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Rules of Jurisdiction of the Regulation Brussels I bis – Application of General Jurisdiction Rule and Special Jurisdiction Rule under Close Connecting Factor (Article 7 (1)) – Lithuanian Perspective

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Rules of Jurisdiction of the Regulation Brussels I bis – Application of General Jurisdiction Rule and Special Jurisdiction Rule under Close Connecting Factor (Article 7 (1)) – Lithuanian Perspective

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Summary. This paper focuses on the application of the general jurisdiction rule and the special jurisdiction rule under Article 7 (1) 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 (recast) (Regulation Brussels I bis) in Lithuanian jurisprudence. It firstly briefly presents the general jurisdiction rule, and then penetrates into the discussion about the special jurisdiction rule under Article 7 (1) of Regulation Brussels I (recast) revealing the jurisprudence of the Court of Justice of the European Union (CJEU) and answering the question whether Lithuanian courts apply this legal norm correctly. By analysing the Case Law, the authors reveal the peculiarities of the national Case Law and disclose how it is compatible with the jurisprudence of the CJEU. The research aims to contribute to the development of the Lithuanian legal doctrine, by analysing Regulation Brussels I bis.
Keywords: jurisdiction, civil and commercial disputes, Regulation Brussels I (recast), Regulation No. 1215/2012, Regulation Brussels I bis

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Reglamente Briuselis I bis įtvirtintos jurisdikcijos nustatymo taisyklės – bendrosios jurisdikcijos taisyklės ir specialiosios jurisdikcijos taisyklės taikymas pagal glaudų siejantį kriterijų Reglamento Briuselis I bis (7 straipsnio 1 dalis) – Lietuvos perspektyva

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Santrauka. Šiame straipsnyje daugiausia dėmesio skiriama apibūdinti bendrosios jurisdikcijos taisyklės ir specialiosios jurisdikcijos taisyklės taikymą Lietuvos jurisprudencijoje pagal 2012 m. gruodžio 12 d. Europos Parlamento ir Tarybos reglamento (ES) Nr. 1215/2012 dėl jurisdikcijos ir teismo sprendimų civilinėse ir komercinėse bylose pripažinimo ir vykdymo (nauja redakcija) (Reglamentas Briuselis I bis) 7 straipsnio 1 dalį. Pirmiausia trumpai pristatoma bendrosios jurisdikcijos taisyklė, o paskui diskutuojama apie specialiosios jurisdikcijos taisyklę pagal Reglamento Briuselis I (nauja redakcija) 7 straipsnio 1 dalį, atskleidžiama Europos Sąjungos Teisingumo Teismo (ESTT) jurisprudencija ir atsakoma į klausimą, ar Lietuvos teismai tinkamai taiko šią teisės normą. Analizuodamos teismų praktiką, autorės atskleidžia nacionalinės teismų praktikos ypatumus ir parodo, kaip ji dera su ESTT jurisprudencija. Tyrimu siekiama prisidėti prie Lietuvos teisės doktrinos kūrimo, analizuojant Reglamentą Briuselis I bis.
Pagrindiniai žodžiai: jurisdikcija, civiliniai ir komerciniai ginčai, Reglamentas Briuselis I (nauja redakcija), Reglamentas Nr. 1215/2012, Reglamentas Briuselis I bis.

Introduction

Today's civil and commercial disputes are complicated and multidimensional. The application of international legal rules causes challenges to courts, litigants, and lawyers. 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 (recast) (Regulation Brussels I bis) is applicable since the 10th of January 2015. It seeks to facilitate access to justice particularly by providing the rules on the jurisdiction of the courts and the rules on a rapid and simple recognition and enforcement of judgments in civil and commercial matters given in the Member States of the European Union (EU).

Moreover, the jurisdiction rules, established in the Regulation Brussels I (recast) may sometimes be applied even if the dispute is related to the third country (i.e., a non-EU country). In the Lithuanian legal doctrine, there are some articles in which the peculiarities of the Regulation Brussels I bis are revealed, but they mainly are related to the *lis pendens* principle (Šekštelo, 2006), arbitration (Parchajev, Kisieliauskaitė, and Bajoraitė, 2016) and prorogation of jurisdiction (Kisieliauskaitė, 2017), and they were drawn up more than five years ago.

