

The application of the Brussels I Regulation (Recast) to wrongful activities online and the *delict* oriented approach

Anabela Susana de Sousa Gonçalves¹

Cite as, Gonçalves, A.S.de.S, “The application of the Brussels 1 Regulation (Recast) to wrongful activities online and the *delict* oriented approach” in European Journal of Law and Technology, Vol 9, Issue 1, 2018.

Abstract

The Internet has a global reach and the activities carried out there often have a transnational nature. In cases where the transnational activity has an unlawful nature, it is necessary to determine which court has jurisdiction to decide compensation for damage arising from such unlawful activity and to that end it is necessary to resort to Regulation No 1215/2012, of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation (recast)). The Regulation has special jurisdiction rules applicable to matters relating to torts, *delict* or quasi-*delict* (Article 7(2)) which gives jurisdiction to the court of the Member State where the harmful event occurred or may occur. However, taking into account the specific characteristics of the internet and its global nature, it is not easy to establish the place where harmful event occurs when the wrongful activity takes place online. The features of the internet require an adaptation of the interpretation of the traditional jurisdiction rule of Article 7(2), which has a territorial nature, in a way that it is possible to apply this provision to internet activities. This effort of interpretation is the aim of this study.

Keywords: Brussels I Recast; *delict*; wrongful activities online; jurisdiction rules.

1. Brussels I Regulation (Recast)

The Internet has a global reach and the activities carried out there often have characteristics of internationality, since their elements are in touch with different legal systems. In cases where the transnational activity has an unlawful nature, it is necessary to determine which court has jurisdiction to decide the compensation for damage arising from such unlawful activity.

To determine which court has jurisdiction in transnational situations, it is mandatory to resort to *Regulation No 1215/2012, of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters* (hereinafter referred to as Brussels I (recast)). This Regulation is one of the central instruments of European Union judicial cooperation in civil matters, within the meaning of Article 81 of the Treaty on the Functioning of the European Union (TFEU)², and it contains rules of jurisdiction and recognition and enforcement of judgments, authentic instruments and court settlements in civil and commercial matters between Member States, according to Article 1. From its material scope are excluded the matters listed in Article 1(1) and 1(2), such as the status and legal capacity of natural persons; rights in property arising out of a matrimonial relationship or comparable relationships; maintenance obligations arising out of a family relationship, parentage, marriage or affinity; wills and successions; bankruptcies; social security; arbitration; revenue, customs and administrative matters.

The rules of jurisdiction set in Brussels I (recast) are applicable when the defendant is domiciled in a Member State (Article 4). Otherwise, the national rules of jurisdiction of the Member States shall apply, except in situations covered by Article 6(1) where the courts of a Member State may have jurisdiction even if the defendant does not have domicile in a Member State. That will be the cases of consumer contracts (Article 18(1)); employment contracts (Article 21(2)); exclusive jurisdiction matters (Article 24); and choice-of-court agreements (Article 25). The system of recognition and enforcement provided for in the Regulation applies to judgments given in the Member States (Article 36) and to authentic instruments and court settlements enforced in a Member State of origin (Article 58), within the scope of the Regulation.

As regards to its temporal scope, the Brussels I (recast) is applicable since 10 January 2015 and repealed *Regulation No 44/2001, of 22 December 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*, known as Brussels I.

Having defined the scope of application of the Brussels I Regulation (recast), it is possible to conclude that the Regulation covers non-contractual obligations arising out of a tort. Therefore, it should be settled which jurisdiction rule governs wrongful activities from which damages arises.

