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THE INFLUENCE OF THE E-COMMERCE DIRECTIVE ON CONFLICT-OF LAWS AND JURISDICTION RULES REGARDING THE PROTECTION OF TORT VICTIMS AND CONSUMERS

Abstract**:** *In line with corresponding developments in national laws and international conventions relating to the protection of tort victims and consumers, the Brussels I Regulation (on the one hand) and the Rome I & II Regulations (on the other hand) provide specific conflict rules, by virtue of which such vulnerable parties enjoy a jurisdictional and choice-of-law protection. In case of dispute, such parties are entitled, under certain broad conditions, to seize the tribunals of the country of their habitual residence and take advantage of the application of the substantive legislation of that country.*

The E-Commerce Directive (2000/31/CE) is commonly considered to consolidate, in the application of private law in electronic commerce, the so-called country-of-origin principle, under which the commercial activities of a company in cyberspace may not be submitted to the application of a legislation other than the legislation of its country of origin, to the extent that the former is more onerous for said company than the latter.

It is my position that the so-called country-of-origin principle cannot have any influence in the application of private law and cannot affect the principles and rules dominating the field of choice of laws and international competence. This position finds comfort in Greek case-law and is not refuted by some recent developments in the jurisprudence of the European Court of Justice.

Keywords: *jurisdiction, conflict-of-laws, Brussels I Regulation, Rome I Regulation, Rome II Regulation, E-Commerce Directive, country-of-origin principle, tort victims, consumers.*

1. Introduction

Globalization of commerce and trade and of telecommunications makes everybody a potentially vulnerable person: a consumer before an all-mighty corporation and a citizen in the pages of an electronic journal may well fall prey to exploitation by another party based abroad. Protection through domestic legislation would not be adequate if the professional or the publisher may not be sued in the courts of the country of the weaker party's domicile or if the case were not governed by the law of the country of the latter's habitual residence. Conflict-of-laws and jurisdiction rules supplement such protection by submitting the cases to the competence of the courts and of the legislation of the country of the tort victim or the consumer, as the case may be.

In Greece, there are no conflict-of-laws or jurisdiction rules of national origin specific to the activities (contracts and torts) on the Internet. The Brussels I and Rome I & II Regulations apply in the virtual space in the same way as in the real world. The difficulties in the localization of cyber-acts, which was noted in literature very early (e.g. Grammatikaki-Alexiou, 1998), do not seem to have occupied Greek courts too much, which have always been able to resolve the questions of private international law in a satisfactory way, applying the existing conflict rules (already Liaskos&Pyrgakis, 2002; also Tassis, 2011). Case law has not developed any criteria specific to the Internet, for good reason in our opinion: the undertaking that deploys an activity in the cyberspace and does not desire to submit to the Greek private law legislation, may well either not contract with Greece residents (also Liaskos&Pyragakis, 2002: 490) or render its site inaccessible for them, in order to avoid any liability in tort under Greek law.

In this framework, it is important to note that, in accordance with well-established case law, the concept of press covers electronic publications as well (also Karakostas, 2003: 45)[1]; by analogy, this forces the application of the draconian provisions of the Law of 1981 on civil liability of the press and of the simplified and fast-track special procedure of Article 681D of the Code of Civil Procedure. On the other hand, blogs escape this characterization[2], thus allowing for abuses, in the sense that, as it seems, certain media companies baptize their sites as blogs in order to take advantage of blogs' favorable status. The balance between freedom of expression and protection of privacy is difficult to achieve (Inglezakis, 2011).

Be it as it may, one should explore the importance that would be granted by the Greek courts to the case law of the European Court of Justice in relation, first, to the interpretation of the Brussels I Regulation provisions on torts and con-

1 See e.g. Athens Court of Appeal 8962/2006.

2 See Piraeus Court of First Instance 4980/2009.

sumer contracts on line (*infra* Chapter 2) and, second, and more importantly, the influence of the E-Commerce Directive 2000/31/CE (transposed *verbatim* by presidential decree 131/2003) on the applicable law in these circumstances (*infra* Chapter 3).

