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Interpretation of the jurisdictional prerequisites in EU civil and commercial matters in the process of practical application of the Brussels I Regulation in the light of the CJEU jurisprudence

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SUMMARY
The possession of national jurisdiction by the court is a condition sine qua non for the possibility to resolve the case. Its lack results in the invalidity of the proceedings in accordance with the disposition of Article 1099 § 2 of the Code of Civil Procedure. After the amendments in 1997 and the doctrine's acceptance of the division of domestic jurisdiction into jurisdiction in the international legal sense and international jurisdiction, these institutions are no longer included in the concept of a court path. At present, admissibility of a court path and international jurisdiction are treated as two separate procedural institutions which, on their own, constitute prerequisites for proceedings. Do EU cases differ in this respect from cases without a cross-border element? Is the interpretation of EU law different from the traditional interpretation in domestic cases? Should a purpose-oriented interpretation prevail? The author attempts to answer these and other questions in this text.

Key words: domestic jurisdiction, priority rule of EU law, jurisdictional connecting factors, civil case, commercial case

I. JURISDICTION – DEFINITION AND INTERPRETATION

The existence of national jurisdiction is a condition sine qua non for the possibility to resolve the case. Its lack results in the lawsuit or application being rejected. The

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conduct of the proceedings despite the lack of jurisdiction results in its nullity, in accordance with the disposition of Art. 1099 § 2 of the Code of Civil Procedure.

In the doctrine a domestic jurisdiction has been divided into jurisdiction in the international legal sense and international jurisdiction. These institutions are no longer included in the concept of a court path. At present, admissibility of a court path and international jurisdiction are treated as two separate procedural institutions which, on their own, constitute prerequisites for proceedings[1].

Jurisdiction is an appropriately regulated capacity of authorities and courts to hear cases of a specific scope[2]. K. Weitz points out that: „national jurisdiction is related to the issue of access to a court of a particular state, and therefore it sets the limits within which the exercise of the right to a fair trial may take place before the courts of individual states" [3].

Assuming that by national jurisdiction we mean a form of exercise of sovereign power by the state, and reflecting this assumption in the division into legislative, executive and judicial jurisdiction, the matter of the analysis will be national judicial jurisdiction [4].

In terms of determination of the prerequisites for the jurisdiction of the court in EU cases, the interpretation process differs from the interpretation made by courts in domestic cases, lacking a cross-border element. In the application of EU law, the purposeful and functional interpretation is dominant. The jurisdiction of the Court of Justice of the European Union, the role of which is controversial, is of significant importance.

There is no doubt, that the founding treaties did not grant the rulings of the CJEU the universally binding force and do not include the jurisprudence of the CJEU among the sources of EU law. The role of the so-called preliminary rulings issued by the CJEU in response to questions referred by national courts is, however, debatable. The answer to the question referred for a preliminary ruling is binding on the referring national court[5]. It is disputed whether these judgments are binding on other courts adjudicating or in the future to adjudicate in other similar cases. The views of the doctrine in this regard vary greatly from the lack of any binding

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1 K. Weitz, *Jurysdykcja krajowa w postępowaniu cywilnym*, Warszawa 2005, Wydawnictwo Prawo i Praktyka Gospodarcza, p. 117.

2 M. Koszowski, *Granice związania orzecznictwem Trybunału Sprawiedliwości Unii Europejskiej*, [w:] Granice państwa jako granice jurysdykcji w Unii Europejskiej, red. S. Grochalski, Dąbrowa Górnicza 2012, p.103.

3 K. Weitz, *ibidem*, p.113.

4 S. Żyrek, *Jurysdykcja krajowa w sprawach zobowiązań elektronicznych w prawie Unii Europejskiej*, Warszawa 2019, C.H. Beck, p. 8.

5 M. Koszowski, *ibidem*, p. 35-54.

force of preliminary rulings to the assumption that all preliminary rulings are legally binding[6].

The acceptance of the last view is supported by both the previous jurisprudence and the procedure of the preliminary ruling itself, which is also sent to all Member States, to express their opinion in this regard within the specified time limit. If the preliminary ruling were not binding on courts from other Member States, such a solution would appear to be pointless.

If a court is required to examine its jurisdiction in EU civil and commercial cases before proceeding to the procedure, the concept of „EU case" should be defined before proceeding any further. The case is of an EU nature, if the facts established therein require the application of EU law. This definition is a contractual term for the subject of court proceedings in which the court of a given Member State acts as a Union court in functional terms[7].

The consideration of judicial jurisdiction in this category of cases should be connected with an analysis of the purpose of judicial cooperation in civil matters.

Judicial jurisdiction in this category of cases should be considered in relation to the objective of judicial cooperation in civil matters. The European Union is developing such cooperation with cross-border implications as a consequence of the increasing movement of goods, capital, people and services. Access to justice must be facilitated to ensure the proper development of the common market. The actions of the EU legislator in this area also focus on creating a system of clearly defined conflict-of-law rules regarding the designation of the court competent to settle a specific category of cases[8].

The jurisdiction of the courts of the Member States in civil and commercial cases is the cornerstone of judicial cooperation in this matter in the European Union. Individual Member States have different national procedures in terms of civil law. This may hinder the proper functioning of the internal market in the European

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[6] P. Justyńska, *Rola Europejskiego Trybunału Sprawiedliwości w procesie interpretacji prawa wspólnotowego i prawa krajowego państw członkowskich*, [w:] Wykładnia prawa i inne problemy filozofii prawa, red. L. Morawski, Toruń 2005, p. 86-87, 88-99; P. Dąbrowska-Kłosińska, *Skutki wyroków prejudycjalnych Trybunału Sprawiedliwości Unii Europejskiej w postępowaniu przed sądami krajowymi w świetle orzecznictwa Trybunału i prawa Unii Europejskiej*, [w:] Zapewnienie efektywności orzeczeń sądów międzynarodowych w polskim porządku prawnym, red. A. Wróbel, Warszawa 2011, p. 397-408, 413, 414, 415-416; A. Orłowska, *Czy orzeczenia Trybunału Europejskiego są precedensami?*, [w:] Teoretycznoprawne problemy integracji europejskiej, red. L. Leszczyński, Lublin 2004, p. 241, 243-244.

[7] D. Miąsik, M. Szwarc, *Stosowanie prawa Unii Europejskiej przez sędziów sądów powszechnych i prokuratorów*, Warszawa 2012, p. 17.

