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Mateusz Grochowski and Katarzyna Południak-Gierz

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Contacts: Centre for Judicial Cooperation, Villa Raimondi, via Boccaccio 121, IT-50133 Florence

Editor of the CJC Working Papers: Research Fellow Dr. Madalina Moraru, madalina.moraru@eui.eu

Telephone: [+39] 055 4685761

www.eui.eu/cjc

Abstract

The paper examines the way Polish courts apply EU private international law (EU PIL) rules in the disputes concerning online context. The analysis seeks, in particular, to better understand the patterns recurring in the judicial reasoning and to map the typical circumstances of internet-related disputes pled before Polish courts. The paper attempts to cluster the existing case law and to trace the use made of EU PIL and CJEU decisions by Polish judges. It also aims to identify how the courts perceive specificity of internet-related disputes from the perspective of conflict of laws and how they understand specific goals of EU PIL (especially consumer protection). The text delves also into the cases where – despite encountering transnational elements – courts did not address conflict of laws issues. It attempts to indicate the most common instances of such omission and hence, to elucidate further the possible barriers to full application of EU PIL.

Keywords

International private law, internet, consumer law, personality rights, judicial application of EU law.

1. Introduction: The Implementation of Private International Law in Poland*

In the cases that involve a trans-border element, the EU Private International Law (hereinafter: PIL)¹ has supremacy over Polish rules. This pertains both to the substantive conflicts-of-laws provisions in the Private International Law Act of 2011 (hereinafter: PPM)², as well as to procedural rules on jurisdiction set in Articles 1097-1110⁴ of Polish Code of Civil Procedure (hereinafter: CCP) of 1964³. The EU rules are directly applicable in all the Member States, and as such they, in principle, do not need implementation into the Polish legal system. Moreover, Article 28 PPM refers directly to the EU law, setting forth that the law applicable to contractual obligations should be established with reference to provisions of the Rome I Regulation. Consequently, according to Article 33 PPM, the law applicable to the obligation arising from an event that is not a legal act should be established under the Rome II Regulation.⁴

As to the rules on jurisdiction, prior to the amendment to CCP of 2008,⁵ Polish law set forth utter independence of jurisdiction of Polish courts from any dispute pending between the same parties before a foreign court. Yet, under the influence of EU law (Brussels I Regulation), this principle was reversed. Since 2008, if a trans-border dispute regarding the same claim between the same parties has been pending before a foreign court before it became pending before a Polish court, the Polish court should suspend the proceedings (Article 1098 CCP). The *actor sequitur forum rei* principle became the core rule for determining the jurisdiction in civil proceedings (Article 1103 CCP). Furthermore, the 2008 reform introduced an implied (tacit) agreement on national jurisdiction (Article 1104 § 2 CCP) and limited the array of situations in which the domestic jurisdiction of Polish courts is exclusive. Finally, the reform introduced the principle of automatic recognition of rulings (Articles 1145–1149 CCP). The further amendment to CCP of 2014⁶ introduced into the Polish legal system the Brussels I *bis* Regulation (by introducing Book IV to Part Four of CCP). Under these new provisions, the judgments in civil and

* Paper includes result of the caselaw analysis conducted for National Report on the Application of Internet-Related Private International Law Issues: Poland, within the Interlex Project, (G.A. 800839).

¹ The paper refers to PIL as the system composed of substantive and procedural rules. In the former regard, the paper focuses on Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (hereinafter: "the Rome I Regulation"), OJ L 177, 4.7.2008, p. 6–16 and the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (later: "the Rome II Regulation"), OJ L 199, 31.7.2007, p. 40–49. Regarding the procedural rules, the paper refers to the system established by the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (The Lugano Convention), in Poland in force since 1 February 2000, further replaced by the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter: "Brussels I Regulation"), OJ L 12, 16.1.2001, p. 1–23, in Poland in force since 1 May 2004. The Brussels I Regulation replaced the Lugano Convention in relation to the Member States of the European Union to be superseded on 10 January 2015 by the 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 (later as: "Brussels I *bis* Regulation"), OJ L 351, 20.12.2012, p. 1–32. The arbitration proceedings have been excluded from the scope of Regulation No 1215/2012 – in this regard the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (signed in New York on 10 June 1958, hereinafter referred to as "the New York Convention") applies.

² Act of 4 February 2011 Journal of Laws 2011, No. 80, item 432.

³ Act of 17 November 1964, Journal of Laws 1964, No. 43, item 296.

⁴ On the PIL system in Poland cf. e.g. A. Frąckowiak-Adamska, A. Guzewicz, Ł. Petelski, *Cross-border Litigation Pattern-Empirical Data and Analysis (Poland)*, in: P. Beaumont, M. Danov, K. Trimmings, B. Yüksel, *Cross-Border Litigation in Europe*, Hart Publishing: London 2017, pp. 221-242.

⁵ Act on amendment of the act – Code of civil proceedings and some other acts of 5th December 2008 r. (Journal of Laws No 234, item 1571).

⁶ Act on amendment of the act – Code of civil proceedings and the act on judicial costs in civil matters of 5 December 2014. (Journal of Laws 2015, item 2) in force since: 10 January 2015.

commercial matters issued by courts of other EU Member States, as well as court settlements and official documents from these countries became enforceable in Poland without any separate declaration of enforceability.