2. Jurisdiction rules

The general rule of jurisdiction usually requires that the plaintiff has to sue the defendant before the court of the latter's domicile (principle *sequitur forum rei* set in Article 4(1)). Besides this general rule of jurisdiction, there are also special jurisdiction rules which set alternative forums, inspired by the proximity of the court to the claim (Articles 7 to 9), in order to safeguard the legitimate expectations of the parties and to promote the sound administration of justice. It is considered that these jurisdictions are spatially or procedurally better placed to judge the matter, and it is assumed that the proximity between the litigants and the forum ensures that it is easier to conduct the proceedings and to produce evidence.³

One of these special jurisdiction rules concerns matters relating to torts, *delict* or *quasi-delict*. According to Article 7(2), the tortfeasor domiciled in a Member State may also be sued in the Member State where the harmful event occurred or may occur. In situations of international torts, there may be a spatial decoupling of the harmful event, i.e. the place of the wrongful act may not be the same as the place of the damage resulting from the wrongful behavior. Called to interpret the concept of *place where the harmful event occurred or may occur*, the Court of Justice of the European Union (CJEU) has decided that the plaintiff has the option to sue, either in the courts of the place of the event which gives rise to and is at the origin of that damage, or in the courts of the place where the damage occurred.⁴

As to the application of Article 7 (2), the relevant damage is only the direct damage, according to the CJEU. The place of the direct damage will be the place where the initial damage occurs, as the place where the event giving rise to the damage, and entailing tortious, delictual or quasi-delictual liability, that directly produced its harmful effects upon the person who is the immediate victim of that event.⁵ So, place of occurrence of the direct damage, in the sense of the CJEU's jurisprudence, will be the place where the direct effects from the event that generates the situation of liability are produced.⁶

The option of the claimant to choose between the courts of the place of the event which gives rise to the damage or the courts of the place where the damage occurred is determined by the extent of the jurisdiction of each court. The court of the place of the wrongful action has jurisdiction to decide the compensation for all the damage resulting from that behavior, whereas the court of the place of the damage has only jurisdiction to decide about the damages that occur in its territory.⁷

Taking into account the specific characteristics of the internet, its global and diverse nature, it is not easy to establish the place where a harmful event occurs when the wrongful activity takes place online. Brussels I (recast) does not have a specific rule for the internet, so it is necessary to interpret Article 7(2), when applying it to online activities.

3. The application of Article 7(2) to online wrongful activities

The unique characteristics of the internet influence the activities that take place there. The internet has a global scope, which means that its users are located worldwide. This implies that an activity done in the internet can potentially have effects anywhere in the globe, allowing those activities to have a wide-reaching impact. These features call for an adjustment of the interpretation of the traditional jurisdiction rules, which have a territorial nature. The CJEU has already been called to clarify the concept of *place where the harmful event occurred or may occur* of Article 7(2) in relation to online wrongful activities.

3.1. The place of origin of the event which gives rise to the damage

3.1.1. In the *eDate* case, the CJEU addressed a situation of online infringement of personality rights and recognized the ubiquitous nature of the internet and its worldwide reach. In the *eDate* decision, on the application of the current Article 7 (2) of the Brussels I Recast Regulation, the CJEU weighed the impact on an individual's personality rights from content that was put online on a website, and the high extent of the damages that it can cause and kept the interpretation of the Article: the claimant can bring an action for all damages caused in the court of the place of the event, or the courts of each Member State where the damage occurs.⁸ In this case, the place of the event which gave rise to the damage was considered to be the place of the establishment of the publisher of the defamatory publication.⁹

However, the CJEU adapted the interpretation of the rule to the nature of the internet, noting that content that is placed online can be consulted all over the world, which increases the impact of the damage, and that "(...) it is not always possible, on a technical level, to quantify that distribution with certainty and accuracy in relation to a particular Member State or, therefore, to assess the damage caused exclusively within that Member State".¹⁰ Consequently the CJEU considered that another court should have jurisdiction to decide the compensation for all the damages caused: the court of the place where the victim has his/her centre of interests.¹¹

The centre of interests of the victim would generally be his/her habitual residence, but the CJEU admitted that it can also be the place where the victim follows his/her professional activity if the person has a close connection with that State.¹² The jurisdiction of the court of the place of the victim's centre of interests is ascertained by the CJEU according to the principle of predictability underlying the rules of jurisdiction: in this case, the publisher of the harmful content is in a position to know where the centre of interest is of the person who will suffer the damage.