[8] Obywatele/Przestrzeń wolności, bezpieczeństwa i sprawiedliwości/Współpraca sądowa w sprawach cywilnych, https://www.europarl.europa.eu/;

Union. To prevent this from happening, it is important to establish uniform rules in the EU that will determine the competent court in a given case.

The dominant jurisdictional condition is the place of residence of the defendant or the seat of a legal person or a unit without legal personality. The connecting factor of citizenship in the case of general jurisdiction based on Brussels I bis is irrelevant[9].

The incompatibility or complexity of the legal or administrative systems of the Member States cannot be a justification for preventing Union citizens from exercising their rights[10].

In EU cases, a purposive and functional interpretation is decisive. If we analyse the issues related to jurisdiction from this perspective, we will find an answer to the question of how the court should assess the prerequisites for jurisdiction. There is no doubt that if this interpretation is made with reference to the purpose of Brussels I in the recast version, the court to which the party initiating the proceedings has turned for legal protection should interpret the existence of jurisdictional prerequisites as broadly as possible.

EU introduces clear conflict-of-law rules, the application of which is supposed to indicate which court or courts will resolve a specific legal dispute. On the one hand, these solutions facilitate access to justice for citizens of the Union. On the other hand, they are intended to prevent 'forum shopping', understood pejoratively as speculating on jurisdiction[11].

Before analysing the specific solutions adopted in *Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*[12] (Brussels I bis), it is necessary to refer to the reasons for their creation.

Article 81(1) TFEU provides that "the Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation

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9 J. Gołaczyński, *Jurysdykcja, uznawanie orzeczeń sądowych oraz ich wykonywanie w sprawach cywilnych i handlowych. Rozporządzenie Parlamentu Europejskiego i Rady (UE) Nr 1215/2012. Komentarz*, Warszawa 2015, p.25-27.

10 Obywatele/Przestrzeń wolności, bezpieczeństwa i sprawiedliwości/Współpraca sądowa w sprawach cywilnych, https://www.europarl.europa.eu/;

11 see *forum shopping* D. Klimas, *Upadłościowy forum shopping w Unii Europejskiej. Pojęcie i ocena upadłościowej migracji celem uzyskania lepszej pozycji procesowej*, Internetowy Przegląd Prawniczy TBSP UJ 2017/10, ISSN 1689-9601, p. 103-107.

12 Document 32012R1215, https://eur-lex.europa.eu/; [Dostęp 15 września 2021r].

may include the adoption of measures for the approximation of the laws and regulations of the Member States" [13].

When analysing the prerequisites of jurisdiction, it should also be pointed out that a lack of jurisdiction may in the future result in a refusal to enforce or recognise the judgment in another Member State.

Point C of paragraph 2 of Article 81 TFEU stipulates that "the Union shall develop cooperation as regards the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction."[14]. This provision transmits competence to the Union to legislate on conflict of laws. The development of this general rule is detailed in specific legal acts. From a practical point of view, jurisdiction should always be decided with reference to a specific legal instrument. Not all categories of civil matters are regulated by EU law. In accordance with the principle of priority, issues within the material scope of the Regulation under review may not be resolved by Polish courts under national law.

The adoption of the form of a regulation by the EU legislator to adjust the rules of jurisdiction in civil and commercial matters indicates that this is such an important matter that no freedom of choice was left to Member States to achieve the intended purpose.

According to the definition resulting from Article 288 TFEU "A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States (...)". All Member States throughout the Union shall apply the Regulation in the same way. A court or other authority exercising judicial functions in civil and commercial cases should interpret the rules governing jurisdiction in the same way, irrespective of the Member State in which it is situated.

From the point of view of case-law practice, the question of jurisdiction cannot be analysed *in abstracto*. In the process of interpreting EU law, the case law of the Court of Justice of the European Union plays a very important role. In case of justified doubts of the national court in the process of applying EU law in the case at hand, it is possible to submit a question for a preliminary ruling. The adoption of a binding interpretation of the CJEU in this respect strengthens the principle of uniform application of EU law.

The interpretation of the jurisdictional conditions in civil and commercial matters governed by the Brussels I bis regulation must be made with taking into account the autonomous nature of these institutions, as in all Member States.

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[13] Document 12012E/TXT, https://eur-lex.europa.eu/; [Dostęp 15 września 2021r].

[14] *Ibidem*.

The analysis of the jurisdictional premises in the indicated scope should be preceded by the definition of the concept of a civil and commercial case from the EU perspective. Brussels I bis does not contain its own definition of the discussed issue. In this situation, the answer should be found in the jurisprudence of the CJEU, which in this context supplements the discussed legal regulation.

The concept of civil and commercial matters is an autonomous concept of EU law and cannot be defined by the law of a Member State[15].

According to settled line of jurisprudence, the concept of „civil and commercial case" does not include such categories of cases in which decisions were issued in a legal dispute between an authority and a private person, conducted by that authority in connection with the exercise of powers. This was the ruling of the Court in the judgment of October 14, 1976, C-29/76, in the case LTU Lufttransportunternehmen GmbH & Co. KG v. Eurocontrol.

In its judgment of 23.10.2014, C-302/13, flyLAL-Lithuanian Airlines AS, in liquidation against Starptautiskā lidosta Rīga VAS, Air Baltic Corporation AS, the Court stated that the claim for damages for the alleged breach of law Union competition (…) falls under the concept of ‚civil and commercial matters' within the meaning of Article 1 (1) of Brussels I and therefore falls within the scope of that Regulation.

A claim for damages in relation between entrepreneurs, the premise of which is a breach of EU competition law rules, indirectly implements the public interest, while directly the interest of the entrepreneur who demands protection by referring to the breach of the common market rules by a competitor. Excluding such cases would unduly limit the scope of the Brussels I regulation[16] and make it difficult to use private law measures to combat anti-competitive practices in the common market.

This judgment remained valid despite the entry into force of a new normative act (Brussels I bis) [17]. The interpretation of the scope of the said regulation provided by the Court in this judgment broadly covers the notion of civil and commercial cases thus facilitating access to justice.

Regulation EU No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial cases (recast version) establishes jurisdictional

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[15] J. Gołaczyński, *op.cit.,* p.16.

