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Propositions Regarding the Doctoral Thesis

“EU Private International Law on the Law Applicable to Cross-border Contracts involving Weaker Contracting Parties: Towards EU Market Integration?”

by María Campo Comba

1. In order to ensure an effective Area of Justice and the well-functioning of the EU internal market, EU secondary law and EU conflict rules regarding weaker contracting parties must be well coordinated.
2. Our private international law method is and should be initially based on the multilateral approach and party autonomy. However, the use of a unilateral approach and restriction of application of foreign law is justified and necessary depending on the legal interests involved and the interrelationship between the respective countries.
3. The Rome I Regulation on the law applicable to contractual obligations does not sufficiently take into account the specialties deriving from the existence of the EU and an internal market, both regarding the existence of EU legal values and EU mandatory law, and the interrelationship between Member States and non-Member States. Thus, the Rome I Regulation should acknowledge better the difference between intra-EU and extra-EU situations regarding the application of EU directives protecting weaker contracting parties and involving EU mandatory law.
4. EU directives concerning consumer contracts, employment contracts or contracts involving other weaker contracting parties should not include ‘scope rules’ affecting PIL clashing with the conflict rules of the Rome I Regulation.
5. In order to ensure the application of EU consumer directives according to the wishes of the EU legislator, article 6 Rome I should add a provision ensuring that, when a professional from a non-Member State directs commercial or professional activities to any Member State, the provisions of the EU consumer directives are applicable to consumers with habitual residence in any Member State.
6. In order to be consistent with the wishes of the EU legislator regarding the application of EU directives concerning weaker contracting parties, article 3(4) Rome I should be modified and extend the restriction of party autonomy when the application of mandatory EU law provisions is at stake, the contract has a closest connection to the territory of the Member States and parties have chosen the law of a non-Member State as applicable to their contract.
7. The concept of overriding mandatory provisions should be interpreted restrictively, as the definition of article 9 Rome I provides. Overriding mandatory rules are applicable as an exception to all the other conflict rules of the Rome I Regulation only when essential public interests of the Member State in question are at stake, and protection of weaker contracting parties as such is not a public interest.