EU PIL and substantive EU law at national level interact on various levels. One of them, particularly meaningful for the Internet-related agreements, has been set in Article 3 of the directive 2000/31/EC, which sets the country of origin principle⁷. The rule prescribes that information society services provided from one of the Member States must comply with the law of that country and is applicable in particular to electronic commerce on the Internal Market. Primarily, the rule was not incorporated into the Polish legal system and was mentioned merely in the motives of the act that implemented the directive 2000/31/EC. This omission rested on the assumption that services provided electronically are subject to the law of the country in which the service provider is established. The Polish legislator claimed that this principle encompasses only public law rules and does not introduce a new conflict-of-laws rule. Subsequently in 2008 the relevant principle was added⁸ to the Polish law and applies to the law of an Member State of EU and EFTA – parties to the agreement on the European Economic Area in whose territory the service provider has his place of residence or registered office. The exact character of this provision remains, however, disputable. It is argued whether it is a conflict-of-laws rule of a private nature, or if it rather applies only within public law domain.⁹ Undoubtedly, however, the rule in question does not apply to consumer transactions, where the principal point of reference is the consumer's venue of habitual residence, under Article 6(1) of the Rome I Regulation. It also does not limit parties' freedom to determine which law should be applicable to the contract, according to Article 6(3) of the Rome I Regulation.

From the practical perspective, the Internet-related cases are decided by all the civil and administrative courts in Poland. There is no court (nor any court's division or chamber) that would specialize in PIL issues or in disputes arising online.

2. Methodology and statistics

The aim of the study is twofold. Firstly, it attempts to delve more deeply into how the EU PIL is applied by Polish courts in cases with Internet and cross-border elements. Secondly, it aims to identify the actual degree of effectiveness of the rules in question, along with hurdles and obstacles to their application. Both elements have been grounded in an extensive analysis of decisions by Polish courts of various types and tiers in the judicial system issued before 1st January 2020. The basis of the search has been two most popular Polish commercial legal databases,¹⁰ as well as open access websites collecting judgements of Polish courts both run by state administration¹¹ and by independent scientific entities.¹²

⁷ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, OJ L 178, 17.7.2000, p. 1–16.

⁸ By Act on amendment of the act on the provision of services by electronic means of November 7, 2008 (Journal of Laws No. 216, item 1371). It introduced Article 3a to the act of 18 July 2002 on provision of services in electronic way (Journal of Laws No. 144, item 1204).

⁹ K. Chałubińska-Jentkiewicz in: *Świadczenie usług drogą elektroniczną. Komentarz*, K. Chałubińska-Jentkiewicz, J. Taczowska-Olszewska (eds), Legalis, C.H. Beck 2019, Commentary to Art. 3°, point 31. On the doctrinal approaches see: P. Polański, *Europejskie prawo handlu elektronicznego. Mechanizm regulacji usług społeczeństwa informacyjnego*, Warszawa: C.H. Beck 2014, Chapter III. § 4.

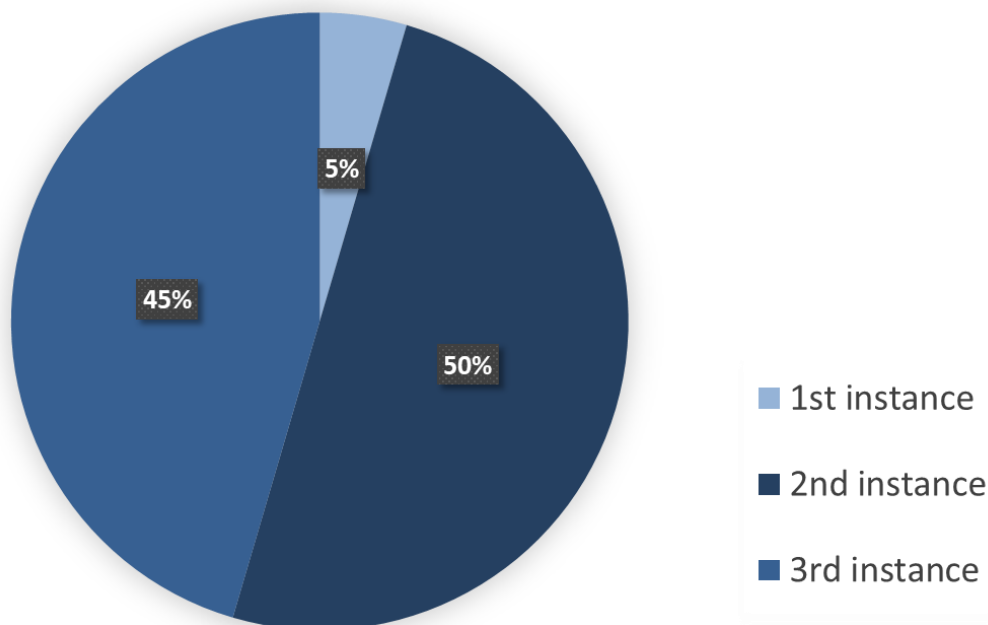
¹⁰ Legalis.pl; lex.pl.

¹¹ For the judgements of the Supreme Court: www.sn.pl, of the Supreme Administrative Court (second instance) and of the administrative courts of first instance: <http://orzeczenia.nsa.gov.pl/cbo/query>, of the other courts: <https://orzeczenia.ms.gov.pl/>.

¹² <https://www.saos.org.pl> (Interdisciplinary Centre for Mathematical and Computational Modelling UW in cooperation with: Watchdog Polska Civic Network, Akces Lab Social Cooperative and National Federation of NGOs).

However, it should be noticed that though the verdicts are publicly announced not all the judgement are accessible online.¹³

Figure 1: The percentage of cases that ended in the particular instance



The decisions encompassed by the study were selected out of the public and commercial databases of Polish case law, using the full-text search devices.¹⁴ It allowed to identify 22 cases¹⁵, which included both the online and the cross-border elements. The cases were concluded between 2007 and 2019, with the vast majority finalized between 2014 and 2019. This pool of cases embraces 53 separate judicial decisions *in merito*, including: 22 judgements of courts of the first instance, 21 judgements of courts of appeal (including three judgements of the Supreme Administrative Court, which is the court of second instance in administrative proceedings), and ten Supreme Court decisions. In other words, only 50% of disputes were settled in the first instance, 50% were concluded with the award of a court of appeal and in 45% percent of cases the dispute was decided by the Supreme Court. The analysis encompassed all