[16] B. Sujecki, *Anwendung der EuGVVO auf Schadensersatzklagen wegen Kartellrechtsverstoßes — Keine Berufung auf ordre public wegen schwerwiegender wirtschaftlicher Folgen von einstweiligen Anordnungen für Staatsunternehmen – „flyLAL"*, Europäisches Wirtschafts- und Steurrecht (EWS) 2014, z. 6, p. 341.

[17] M. Pilich, *Glosa do wyroku TS z dnia 23 października 2014 r., C-302/13,* LEX/el. 2016.

prerequisites in civil and commercial cases, but the interpretation of these concepts must be done autonomously, the same in all Member States.

II. CONCEPTS OF CIVIL AND COMMERCIAL MATTERS

A very representative example of this kind is the CJEU judgment of 09.03.2017, C-551/15 in the case of Pula Parking. According to the Court's established case law, in order to ensure, as far as possible, equality and uniformity of rights and obligations under this Regulation for the Member States and the persons concerned, the concept of "civil and commercial cases" should not be interpreted by a simple reference to the national law of one of those States. That concept must be regarded as autonomous, which must be interpreted on the basis of, on the one hand, the objectives and scheme of that regulation and, on the other hand, the general principles deriving from the national legal systems as a whole. In this ruling, the CJEU indicated that it would be decisive to determine the nature of the relationship between the parties. A private law relationship will fall within the meaning of "civil and commercial cases" within the meaning of Regulation No 1215/2012 if the claim is not in any way of a repressive nature, but constitutes mere remuneration for a service rendered.

Each state takes action against other entities not only on the basis of the power relations (empire), but also as a subject of civil law transactions (dominium) [18]. In the present judgment, the interpretation given by the Court is binding on the national courts of the Member States as regards the way in which the nature of the claim in question is defined.

This principle, also known as the principle of primacy or supremacy, was developed in the jurisprudence of the Court of Justice of the European Union. The consequence of its adoption is the primacy of the application of EU law over the national law of the Member States. It constitutes a conflict-of-law rule in the case of a conflict of laws which is to be applied if a pending case is inconsistent with a provision of EU law[19].

Shaping this principle through the judgments issued by the Tribunal confirms the role of its jurisprudence in filling the gaps in EU law. This is another argument supporting the binding nature of CJEU rulings on all Member States and their bodies.

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[18] M. Podleś, *Reprezentacja Skarbu Państwa w procesach cywilnych z udziałem Prokuratorii Generalnej Skarbu Państwa – zagadnienia wybrane*, Acta Universitatis Wratislaviensis, No 3161 PRAWO CCCVIII, Wrocław 2009, p.399.

[19] E. Całka, *Zasada pierwszeństwa w prawie Unii Europejskiej. Wybrane problemy*, Studia Iuridica Lublinensia vol. XXV, 1, 2016, p. 48.

III. PRINCIPLE OF PRIMACY OF UNION LAW

Only the provisions of the Brussels I Regulation may be applied between EU Member States in civil and commercial matters.

The formal provisions of the Regulation (controlling the proceedings) take priority over the provisions of the domestic procedure, i.e. Articles 1096-1116 of the Code of Civil Procedure, but only in matters governed by EU law. In this respect the provisions of the Regulation cannot be supplemented by the provisions of Polish procedure. In other matters, the provisions of the CCP shall apply.

Certain jurisdiction provisions contained in the national law of the Member States should not be applied to persons residing in a Member State, although they are still applicable to persons whose place of residence is outside the EU. These so-called "excessive" jurisdiction provisions have to be listed in the Official Journal of the EU and subsequently notified to the Commission.

In the process of interpretation, it is necessary to answer the question what is the purpose of the Brussels I Regulation recast, as the purposive interpretation is dominant in the process of applying EU law.

The teleological interpretation strengthens thinking about law as a tool in the hands of a rational legislator. It aims to determine the meaning of a given provision by taking into account the purpose of a legal act in which the provided rule is contained [20].

The aim of Regulation No 1215/2012 is to facilitate and speed up the circulation of judgments in civil and commercial cases in the EU in accordance with the principle of mutual recognition and the guidelines of the Stockholm Programme, and to facilitate access to justice for citizens of the Union by providing clear rules to answer the question which court will settle a particular case.

The rules of interpretation of the provisions regulating jurisdiction according to this regulation should be sought first of all in the preamble of this legal act. Recital 13 of Regulation 1215/2012 states that: "There must be a connection between the proceedings to which this Regulation applies and the territory of the Member States. Accordingly, the common rules on jurisdiction should in principle apply where the defendant is domiciled in the territory of one of the Member States." Taking into account the socio-economic reality, the regulation introduces a number of exceptions to the above-mentioned main rule, reserved for the benefit of specific entities. It is when the position of a given entity as a party to a legal relationship is weaker than that of an opponent [21].

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[20] J. Helios, W. Jedlecka, *Wykładnia prawa Unii Europejskiej ze stanowiska teorii prawa*, Prace Naukowe Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, Wrocław 2018, p. 165.

[21] B. Trocha, *Ochrona strony słabszej w europejskim prawie procesowym*, ISSN 2391-4424.

The EU legislator provides protection to these categories of entities on the assumption that it is necessary to ensure a real balance of the parties in matters relating to insurance[22], consumer contracts and individual employment contracts. This protection also covers cases where the courts of a Member State have exclusive jurisdiction.

Recital 14 refers to the situation where the defendant is not domiciled in the EU. In principle, he should be subject to the national provisions on jurisdiction applicable in the territory of the Member State before whose court the action is brought. "However, in order to ensure the protection of consumers and employees, to protect the jurisdiction of the courts of the Member States in situations where they have exclusive jurisdiction and to respect party autonomy, certain jurisdiction provisions in this Regulation should apply regardless of the defendant's domicile".

Recital 15 of the Preamble stipulates that: "The rules of jurisdiction should be highly predictable and be based on the principle that jurisdiction in general lies with the courts of the defendant's domicile. Such jurisdiction should always be established, except in a few well-defined cases where the subject matter of the litigation or the autonomy of the parties justifies a different linking factor. The domicile of legal persons must be defined expressly in the Regulation in order to enhance the clarity of the common rules and avoid conflicts of jurisdiction".

IV. THE DOMICILE OF LEGAL PERSONS UNDER REGULATION 1215/2012. RULES OF INTERPRETATION

According to Article 63(1) of Regulation 1215/2012, for the purposes of the application of the Regulation, domicile in the case of companies and legal persons shall be understood as the place where: their registered office; their main management body; or their main establishment is located. In Article 5(1), Regulation 1215/2012 allows the jurisdiction of other courts, in strictly defined situations, regulated in Article 7 et seq.