3.1.2. In the *Wintersteiger* case,¹³ an online *delict* was discussed, but in the context of infringement of an intellectual property right. Called to determine the place where the harmful event occurred, the CJEU did not use the criteria of the centre of interests,

considering that factor only relevant in the specific context of infringement of personality rights. This decision was justified by the objective of foreseeability of jurisdiction¹⁴ and because personality rights are protected in all Member States, while the “(...) the protection afforded by the registration of a national trade mark is, in principle, limited to the territory of the Member State in which the trade mark is registered, so that, in general, its proprietor cannot rely on that protection outside the territory”¹⁵. So, the justification for the application of the centre of interest in cases of infringement of personality rights, and for exclusion of the same in the case of infringement of a national trade mark, is the foreseeability of jurisdiction according to the geographic range of protection of each right, which allows the claimant and defendant to foresee where one can sue and the other can be sued, respectively.

In this case, in relation to the concept of place of event giving rise to jurisdiction for infringement of an intellectual property right and specifically trade mark, the CJEU took the view that “an action relating to alleged infringement of a trade mark registered in a Member State through the use, by an advertiser, of a keyword identical to that trade mark on a search engine website operating under a country-specific top-level domain of another Member State may also be brought before the courts of the Member State of the place of establishment of the advertiser”.¹⁶ So, the important element of jurisdiction is the place of the establishment of the infringer, where she/he decided to practice the acts giving rise to the damage.

The CJEU concluded that the act giving rise to the damage (the technical display process) was centred on a server belonging to the operator of the search engine that the infringer chooses to use.¹⁷ Nevertheless, besides the uncertainty of the place of establishment of that server, which would be unpredictable¹⁸, its location has little connection with the causal event giving rise to the damage. The place of the decision of the act was considered by the CJEU as a definite and an identifiable place, which could also facilitate the presentation of evidence and the organization of the process.¹⁹ Also, here the criterion was the foreseeability of the forum, according to the principle of proximity.

3.1.3. In the *Pez Hejduk* case, the CJEU confirmed the direction previously given in the *Wintersteiger* case in relation to the causal event. The dispute involved an online

webpage available for viewing and downloading of photographs on a company's internet site (EnergieAgentur), without the authorisation of the author of the photographs, who came before the court to claim compensation for damages suffered by the infringement of the author's copyrights.²⁰ The causal event (the event which gave rise to the alleged damage) of infringement of copyright by placing photographs online without the photographer's consent was considered to be, by the CJEU, the actions of the website owner who triggered the technical process of displaying photographs on the Internet.²¹ So, the place of the causal event was the place where the tortfeasor (the company whose actions infringed the author's right) had its seat (Germany), since it was there that the decision of putting the photographs online was taken and carried out.²²

3.2. The place of damage

The court of the place of the damage also has jurisdiction but only decides about the damages that occur in its territory. Identifying the location of the damage occurred online is not an easy task.

3.2.1. In the *eDate* case, where there was an online infringement of personality rights (through a publication on a website), the CJEU considered that the damage occurred in each Member State in the territory of which the content placed online is or has been accessible,²³ and each court would have jurisdiction in respect of the damages caused in its territory. However, as pointed out earlier, the difficulties in identifying and quantifying with certainty and precision in an online infringement of a personality right through a defamatory publication how the damage was distributed in a particular Member State led to the development of the criteria of the victim's centre of interests. As stated by the CJEU, "it thus appears that the internet reduces the usefulness of the criterion relating to distribution, in so far as the scope of the distribution of content placed online is in principle universal"²⁴, since the content that is placed online can be consulted straight away by an undetermined number of users located worldwide.

3.2.2. In the *Wintersteiger* case,²⁵ where there was an infringement of an intellectual property right, in determining the place where the damage occurred the court decided that "(...) both the objective of foreseeability and that of sound administration of justice

militate in favor of conferring jurisdiction, in respect of the damage occurred, on the courts of the Member State in which the right at issue is protected”.²⁶ Those courts could determine all the damages, because all the damages to the protected right would occur in the country where the right was protected by registration. This case involved a trade mark registered in a Member State, and the CJEU decided that the plaintiff could sue in the courts of the Member State in which the trade mark was registered as the place where the damage occurred.