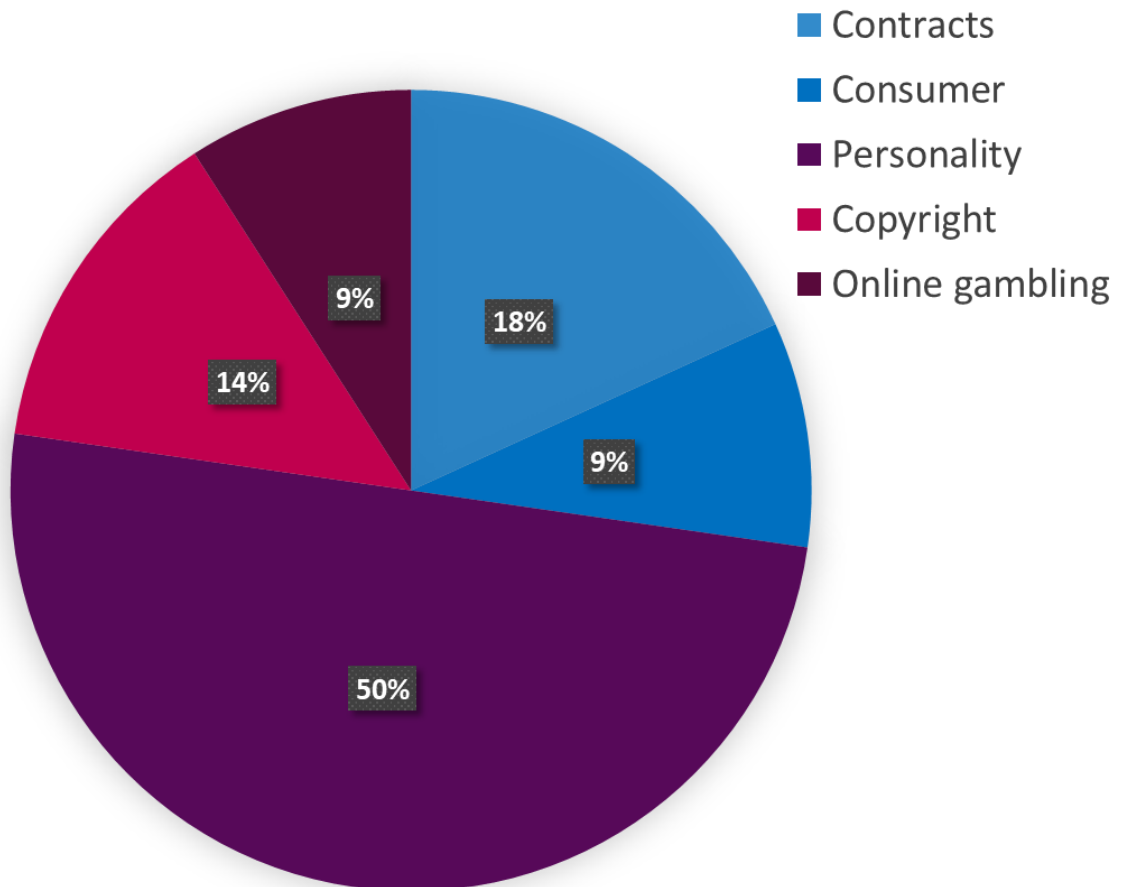
¹³ The president of each court decides on the online publication of every judgement. K. Kapelczak, M. Pieróg, *Internetowa publikacja orzeczeń sądowych – zagadnienia wybrane*, „Prawo Mediów Elektronicznych” 2015, Vol. 1, p. 21.

¹⁴ The selection was based on the keyword search, as well as on the categorization of cases into clusters, provided within the architecture of each database. The search was based also on analyzing quotations and references to the other decisions.

¹⁵ On the analysis of Polish case law regarding jurisdiction in online-related claims see also S. Żyrek, *Jurysdykcja krajowa w sprawach zobowiązań elektronicznych w prawie Unii Europejskiej*, Warsaw: C.H. Beck 2019. The subsequent remarks refer also to a few unpublished decisions, which were not available for analysis in this paper. First of all, it is the judgment of District Court in Warsaw of 13 April 2007, GC XX 70/06, according to which an act of unfair competition may be committed only where the perpetrator who is an entrepreneur conducts business activity. The Internet, under this view, constitutes only a tool with which the act is committed and therefore the fact that the act was committed online does not influence the identification of jurisdiction. Secondly, the publication refers also to the judgements: of the Court of Appeal in Łódź of 29 December 2009, I ACz 1150/10; of the District Court in Wrocław of 12 October 2010, X GC 112/10 and of the District Court in Warsaw of 24.6.2010, II C 45/10 – all of which refer to infringement of personal rights – as well as to the judgement of the Court of Appeal in Warsaw of 27 October 2010, I ACz 1602/10, which refers to the specific form of personal rights infringement: the use of the phrase "Polish death camps" in online media. Thirdly, the book refers also to the judgement of the District Court in Wrocław of 29 March 2011, X GC 112/10. These judgements were not included in the statistics presented in this paper.

of these decisions. It must be noted, however, that some of them address the issue of cross-border Internet relations only in part, by neglecting either the online character of the dispute or its cross-border dimension.

Figure: 1. Frequency of particular types of disputes



The cases were divided into two main groups: regarding either contractual or non-contractual obligations. Within the former, 4 cases (11 judgements) concerned general contract law obligations that involved Internet context. In 2 cases (6 judgments), the contracts involved were concluded in the B2C setting. The majority of the relevant Polish case law that touches upon non-contractual obligations regarded defamation on Internet (9 out of 16, translating into 20 of 36 judgements). However, six of these judgements were issued as a result of three lawsuits originated by a sole deed: publication of an online journal entry that labelled former Nazi camps as “Polish death camps” (see Judgements No 12, 13, 14). In 3 cases (7 judgements) application of EU PIL in Internet was related to copyright disputes. Finally, 2 cases (4 judgements) concerned online gambling.