During the last few years, the Case Law of the Supreme Court of the Republic of Lithuania has developed rapidly, and this inspires to explore the problems of determining the jurisdiction in more depth.

The object of the research is the general jurisdiction rule and special jurisdiction rule under Article 7 (1) established in Regulation Brussels I bis and the practice of their interpretation and application. The aim of the article is to briefly discuss the jurisdiction rules established in Regulation Brussels I bis and to disclose if the Lithuanian Case Law is compatible with the jurisprudence of the CJEU. The authors shall focus on three tasks: 1) to discuss briefly the aims and the scope of Regulation Brussels I bis, the general rule of jurisdiction, and the possibility to apply the alternative jurisdiction rule, established in Article 7(1) of Regulation Brussels I bis; 2) to analyse the relevant jurisprudence of the CJEU concerning the interpretation and application of the jurisdiction rules under Article 7(1) of Regulation Brussels I bis; and 3) to reveal the peculiarities of the national Case Law and to disclose how it is compatible with

the jurisprudence of the CJEU. The research is relevant as it aims to contribute to the development of the Lithuanian legal doctrine, by analysing Regulation Brussels I (recast). Brussels I bis Regulation was adopted on 12 December 2012, and has been applied since 10 January 2015.

The research was carried out by using the traditional text analysis (linguistic), logical, comparative and teleological methods.

1. Aims and Scope of Regulation Brussels I bis

Regulation Brussels I bis aims to guarantee the free circulation of judgments in civil and commercial matters within the EU. This legal act establishes the rules governing the jurisdiction and the recognition and enforcement of judgments in the EU. It is binding and directly applicable in all 27 Member States of the EU (including Denmark).

The Brussels Convention of 27 September 1968 on the jurisdiction and enforcement of judgments in civil and commercial matters is the predecessor of Regulation Brussels I (No. 44/2001), and the latter is the predecessor of Regulation Brussels I bis. Since Regulation Brussels I bis repealed and replaced Brussels I, which itself replaced the Brussels Convention, as amended by successive Conventions on the accession of new Member States to that Convention, the CJEU interpretations of the provisions of one of those legal instruments also applies to those of the others, whenever those provisions may be regarded as equivalent (RH v AB Volvo and Others, C30/20, p. 28).

The scope of Brussels I bis Regulation is to cover all the main civil and commercial matters, apart from certain well-defined matters, in particular, maintenance obligations.[1] The Regulation is also not applied to arbitration,[2] the status or legal capacity of natural persons, rights in property arising out of

[1] Which should be excluded from the scope of Brussels I bis Regulation following the adoption of Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

[2] See Article 1 (2) (d), Recital 17 of the preamble: *Regulation should not apply to arbitration. Nothing in this Regulation should prevent the courts of a Member State, when seised of an action in a matter in respect of which the parties have entered into an arbitration agreement, from referring the parties to arbitration, from staying or dismissing the proceedings, or from examining whether the arbitration agreement is null and void, inoperative or incapable of being performed, in accordance with their national law.*

A ruling given by a court of a Member State as to whether or not an arbitration agreement is null and void, inoperative or incapable of being performed should not be subject to the rules of recognition and enforcement laid down in this Regulation, regardless of whether the court decided on this as a principal issue or as an incidental question.

But Regulation Brussels I bis does not affect the application of the 1958 New York Convention (Article 73 (2).

On the other hand, where a court of a Member State, exercising jurisdiction under this Regulation or under national law, has determined that an arbitration agreement is null and void, inoperative or incapable of being performed, this should not preclude that court's judgment on the substance of the matter from being recognised or, as the case may be, enforced in accordance with this Regulation. This should be without prejudice to the competence of the courts of the Member States to decide on the recognition and enforcement of arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 ('the 1958 New York Convention'), which takes precedence over this Regulation.

This Regulation should not apply to any action or ancillary proceedings relating to, in particular, the establishment of an arbitral tribunal, the powers of arbitrators, the conduct of an arbitration procedure or any other aspects of such a procedure, nor to any action or judgment concerning the annulment, review, appeal, recognition or enforcement of an arbitral award.