3.2.3. In the *Peter Pinckney* case²⁷ there was an infringement of copyright committed by means of content placed online on a website. The author of a music work domiciled in France claimed damages in the French courts against a company established in Austria, which had reproduced the work in this country, which was afterwards marketed through the internet by companies (established in the United Kingdom) using a website that was accessible in France (place of the court seized). So, in this case it was necessary to locate the place of the damage to determine if the French courts had jurisdiction.

Keeping the *delict* analysis approach, the CJEU looked at the infringed right and noted that copyright is subject to the principle of territoriality, but they are protected in all Member States, especially because of the Directive 2001/29, so “(...) they may be infringed in each one in accordance with the applicable substantive law”.²⁸ As a consequence, the CJEU concluded that the damage may occur in the jurisdiction of the court that was seized (in France) because the copyrights were protected in that territory, and the risk of infringement arises “(...) from the possibility of obtaining a reproduction of the work to which the rights relied on by the defendant pertain from an internet site accessible within the jurisdiction of the court seized (...)”.²⁹ In this case, the seized court could only know about the damage occurred in its territory.

3.2.4. In the *Pez Hejduk* case, the CJEU confirmed the direction previously given in the *Peter Pinckney* case in relation to the place of the damage. As in the *Pinckney* case, the CJEU once again stated that copyright is subject to the principle of territoriality and can therefore be infringed in each Member State in which it is protected, taking into account the applicable substantive law³⁰. It was restated that the place where the damage occurred may be different according to the nature of the right infringed and that the risk

of damage occurring in a certain place is dependent on the circumstance that the right whose infringement is at issue is protected in that State,³¹ which means that it is dependent on the geographical scope of protection of the right. Thus, in a situation of online infringement of copyright, the place where the damage, or risk of such damage, occurs is in the State from which the photographs can be accessed (through the website of the company), once protected by copyright in that State.³² However, as also specified before, the court of the place of the damage can only determine the damage that occurred in its territory in accordance with the principle of territoriality, “given that they are best placed, first, to ascertain whether those rights guaranteed by the Member State concerned have in fact been infringed and, secondly, to determine the nature of the damage caused”.³³

3.2.5. In the case *Concurrence SARL*, the discussion related to the jurisdiction to settle a dispute about the infringement of prohibitions on resale outside a selective distribution network and on a marketplace through online offers on several websites operating in various Member States.³⁴ *Concurrence's* commercial activity was in the retail of consumer electronics through an establishment located in Paris and an online sales website (*concurrence.fr*). This company concluded a selective distribution agreement with *Samsung*, to sell high-end products (*Elite* range) in France. This agreement prohibited *Concurrence* from selling those products through the Internet. It was precisely the breach of that exclusivity clause that *Samsung* invoked and used as a basis for terminating the mentioned commercial relationship, because *Concurrence* was selling *Elite* products on its online website. *Concurrence*, on the other hand, put into question the validity of the clause, claiming that was not uniformly applied to all distributors, since some marketed those products on the internet through various *Amazon* websites without any reaction from *Samsung*. Following this, *Concurrence* brought an action before the Commercial Court of Paris: requesting an interim order declaring the prohibition clause of online sales unenforceable against it; and requiring that *Samsung* should continue to supply the products in compliance with the agreement. In addition, *Concurrence* brought an action against *Amazon* to obtain an interim order requiring *Amazon* to withdraw from its various websites (including the *Amazon* webpages with French, German, UK, Spanish and Italian domain names) the offer for sales of such *Samsung* products. It was precisely the question of whether the French courts had jurisdiction to hear an action concerning *Amazon's* websites operating

outside the territory of that Member State, as court of the damage, which was posed before the CJEU.