The key legal issues raised in the analyzed cases differed between the following groups:

Figure 3: The subject of dispute

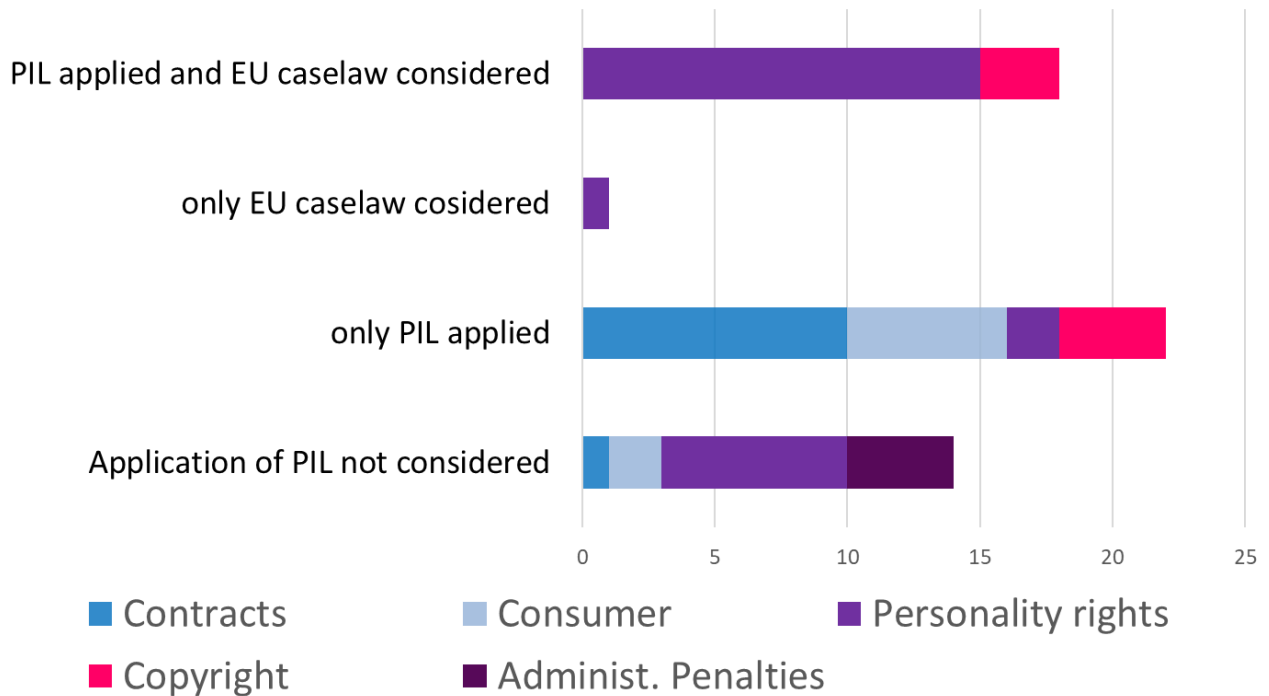


In B2B disputes (regarded as “contract” in figure No. 3) the focal point was establishing the liability for improper performance or non-performance of the contract on the carriage of goods (cases No. 1 and 2) or enforceability of an arbitration judgment (cases No. 3 and 4).¹⁶ The main difficulty in the first situation was establishing the precise link between conclusion of a contract via an online platform and the law applicable in the case. In the second setting, the fundamental question regarded the form and place of conclusion of a juridical act when a declaration of intent was submitted via e-mail. In consumer disputes, in turn, the primary focus was on verification of unfairness of a contract term.

In case of non-contractual obligations, it is possible to identify three groups of judgements. In the first one, the claim concerned broadly understood personality rights. The key issues that were tackled by the courts included: the right to be forgotten (removing defamatory content), defamation (infringement of personal rights) and unfair competition acts (infringement of company’s reputational interests). The second group of cases refers to the application of EU PIL in Internet related situations and copyright. Here the main issues regarded domain piracy and trademark protection right. In the last group of cases courts focus on administrative penalties imposed for organizing online gambling infrastructure.

¹⁶ For these and the other cases, see the detailed descriptions in point 3 of this paper.

Figure 4: The impact of the Internet and cross-border related factors on establishing jurisdiction and applicable law



The impact of the Internet and the factors related to a cross-border character of a transaction on the arguments formulated by courts in relation to PIL issues varied across the cases. The vast majority of judgements where the court applied EU PIL rules, along with a reference to CJEU case-law, regarded protection of personality rights (15 out of 18 judgments). The remaining 3 decisions pertained to copyright claims. Notably, in most cases courts abstained from analyzing EU case-law and took into account only appropriate PIL provisions (20 out of 53 judgements). Furthermore, in 14 decisions the court neither considered application of PIL nor referred to EU case-law, despite the trans-border character of the case.

3. The case law: contractual obligations

3.1. Introduction

The subsequent remarks focus on decisions of Polish courts that applied EU PIL rules to contractual relations that involved Internet-related settings. In the majority of these cases the dispute was adjudicated at least by courts of two instances, sometimes also by the Supreme Court. For the sake of the analysis only the final decision has been taken into in-depth consideration, though all the substantial differences in views between the other courts involved in adjudication of the dispute were also noted.

3.2 Contracts

In 4 cases (11 judgements) courts addressed contractual obligations which required application of European PIL in Internet-related situations. All of them stem from B2B disputes.

Judgement 1. Supreme Court, 04-12-2015, I CSK 1063/14

i) summary of facts

The plaintiff claimed payment for a shipped good (a load of sugar) that has been stolen within a shipment process by other persons, who misleadingly claimed that they were entitled to receive goods. The perpetrators have stolen goods, providing untrue information on the online platform for transport services (which allowed to put together offerors of transport services and entrepreneurs who wanted to ship particular goods).