The arbitration exclusion covers arbitration in its entirety, including proceedings brought before national courts. See the CJEU judgment of 25 July 1991, in *Rich*, C190/89, EU:C:1991:319, para 18.

As the CJEU noted in the judgment of 20 June 2022 in *London SteamShip Owners' Mutual Insurance Association Limited* case No. C-700/20, "the content of the arbitral award at issue in the main proceedings could not have been the subject of a judicial decision falling within the scope of Regulation No 44/2001 without infringing two fundamental rules of that regulation concerning, first, the relative effect of an arbitration clause included in an insurance contract and, secondly, *lis pendens*" (see para 59).

a matrimonial relationship or out of a relationship deemed by the law applicable to such a relationship to have comparable effects to marriage (Article 1 (2) (a)), bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings (Article 1 (2) (b)), social security (Article 1 (2) (c)), maintenance obligations arising from a family relationship, parentage, marriage or affinity (Article 1 (2) (e)), wills and succession, including maintenance obligations arising by reason of death (Article 1 (2) (f)). Regulation Brussels I bis is applicable in all civil and commercial cases and matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*) (Article 1 (1)). Although certain actions between a public authority and a person governed by Private Law may come within the scope of civil and commercial matters, the position is otherwise where the public authority is acting in the exercise of its public powers (Land Berlin v Ellen Mirjam Sapir and Others, C645/11, p. 33; The Commissioners for Her Majesty's Revenue & Customs v Sunico ApS and Others, C49/12, p. 34; flyLAL-Lithuanian Airlines AS v Starptautiskā lidosta Rīga VAS and Air Baltic Corporation AS, C302/13, p. 30). The *Movic* case (Belgische Staat and Directeur-Generaal van de Algemene Directie Controle en Bemiddeling van de FOD Economie, K.M.O., Middenstand en Energie v Movic BV and Others, No. C-73/19) illustrates that, sometimes, it is really complicated to identify if the State authority acts in the sphere of *acta iure gestionis* or *acta iure imperii*. This case was founded when Belgian authorities brought interlocutory proceedings against Movic, Events Belgium and Leisure Tickets & Activities International before the president of the Rechtbank van koophandel Antwerpen-afdeling Antwerpen (Commercial Court, Antwerp Division, Antwerp, Belgium), with their primary claim being, first, for a declaration that those companies were reselling event admission tickets in Belgium, via websites managed by them, at a price greater than their original price, which constituted infringements of the provisions of the Law of 30 July 2013 and the CEL, and, second, for an order for the cessation of those commercial practices. The Belgian authorities also made applications for ancillary measures, namely, an order for the publication of the judgment delivered, with those companies ordered to pay the costs of that publication, an order imposing a penalty payment of EUR 10 000 for every infringement which might be found to have taken place after the service of that judgment, and a declaration that future infringements can be identified simply by a report issued, on oath, by an official of the Directorate-General for Economic Inspection, in accordance with the CEL. The three companies in the proceedings raised an objection that the Belgian courts lacked international jurisdiction, maintaining that the Belgian authorities had brought actions in the exercise of public powers (*acte iure imperii* [authors' note]), so that their actions did not come within the scope of Regulation Brussels I bis. However, in that respect, the CJEU reminded its previous jurisprudence (Stefan Fahnenbrock and Others v Hellenische Republik, in joined cases C226/13, C245/13 and C247/13, p. 56) emphasising that the fact that a power was introduced by legislation is not, in itself, decisive in order to conclude that a State authority acted in the exercise of public powers. The CJEU summed up that Article 1(1) of Brussels I bis Regulation must be interpreted as meaning that an action where the opposing parties are the authorities of a Member State and businesses established in another Member State, in which those authorities seek, primarily, findings of infringements constituting allegedly unlawful unfair commercial practices and an order for the cessation of such infringements and, as ancillary measures, an order for publicity measures and the imposition of a penalty payment, falls within the scope of the concept of 'civil and commercial matters' in that provision (Belgische Staat and Directeur-Generaal van de Algemene Directie Controle en Bemiddeling van de FOD Economie, K.M.O., Middenstand en Energie v Movic BV and Others, No. C-73/19, p. 64).