2. Jurisdiction

2.1. Torts

The European jurisdiction rule on torts, now incorporated in Article 7(2) of the Brussels I*bis* Regulation, reads as follows: "A person domiciled in a Member State may be sued in another Member State in matters relating to tort, *delict* or *quasi-delict*, in the courts of the place where the harmful event occurred or may occur"[3]. This provision has been interpreted by the European Court of Justice in the early landmark *Mines de potasse d'Alsace* judgment of 1976, as covering both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the plaintiff, in the courts of either place[4]. Nevertheless, as this position has been concretized in the *Fiona Shevill* judgment of 1995, the victim of a libel by a newspaper article distributed in several Contracting States may bring action for damages against the publisher either before the courts of the State of the place where the publisher is established, which have jurisdiction to award damages for all the harm caused by the defamation, or before the courts of each State in which the publication was distributed and where the victim claims to have suffered injury to his reputation, which have jurisdiction to rule solely in respect of the harm caused in the State of the court seized[5].

The case law of the European Court of Justice on jurisdiction in the field of tort liability outside Internet is constantly followed by the Greek courts, which take care, in line with the *Dumez France* and *Marinari* rules[6], not to found their international competence on indirect damages (*dommage par ricochet*)[7].

However, in the field of the Internet, the *Fiona Shevill* rule has recently been loosened, by the *eDate* judgment of 2011: the victim of the alleged infringement of privacy may now bring an action for liability in respect of all the damages

3 Same under Brussels I Regulation (before the recast of 2012), Article 5(3); and under the same Article of Brussels Convention.

4 ECJ 21/76 *Mines de potasse d'Alsace* [1976].

5 ECJ C-68/93 *Fiona Shevill* [1995].

6 ECJ C-220/88 *Dumez France* [1990]; C-364/93 *Marinari* [1995].

7 See Areios Pagos 1551/2003 & 18/2006, under Brussels Convention; Areios Pagos 1738 & 1865/2009, 1027 & 1028/2011; also Thessaloniki Court of Appeal 121/2010.

caused not only before the courts of the Member State in which the publisher is established but also before the courts of the Member State in which the center of the victim's interests is based[8]. The rule applies only in relation to injuries to personality, and not in relation to infringements of a trade mark and copyright on the Internet[9]. It must be noted however that, as the European Court of Justice clearly ruled in the *Hejduk* case, it is sufficient for the court of the victim's domicile to establish jurisdiction that the site be *accessible* in the Member State of the court, and it is not required that the activity concerned be *directed* to or *focusing* on that State.

The Court case law on cyber-torts has not been tested by the Greek judges yet, but it will probably be received without any problem. The fact that, for instance, the application of the *eDate* judgment will probably give rise to a *forum shopping* in the field of infringements of privacy (for a critique on this aspect, see T.C. Hartley, 2014), would not seriously alter the situation in Greece. On the one hand, the Greek courts are not the *forum* preferred by claimants in this field; on the other hand, Areios Pagos (the Supreme Court of Greece) already applies the lesson of the *eDate* judgment in regard to libel, having surpassed the *Fiona Shevill* rule in the sense that, in case of a Greek national having his habitual residence in Greece and suing a foreign media company, the Supreme Court does not seek to limit the jurisdiction of Greek courts solely to damages suffered in Greece, even when the *medium* of the infringement is not the Internet but a traditional paper[10].

2.2. Consumer contracts

In accordance with Article 18 of Brussels I*bis* Regulation, "a consumer may bring proceedings against the other party to a contract in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled". However, this jurisdictional protection is granted in relation to a consumer contract concluded via internet, only if, in accordance with Article 17(1)(c), "the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State, and the contract falls within the scope of such activities". It follows that, for a consumer to be protected, the contract must be the fruit of commercial or professional activities *directed* to the State of the consumer's domicile. The concept of *direction* acquires then central role.

8 ECJ C-509/09& C-161/10 *eDate Advertising* [2011].

9 ECJ C-523/10 *Wintersteiger* [2012] (trade mark); ECJ C-170/12 *Pinckney* [2013]; C-441/13 *Hejduk* [2015] (copyright).