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The case was decided under provisions of Polish law and of the Convention on the Contract for the International Carriage of Goods by Road ("CMR").¹⁷ Under article 1 CMR, provisions of this act apply to contracts that specify venues of taking over and delivery of goods in two different countries (at least one of which is a party to CMR).

The Supreme Court (Civil Chamber) did not take into consideration the possible impact of the fact that the carriage contract was concluded online, with use of an online business-to-business platform.¹⁸ In particular, it was not considered, what the actual venue where the contract has been concluded was¹⁹ and what impact it could have on the law applicable to the contract. The Court's analysis did not cover, in particular, to what extent the agreement was governed by the general rules of Polish PIL, which make the choice of law contingent mostly on the geographical location of the place of contract's conclusion.²⁰ The possible transnational element, introduced by involvement of an online platform, was not explicitly considered in the case. The principal issue, which needed to be discussed in this regard, was who should be attributed with the statement of intent that has been sent on Internet under the name of the other entity.²¹

The court of the first instance applied CMR provisions to assess the plaintiff's claim. This approach was criticized by the court of second instance. The Supreme Court, while investigating the case for the third time, concluded that the premises for application of CMR have not been properly investigated and, therefore, the case needed to be re-examined.²²

¹⁷ Signed in Geneva on 19 May 1956.

¹⁸ V. Hatzopoulos, *The Collaborative Economy and EU Law*, London: Bloomsbury Publishing 2018, point 6.II.A.; D. Jerker, B. Svantesson, *Internet & Jurisdiction Global Status Report 2019. Key Findings*, https://www.internetjurisdiction.net/uploads/pdfs/Internet-Jurisdiction-Global-Status-Report-2019-Key-Findings_web.pdf, p. 18.

¹⁹ On establishing the place of contract conclusion in case on online transactions in Polish law see: E. Diakowska, *Miejsce zawarcia umowy elektronicznej*, "Prawo Mediów Elektronicznych" 2007, Vol. 7; P. Polański in: *Kodeks cywilny. Komentarz*, M. Załucki (ed.), Warszawa: C.H. Beck 2019, 1st edn, Commentary to Art. 70 KC, point 6.

²⁰ J. Gołaczyński, *Prawo prywatne międzynarodowe*, Warszawa: C.H. Beck 2017, p. 38.

²¹ K. Mularski, Z. Radwański, in: Z. Radwański, A. Olejniczak (eds.), *System prawa prywatnego*, vol. 2, *Prawo cywilne – część ogólna*, Warszawa: C.H. Beck 2019, pp. 35-42; K. Południak-Gierz, *Wady oświadczenia woli w umowach zawieranych na internetowym rynku konsumenckim*, Warszawa: C.H. Beck 2020, pp. 114-119.

²² After re-examining the case, the Court of Appeal in Rzeszów, by judgment of 21-12-2016. I ACa 95/16, dismissed the defendant's appeal, considering him liable for damages as a successive distributor.

Judgement 2. Court of Appeal in Łódź of 07-02-2017, I ACa 508/16

i) summary of facts

The plaintiff (a firm operating in Netherlands) claimed payment for goods sold to a firm located in Poland. The claim was based on several sale agreements, concluded between parties by placing orders through the plaintiff's website. The defendant could make an offer, after logging in to the website.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The case was decided under provisions of Polish law and of CMR. The Court of Appeal followed the line of reasoning of the court of first instance.

As in the case No. 1, the Court did not take into consideration the possible impact of the fact that the contract was concluded online, with use of an online business-to-business platform. Again, the actual place for the conclusion of the agreement was left aside the reasoning, along with its possible impact on the law applicable to the contract. This pertained, in particular, to the question, to what extent the agreement is governed by the general rules on Polish PIL, which make the choice of law contingent mostly on the geographical location of contract conclusion. The possible transnational element, introduced by the use of online platform, was not explicitly taken into consideration in the case.

Judgement 3. Supreme Court, 02-03-2017, V CSK 392/16

i) summary of facts

The Supreme Court (Civil Chamber) was deciding on the case concerning enforceability of an arbitration judgment, under provisions of the New York Convention.²³ The arbitration clause was included in a supply agreement, concluded by exchange of e-mails (the Supreme Court ascertained that this way of communication complies with the requirement of written form of arbitration clause prescribed in the Convention). At the same time, parties incorporated in the contract a choice-of-law clause, which subjected the agreement to English law.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The Supreme Court was verifying validity of the arbitration clause. The reasoning focused on investigation, whether the proxy, who concluded the contract in the name of one of the parties, received the power of attorney – in particular, whether the form of granting the power of attorney was compliant with the general requirements of Polish Civil Code (which, in principle, requires this act to have the form needed for the conclusion of the final contract)²⁴. The Court ascertained that Polish law should be applied in this matter due to Article 25.1 of PPM, which subordinates the form of power of attorney to the same law as the form of the final contract. If parties to a contract reside in various states, it is enough if they observe formal requirement set forth by at least one of the domestic laws that applies to the power of attorney. While concluding the agreement, parties choose to subordinate their contract to English law. Under this legal regime, the power of attorney is subjected to the law of the country, where a proxy acts while concluding an agreement.²⁵ Building on this premise the Supreme Court concluded that under the contract, the formal validity of the power of attorney should be ascertained according to Polish law.

The Court did not consider the impact of the possible transnational element (contractors domiciled in various countries) on the process of incorporation of the arbitration clause into the contract. The Court

²³ Articles II, III, IV, V.

²⁴ Article 99 § 1 PCC.

²⁵ Article 21(1) PPM.

made an implied assumption that the proxy was acting in Poland, which consequently required to apply Polish law as a basis for establishing formal validity of a power of attorney. This finding was not supported by analysis, what was the legal relevance of the fact that the agreement was concluded online. In particular, the judgement did not determine the precise venue of the proxy's activity within the process of concluding the agreement.