Assessing the ratione *materiae* of Brussels I bis Regulation (EPIC Financial Consulting Ges.m.b.H. v Republic of Austria, Bundesbeschaffung GmbH, in joined cases C274/21 and C275/21, p. 57), the CJEU recalled to its previous jurisprudence in cases *Owusu* (Owusu v N.B. Jackson, C-281/02, p. 25–26) and *Rina* (LG and Others v Rina SpA, Ente Registro Italiano Navale, C641/18, p. 25), stating that Regulation No. 1215/2012 is applicable only where a dispute concerns several Member States or a single Member State provided, in the latter case, that there is an international element because of the involvement of a third State. That situation is such as to raise questions relating to the determination of international jurisdiction. If the international element is lacking (like it was in the EPIC Financial Consulting Ges.m.b.H. v Republic of Austria, Bundesbeschaffung GmbH, in joined cases C274/21 and C275/21), the Regulation is not applicable.

An interesting Lithuanian case *Kintra* (Ruling of the Supreme Court of the Republic of Lithuania of 20 March 2013) was referred to the CJEU by asking a preliminary question whether Brussels I bis was applicable in a case where an action is brought by an insolvency administrator acting in the interests of all creditors and seeking to restore the solvency and increase the asset value, including actions to set transactions aside (*actio Pauliana*) which have been recognised as actions closely connected to the insolvency proceedings covered by the CMR (Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956, as amended by the Protocol signed in Geneva on 5 July 1978), will it be covered by the EIR or by the Brussels Regulation. There was no jurisprudence of the CJEU or Case Law in Lithuania clarifying this question. The CJEU accepted the preliminary reference and ruled that an action for the payment of a debt based on the provision of carriage services taken by the insolvency administrator of an insolvent undertaking in the course of insolvency proceedings opened in one Member State and taken against a service recipient established in another Member State comes under the concept of 'civil and commercial matters'. Also, the CJEU stated that Article 71 of Regulation No. 44/2001 must be interpreted as meaning that, in a situation where a dispute falls within the scope of both that regulation and the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956, as amended by the Protocol signed in Geneva on 5 July 1978, a Member State may, in accordance with Article 71(1) of that regulation, apply the rules concerning the jurisdiction laid down in Article 31(1) of that convention. As a consequence, the Lithuanian Supreme Court, by applying both the Regulation No. 44/2001 and the CMR Convention, stated regarding the jurisdiction that the defendant did not have a registered office in Lithuania, there was no place of performance of the obligation for which the claim had been filed, the headquarters, branch or agency of the defendant, through whose mediation the transport contract was concluded, does not operate here. The defendant's registered office was in Germany. This formed the basis for deciding that the case cannot be heard in Lithuanian courts (Ruling of the Supreme Court of the Republic of Lithuania of 05 November 2014).

In another recent cassation case (Ruling of the Supreme Court of the Republic of Lithuania of 02 October 2023), the Lithuanian Supreme Court dealt with the interpretation and application of the legal norms governing the establishment of international jurisdiction to the insolvency administrator when filing a counterclaim challenging the creditor's claim in a cross-border insolvency case. Both the Court of First Instance and the Court of Appeal decided that Lithuanian courts have jurisdiction to examine the defendant's counterclaim against a third party, but on different legal grounds. The Court of First Instance decided that the defendant's counterclaim should be considered as arising directly from the defendant's bankruptcy case and, based on Article 6, Part 1 of the Regulation on Insolvency Cases (Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast). OJ, 5.6.2015, L 141/19), should be examined in the defendant's bankruptcy case. The Appellate