V. JURISDICTIONAL CONNECTING FACTORS

In recital 16 the Preamble indicates that the main rule, which establishes the defendant's domicile as the principal connecting factor, should be supplemented by jurisdiction based on other connecting factors. They should be admissible on the ground of a close link between the court and the legal dispute or in the interests of the proper administration of justice. The existence of such a close link should ensure legal certainty and enable the defendant to avoid being sued in a court of

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[22] S. Hackspiel, *Podstawy jurysdykcji*, KPP 1999, z.4, p.716-717.

a Member State which he could not reasonably have foreseen. This is particularly important in disputes concerning non-contractual obligations arising out of violations of privacy and other personal goods, including defamation.

VI. AUTONOMY OF THE WILL OF THE PARTIES

EU legislation pays particular attention to respecting the autonomy of the will of the parties. However, the freedom of the parties with regard to jurisdiction agreements is not absolute, but is subject to certain limitations, either for objective reasons – exclusive jurisdiction – or for subjective reasons – the protection of certain categories of parties. Recital 19 provides guidance in this regard: "Subject to the exclusive jurisdictions set out in this Regulation, the autonomy of the parties to a contractual choice of jurisdiction should be respected, except in matters relating to insurance, consumer contracts or employment law, where only limited freedom of the parties to a contractual choice of jurisdiction is permitted". The validity of a choice of court agreement is to be determined on the basis of the law of the Member State in which the court or courts designated by the agreement are situated, including the rules on conflict of laws of that Member State.

In accordance with Article 27 of Regulation 1215/2012, a court of a Member State shall declare of its own motion that it lacks jurisdiction only if it has been requested to settle a case which in meaning of Article 22 falls within the exclusive jurisdiction of a court of another Member State.

Under Article 28 of Regulation 1215/2012, where a defendant domiciled in one Member State is sued in a court of another Member State but fails to appear, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.

In the regulation under examination, we can distinguish at least seven types of jurisdiction. The most important one from the point of view of the case-law practice, apart from general jurisdiction because of its frequency, is jurisdiction by prorogation. When adopting an EU interpretation in this respect, it should be emphasized that this jurisdiction is in fact a type of jurisdiction under the agreement of the parties.

Jurisdiction according to the Brussels I Regulation is:

1. general jurisdiction (Articles 4-6),
2. special jurisdiction (Articles 7-9),
3. jurisdiction in matters relating to insurance (Articles 10-16),
4. jurisdiction over consumer contracts (Articles 17-19),
5. jurisdiction over individual contracts of employment (Articles 20-23),
6. exclusive jurisdiction (Article 24) and

7. prorogation of jurisdiction (Article 25) , including jurisdiction as a result of getting into a legal dispute (Article 26).

For the correct application of the jurisdiction rules resulting from the Regulation under examination, it should be indicated what is the relationship between general jurisdiction and special jurisdiction.

The general jurisdiction will apply if the insurance, consumer or employment, exclusive and contractual jurisdiction does not apply to the given facts. In the case of special jurisdiction, the choice of court will be left to the party initiating proceedings. The acquisition of jurisdiction by the court as a result of entering an appearance does not apply to the cases of exclusive, insurance, consumer and employee jurisdiction. This position follows the case law of the Court of Justice (see judgment of the CJ of 14 December 1976, Colzani v. Ruewa, Rs 24/76, judgment of the CJ of 14 December 1976, Esgoura v. Bonakdarian, Rs 25/76) [23].

VII. GENERAL JURISDICTION

This type of jurisdiction establishes a basic principle of choice of court in EU civil and commercial matters. The case must be heard by the court of the defendant's domicile (Article 4) – principle *actor sequitur forum rei*[24]. It should be stressed that there is no single universal autonomous definition of domicile in EU law. Each piece of legislation dealing with these issues must be interpreted separately. The Brussels I bis Regulation, continues in this regard the solution adopted in Brussels I and refers to national law. The court hearing the case will determine on the basis of the *lex fori* what is to be understood by domicile (Article 62) and whether this jurisdictional prerequisite is met in the specific case. This condition is separate from the connecting factor of nationality. In order to facilitate access to justice for citizens of the European Union, the domicile link has been elevated to a central principle. There is no doubt that it is easiest and cheapest for parties to bring proceedings close to their place of residence, whereas the Member State of which they are a national may be located at a very great distance. In addition, this solution prevents the same case from being heard by several courts from different Member States.

If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall be determined (subject to Article 18(1), Article 21(2) and Articles 24 and 25) by the law of that Member State.

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[23] J.Gołaczyński, *op.cit. p*.25;
[24] *ibidem*, p.25;

Exceptionally, a court other than that of the defendant's domicile may also have jurisdiction to hear a case.

First of all, as a derogation from the main rule, the special jurisdiction should be indicated. The location of this jurisdiction as an exception to the main rule is decisive in the process of its interpretation. This is confirmed in the judgment of the Court of 16.05.2013, C-228/11, Melzer v MF Global UK Ltd, where the Court found that the general jurisdiction of Brussels I does not allow the courts of the place where a harmful event occurred which is imputed to one of the presumed perpetrators of damage, who is not a party to the dispute, to take jurisdiction over another presumed perpetrator of that damage who has not acted within the jurisdiction of the court solving the dispute.

Special jurisdiction applies in the following cases:

1. relating to a contract, the courts for the place of performance of the obligation in question shall have jurisdiction;

2. in matters relating to tort, delict or quasi-delict, the courts for the place where the harmful event occurred or may occur

3. in actions under civil law for damages or restitution arising out of an act that is punishable as a criminal offence, the court before which the action has been brought (if it is competent to hear such actions) shall have jurisdiction.

4. in civil actions for the restitution of cultural objects based on ownership rights, the courts of the place where the object is located at the time the action is brought shall have jurisdiction;

5. in disputes arising out of the operations of a branch, agency or other establishment, the courts of the place in which the branch, agency or other establishment is situated shall have jurisdiction

6. as against a settlor, trustee or beneficiary of a trust, the courts of the Member State in which the trust is domiciled shall have jurisdiction;

7. as regards a dispute concerning the payment of remuneration for salvage or assistance in respect of cargo or freight, the court under whose jurisdiction the cargo or freight in question has been, or could have been, seized to secure such payment shall have jurisdiction.