The approach towards the main legal issue in the case – i.e. enforceability of the decision of the arbitration court – was consistent in proceedings before the courts of all instances. However, their opinion on whether the power of attorney was effectively granted differed. The Supreme Court ascertained that Court of Appeal's conclusion that power of attorney was effectively granted through declarations of intent submitted online was not based on properly-construed factual findings. Therefore, it annulled the contested judgement and referred the case to the Court of Appeal for reconsideration.

Judgement 4. Supreme Court, 13-09-2012, V CSK 323/11

i) summary of facts

The Supreme Court (Civil Chamber) was deciding on the enforceability of an arbitration judgment under provisions of **the New York Convention**. The arbitration clause was included in a supply agreement, concluded by exchange of e-mails by two companies – a Georgian and a Polish one. One of the parties challenged the enforceability of the arbitration judgement due to lack of written form of the arbitration clause.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The Supreme Court was investigating validity of the arbitration clause and its impact on the enforceability of the arbitration judgement. The reasoning has been focused on investigation, whether the form in which the arbitration clause was concluded was compliant with the general requirements of Articles 2.2 and Article 5.1b of the New York Convention. There are two approaches towards the validity of arbitration clause agreed upon via e-mail exchange,²⁶ and the Supreme Court ascertained that this way of communication complies with the requirement of written form, required under the Convention. This matter is, though, of secondary importance, as the fact that both parties took part in the arbitration proceeding was sufficient to exclude their right to undermine the enforceability of the judgement due to the invalidity of arbitration clause.²⁷

Also in this case, the Court abstained from concerning transnational character of making an arbitration clause. According to the Court, the obligation to apply the New York Convention resulted only from the fact that the arbitration award was issued in Germany, which is party to the Convention.

The position of courts differed across the instances – while the court of the first instance declared the enforceability of the award of the Court of Arbitration (under Article 1162 CCP the arbitration clause was considered valid and binding), the Court of Appeal changed the contested order and dismissed the claim. It declared that the party did not prove the conclusion of the arbitration clause. The basis for

²⁶ J. Balcarczyk, *Zagadnienie formy umowy o arbitraż w świetle art. II (2) Konwencji nowojorskiej o uznawaniu i wykonywaniu zagranicznych orzeczeń arbitrażowych oraz w świetle regulacji wewnętrznych*, "ADR. Arbitraż i Mediacja" 2008, No. 4, pp. 5–16; N. Lederer, *Article II(2) of the New York Convention and Modern Means of Electronic Communication: Are Letters and Telegrams an Archaic Relic from the Past?*, "Zeitschrift für Schiedsverfahren" 2017, No. 5, p. 246; Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, adopted by the United Nations Commission on International Trade Law on 7 July 2006 at its thirty-ninth session.

²⁷ A. Wiśniewski, *Skutki wdania się w spór przed arbitrażem za granicą pomimo braku skutecznej umowy o arbitraż. Glosa do postanowienia SN z dnia 13 września 2012 r., V CSK 323/11*, "Polski Proces Cywilny" 2013, No. 4, pp. 571–582.

this conclusion was Article IV of the New York Convention, applicable because the parties were domiciled in Poland and Georgia.

3.3 Consumer protection

The Polish case law on consumer protection is relatively developed in particular regards, especially as concerns unfair contract terms.²⁸ Moreover, with the observable growth of ADR procedures in consumer cases, the number of disputes brought to a court may further diminish over time.²⁹ Moreover, consumer cases brought before courts are usually initiated before the lowest tier of the judicial structure – i.e. regional courts (*sądy rejonowe*). Only in selected matters, especially in the cases where the claim's value exceeds 75.000 PLN (which is beyond a value of most every-day consumer agreements), a case is heard by a district court (*sąd okręgowy*), i.e. the second-tier court in the Polish system.³⁰ In consequence, certain issues of consumer law hardly ever reach courts of higher level, including the Supreme Court. This creates a substantial impediment for refinement of consumer law and creation of more precise standard or protection through judicial decisions that would be binding upon authority of the high-tier courts.

Two cases (6 judgements) touched upon application of EU PIL in Internet-related consumer contracts. In both of them, courts focused on inspection of contract terms in order to establish if they are unfair in the meaning of the directive 93/13/EEC. In this way Polish courts complied with the obligation to examine B2C agreements *ex officio*, ascertained clearly in the CJEU case law.³¹ The number of consumer disputes that involved PIL elements does not allow, however, to make definitive conclusions, whether such an outcome is coincidental or does it reflect a more profound conviction of the Polish judiciary, as to consumer protection in transnational cases.

Judgement 5. Supreme Court, 22-02-2007, IV CSK 200/06

i) summary of facts

The Supreme Court (Civil Chamber) decided a dispute between an American company and a Polish consumer. The plaintiff (Polish) demanded the refund of 52,937 PLN as the equivalent of 14,000 USD paid by her in order to conclude an agreement on the conclusion of foreign exchange transactions on the interbank market. The brokerage agreement, displayed on the defendant's website and agreed to by the

²⁸ <https://www.uokik.gov.pl/download.php?plik=24030> 46; <https://www.uokik.gov.pl/raporty2.php>; see also: R. Trzaskowski, *Skutki uznania postanowienia wzorca umow za niedozwolone i jego wpisu do rejestru w sferze przeciwdziałania praktykom naruszającym zbiorowe interesy konsumentów (art. 24 ust. 2 pkt 1 u.o.k.i.k.) w świetle orzecznictwa Sądu Ochrony Konkurencji i Konsumentów*, "Prawo w Działaniu" 2014, No. 20, pp. 136-137.

²⁹ <https://uke.gov.pl/akt/sprawozdanie-z-dzialalnosci-prezesa-uke-w-zakresie-pozasadowego-rozwiazywania-sporow-konsumentkich-adr-w-2017-r-,70.html>, <https://cik.uke.gov.pl/news/sprawozdanie-adr-2018-r-,120.html>, for the sake of example see also reports on ADR resolutions Wrocław: <https://wiih.ibip.wroc.pl/public/?id=117363>, Kielce: <http://wiihkielce.pl/nowemediacje/sprawozdania>, Opole: <http://www.opole.wiih.gov.pl/pliki/sprawozdanieADR2018.pdf>.