Court decided the question of the jurisdiction of the defendant's counterclaim based on Article 8(3) of Brussels I bis Regulation, which establishes a special rule of jurisdiction in cross-border civil cases, when deciding the issue of a counterclaim when the plaintiff has already filed a claim. The Supreme Court, referring to the jurisprudence of the CJEU (Tünkers France and Tünkers Maschinenbau, C-641/16, p. 18) stated that concept of 'civil and commercial cases' of Regulation Brussels I bis must be interpreted broadly and, on the contrary, the scope of Regulation No. 1346/2000 (Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings (no longer in force). OJ, 30.6.2000, L 160) should not be interpreted broadly; the respective fields of the application of these two regulations are clearly defined and the claim, which directly arises from the bankruptcy case and is closely related to it, does not fall under the scope of Regulation Brussels I bis, but falls under the scope of the Insolvency Regulation (Wiemer & Trachte GmbH v Zhan Oved Tadzher, C-296/17, p. 31). The concentration of all claims directly related to insolvency in the courts of the Member State where such insolvency proceedings were initiated is in accordance with the Insolvency Regulation as its purpose is to improve the efficiency and promptness of insolvency proceedings with cross-border consequences (Wiemer & Trachte GmbH v Zhan Oved Tadzher, C-296/17, p. 33; Seagon, C339/07, p. 22). Therefore, the Supreme Court, by citing its previous Case Law (Ruling of the Supreme Court of the Republic of Lithuania of 23 December 2023) which is based on the emerging jurisprudence of the CJEU, stated that, in the event that a creditor submits a request to the bankruptcy administrator to confirm their financial claim in the bankruptcy case, and the bankruptcy administrator, not agreeing to such a claim, files a claim, which, if granted, would result that the court cannot satisfy the creditor's claim in whole or in part , such a claim by the bankruptcy administrator does not fall under Regulation Brussels I, but, instead, under the Insolvency Regulation. As in the particular case, the defendant's insolvency administrator filed a counterclaim in the third party's financial claim approval procedure in order to contest what he considered to be an unjustified third-party claim. The acceptance and verification of the creditors' claims is an integral part of the insolvency procedure and one of the functions of the insolvency specialist (Art. 2, para 5, item (i) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast). OJ, 5.6.2015, L 141/19). Thus, the insolvency administrator of the defendant filed a counterclaim representing the interests of the defendant and its creditors and performing special functions established by the insolvency law. The requirement of the counterclaim is directly related to the issue under consideration in the insolvency case of the defendant – the evaluation of the validity of the claim made by the third party. In the case, it was established that the defendant's counterclaim is factually and legally related to a claim made by a third party, and, if the counterclaim is satisfied, it will no longer be possible to fully or partially satisfy the third party's claim. Taking this into account, the panel of judges concluded that, in the case in question, the counterclaim filed by the insolvency administrator of the defendant falls under the exception established in Article 1, paragraph 2, point (b) of Regulation Brussels I bis, and that Brussels I bis does not apply to the determination of its jurisdiction.

2. General Jurisdiction Rule and Special Jurisdiction Rule under Article 7 (1) of Regulation Brussels I bis

2.1. General Rule – jurisdiction belong to the court where the defendant is domiciled (Article 4)

Regulation Brussels I bis establishes the so-called jurisdictional regime – rules applicable to establish the jurisdiction in cases related to more than one EU Member State. These rules help to clearly define

the court which is competent to hear a particular case. As it is noted in the Regulation, the rules of jurisdiction should be highly predictable and founded on the principle that the jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

Hence, the basic principle of the Regulation (Art. 4) is that individuals could only be sued in their Member State of domicile or the place of registration (when we talk about legal persons). The domicile of a person is not equivalent to the Common Law doctrine of domicile, but it refers to a person's habitual or ordinary residence.

The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction (Georges and Dickinson, 2015, p. 141). Even though Article 4(2) establishes the rule that persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to the nationals of that Member State, this rule should be applied very cautiously when applying other Articles of Brussels I bis. As the CJEU emphasised in the *Sapir* case (Land Berlin v Ellen Mirjam Sapir and Others, C645/11), Article 6 (1) (Article 8 (1) of Brussels I bis) [author's remark] of Regulation No. 44/2001 must be interpreted as meaning that it is not intended to apply to defendants who are not domiciled in another Member State, in the case where they are sued in proceedings brought against several defendants, some of whom are also persons domiciled in the European Union.

