SOERGEL, **Bürgerliches Gesetzbuch mit Einführungsgesetz und Nebengesetzen,** Kohlhammer - Kommentar. Band 8: Einführungsgesetz, Wissenschaftliche Redaktion: Gerhard Kegel, 11. Auflage, 1984 Stuttgart : Kohlhammer.

Prof. Dr. Ergin NOMER*

In 1970, the volume number 7 prepared by **Kegel** for the "Soergel-Kommentar" was puplished in the Kommentar's 10th issue. Now, after a long interlude, the awaited 11th issue with its volume number 8 joined the legal arsenal in an expanded and more complete version.

Awaited it was, because, ever since the first publication prepared by **Kegel** it has become a wide-ranging, detailed and reliable source of knowledge not only to German jurists but also to foreign jurists dealing in International Private Law. It has particularly been prepared in a guise enabling it to constitute an important guide to International Private Law's and all its adjacent fields' existing and potential problems as well as to their solutions.

In this work **Kegel** gives special importance to the deployment of the International Private Law's problems and their solution forms as well as to their evaluation. The reader, together with explanations on International jurisdiction, is able to acquire knowledge relevant to any subject and problem from amongst a systematically ordered knowledge chest.

The work no doubt conserves these qualities in its 11th issue. Compared to the preceding, 10th issue, the work hasn't undergone any change from the point of views of its methodology and pattern of thought. I think the finding and suggesting of the most practical and just solutions to problems of International Private Law taking into account new tendencies and practices represent the work's basic approach. Whether in the theoretical fields or concerning the solutions accepted in court rulings this is the prevalent approach. For this reason, this work which can be said to pertain to the German International Private Law constitutes a reference not only to German jurists but also to jurists of other Legal cultures. It is therefore not surprising to see **Kegel**'s views and suggestions taking place in new legislation concerning International Private Law. In this respect it is enough to give one or two examples from the 1982 Turkish legislation in the International Private Law field :

The "most important" of basic rights to influence International Private Law is the principle of equality between Man and Woman. In this connection, the insistance on the "nationality principle" in the case of spouses having different nationalities brings with it undesirable results. Especially, in the case of differing nationalities, there is always an element of doubt and hesitation concerning the decision of whether to forgo the implementation of the "Nationality principle" or not or the correctness of substituting it by the place of residence (Wohnsitz) or perhaps better still the usual place of residence (Gewöhnlicher Aufenthalt) or a third person's (their common child for instance) natio-

* *İstanbul Üniversitesi Hukuk Fakültesi Devletler Özel Hukuku Öğretim Üyesi.*

nality. The implementation of both nationalities simultaneously signifies the sole use of legal provisions common to the two different national legislations. This signifies the attachment to "the application (implementation) of the weaker legislation principle" (Grundsatz des schwächeren Rechts) and this is not a method to be approved of. For this reason, according to **Kegel** (Rz 8-10 vor Art 7), if the spouses are of different nationality, the case should, de Lege Ferenda, forthright be tied to the "usual place of residence principle" (Gewöhnlicher Aufenthalt). This is also appliable to other situations non-solvable by the nationality principle, that is: Stateless persons (Staatenlos), persons with more than one nationality (Mehrstaater) and refugees (Flüchtling).

Indeed, in International Family Law, the insistance on the attachment to the nationality principle in the case of spouses with different nationalities gives birth to a variety of difficultly solvable problems due to the observance of the principle of equality between Man and Woman (Rz 5-8 vor Art. 13; Art. 14 Rz 4; Art 19 Rz 3). In this respect, the reform suggested by **Kegel** has been included, idem, in the 1982 Turkish International Private Law which is one of the newest in this field. In the field of Family Law the nationality principle has been abandoned where different nationalities exist, instead the joint place of residence (gemeinsamer Wohnsitz) or the usual joint place of residence (gemeinsamer gewöhnliche Aufenthalt) are legally taken into account (Marriage, Art. 12; divorce and separation, Art. 13; within marriage filiation, Art. 15).

A reform proposal made by **Kegel** for German Law concerns the subject of filiation within marriage. According to him (Art. 18 Rz 12), filiation within marriage has to be attached to the statutes regulating marriage's general disposition. This view has taken place as a legal stipulation in the Turkish International Private Law (Art. 15): "The filiation relationships within marriage, are attached to the statutes regulating marriage's general dispositions at the moment of birth". On the other hand, in the event of the non-existence of National Laws common to both sides the attachment to the place of residence in the same country principle (gewöhnlicher Aufenthalt im selben Staat) in the marriage's general dispositions is, according to **Kegel,** an inevitable situation (Art. 14 Rz 2-6). This solution formula suggested, De Lege Ferenda, has been adopted in the Turkish International Private Law (Art. 12 II p. 2): "In the situation where the spouses are of different nationality, the Law to be applied to the general dispositions of the marriage will be determined by the principle of joint place of residence or if non-existent of usual joint place of residence. If the "usual residence" in a determined single country has not materialised, howevermuch a rare possibility, **Kegel** views attachment to the "weaker law" as a last step (KEGEL IPR 1977 §. 20 IV 1b, s. 360 f.). Instead of this attachment point, wouldn't it have been a far more practical solution to attach, as in the Turkish arrangement, to the Lex Fori in the last instance?

It is both useless and impossible to undertake a detailed examination and evaluation encompassing the entire work. For it is a considerably vast work that includes besides International Private Law, all its adjacent branches starting with International Procedural Law. We must be content with a general evaluation: A complete and reliable knowledge of International Private Law. It is as much an indispensable work for jurists as for practical direct use.

The reader is also in the obligation of thanking Verlag W. Kohlhammer who printed the work: It is a book in a mold fitting its contents, of fine print and of an easily readable nature.