From the selective distribution agreement resulted that the distributor undertook the obligation to sell the products in a certain territory (in this case, France). The producer gave the right to exclusive distribution of its products to the distributor in the same territory and assumed the obligation not to distribute the products outside the distributor's sales network. In the event of non-compliance with the exclusivity clauses resulting from the selective distribution agreement, including through internet sites, the damages that the distributor may invoke is the reduction of the volume of its sales and consequent loss of profit as a result of sales made in breach of the conditions of the distribution network resulting from the contract. This damage occurs in the geographical area of protection of the right, which means in the territory where, by agreement, the exclusive distribution right was granted and where there is a reduction in the distributor's sales volume as a result of the infringement of the exclusivity clause. According to the CJEU, “for the purpose of conferring the jurisdiction given by that provision to hear an action to establish liability for infringement of the prohibition on resale outside a selective distribution network resulting from offers, on websites operated in various Member States, of products covered by that network, (...) the place where the damage occurred is to be regarded as the territory of the Member State which protects the prohibition on resale by means of the action at issue, a territory on which the appellant alleges to have suffered a reduction in its sales”.³⁵

4. Conclusions

The interpretation of Article 7(2) of the Brussels I Regulation (recast) is an example of how the traditional rules of international jurisdiction, which was envisaged from a geographical perspective needs adaptation to be applicable to the internet, taking into consideration its characteristics - global reach, ubiquity, and location of its users worldwide. The starting point for the interpretation of the place where the harmful event occurred is based on the principles of proximity, certainty and predictability, proper administration of justice, the effective production of evidence and the useful organization of the process. This justifies the attribution of jurisdiction either to the

courts of the place of the event that gave rise to and is the origin of the damage (to assess all damages); or to the courts of the ‘place of damage’ (to assess only damages occurring in its territory). The author of the claim can choose between the court of the place where the event giving rise to the damage occurred or the court of the place where the damage occurred.^{36 37}

From the CJEU’s case law, it is possible to conclude that the place of the event which gives rise to the damage is the place of the causal event, i.e., the place of establishment of the offender who wrongfully places or publishes the harmful online content. This is considered to be the place where the decision to do the wrongful activity was taken. This will be the place of the causal event that gave rise to the damage, being a certain and identifiable place which determines the predictability of the forum, facilitates the presentation of evidence and organization of the process, in accordance with the principle of proximity. In the case of defamatory online infringement of a personality right, the place of the harmful event will be the place of establishment of the publisher of the content, since it was from that place that the defamation was decided and put into circulation online. In the online infringement of an intellectual property right resulting from a registered trade mark, the place of the harmful event will be the place of the establishment of the infringer, because it was the place where she/he decided to practice the acts giving rise to the damage. In the infringement of copyright, by the online use of photographs without the consent of the author, the place of the causal event will be the place where the tortfeasor has its seat, because it was there that the resolution to place the photographs on the internet was taken and executed. The common ground in all the situations presented and decided by the CJEU is that the place of the event which gives rise to the damage, the place of the causal event, is the place of the decision and where the actions to the infringement of the right were taken.

To determine the ‘place of damage’, the CJEU has developed a *delict* oriented approach, which means that the place where the damage occurred may be different depending on the nature of the infringed right. The place of damage is the place where the direct harmful effects of the event or omission giving rise to the damage occurs, which varies according to the nature of the right infringed and the geographical scope of protection of the right infringed. It is so because the risk of damage occurring in a

certain place is dependent on the extent that the right in question is protected in that State. This criterion is related to the identification of the court that is best located, which has a greater connection, to assess the violation of the right in question.

In particular, for the ascertainment of damages on the internet for infringement of personality rights the damage occurs in each State in which wrongful content placed online is accessible. However, since the harmful impact of such content for the personality rights of the individual may be extensive due to the global reach of the internet, the court of the place of the victim's centre of interest can fully appreciate the damage. In the case of an intellectual property right protected by an act of registration, the damage occurs in the State in which the right is protected by registration, because the protection of the registration is limited to the territory of that State. In the case of copyright, the damage occurs in the State in which the right is protected and in the territory of which the website is accessible reproducing unlawfully the works covered by the infringed rights. In the case of the infringement of prohibitions on resale outside a selective distribution network and on a marketplace, through online offers on several websites operating in various Member States, the damage occurs in the territory where, by agreement, the exclusive distribution right was granted and where there is a reduction in the distributor's sales volume as a result of the infringement of the exclusivity clause.