Under the Lithuanian Case Law, the criteria which have to be evaluated when establishing the domicile of a person are based not only upon the formal fact where the person lives or the declared place of residence, but also considering the duration and continuity of the actual life in that place, the person's own statement about their place of residence, etc. (see Rulings of the Supreme Court of the Republic of Lithuania of 07 September 2012, 06 December 2013 and 16 October 2015). Sometimes, the nationality and the centre of interests of a person can also play a big role in establishing the domicile, but it does not depend solely on these factors. If a person actually lives in more than one place, the place with which the person is most closely connected is considered main place of residence – that is, the domicile (i.e., where the person's property or most of the property is located, where the person works, or where the person has lived the longest period of time).

Under Article 6 (1) of Brussels I bis, if the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State.

2.2. Special jurisdiction – close connecting factor (Article 7 (1))

Despite of the general rule established in Article 4, the plaintiff can choose the jurisdiction under special rules specified in Article 7 (1). This possibility to choose was established according to the fact that a case is somehow related to the particular state, and that it is convenient to hear a case in a particular court. The dispute and the court having jurisdiction to entertain shall be linked by an especially close connecting factor (Mankowski et al., 2022, p. 129). As the CJEU has reminded (EXTÉRIA s.r.o. v Spravime, s.r.o., C393/22, p. 29), the rule of special jurisdiction in matters relating to a contract, as laid down in Article 7(1) of the Brussels I bis Regulation, reflects a concern for proximity and is motivated by the existence of a close link between the contract concerned and the court called upon to hear it. Thus, the general rule of the jurisdiction of the courts for the defendant's domicile, referred to

in paragraph 27 of the present judgment, is supplemented by that special rule of jurisdiction in matters relating to a contract, pursuant to which the defendant may also be sued before the courts for the place of performance of the obligation in question (Falco Privatstiftung and Rabitsch, C533/07, p. 24, 25). Article 7 (1) strikes the balance between the plaintiff's and the defendant's interests comparing to Article 4 which only favours the interests of the defendant. Article 7 has proven itself to be perhaps the most important Article of the entire Brussels I bis and Lugano regime generating more requests for preliminary rulings to the CJEU than any other Article, even exceeding Article 25 (Saale Kareda v Stefan Benkö, C-249/16).

In the *Kareda* case (Saale Kareda v Stefan Benkö, C-249/16), the CJEU ruled that Article 7(1) must be interpreted as meaning that a recourse claim between jointly and severally liable debtors under a credit agreement constitutes a 'matter relating to a contract', as referred to in that provision. Interpreting the second indent of Article 7(1)(b) CJEU ruled that it must be interpreted as meaning that a credit agreement, such as that at issue in the main proceedings, between a credit institution and two jointly and severally liable debtors, must be classified as a 'contract for the provision of services' for the purposes of that provision. Where a credit institution has granted a loan 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 otherwise agreed, the place where that institution has its registered office, and this also applies with a view to determining the territorial jurisdiction of the court called upon to hear and determine an action for recourse between those joint debtors (Saale Kareda v Stefan Benkö, C-249/16, p. 46).

Of course, the concept 'contract is to be interpreted autonomously as well as the concept 'matters relating to a contract' (Nekrošius, 2009, p. 32). Delimiting the case of applying Article 7(1) and 7(2), the CJEU stated that the concept of 'matters relating to tort, delict or quasi-delict' within the meaning of Article 7(2) covers all actions which seek to establish the liability of a defendant and do not concern 'matters relating to a contract' within the meaning of Article 7(1)(a), in that they are actions not based on a legal obligation freely consented to by one person towards another (Wikingerhof v Booking.com BV, C59/19, p. 23).