³⁰ The court procedure is frequently seen by consumers as requiring significant resources and – therefore – disproportionately burdensome in case of typical B2C online disputes. On reasons behind this phenomenon see: M. Grochowski, *Obowiązki informacyjne w umowach z udziałem konsumentów a nadmierny formalizm prawa* in: M. Jagielska, E. Rott-Pietrzyk, A. Wiewiórowska-Domagalska (eds) *Kierunki rozwoju europejskiego prawa prywatnego*, Warszawa: C. H. Beck 2012, 2.1, 2.2; Ch. Riefa, *Consumer Protection and Online Auction Platforms: Towards a Safer Legal Framework*, Abingdon: Routledge 2016, pp. 149-152.

³¹ CJEU Judgement of 27 June 2000, C-240/98 to C-244/98, *Océano Grupo Editorial SA v Rocío Murciano Quintero and Salvat Editores SA v José M. Sánchez Alcón Pradés and Others*, ECLI:EU:C:2000:346; CJEU Judgement of 4 June 2009, C-243/08, *Pannon GSM Zrt.*, ECLI:EU:C:2009:350; CJEU Judgement of 6 October 2009, C-40/08, *Asturcom Telecomunicaciones*, ECLI:EU:C:2009:615; CJEU Judgement of 14 June 2012, C-618/10, *Banco Español de Crédito, SA v Joaquín Calderón Camino*, CLI:EU:C:2012:349.

plaintiff, incorporated: a derogation clause excluding the jurisdiction of Polish courts, an arbitration clause (either an arbitration tribunal in Michigan, USA or an ordinary court in Michigan had jurisdiction), and a choice-of-law clause, which indicated the law of the State of Illinois as applicable to the agreement. With reference to this clause, the defendant challenged the jurisdiction of a Polish court.

The Regional Court, which decided the case in the first instance, found the aforementioned clauses valid and binding (though concluded by implied statements), and dismissed the claim. The Court of Appeal, after considering the fulfilment of the formal requirement prescribed for the arbitration clause, applied the New York Convention. Further, according to the court, the choice of Illinois law was admissible under Article 25 § 1 PPM of 1965³². At the same time, Article 27 § 1 point 2 PPM of 1965 points to US law as applicable if the parties fail to make a choice of law. The Court of Appeal rejected the possibility of examining the contract in the light of the EU consumer law, since the United States of America is not a party to the Treaty of the European Communities. The plaintiff filed a cassation appeal to the Supreme Court.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The Supreme Court agreed with the position of the Court of Appeal that the legal relationship between the parties should be assessed in the light of the provisions of the New York Convention binding both the USA and Poland. Article II 3 of the New York Convention allows the waiver of the obligation to refer the case to arbitration by the court in which the dispute was initiated, if the court finds that the arbitration clause is invalid, unenforceable or unfit.

Both the derogatory and the arbitration clauses may be considered to constitute unfair contract terms in the light of the Article 3(1) of the directive 93/13/EEC. Article 6(2) of the directive obliges Member States to take the necessary steps to ensure that the consumer does not lose the protection granted under directive 93/13/EEC by choosing the law of a third country as the law applicable to the contract in question, if that contract is closely connected with the territory of the Member States. However, the Polish implementation of the directive 93/13/EEC did not transpose directly Article 6(2).³³

The brokerage agreement together with the arbitration agreement justifies the application of Article 6(2) of the directive 93/13/EEC, since it causes a significant disproportion of rights and obligations to the detriment of the consumer. At the same time the contract has a strong link to the territory of a Member State. The plaintiff is domiciled in Poland, from where he gave instructions to conduct currency trading and made payments to the bank account indicated in Poland which lead to a strong connection between the contract and the Polish territory. As to the first premise: arbitration clause depended on the choice left to the professional and the principles on which the American Arbitration Chamber's decisions are based were not indicated within it. Moreover, a foreign law that was indicated in a choice-of-law clause differed significantly from the EU law. In addition, the Court noticed numerous practical difficulties in pursuing a claim by a consumer (triggered by distance between parties, as well as costs and difficulties in obtaining an American visa by a Polish citizen). All these elements created a state in which the arbitration clause and the choice of law clause had to be considered unfair within the meaning of the directive 93/13 EEC. Thus, the clauses in question constitute an unfair contractual provision and, as such, contradict Article 6(2) of the directive. As a result, the Court could abstain from referring the

³² Act of 12 November 1965, Private International Law, Journal of Laws No. 46, item 290 as amended.

³³ M. Lijowska, *O kolizyjnoprawnych problemach dostosowania prawa polskiego do europejskiego prawa ochrony konsumentów*, "Kwartalnik Prawa Prywatnego" 2004, No. 1, pp. 144, 168; M. Pazdan, M. Szpunar, *Conflict of laws rules in polish consumer protection laws*, in: M. Kępiński (ed.), *Conference Proceedings: The Evaluation Of The New Polish Legislation In The Matter Of Consumer Protection Form The European Perspective*, Poznań: Adam Mickiewicz University Faculty of Law and Administration 2002, p. 116; A. Torbus, *Ochrona konsumenta jako strony zapisu na zagraniczny sąd polubowny*, "ADR. Arbitraż i Mediacja" 2009, No. 2, p. 96.

case to arbitration. The Court supported this argumentation with reference to the ECJ judgement in C-240/98–244/98 *Océano*.³⁴

Additionally, the Supreme Court stated that the formal requirement prescribed for the arbitration clause was not met, since agreeing online to the content displayed on the website neither enables identification nor reconstruction of parties' consent.

Therefore, due to the lack of written form of the arbitration clause and its unfair character, the Supreme Court declared the charge of arbitration clause unfounded.