10 Areios Pagos 903/2010.

The European Court of Justice has given a lengthy interpretation of this concept in its *Pammer* judgment of 2010[11]:

> In order to determine whether a trader whose activity is presented on its website or on that of an intermediary can be considered to be 'directing' its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation No 44/2001 [now 17(1)(c) of Brussels I*bis* Regulation], it should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them. The following matters, the list of which is not exhaustive, are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile, namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. It is for the national courts to ascertain whether such evidence exists.
>
> On the other hand, the mere accessibility of the trader's or the intermediary's website in the Member State in which the consumer is domiciled is insufficient. The same is true of mention of an email address and of other contact details, or of use of a language or a currency which are the language and/or currency generally used in the Member State in which the trader is established.

The non-exhaustive list of the *Pammer* judgment evidences, in our opinion, an embarrassment of the Court of Justice concerning the concretization of the concept of "direction". The enumeration of elements that constitute indicators which permit to consider that a commercial or professional activity is directed to the State of the consumer's domicile and which can be combined with each

11 ECJ C-585/08 & C-144/09 *Pammer* [2010].

other in order to lead to the same result shows that, in the end of the day, the criterion for the application of the provision is not prospective but retrospective: the professional, who has concluded a contract with a consumer domiciled in another Member State, directs *de facto* his activities to that State; if the activities were not directed to that State, the contract would not have been concluded… Our opinion is strengthened by the more recent judgment of 2013 in the case *Emrek*, where the Court of Justice held that no causal link is required "between the means employed to direct the commercial or professional activity to the Member State of the consumer's domicile, namely an internet site, and the conclusion of the contract with that consumer"[12].

The Greek courts will have no difficulty to apply this jurisprudence, given that Greece is a country of destination rather than production of consumer products and services.

3. Applicable law

3.1. A possible interplay between Rome Regulations and E-Commerce Directive

Applicable law in torts committed and consumer contracts concluded online is regulated by European Regulations Rome I & II, as well as, outside the scope of said regulations, by national conflict rules.

In accordance with the general rule of Article 4 of Rome II Regulation, "the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred". The result is the same under Article 8(1), which regulates the law applicable to infringements of intellectual property rights, very common online. Despite the fact that, under Article 1(2)(g), "non-contractual obligations arising out of violations of privacy and rights relating to personality" are excluded from the scope of Rome II Regulation, the law of the place of habitual residence of the victim should be applicable in this case too, by virtue of Article 26 of the Greek Civil Code.

According to Article 6(1) of Rome I Regulation, a consumer contract "shall be governed by the law of the country where the consumer has his habitual residence", provided that the professional, at the very least, directs his commercial or professional activities to the consumer's country.

It follows that tort victims and consumers via the Internet are in principle entitled to the protection of the law of the country of their habitual residence. The

12 ECJ C-218/12 *Emrek* [2012].

question is nevertheless complicated in light of the E-Commerce Directive and of its interpretation in the *eDate* judgment[13], given that certain Greek authors (e.g. Alexandridou, 2000: 118-121; Christodoulou, 2004 : 355-356; Apostolopoulos, 2004; Christodoulou, 2010: 330) read the "internal market" clause contained in Article 3(2) of the Directive, as instituting, more or less, a conflict-of-laws rule imposing the application, both in the field of torts and contracts, of the law of the country of origin of the service provider (*contra* Liaskos&Pyrgakis, 2002: 492; Tsouka, 2005: 795-797). The provisions of the Directive that are of importance for the purposes of this analysis read as follows:

Article 1 – Objective and scope

. . .

(4) This Directive does not establish additional rules on private international law nor does it deal with the jurisdiction of Courts.

Article 2 – Definitions

. . .

(h) 'coordinated field': requirement laid down in Member States' legal systems applicable to information society service providers or information society services, regardless of whether they are of a general nature or specifically designed for them.

(i) The coordinated field concerns requirements with which the service provider has to comply in respect of:

- . . .

- the pursuit of the activity of an information society service, such as requirements concerning the behavior of the service provider, requirements regarding the quality or content of the service including those applicable to advertising and contracts, or requirement concerning the liability of the service provider;

(ii) . . .

Article 3 – Internal Market

(1) Each Member State shall ensure that the information society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within the coordinated field.

13 ECJ C-509/09& C-161/10 *eDate Advertising* [2011].

(2) Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State.