As to Article 7(2) of Brussels I bis, according to the jurisprudence of the CJEU, the wording "the place where the harmful event occurred or may occur" means both: the place where the damages occurred and the place where the place of the event giving rise to it (eDate Advertising v X and Olivier Martinez; Robert Martinez v MGN Limited, C-509/09 and C-161/10, p. 41). Those two places could constitute a significant connecting factor from the point of view of the jurisdiction, since each of them could, depending on the circumstances, be particularly helpful in relation to the evidence and the conduct of the proceedings; therefore, the defendant may be sued, at the option of the plaintiff, either in the courts for the place where the damage occurred, or else in the courts for the place of the event which gives to and is at the origin of that damage (Shevill and Others v Presse Alliance SA, C-68/93, p. 20). The CJEU holds that, while taking into account the close connection between the component parts of every sort of liability, it does not appear appropriate to opt for one of the two connecting factors mentioned to the exclusion of the other, since each of them can, depending on the circumstances, be particularly helpful from the point of view of the evidence and of the conduct of the proceedings (Handelskwekerij G. J. Bier BV v Mines de Potasse d'Alsace SA., 21/76, p. 17). For instance, in the case of an international libel through the press, the injury caused by a defamatory publication to the honour, reputation and good name of a natural or legal person occurs in the places where the publication is distributed, when the victim is known in those places (Shevill and Others v Presse Alliance SA, C-68/93, p. 29). And, for example, in the event of an alleged infringement of personality rights by means of content

placed online on an internet website, the person who considers that their rights have been infringed has the option of bringing an action for liability, in respect of all the damage caused, either before the courts of the Member State in which the publisher of that content is established, or before the courts of the Member State in which the centre of their interests is based. That person may also, instead of an action for liability in respect of all the damage caused, bring their action before the courts of each Member State in the territory of which the content placed online is being or has been accessible. Those courts have jurisdiction only in respect of the damage caused in the territory of the Member State of the court seised (eDate Advertising v X and Olivier Martinez; Robert Martinez v MGN Limited, C-509/09 and C-161/10, p. 52). It is of importance to note that the rule of special jurisdiction in matters relating to tort, delict or quasi-delict does not pursue the same objective as the rules on jurisdiction laid down in Sections 3 to 5 of Chapter II of Regulation Brussels I bis, which are designed to offer the weaker party a stronger protection (Folien Fischer AG and Fofitec AG v Ritrama SpA, C133/11, p. 46). The criterion of the centre of interests is intended to determine the place in which the damage caused by online content occurs and, consequently, the Member State whose courts are best able to hear and to rule upon the dispute (Bolagsupplysningen OÜ, Ingrid Ilsjan v Svensk Handel AB, C194/16, p. 39).

It has to be noted that, in the majority of cases, national courts apply the rule of Article 7 correctly. They ground the decisions on the jurisprudence of the CJEU. For instance, Šiauliai Regional Court, citing the jurisprudence of the CJEU, annulled the decision of the first instance court and returned to decide upon the admissibility of the claim. It was evident that the first instance court did not determine where the place of delivery of the goods agreed upon by the parties was, did not assess all the relevant factual circumstances in this matter (Ruling of Šiauliai Regional Court of 05 May 2021). As it was stated in the ruling, when deciding on the place of performance that grounds the jurisdiction, the determination of the place where the goods were transferred in the performance of the contract is of decisive importance. Without determining the place of the transfer of the goods, there is no possibility to answer the question whether the case is judicial before the court that heard the case.

From the national perspective, we can see that the Supreme Court had some cases in which the Court had an opportunity to disclose the concept of place for the place of performance of the obligation. In 2009, the Supreme Court of the Republic of Lithuania, citing the jurisprudence of the CJEU (Peter Rehder v Air Baltic Corporation, case No. C-204/08) stated that, in the case of air transport, the place of performance of the obligation (providing the service) must be considered both the place of departure *and* arrival of the aircraft. Each of these two places was sufficiently related to the material elements of the particular case, and therefore the close connection between the contract and the court having jurisdiction was ensured (Ruling of the Supreme Court of the Republic of Lithuania of 01 December 2009). In another case which was heard by the Supreme Court of the Republic of Lithuania, the court of cassation emphasised that a joint activity agreement, which was concluded between natural persons, is attributable to the agreements referred to in Article 7 (1) (a) of Regulation Brussels I bis (Ruling of the Supreme Court of the Republic of Lithuania of 29 November 2018). Yet, it is of importance to keep in mind that the place of the performance of such an obligation must be understood according to the material law applicable to the claim, and this is determined according to the private international law (conflict) norms of the court where the case was initiated (Hassan Shenavai v Klaus Kreischer, C-266/85, p. 9; Industrie Tessili Italiana Como v Dunlop AG., C-12/76, p. 13–15; Falco Privatstiftung, Thomas Rabitsch v Gisela Weller-Lindhorst, C533/07, p. 46–56; Magnus et al., 2016, p. 249, 252). Since, in the case the courts incorrectly determined the applicable provision of Brussels I bis regulation (i.e., applied Article 4 (1) instead of Article 7(1) (a)), the Supreme Court annulled the decisions and returned the case to be heard once again to the Court of Appeal.

