

Anna Z., a Polish teacher of the public secondary school administered by the Commune of the Capital City of Warsaw took part in the school trip to Austria in the summer of 2014. During the mountain excursion in the Alps, one of the pupils slipped on the rock and fell down a steep mountain slope, which resulted in his death on the spot. The police established that Anna Z. was totally careless in overseeing the group of teens. She was found guilty of the criminal offence by the competent court in Austria.

In January 2015, the parents and the brother of the dead pupil brought an action against Anna Z. before the *Landesgericht* (the Land Court) in Feldkirch, Austria, claiming PLN 2,000,000 (ca. EUR 500,000) as the moral damages. The applicants rely on Sec. 1325 and ff. of the Austrian Civil Code (ABGB) and argue that the court should apply Austrian law as the law at the place where the damage occurred, cf. Article 4(1) of the Rome II Regulation.

Anna Z. raised the defense based on Polish law, claiming, *inter alia*, that the court of the foreign country has no jurisdiction to hear the case because of the subject matter of the claim strictly connected with exercising the public authority. She also questioned the application of the Austrian ABGB; according to the statement of defense, the place of the alleged moral damage of the family members was Poland as the place of their habitual residence and then the claim is governed by the local law.

Who is right? Please pay attention to [ECJ ruling in C-172/91 Sonntag v Weidmann et al.](#)