(3) Paragraphs 1 and 2 shall not apply to the fields referred to in the Annex

Annex – Derogations from Article 3

As provided for in Article 3(3), Article 3(1) and (2) do not apply to:

- . . .

- the freedom of the parties to choose the law applicable to their contract

- contractual obligations concerning consumer contracts.

3.1.1. Consumer contracts

The above provisions are dominantly interpreted in the sense that the words "liability of the service provider" in Article 2(h)(i) also comprise civil liability. Nevertheless, given that the consumer contracts obligations and the freedom of contractual choice of law are exempted from the application of the internal market clause, we do not see what part of contract law remains within the scope of the clause. As a matter of fact, on the one hand, if the choice of law is excluded from the coordinated field, the exclusion applies also by necessity to the contractual liability of the service provider in accordance with the law chosen; on the other hand, by the same token, one should also exclude civil liability of the service provider in accordance with the law applicable in the absence of any choice. Furthermore, we have shown (Panopoulos, 2009), by means of an interpretation of the *Alsthom Atlantique* judgment of 1991[14], that the application of the civil liability regime provided for by the law of any Member State is not susceptible of obstructing the free movement of goods and services and thus, provided that it does not imply any discrimination, such application escapes from the scope of the Treaty provisions relating to the four freedoms. This means that the Directive, issued precisely in order to eliminate the obstacles to intra-Community electronic trade, would not affect the application of the private law of civil liability, precisely because the latter does not impedes on the former. In consequence, it must be admitted that contracts law does not fall into the coordinated field (see also Mankowski, 2001: 153-157; *contra* e.g. Spindler, 2001).

14 ECJ C-339/89 *Alsthom Atlantique* [1991].

3.1.2. Torts

One should then examine the case of tort law, in particular infringements of privacy, excluded as they are from the scope of Rome II Regulation (see Article 1(2)(g)*supra*) (*for* the inclusion in the coordinated field, but disapproving Lurger&Vallant, 2002: 190; Mankowski 2001: 173-174; against, Wilderspin& Lewis, 2002). In regard to torts, Article 3(2) of the E-Commerce Directive can be reformulated as follows: "Member States may not, in the field of private tort law, restrict the freedom to provide information society services from another Member State". In essence, this means that: "Member States may not apply their own private tort law to information society services or to providers of same from another Member State, to the extent that such application restricts the freedom to provide such services".

In other words, the last proposition dictates that the host country law is applicable only to the extent that it is not unfavorable to the provider of information society services from another Member State. And, in order to evaluate the favorable or unfavorable character of the application of the host country law, Article 3(1) of the Directive offers the law of the country of origin as a point of comparison. In consequence, this leads to the formulation of a conflict-of-laws rule, according to which the information society services are governed by the law most favorable to the service provider, being understood that the choice lies between two laws: the law of the country where the service is provided and the law of the provider's country of origin[15].

However, to thus deduct a conflict rule contradicts Article 1(4), which clearly states that the Directive does not establish any rule of private international law. Thus, in accordance with the *eDate* judgment (pt. 63):"it follows that Article 3(2) of the Directive does not require transposition in the form of a specific conflict-of-laws rule". But it is evident that there is a contradiction, which many doctrinal proposals have tried to raise; however, none of these proposals is completely satisfactory since all of them lead to the denial of the normativity of Article 1(4) (on these proposals and their refutation, Panopoulos 2012: 315-316).

3.2. *eDate* judgment and its critique

3.2.1. The eDate judgment

The Court of Justice has nevertheless opted for one of these proposals, namely that which reads in Article 3(2) of the E-Commerce Directive an obligation for

15 Alternatively, this would lead to the formulation of a conflict-of-law rule that always designates as applicable the law of the provider's country (e.g. Lurger&Vallant, 2002, always disapproving), even if this is not more favorable to him (see e.g. Thünken, 2002: 938).

the judge of the host state applying his own law to take into consideration the law of the country of origin of the service provider in favor of the latter. In other words, this position holds that, if the host country's law is unfavorable to the provider in comparison with the law of the country of origin, the judge of the host country applies his own law but without the elements that make it less favorable for the provider (Spindler, 2001: 335-336). Thus, as for the supporters of this position, private international law is not put into question and the court applies solely the law of the host country, as appropriately corrected, so that it does not handicap the service provider (Halfmeier, 2001: 863; Fezer&Koos, 2000: 353, disapproving; the mechanism of the "exception of mutual recognition" leads to the same result, Fallon &Meeusen, 2002: 487).This is more or less what the *eDate* judgment accepts (pt. 68):

... in relation to the coordinated field, Member States must ensure that [. . .] the provider of an electronic commerce service is not made subject to stricter requirements than those provided for by the substantive law applicable in the Member State in which that service provider is established.