Another case where the Supreme Court had to correct the errors of the lower courts was also heard in 2018. Citing the jurisprudence of the CJEU (Granarolo SpA v Ambrosi Emmi France SA, C-196/15, p. 30–31), the Supreme Court stated that taking into account the hierarchy of paragraphs (a) and (b) set out in Article 7(1) (c) of Brussels I bis, the rule of jurisdiction set out in paragraph (a) is only applied alternatively if it is not possible to apply the rule of jurisdiction in paragraph (b) (Ruling of the Supreme Court of the Republic of Lithuania of 27 November 2018). Thus, Article 7(1) (b) is a special norm with respect to (a), and it applies to most international contracts related to the purchase and sale of goods and the provision of services. Taking this into account, the courts must assess in each case whether the dispute is about a contractual obligation, and, if so, whether this obligation is related to the purchase and sale of goods or the provision of services. Only if there is a reason to state that the dispute arises from an obligation unrelated to the legal relationship of the purchase and sale of goods or the provision of services, Article 7 (1) (a) may be applied.

It must be remembered that, if the claimant has chosen the court under alternative ground of jurisdiction (i.e., Article 7(1)), the court does not have a right to refuse to accept the claim (Rauscher, 2022). Thus, the national courts have to be careful while deciding the question of the jurisdiction, and the doctrine of *forum non conveniens* cannot be the ground to justify a waiver of jurisdiction. The *onus probandi* to plead the facts supporting jurisdiction under Article 7 is on shoulders of the plaintiff, but, more precisely, on the party who is invoking a specific ground of jurisdiction under Article 7 (Nekrošius, 2009, p. 31). Article 7 does not grant exclusive jurisdiction, and even less a defence for a defendant sued in his domicile (Mankowski et al., 2022, p. 139). To the contrary, Article 7 presupposes as a prerequisite that there is a general jurisdiction within the EU, and Article 7 comes only into operation if the defendant has their domicile within the EU and not in a non-Member State, i.e., when the general requirements of Article 4 are fulfilled (Mankowski et al., 2022, p. 139). In cases when the defendant is not domiciled in any Member State, Article 7 is inapplicable whereas, by virtue of Article 6 (1), the national rules on jurisdiction of the forum state apply (Mankowski et al., 2022, p. 139). Consequently, Article 7 jurisdiction is not discretionary; it is obligatory if one of the parties chooses such a jurisdiction. If the autonomous connection of the place of performance created by Article 7 (1) (b) does not point to a particular Member State, the rule from Article 5 (1) adopted in Article 7 (1) (c) remains applicable as an alternative (including the interpretation chosen by the CJEU) (Rauscher, 2017, p. 475).

Conclusion

It should be noted that Brussels I bis establishes not only the general jurisdiction rule, but also other alternative jurisdiction rules. Article 7(1) establishes alternative jurisdiction under the choice of the interested party. The court does not have discretion to deny the jurisdiction if the court thinks that there is a court which is better situated to hear the case so the *forum non conveniens* shall not apply. From the national Case Law, we can see that the application of Article 7(1) of Regulation Brussels I bis is a complicated issue. The Supreme Court has already had many opportunities to correct the errors of the lower courts in the interpretation and application of this provision. It should be taken into account that the special jurisdiction rule established in Article 7(1) of Brussels I bis Regulation is to be applied according to the relevant jurisprudence of the CJEU and, the Case Law of the Supreme Court of the Republic of Lithuania is compatible with it.

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