



Collision Liability from the Austrian Law Perspective

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TO THE POINT.

Auf einen Blick

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Inland Navigation

Inland Navigation is safe

..... but nevertheless accidents occur

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Collision of cruise vessel with bridge



19.6.2016: Schiff mit 200 Gästen prallt in Bayern gegen Donau-Brücke / Cruise Ship with 200 passengers collides with Bridge on River Danube in Bavaria

**And soon after –
the vessel collided
with another bridge!**



Collision of barge with bridge

Railways-Bridge over River Danube in Krems/Austria; one segment of the bridge pillar shifted by approx. 1.5m



Case-Study



Collision between

self-propelled barge

and

cruise vessel

Owner: dutch company
Deadweight: 3015,212 t;
Propulsion: 1214kwh;
Load: 2000t gasoil

owner: Swiss company
displacement: 9910m³
propulsion: 1000kW
passengers: 190

under a railway bridge

due to a navigational fault of the master of the barge

Damages:

- ➔ The barge sinks;
- ➔ **gasoil spill**;
- ➔ a **crew member dies**; another is **seriously injured**
- ➔ The bridge is **seriously damaged**: stoppage of railway services for more than 1 year;
repair costs >10 mio €
- ➔ cruise vessel is damaged; **50 passengers suffer serious injuries**

Place of collision ?

Contractual Liability



- **Personal injuries, death**
- **damage/loss of luggage or personal belongings**
- **cancelled or delayed departure**

Carriage Contract (Persons) / Employment Contract:

- * no uniform law / convention in inland navigation
- * applicable national law / Rom-I Convention
- * ev. Package Travel Directive (EU) 2015/2302

EU-Reg 1177/2010:

- * assistance, compensation, reimbursement

Tort Liability



- * **Personal injuries, death,**
- * **damage/loss of luggage or personal belongings**

Tort Liability

- * no comprehensive uniform law / convention in inland navigation
- * applicable national law / Rom-II Convention
- uniform / international rules only for parts of the relevant legal issues:
- * CLNI 2012: global limitation of liability
- * Convention for the harmonisation of certain rules on the collision of inland navigation vessels (1960)

Which Law is applicable ?



Art 4, 7, 15 Rome-II

General Rule:

- * Law of the country in which the damage occurs – „*lex loci damni*“
- * irrespective of the country in which the event giving rise to the damage occurred, and
- * irrespective of the country in which indirect consequences of that event occur
 - ➔ place where person suffers personal injury/death;
 - ➔ place where good is damaged/lost
- Exceptions: same habitual place; closer connection

Legal Consequence



- * **As a general rule, the law of the state in which the collision occurs, is applicable - under this law all relevant legal issues (damage, kind of liability, fault, causality, etc) have to be assessed**
- * **Since there is no uniform law, kind and extent of the liability (resp. the preconditions for a claim for damages and the nature and extent of the compensable damages) is depending on the place of the collision**
- * **However, because there are some exemptions to this general rule (damaged person and tortfeasor are residents in the same state; closer connection to another state), even several laws can be applicable to the same collision depending on personal situation of the damaged person and the tortfeasor**

Legal Situation in Austria



International Conventions:

CLNI

Not ratified

**Convention for the Harmonisation
of certain Rules on the Collision of
Inland Navigation Vessels (1960)**

ratified

1960 Convention on Collisions



Convention of March 15, 1960, for the **harmonisation of certain rules** on the **collision** of inland navigation vessels

Scope:

Damages caused by a collision of vessels or by execution or omission of a manoeuvre

Principle of Liability:

- Liability for fault (no strict liability);
- no presumption of fault – injured person party bears the burden of proof;
- Contributory fault – apportionment of damages acc. share of fault; in case of doubt equal liability;
- National law applicable for all other issues

Limitation period:

2 years

Austrian National Law (1)



ABGB – Austrian General Civil Law Book (Tort Claims)

- * **Liability** of the tortfeasor for **fault** (no strict liability);
- * **no presumption of fault** – injured person bears the burden of proof;
- * Contributory fault – apportionment of damages according share of fault; in case of doubt equal liability;
- * **No limitation**, neither for personal injuries nor for loss of / damaged goods
- * Only very **limited vicarious liability**

Austrian National Law (2)



BinnSchG – Inland Navigation Act

Liability of the Captain / Crew Member:

- * **unlimited liability** for all damages caused by a breach of his duty of care;

Liability of the shipowner:

- * Liability only for damages negligently or intentionally caused by a member of the crew – no strict liability
- * **Liability is limited to the vessel** and the remuneration for the transport

Austrian National Law (3)



Schiffahrtsgesetz – SchiffG and other statutes

Unlimited liability of the shipowner and master for costs of wreck removal and costs for river / riverbank cleaning operations

(negligent /intentional) water pollution may constitute criminal offence for responsible crew-member and shipowner

Austrian Legal Situation - Summary



- ➔ no strict liability in collision cases;
- ➔ tortfeasor is liable, without limitation, for damage to property, persons and assets.

However:

- ➔ the bigger the damage to the vessel – the lesser is the amount of damages to be collectable from the shipowner by the injured persons
- ➔ usually the Master /Crew Members do not have sufficient financial means to cover the damage claims
- ➔ No direct claim against the insurer under Austrian Insurance Law; „*pay to be paid-clause*“ in P&I Policies
- ➔ unlimited liability of shipowner for wreck removal and cleaning costs

BUT HOW IS THE SITUATION IN HUNGARY AND THE NETHERLANDS ?





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