Yet, since the correction of the law of the host country is destined to make it coincide with the law of the country of origin, to say that one applies the former rather than the latter is nothing more than wordplay, whose sole goal is to bypass the provision of Article 1(4). Let's imagine for instance a case where the law of the country of origin provides, in favor of the service provider, a defense which is not at his disposal under the law of the host country. According to the European Court's position, in applying the law of the host country, the judge "will take into consideration" this defense, even though the law of the host country ignores it. We see no difference between such consideration taken and straightforward application (see also Mankowski, 2001: 144-145).

3.2.2. Critique

The European Court of Justice seems to have adopted a position that would be dangerous if it was not inapplicable. It would be dangerous in the sense that it would imply a systematic (if not systemic) favor for the commercial and professional undertakings *vis-à-vis* consumers and in general weaker parties, as we have already shown in our analysis of the reasons why this position not only is not imposed by the relevant Treaty provisions but is in fact incompatible with them (Panopoulos, 2008).

The inapplicability of the position derives already from the formulation employed by the Court: "ensure that . . . the provider . . . is not made subject to stricter requirements". But the "requirements" of the substantive law of a Member State, before being more or less "strict", are, most importantly, *other*. Suppose

that, according to law A, an infringement of privacy is always a tort even if not wrongfully committed, and that the victim's claim is subject to a six-month statute of limitations starting from the commission of the tort; while, according to law B, solely a wrongful infringement gives rise to damages and the statute of limitations is of twelve months: we do not see which regulation is stricter. If the victim commences proceedings nine months following a wrongful infringement and that the action is dismissed, then: which law has been applied?

Furthermore, the function of the so-called country-of-origin principle is, where it is used, to spare the commercial or professional undertaking from a *cumulative application* of the regulation of two Member States. However, in the field of private law, the court hearing a given dispute is only one and applies only one law, as "it is logically impossible, even if the solutions [of the laws having a claim to application] are identical, to cumulatively apply [all] the . . . laws" (Mayer, 1973: n° 8). To be sure, before the initiation of any proceedings, it is not easy to say with certainty which law will be applied. However, what could obstruct free movement is the *in concreto* cumulative application of multiple laws, and not their *in abstracto* concurrent applicability.

In the specific case, the position taken by the Court of Justice will be of no use for the Federal Court of Germany that had submitted the preliminary question. This is because, as it comes out from point 23 of the judgment:

The Bundesgerichtshof states that if the country-of-origin principle were to be considered to be an obstacle to the application of the law on a substantive level, German private international law would be applicable and the decision under challenge would then have to be set aside and the action ultimately dismissed, since the applicant's claim seeking an injunction under German law [applicable, it seems, under Article 40(1) of the Introductory Law to the German Civil Code] would have to be refused. By contrast, if the country-of-origin principle were to be treated as a conflict-of-laws rule, X's claim for an injunction would then have to be assessed according to Austrian law.

In effect, given that the Court of Justice has considered that the so-called country-of-origin principle does not have the function of a conflict rule, it is immaterial whether this "principle" constitutes an obstacle to the application of substantive German law, given that the action would be dismissed in any case under German law! The judgment of the Court of Justice is thus useless for the specific case… But there is more than that.

Just before arriving at a conflict rule, the interpretation of Article 3 of the E-Commerce Directive leads to the proposition that the host country may not apply its own private law, to the extent that such application is unfavorable to the provider of the information society services (proposition No. 2). This proposition

is founded in turn on a second one, according to which the host country may not, by means of the application of its own private law, restrict the freedom to provide information society services (proposition No. 1). Proposition No. 1 does not thus lead to proposition No. 2 unless the application by the host country of its own private law is apt to restrict the freedom to provide services. But we have shown that this can never be the case (Panopoulos, 2009; cf. Wilderspin & Lewis, 2002). This application does not fall, in consequence, within the scope of Community freedoms, provided (as it is practically always the case) that it does not institute any discrimination against foreign economic entities. In consequence, proposition No. 2 is false.