It is understood that the provisions concerning special jurisdiction over civil claims arising out in matters relating to tort, *delict* or *quasi-delict*, apply not only to proceedings between the direct author of the tort and the injured party. They also cover cases involving legal successors to those entities, as well as cases involving a person who is liable under the law for a tort committed by another entity, cases involving recourse claims both between the persons who caused the damage

and between the entity that repaired the damage and the author of the damage[25]. This regulation also covers preventive proceedings and the mere risk of damage is sufficient[26].

As far as the interpretation of special jurisdiction is concerned, in addition to the preamble, the case law of the CJEU should be referred to. The rulings passed when Brussels I was in force are still relevant because the Brussels I bis is a continuation of its predecessor with a different numbering of the Articles.

As regards the interpretation of Article 7(1) of Brussels I bis (previously Article 5(1) of Regulation 44/2001), it is worth analysing the ruling of the CJEU of 7.08.2018, issued in joined cases C 274/16, C 447/16 and C 448/16 concerning connecting flights. In this ruling, the Court indicated that: "Article 5(1)(b), second indent, of Council Regulation (EC) No 44/2001 (...) must be interpreted as not applying to a defendant established in a third country (...).

Article 5(1)(a) of Regulation No 44/2001 must be interpreted as meaning that the concept of 'contract or contractual claim' within the meaning of that provision encompasses a claim for compensation by air passengers for a long delay of a connecting flight, brought pursuant to Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, against an operating air carrier which is not a contracting party to the passenger concerned.

The second indent of Article 5(1)(b) of Regulation No 44/2001 and the second indent of Article 7(1)(b) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the case of a connecting flight, the 'place of performance' of that flight, within the meaning of those provisions, is the place of arrival on the second flight, where the carriage on both flights is operated by two different air carriers, and a claim for compensation for long delay on that connecting flight under Regulation No 261/2004 is based on an event which occurred on the first of those flights, which is operated by an air carrier which is not the contracting party of the passengers concerned ".

In turn, in its judgment of 15.06.2017, in case C 249/16, the CJEU indicated how jurisdiction should be interpreted in the case of recourse claims between joint and several debtors. The Court explained that: "Article 7(1) of Regulation (EC) No

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[25] *ibidem*, p.59;

[26] K. Weitz, *Jurysdykcja krajowa oraz uznawanie i wykonywanie orzeczeń w sprawach cywilnych i handlowych w świetle prawa wspólnotowego*, KPP 2004, z.1, p.222.

1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action on a recourse claim brought by one of the joint debtors under a credit agreement against the other falls within the concept of a 'matter relating to a contract' within the meaning of that provision.

The second indent of Article 7(1)(b) of Regulation No 1215/2012 must be interpreted as meaning that a credit agreement, such as that at issue in the main proceedings, concluded between a credit institution and two jointly and severally liable debtors must be regarded as a 'contract for the provision of services' within the meaning of that provision.

The second indent of Article 7(1)(b) of Regulation No 1215/2012 must be interpreted as meaning that, where a credit institution grants credit to two jointly and severally liable debtors, 'the place in a Member State where, under the contract, the services were provided or should have been provided' within the meaning of that provision is, unless the parties have agreed otherwise, the place where that institution has its head office, including for the purposes of determining the place of jurisdiction of the court in which an action for recourse is brought by one jointly and severally liable debtor against another.

VIII. JURISDICTION IN MATTERS RELATING TO TORT, ARTICLE 7(2)

According to the judgment of the CJEU of 17.10.2017, C-194/16 : " 1. Article 7(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a legal person who alleges that its personal rights have been infringed following the publication on the internet of false information about it and the failure to remove comments directed at it may bring an action for the correction of the false information, the removal of the comments and the award of compensation for all the damage suffered and the harm suffered before the courts of the Member State in which the centre of its interests is situated.

Where a legal person conducts the greater part of its activities in a Member State other than that in which it has its registered office, it may sue the potential infringer of its rights on the basis of a connecting factor of the place where the damage occurs in that other Member State.

Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that a person who alleges that his personal rights have been infringed as a result of the publication of false information about him on the internet and the failure to remove

the comments directed at him cannot bring an action for the correction of the false information and the removal of the comments which infringe his rights before the courts of each Member State in the territory of which that information, published on the internet, was or is accessible".

IX. JURISDICTION IN MATTERS RELATING TO COUNTER – CLAIMS, ARTICLE 8

The CJEU judgment of 31.05.2018, C-306/17 states that : "Article 8(3) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as applying, without precluding the application of the other rules of jurisdiction provided for by that regulation, in a situation where a court with jurisdiction to hear an allegation of infringement of the claimant's personal interests in connection with the taking, without her knowledge, of photographs and videos of her a counterclaim is brought by the defendant seeking compensation from the claimant on account of a tort, *delict* or *quasi-delict* consisting, in particular, in the restriction of the defendant's intellectual creation which is the subject-matter of the original claim, inasmuch as the examination of that counterclaim requires an assessment by that court of the legality of the facts on which the claimant bases their claim.

X. JURISDICTION IN MATTERS RELATING TO INSURANCE

There is no doubt that the way insurance jurisdiction is formulated indicates that it is asymmetrical in nature. The weaker party may take advantage of several possibilities and choose the court which it considers most favourable. The insurer as the stronger party does not have such a choice[27].

In the case of actions brought by the policyholder, the insured or a beneficiary, jurisdiction shall also lie with the courts for the place where the claimant is domiciled or, if he is a co-insurer, with the courts of the Member State in which the main insurer is sued.

In accordance with the provision of Article 12 of Regulation 1215/2012, with respect to liability insurance or insurance of immovable property, the insurer may also be sued before the court of the place where the harmful event occurred (the same rule shall apply where movable and immovable property are covered by the

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[27] *ibidem*, p.93, K. Weitz, *Europejskie prawo procesowe cywilne [w:] Stosowanie prawa Unii Europejskiej przez sądy,* Zakamycze 2005, p.521.

same insurance agreement and the damage arising therefrom results from the same event).

However, the above provision cannot be interpreted in isolation from Article 13(2) of Regulation 1215/2012, which specifies that the provisions of Articles 10, 11 and 12 apply to actions brought by the injured party directly against the insurer if such direct action is permitted.