Therefore, in those cases where online activities cause damage, the 'place of damage' varies according to the nature of the right infringed and the scope of geographical protection of that right, which necessitates an analysis of the infringement, the nature of the right, and its geographical area of protection. This is so because the risk of damage occurring in a particular place is dependent on the extent that the right in question is protected in that State. This *delict* oriented approach taking into consideration the area of geographical protection of the right is justified by the need to identify the court best placed to assess the infringement of the right in question. The final answer varies according with the nature of the right that was infringed, as can be concluded from the several decisions of the CJEU that were analysed in this article.

¹ Anabela Susana de Sousa Gonçalves, School of Law, University of Minho, Braga, Portugal

² About the area of judicial cooperation in civil matters, see ANABELA SUSANA DE SOUSA GONÇALVES, ‘Cooperação Judiciária em Matéria Civil’ in *Direito da União Europeia, Elementos de Direito e Política da União*, coord. Alessandra Silveira, Mariana Canotilho, Pedro Madeira Froufe, Almedina, Coimbra, 2016, pp. 339-391.

³ This follows from the case-law of the CJEU: see, e.g., *Melzer v. MF Global UK Ltd*, C-228/11, 2013, §26; *Coty Germany GmbH, formerly Coty Prestige Lancaster Group GmbH v. First Note Perfumes NV*, C-360/12, 2014, § 47; *eDate Advertising GmbH c. X (C-509/09) and Olivier Martinez and Robert Martinez c. MGN Limited* (C-161/10), C-509/09 and C-161/10, ER 2011, p. I-10269; *Zuid-Chemie BV v. Philippo’s Mineralenfabriek NV/SA*, C-189/08, ECR 2009, p. I-06917.

⁴ See, e.g., 1976, *Handelskwekerij G. J. Bier B.V. v Mines de Potasse d’Alsace S.A.*, 21/76, ER 1735, with regard to the parallel legal provision of the *Brussels Convention of 1968 on Jurisdictional Jurisdiction and Enforcement of Decisions in Civil and Commercial Matters* (Brussels Convention), Article 5(3). According to the CJEU, the jurisprudence of the court about the provisions of the Brussels Convention should apply to the equivalent rules of Brussels I Regulation: see, e.g., *Zuid-Chemie*, Cit.; *Verein für Konsumenteninformation v Karl Heinz Henkel*, C-167/00, ER 2002, p. I-08111; 2004, *Rudolf Kronhofer v. Marianne Maier and Others*, C-168/02, ER 2004, p. I-06009.

⁵ *Zuid-Chemie*, Cit.; *Rudolf Kronhofer*, Cit.; *Dumez France SA and Tracoba SARL v. Hessische Landesbank and others*, C-220/88, ER 1990, p. I-00049.

⁶ *Antonio Marinari v. Loyd’s Bank and Zubaidi Trading Company*, C-364/93, ER 1995, p. I-2719; *Dumez France SA and Tracoba SARL v. Hessische Landesbank and others*, C-220/88, ER 1990, p. I-49; *Rudolf Kronhofer*, Cit.; *Réunion européenne SA and o. v. Spliethoff’s Bevrachtungskantoor BV and the Master of the vessel “Alblasgracht”*, C-51/97, ER 1998, p. I-6511; *Danmarks Rederiforening, acting on behalf of DFDS Torline A/S v. LO Landsorganisationen i Sverige, acting on behalf of SEKO Sjöfolk Facket for Service och Kommunikation*, C-18/02, ER 2004, p. I-1417; *Zuid-Chemie*, Cit., p. I-06917.

⁷ CJEU, *Fiona Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd v Presse Alliance SA*, C-68/93, ER 1995, p. I-415.

⁸ *eDate Advertising GmbH*, Cit., §41.

⁹ *eDate Advertising GmbH*, Cit., § 42.

¹⁰ *eDate Advertising GmbH*, Cit., § 46.