Inversely, the only way that a State may restrict the freedom to provide services in the field of private law consists in the application by that State of its own private law, which *ex hypothesi* is stricter than the law of the country of origin of the service. But this comes back to proposition No. 2, which is false. In consequence, proposition No. 1 is false too, because it prohibits Member States from doing something that in any case they are not able to do. It follows that Article 3(2) of the E-Commerce Directive, which prohibits (on a deontological level) Member States from restricting freedom to provide information society services, has nothing to do with private law, because in this field it is impossible (on an "ontological" level) for States to do so. In fact, if *impossibilium nulla obligatio est*, it must also be true that *impossibilium nulla est prohibitio*.

Article 3(2) does not thus contain any conflict rule, a conclusion that is in line with the statement in Article 1(4), in accordance to which the E-Commerce Directive does not establish any private international law rules. One thus saves the (declarative) "normativity" of the provision of Article 1(4), while the rule of Article 3(2) reserves within its scope of application all national measures that are really apt to restrict freedom to provide information society services. The country-of-origin principle, inserted in Article 3(1) of the Directive, has no effect on private law relations, but only concerning the organization of the activity of the undertaking (see also Vivant, 2011: n° 25[16]; Mitsou, 2010: 671). When the Court of Justice establishes that Member States have to ensure that the provider of an electronic commerce service is not made subject to stricter private law requirements than those provided for by the substantive law of his country of origin, the Court forgets that such requirements do not fall under the scope of the E-Commerce Directive because they do not create any obstacle to freedom of movement.

16 «Il faut un singulier aveuglement pour découvrir dans cette phrase [de l'art. 3(1)] ... l'élection de la loi d'origine comme loi devant régir les relations contractuelles du commerce électronique. Ce texte concerne le seul statut des acteurs du commerce... ».

Should this analysis be correct, Greek courts should take no account of the E-Commerce Directive in connection with private international law, and continue undisturbed to grant the protection of Greek law to consumers and tort victims; and so should also do all courts of Member States.

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УТИЦАЈ ДИРЕКТИВЕ О ЕЛЕКТРОНСКОЈ ТРГОВИНИ НА ИЗБОР МЕРОДАВНОГ ПРАВА И НОРМИ О НАДЛЕЖНОСТИ ЗА ЗАШТИТУ СЛАБИЈЕ СТРАНЕ (ЛИЦА ОШТЕЋЕНИХ ПО ОСНОВУ ВАНУГОВОРНЕ ОДГОВОРНОСТИ И ПОТРОШАЧА)

Резиме

У складу са одговарајућим променама у националним правним системима и међународним конвенцијама које се односе на заштиту лица оштећених по основу вануговорне одговорности за штету и потрошача, Регулатива Брисел I (с једне стране) као и Регулативе Рим I и Рим II (с друге стране) предвиђају одређене колизионе норме које омогућавају заштиту слабије стране у сфери међународне надлежности и избора меродавног права. У случају спора, под одређеним широко постављеним условима, слабија страна има право да покрене поступак пред судом државе свог уобичајеног боравишта и да примени супстанцијално право те исте државе.

Генерално се сматра да Дирекива о електронској трговини (2000/31/EC) уводи такозвани принцип државе порекла у област електронске трговине. Према овом принципу, на трговинске активности компаније у виртуленом (cyber) простору може се применити само право државе њеног порекла, у случају када би примена правила друге државе била неповољнија за компанију.

Аутор сматра да такозвани принцип државе порекла не може утицати нити на примену приватног права нити на преовлађујуће принципе и правила у области колизиних норми и међународне надлежности. Овај став је прихваћен и у пракси грчких судова и није оспорен ни досадашњим одлукама Суда правде Европске уније.

Кључне речи*: надлежност, сукоб закона, Регулатива Брисел I, Регулатива Рим I, Регулатива Рим II, Директива о електронској трговини, принцип државе порекла, оштећени, потрошачи.*