An assignee – acquiring a claim from an injured party under a contract regulated in Article 509 of the Civil Code – does not fall within the group of entities listed in Article 13(2) of Regulation 1215/2012. Thus, it cannot benefit from the provision of Article 12 of the said Regulation.

The judgment of the CJEU of 31 January 2018, rendered in Case C-106/17, LVM points out that „Article 13(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in conjunction with Article 11(1)(b) of that regulation, must be interpreted as meaning that it cannot be relied on by a natural person whose professional activity consists, inter alia, in claiming compensation from insurers and who has contractually acquired a claim against the victim of a road traffic accident in order to bring a civil liability action before the courts of the Member State of the victim's residence against the insurer of the road traffic accident, that insurer being established in a Member State other than the victim's Member State of residence".

The right of a representative established in the national territory to receive on behalf of a motor insurer established in another EU country a document initiating legal proceedings was settled in the CJEU judgment of 27 February 2020, C-25/19, Corporis sp. z o.o. In that judgment, the Court indicated that: "Article 152(1) of Directive 2009/138 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II), read in conjunction with Article 151 thereof and recital 8 of Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ('service of documents'), must be interpreted as meaning that the appointment by a non-life insurance undertaking of a representative in the host Member State also includes the power of that representative to receive the document instituting legal proceedings for compensation for a motor accident".

EU Directives are applied indirectly through their introduction into the national system by means of laws. As defined in Article 288 TFEU (Treaty on the Functioning of the European Union), a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods.

Article 208(1)(b) of the Act of 11 September 2015 on Insurance and Reinsurance Business (Journal of Laws 2018, item 999) transposes Article 152 of Directive 2009/138 into Polish law and provides that: "A foreign insurance undertaking having its head office in a Member State other than the Republic of Poland [....] which intends to carry on insurance business in the territory of the Republic of Poland in respect of insurance referred to in Section II in Group 10 of the Annex to the Act, other than carrier's liability, otherwise than through a branch, under the freedom to provide services, shall provide the supervisory authority, through the supervisory authority of the country in which its head office is situated, with the names and addresses of the claims representatives authorised to represent it to the extent necessary to ensure the legal representation of the undertaking in disputes before Polish common courts".

XI. JURISDICTION OVER CONSUMER CONTRACTS

This jurisdiction deserves special attention because of its importance in case-law practice. A proper understanding of this issue is also decisive in order to properly define that we are dealing with a Union case. If national laws incorporate directives into our legal system, then in practice we may be faced with a situation where a court applies a directive indirectly and the case has an EU character, even though there is apparently no cross-border element to it.

A large number of preliminary questions to the CJEU on the basis of Art. 267 TFEU are submitted in this area. Therefore, an analysis of the most significant CJEU rulings may be necessary in order to correctly interpret the provisions determining a court's jurisdiction to rule in this type of case.

It follows from paragraph 18 of the preamble, that consumers, in addition to the insured or claimants under an insurance contract and employees, belong to a category of subjects subject to special protection, which is already reflected in the rules governing the conflict of jurisdiction rules. According to this provision: "In matters relating to insurance, consumer contracts and labour law, the weaker party should be protected by rules of jurisdiction more favourable to it than the general rules".

It must be stressed that the very concept of consumer is an autonomous concept of EU law and must be interpreted identically throughout the European Union. National definitions must not be used in this respect. Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) contains a definition of a consumer, which stipulates that: "a consumer means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession (his economic and professional activities)".

The definition of the term "consumer" is also made by the CJEU. A representative example is the judgment of 3 September 2015, C-110/14, Vwbank Romania. The Court in this ruling indicated that: "an individual practising as a lawyer and concluding a credit agreement with a bank, in which the purpose of the credit is not specified, may be regarded as a 'consumer' within the meaning of that provision if the said agreement is not connected with that lawyer's professional activity. The fact that the claim arising under the contract in question is secured by a mortgage granted by that person, acting as agent for his law firm, on assets for the exercise of that person's professional activity, such as the immovable property belonging to that firm, is irrelevant in that regard.

The consumer is in a weaker negotiating position compared to the seller and has less information than the latter, which means that he is subject to the contract on terms predetermined by the seller without being able to influence its content.

In light of this weaker position, Article 6(1) of Directive 93/13/EEC provides that unfair terms are not binding on the consumer. It is a mandatory provision aimed at replacing the formal balance established in the contract between the rights and obligations of the contracting parties with a real balance capable of restoring equality between those parties.

This provision must be interpreted in accordance with the fifth, ninth and tenth recitals of the Directive in question: "in general, consumers are not aware of the legal rules governing contracts for the sale of goods and services in force in other Member States; this lack of awareness may prevent consumers from making direct purchases of goods or services in other Member States; [...] purchasers of goods and services should be protected against abusive practices by sellers or suppliers [traders], in particular in respect of one-sided standard contracts and the unauthorised exclusion of fundamental rights from contracts; more effective consumer protection can be achieved through the adoption of uniform legal standards for unfair terms; these standards should apply to all contracts concluded between sellers or suppliers [traders] and consumers [...]".

XII. JURISDICTION OVER INDIVIDUAL CONTRACTS OF EMPLOYMENT, ARTICLES 20-23

The above-mentioned regulations of the Brussels I bis) constitute an important element of the EU system of protection of employees working under an individual employment contract, recognized by the EU legislator as entities economically

weaker than the contracting party[28]. An employee who has concluded an individual employment contract (autonomous definition) may bring an action according to the following rules: before the court of the place where the employer is domiciled (registered office, branch, subsidiary), before the court of the place where the employee habitually performs or last habitually performed work or, if the employee does not habitually perform or did not habitually perform work in one and the same country, before the court of the place where the branch which employed the employee is or was located.

The employer may bring proceedings only in the court of the employee's place of residence.

The employer and the employee may by agreement derogate from these rules if the agreement was concluded after the dispute arose or if it provides that the employee may bring proceedings in courts other than the courts specified.

The Court ruled on the interpretation of these jurisdictional conditions in its judgment of 25.02.2021, C- 804/19, BU v Markt24 GmbH. In that judgment, the Court stated that the provisions set out in section 5 of chapter II of Brussels I bis Regulation under the heading „Jurisdiction over individual contracts of employment', must be interpreted as applying to a legal action brought by an employee domiciled in a Member State against an employer domiciled in another Member State in the case where the contract of employment was negotiated and entered into in the Member State in which the employee is domiciled and provided that the place of performance of the work was located in the Member State of the employer, even though that work was not performed for reasons attributable to that employer. At the same time, in this judgment, the Court confirmed that the regulation must be interpreted as precluding the application of national rules of jurisdiction in respect of an action falling within its scope, irrespective of whether those rules are more beneficial to the employee.

