

**REPORT OF THE RTA AND TOURISM EEG JOINT CONFERENCE**  
**IN ISTANBUL – 1 – 2 OCTOBER 2010**

Katherine Allen, Fentons Solicitors

Tourists often travel to their holiday destinations by road. Many of the package tours purchased by tourists often involve coach transfers and people travelling within Europe on non-package holidays often use their own vehicles to travel to their chosen holiday spot. Given the link between the two, this year it was decided that the two EEGs would combine their annual meetings and organise one joint conference that would touch on issues common to both groups.

And so the delegates travelled to exotic Istanbul where East meets West. It did not take long for us to sample the culinary delights on offer. Vahit Kaya and his firm, Kaya & Partner sponsored a dinner on the eve of the conference at a traditional Turkish restaurant where delegates sampled beautiful meats and breads in very authentic surroundings. It was a wonderful evening and the food was delicious. Many thanks to Vahit and his firm for his kind invitation.

The next morning Hanneke Comans-Diesfeldt, Chair of the RTA EEG, welcomed the delegates to the beautiful city of Istanbul for what promised to be an intellectually stimulating day. PEOPIL member Professor Marco Bona opened the lectures by providing a summary of the existing regulations for the protection of passengers travelling by air and rail and highlighted that there was currently very little protection for people travelling by bus and coach. However, he re-assured us that this was being addressed and that there is currently a proposal for a directive to protect passengers on such vehicles before the European Council awaiting a second reading. However, he also highlighted the potential shortcomings and delegates were disturbed to learn that the current proposal does not provide for recovery of mental harm that does not amount to a psychiatric injury and that no damages are payable for the loss of a holiday. However, the directive does provide for strict liability for claims with a value of up to €220,000.

Delegates were then very privileged to have Zuhail Aric in attendance. Zuhail is an Associate Professor at the Law Faculty of the Yeditepe University in Istanbul. She provided very helpful guidance on the Turkish legal structure pertaining to package tours, confirming the Turkish definition of “package tour”, which reassuringly appears to follow in the main the definition provided in the European Package Travel Directive. She then identified for us the information that travel agents need to provide to customers before the package holiday commences, and the obligations to be fulfilled by the travel agency and the consumer during and after the package. Helpful information was also provided as to the insurance requirements to be complied with by the travel agency and also the procedure for the settlement of disputes.

Our host, Vahit Kaya, then provided us with an illuminating view of the how damages are calculated under Turkish law in cases involving death and personal injury. While many of the concepts referred to in the lecture are alien to Western European lawyers, Vahit’s lecture illustrated for all of the delegates how Turkish lawyers dealing with this work are trying to push the boundaries and achieve better compensation for their clients. His careful explanation of the methods for calculating the level of damages was extremely informative although the confirmation that levels of damages in cases involving fatalities can be influenced by the attractiveness of the widow and her prospects of re-marrying did cause quite a stir!

Before lunch Maarten Tromp provided an overview of the Motor Insurance Directives to date and the differences between the Green Card system and the system set out in the Directives. He guided us skilfully through the procedure for submitting claims as provided for in the Directives and had some interesting observations on applicable law and the application of the Hague Treaty to these claims.

Applicable law was also the theme for the first lecture after lunch. Katherine Deal, an English barrister, took the delegates through the difficulties the Rome II Regulation was posing for English lawyers including the issue as to when it applies and its impact upon the quantification of damages in claims before the English courts. In many cases, Rome II will prevent English Claimants from recovering English levels of damages and, given that English damages are generally higher than elsewhere in Europe, English Claimants may well have significant difficulties in paying for things like care as a result of the application of Rome II. From a straw poll in the room, it seems that these difficulties are mainly experienced by English lawyers as lawyers from other European countries did not appear to be having the same issues. An English case has now been referred to the ECJ for a decision as to the scope of the Regulation to watch this space!

I then gave a (very brief) summary of what avenues there may be for compensation in the event that an RTA insurer goes into liquidation. It was re-assuring to hear in the current economic climate that many of the European countries represented at the Conference had made arrangements for victims to be compensated from other sources in such situations.

PEOPIL member Josee van de Laar then finished off the day with some practical advice on mediation in cross border cases. She summarised for us the importance of mediation and the European Code of Conduct for Mediators, in an effort to dispel the myths surrounding this method of dispute resolution. Josee confirmed that her mediation success rate is 90%, food for thought for any lawyer that does not consider this to be an effective way of resolving cases.

Thanks must go to Vahit Kaya and his team for putting on such a thought provoking conference in such a fabulous location and for entertaining the delegates so admirably. Thanks also to all of the presenters, and to our CEO, Wolfgang Resch, without whom the conference just would not happen.

The RTA conference next year will be in Paris – hope to see as many of you as possible there!