¹¹ *eDate Advertising GmbH*, Cit., § 48.

¹² *eDate Advertising GmbH*, Cit., § 49.

¹³ *Wintersteiger AG v. Producuts 4USondermaschinenbau GmbH*, C-523/10, 2012.

¹⁴ Allowing the claimant to easily identify in which court he can sue and the defendant to reasonably to foresee in which court he can be sued: *Wintersteiger AG*, § 22-24.

¹⁵ *Wintersteiger AG*, § 25.

¹⁶ *Wintersteiger AG*, §38. Note that for the CJEU the infringer is «(...) the advertiser choosing a keyword identical to the trade mark, and not the provider of the referencing service, who uses it in the course of trade (...). The event giving rise to a possible infringement of trade mark law therefore lies in the actions of the advertiser using the referencing service for its own commercial communications».

¹⁷ Also in the *Football Dataco Ltd and Others v. Sportradar GmbH et Sportradar AG*, C-173/11, 2012, the CJEU stated the irrelevance of the territory of the State where is situated the web server from which the data in question is sent.

¹⁸ *Wintersteiger AG*, Cit., § 36.

¹⁹ *Wintersteiger AG*, Cit., § 37.

²⁰ *Pez Hejduk c. EnergieAgentur.NTW GmbH*, Processo C-441/13, 2015.

²¹ *Pez Hejduk*, Cit., §24.

²² *Pez Hejduk*, Cit., § 25. The court seized was in Austria, where Ms Hejduk had her domicile.

²³ *eDate Advertising GmbH*, Cit., § 51.

²⁴ *eDate Advertising GmbH*, Cit., § 46.

²⁵ *Wintersteiger AG*, Cit.

²⁶ *Wintersteiger AG*, § 27.

²⁷ *Peter Pinckney v. KDG Mediatech AG*, C-170/12, 2013.

²⁸ *Peter Pinckney*, Cit., § 39.

²⁹ *Peter Pinckney*, Cit., § 44.

³⁰ TJUE, *Pez Hejduk v. EnergieAgentur.NTW GmbH*, Processo C-441/13, de 22.01.2015, § 22.

³¹ *Pez Hejduk*, Cit., § 29.

³² *Pez Hejduk*, Cit., § 34.

³³ *Pez Hejduk*, Cit., § 37.

³⁴ *Concurrence SARL v. Samsung Electronics France SAS, Amazon Services Europe Sàrl*, C-618/15, 2006.

³⁵ *Concurrence SARL*, Cit., § 35.

³⁶ This can, in the opinion of the author, produce *forum shopping* situations, which was one of the reasons that led to Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), which reduced this risk.

³⁷ See, AAVV, *Dicey, Morris and Collins on the Conflict of Laws*, Under the General Editorship of Sir Lawrence Collins, Vol. I, Sweet & Maxwell, London, 2006, pp. 397-399; JAMES FAWCETT, JANEEN M. CARRUTHERS, *Cheshire, North & Fawcett Private International Law*, Consultant Editor Sir Peter North, Oxford University Press, Oxford, 2008, pp. 247-251; HÉLÈNE GAUDEMET-TALLON, *Compétence et execution des jugements en Europe, Matières civile et Commerciale*, 5e Edition, LGDJ, Paris, pp. 274-292; ANABELA SUSANA DE SOUSA GONÇALVES, *Da Responsabilidade Extracontratual em Direito Internacional Privado: A Mudança de Paradigma*, Almedina, Coimbra, 2013, pp. 346-359; BERND VON HOFFMANN, KARSTEN THORN, *Internationales Privatrecht*, Verlag C.H.Beck, München, 2005, pp. 144-146; JAN KROPHOLLER, *Internationales Privatrecht*, 5. Auflage, Mohr Siebeck, Tübingen, 2004, pp. 602-604; PETER MANKOWSKI, "Article 7", *Magnus Mankowski European Commentaries on Private International Law, Brussels I Regulation*, Edited by Ulrich Magnus – Peter Mankowski, Ottoschmidt, Köln, 2016pp. 262-293