In the judgment of 03.06. 2021, C-280/20, in the case of ZN v. Generalno konsulstvo na Republika Bulgaria v grad Valensia, Kralstvo Ispania, the Court stated that general jurisdiction did not apply to dealing with a dispute between an employee from one country who did not perform functions falling within the scope of the exercise of public authority and a consular post of that Member State situated in the territory of another Member State. In that judgment, the Court stated that (...) where employment contracts concluded by an embassy on behalf of the State are concerned, the embassy is a ‚branch' within the meaning of Article 18

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[28] J. Zatorska, *Komentarz do rozporządzenia nr 1215/2012 w sprawie jurysdykcji i uznawania orzeczeń sądowych oraz ich wykonywania w sprawach cywilnych i handlowych*, LEX/el. 2015.

(2) of Regulation No 44/2001 when the obligations of employees with whom the embassy concludes these contracts are related to the performance of management activities by the embassy in the host country (judgment of the CJEU of 19.07.2012, Mahamdia, C-154/11, paragraph 52). By analogy, it should be considered that the consulate general is also a ‚branch' for the purposes of Brussels I bis, because it meets the criteria identified in the Court's case law. As an organizational unit of a ministry of foreign affairs, the consulate general gives the appearance of durability as an outward-facing extension of that ministry[29].

As a result of such an analysis, the Court came to the logical conclusion that one of the parties to the dispute should be regarded as domiciled or habitually resident in a Member State other than the Member State of the court appropriate for the case. This ruling determined the jurisdiction of the court in cases of civil law disputes in which one of the parties is a territorial organizational unit of the ministry of foreign affairs and shaped the jurisprudence of domestic courts in this respect.

The analysis of the CJEU judgments not only confirms their binding nature for national courts, but also proves that the interpretation of EU law by the Court fills the gaps in EU law and, in this sense, is of a legislative nature.

XIII. EXCLUSIVE JURISDICTION, ARTICLE 24

Exclusive jurisdiction shall apply to matters relating to rights in rem in immovable property and tenancies of immovable property where the courts of the Member State in which the property is situated have jurisdiction. This rule shall not apply to contracts concluded for temporary private use not exceeding six consecutive months. Provided that the landlord and the tenant or lessee are both domiciled in the same Member State, the main rule in Article 4 shall apply and jurisdiction shall lie with the court of the defendant's domicile.

In proceedings which have as their object the validity, nullity or dissolution of a company or legal person or the validity of the decisions of its corporate bodies, the courts of the Member State in which the company or legal person has its seat shall have exclusive jurisdiction.

Exclusive jurisdiction shall also exist over proceedings which have as their object the validity of entries in public registers, which may be dealt with by the courts of the Member State in the territory of which the registers are kept, as well as the

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[29] P. Grzegorczyk, *Misja dyplomatyczna jako filia, agencja lub inny oddział państwa – pracodawcy. Glosa do wyroku TS z dnia 19 lipca 2012 r., C-154/11*, PPC 2013/3/408-423, p. 410; M. Orecki, *Ambasada państwa jako filia, agencja, oddział w świetle rozporządzenia (WE) nr 44/2001,glosa do wyroku TS z 19.07.2012 r. w sprawie C-154/11 Ahmed Mahamdia przeciwko République algérienne démocratique et populaire*, Europejski Przegląd Sądowy nr 2 z 2014, p.37-42.

registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, which may be dealt with by the courts of the Member State in the territory of which the deposit or registration has been applied for. As regards the enforcement of judgments, the courts of the Member State in whose territory enforcement is sought or has taken place shall have exclusive jurisdiction.

Guidance in the process of interpreting the provision of Article 24 on exclusive jurisdiction should be sought in the case law of the CJEU. In the decision of the Court of 5 April 2001, Gaillard (C 518/99, EU:C:2001:209), in which the rule of exclusive jurisdiction in the field of rights in rem in immovable property was not applied to an action for termination of a contract for the sale of immovable property. In that decision, the Court indicated that: "An action for withdrawal from a contract for the sale of land and for consequential damages is not covered by the rules of exclusive jurisdiction in proceedings which have as their object rights in rem in immovable property within the meaning of Article 16(1) of the Convention of 27 September 1968 between a Member State of the European Economic Community on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and by the Convention of 25 October 1982 on the accession of the Hellenic Republic." The CJEU, interpreting this, concluded that an action for annulment of the exercise of a right of pre-emption encumbering real estate falls within this exclusive jurisdiction. The concepts of rights in rem and rights of obligation under EU law are autonomous and must be defined as such. In the judgment under review, referring to the Report on the Convention concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters and the Protocol concerning its interpretation by the Court drawn up by P. Schlosser (OJ 1979 C 59/71, paragraph 166), the Court recalled that the difference between a right in rem and a right of obligation is to be found in the fact that the former, which encumbers a thing, produces effects *erga omnes*, whereas the latter can be invoked only against the debtor (see paragraph 17 of that decision).

In its judgment of 3 April 2014, in the Weber case (C 438/12, EU:C:2014:212), the Court emphasised, pursuant to Article 27 of Regulation 1215/2012 , that "A court of a Member State shall declare of its own motion that it lacks jurisdiction where it is requested to hear a case which is within the exclusive jurisdiction of the courts of another Member State by virtue of Article 24".

Failure to apply this provision – in accordance with Article 45(1)(e)(ii-) of the Regulation in question – will result in non-recognition of the judgment, if requested of any interested party. In the ruling under review, the Court pointed out that: "Article 22(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the category of disputes 'which have as their object rights in rem in immovable property' referred to in that provision includes an action, such as that brought in the present case before a court of another Member State, seeking to obtain a declaration that the exercise of a right of pre-emption encumbering that immovable property is invalid and producing effects *erga omnes*.

Article 27(1) of Regulation No 44/2001 must be interpreted as meaning that, before proceedings are suspended pursuant to that provision, the court before which proceedings are subsequently brought must examine whether, by reason of an infringement of the exclusive jurisdiction provided for in Article 22(1) of that regulation, any judgment on the substance given by the court before which proceedings were first brought will not be recognised in the other Member States pursuant to Article 35(1) of that regulation".

