible: substantive national law (implementing measures + harmonious interpretation) or direct effect of MID (if possible)

2. issues not covered with the substantive law: Rome II or Hague C.

3. Hague C.: allowed by Rome II, however, need to assure uniformity (to be interpreted in the light of Rome II or to deny its application); it also has to give precedence to MID

4. Rome II: when MID and Hague C. are not applicable (N.B. Art. 16 & 27 of Rome II)
To sum up:

- Jurisprudence of the EUCJ stresses the need to follow the objectives of the MID...as a lighthouse to its interpretation
- Cases of incidental horizontal effect
- Case law is applied continuously with respect to previous directives
- Lots of space for preliminary rulings (because of civil liability regimes which remains outside the scope of MID)
- Tangle of three regimes (inter. cases can be solved, but for the same of legal consistency and simplification needs to be regulated anew)