XIV. JURISDICTION BY AGREEMENT BETWEEN THE PARTIES, ARTICLE 25

If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State should have jurisdiction to settle a dispute which has arisen or which may arise in the future from a particular legal relationship, that court or the courts of that State shall have jurisdiction, unless the agreement is materially invalid under the law of that Member State. The jurisdiction so determined shall be exclusive unless the parties have agreed otherwise. With regard to the form of the contract, we distinguish three parallel possibilities. The first one will be fulfilled with the written or verbal form confirmed in writing. It should be emphasised that the written form is an autonomous concept. According to the interpretation in the EU law, electronic transmissions enabling a permanent record are a written form. The second possibility is the form that corresponds to the practice adopted between the parties, or the third possibility – the form corresponding to a commercial custom in international trade.

In the judgment of 09.12.2003, C-116/02 in the case of Erich Gasser GmbH v MISAT Srl. the Court pointed out that the European system of jurisdiction [...] seeks to ensure that there can be no parallel proceedings in the same case. This objective is achieved either through exclusive jurisdiction or through regulation of

lis pendens in cross-border situations in individual regulations. In some situations, exclusive jurisdiction is entrusted to a court only on the basis of the subject-matter of the dispute. For example, article 22 of the Brussels I Regulation confers exclusive jurisdiction on a court with territorial jurisdiction over title to real estate. Nevertheless, party autonomy also forms the basis for the conferral of jurisdiction. Article 23 provides that the court of the Member State concerned shall have jurisdiction if the parties have so agreed.

A cursory literal analysis of this judgment could lead to the conclusion that the European system of jurisdiction encourages violations of the concluded agreement on the choice of court. But this form of argument is misplaced. Courts may differ as to whether such an agreement exists, is valid or exclusive. It is important to determine which court should rule on the consequences of the contractual determination of jurisdiction. Contractual determination of jurisdiction is important, and public policy considerations also support their enforcement. If the contract expressly contains a clause specifying the jurisdiction of the court, it seems logical that that court should have jurisdiction to determine the effects of the contract. Such an interpretation meets the parties' rational expectation that any court proceedings between them will be adjudicated by the court of their choice.

XIV. JURISDICTION BY ENTRY OF APPEARANCE

Article 26 of the Brussels I bis Regulation, is one of the most important jurisdictions from the point of view of case-law practice. Its application results in a court which initially had no jurisdiction, but as a result of the defendant's activity in entering a dispute, the court obtained jurisdiction. It should be emphasised that the definition of appearance is an autonomous definition of EU law and has been shaped by the case law of the Court. One of the most representative examples of such rulings is the judgment of the CJEU of 20 May 2010, C-111/09 in the case of Česká podnikatelská pojišťovna as, Vienna Insurance Group v Michal Bilas. The Court indicated in that judgment that: "Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a court appointed contrary to the rules in Section 3 of Chapter II of that regulation must assert its jurisdiction where the defendant enters an appearance and fails to raise an objection of lack of jurisdiction, since such an appearance constitutes a tacit agreement to jurisdiction". With this definition of the notion of entering an appearance, any form of objection by the defendant to the court hearing the case is sufficient for it not to be assumed that there has been a tacit agreement on jurisdiction. This has specific procedural consequences. The court that lacks jurisdiction

must first serve a copy of the statement of claim on the defendant before it takes a procedural decision in this respect. The defendant's inactivity and failure to file a statement of defence or raise a plea of lack of jurisdiction will only allow the court to determine the lack of jurisdiction and, under Polish procedure, issue a decision rejecting the statement of claim.

It should be emphasised that a guardian appointed by the court for a defendant who is not known from his place of residence cannot enter an appearance in the dispute[30].

For these reasons, if the correct address of the defendant is not established, it will become necessary to appoint a guardian for him in order to serve the order of dismissal for lack of jurisdiction, which can be issued immediately.

XVI. CONCLUSIONS

In conclusion, it should be pointed out that the rules on jurisdiction in civil and commercial matters must always be interpreted with reference to the aim of the Brussels I bis Regulation and in the process of interpretation national courts should rely on the guidelines contained in the CJEU jurisprudence on this subject. Facilitating access to justice for citizens of the Union is a decisive prerequisite for the court, in the process of applying the law, to give a broad interpretation to the conditions establishing jurisdiction. The conflict-of-law rules contained in the regulation in question should be applied identically throughout the European Union. Every person should be certain before a court of which country they can seek legal protection, as well as before a court of which country they can be sued. The certainty and efficiency of judicial procedures not only guarantees the implementation of individual rights of European Union citizens, but also protects the functioning of the common market, the proper functioning of which is a guarantee of economic prosperity. The justice system performs a servile function in relation to the common market, and its development is an important element of balance and security in the functioning of both the European Community and individual societies.

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[30] vide the judgment of the CJEU of 21 October 2015, in Case C 215/15, Vasilka Ivanova Gogova v Iliya Dimitrov Iliev.

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Wykładnia przesłanek jurysdykcyjnych w unijnych sprawach cywilnych i handlowych w procesie praktycznego stosowania rozporządzenia Bruksela I bis w świetle orzecznictwa TSUE

STRESZCZENIE

Posiadanie przez sąd jurysdykcji krajowej jest warunkiem *sine qua non* możliwości rozstrzygnięcia sprawy. Jej brak skutkuje nieważnością postępowania zgodnie z dyspozycją art. 1099 § 2 KPC. Po zmianach w 1997 r. i przyjęciu w doktrynie podziału jurysdykcji krajowej na jurysdykcję w znaczeniu prawnomiędzynarodowym i właściwość międzynarodową, instytucje te nie są już włączane w zakres pojęcia drogi sądowej. Dopuszczalność drogi sądowej i właściwość międzynarodowa aktualnie są traktowane jako dwie odrębne instytucje procesowe, które samodzielnie statuują przesłanki postępowania. Czy sprawy unijne różnią się w tym zakresie od spraw pozbawionych elementu transgranicznego? Czy sposób wykładni przepisów prawa unijnego różni się od tradycyjnej wykładni w sprawach krajowych ? Czy dominująca powinna być wykładnia celowościowa? Na te i inne pytania stara się odpowiedzieć autorka w niniejszym tekście.

Słowa kluczowe: jurysdykcja krajowa, zasada pierwszeństwa prawa unijnego, łączniki jurysdykcyjne, sprawa cywilne, sprawa handlowa