The approach towards the issue in question differed across instances. The District court applied CCP (Article 1105 § 3) and decided that both the derogation and arbitration clauses are valid and binding. This conclusion was followed by the Court of Appeal, yet each of the courts invoked different provisions (CCP, New York Convention, and PPM of 1965). The Court of Appeal rejected the possibility of applying consumer protection provided for in the EU, which, however, was considered unjustified by the Supreme Court.³⁵

Judgement 6. Supreme Court, 17-09-2014, I CSK 555/13

i) summary of facts

The Supreme Court (Civil Chamber) decided a dispute between the Polish Office of Competition and Consumer Protection (Urząd Ochrony Konkurencji i Konsumentów – UOKiK) and the European Union of Football Associations (UEFA). The dispute regarded the EURO Championship, organized in Poland and Ukraine in 2012. Before the Championship UEFA was offering online individual tickets for football games, concluding contracts with use of standard terms (“Conditions of the General Public Sell of Tickets for the UEFA EURO 2012”). UOKiK found that several clauses of this document are unfair in the meaning of the directive 93/13/EEC. Amongst them UOKiK questioned a choice of law clause, which subjected relation between UEFA and a consumer to Swiss law.

The District Court in Warsaw, which decided the case in the first instance, found a clause to be unfair.

After the appeal of the defendant (UEFA), the Court of Appeal in Warsaw decided that the clause is not unfair and can be enforced in relations with consumers. The Court grounded this decision in the PPM and the Rome I Regulation. Resting on these rules, the Court concluded that private international law excludes choice of law clauses in consumer contracts only to the extent to which they diminish the degree of consumer protection awarded by the regime of consumer's habitual residence. In the outcome, regardless of the choice of law clause in UEFA contract, consumers can still claim rights awarded to them under EU law. According to the Court this suffices to claim that the clause in question is not unfair. The judgment of the second instance has been challenged by UOKiK before the Supreme Court by a cassation claim. The Supreme Court reversed for the Court of Appeal's conclusions, declaring the choice of law clause to be unfair.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

As the Supreme Court observed, under the Rome I Regulation (Articles 3 and 6), consumer contracts are subjected to the law of the country where the consumer has his habitual residence. Parties are entitled to choose another legal regime, in that case however, consumer keeps his entitlements under the law of the country of habitual residence (including the harmonized consumer law rules of the EU Member States). The similar provisions have been also introduced in Articles 28 and 30 of PPM.

³⁴ CJEU judgment of 27 June 2000, *Océano Grupo Editorial*, C-240/98 to C-244/98, ECLI:EU:C:2000:346.

³⁵ The way of reasoning of the Supreme Court was criticised in the doctrine. W. Kocot, *Glosa do postanowienia Sądu Najwyższego z dnia 22 lutego 2007 r., IV CKN 200/06*, “Orzecznictwo Sądów Polskich” 2008, No. 10, p. 742.

Contrary to the argument of the Court of Appeal, the Supreme Court ascertained that these provisions do not remove *a priori* unfairness of the choice of law clauses in consumer contracts. The rules on unfair contract terms (that transposed the directive 93/13/EEC) mandate separate scrutiny of every clause in B2C contracts. Moreover, Article 3 of the Rome I Regulation requires the actual intent of the parties, which cannot be replaced with imposing a non-negotiated standard term by the entrepreneur.³⁶ The mechanism of consumer protection established in the Rome I Regulation assumes involvement of a court, which has to compare two standards of protection and to decide, whether in the case of choosing another legal regime, the entitlements awarded by the law of habitual residence should be still (at least in part) applicable. This situation is disadvantageous to consumers, who remain uncertain about his rights and duties vis-à-vis the professionals, until the choice of law clause is subjected to court's scrutiny.³⁷

What is more, if a consumer decides to compare two regimes on his own, he has to incur disproportionate costs (being still uncertain as to the final result of a possible litigation). The Supreme Court observed also that in the contract in question, UEFA imposed on consumers Swiss law, i.e. its own domestic regime. In so doing, UEFA put itself in a particularly privileged situation in a relation with consumers. For all these reasons, the Supreme Court found the choice of law clause to be unfair.³⁸

4. The case law: non-contractual obligations

4.1. Introduction

The analyzed cases were divided into three groups: personality rights, copyright and administrative penalties. As for the first one, courts' approach to application of EU PIL was highly differentiated (from neglecting the need to analyze the transnational character of the matter at hand to applying the EU PIL and taking into consideration corresponding EU case law). In the second group, the main legal issues regarded Internet domain piracy and trademark protection. All these judgments involved explicit application of PIL rules were applied. Moreover, in several instances the courts' reasoning was also strengthened with a reference to the appropriate EU case law. One of the decisions focused on administrative penalties imposed with regard to online gambling. In all the situations the courts abstained from taking into account the transnational aspects of the issue and applied Polish law.

4.2. Personality rights

Judgement 7. District Court in Szczecin, 14-10-2014, VII GC 260/12

i) summary of facts

The plaintiff's websites were being blocked by several Internet search engines as containing alleged phishing attempts. This reduced the popularity of these websites and had a negative effect on

³⁶ M. Pazdan, in: M. Pazdan (ed.), *Rozporządzenie Parlamentu Europejskiego i Rady (WE) Nr 593/2008 w sprawie prawa właściwego dla zobowiązań umownych (Rzym I). Komentarz*, Legalis 2018, Commentary to Article 3, point IV.2; opposedly: M. Jagielska, A. Kunkiel-Kryńska, *Wybór prawa jako klauzula abuzywna*, "internetowy Kwartalnik Antymonopolowy i Regulacyjny" 2016, Vol. 3(5), p. 35.

³⁷ A different solution has been adopted by CJEU in judgment of 28 July 2016, C-191/15, *Verein für Konsumenteninformation v Amazon EU Sàrl*, ECLI:EU:C:2016:612.

³⁸ The conclusion of the Supreme Court was, however, challenged by the doctrine: M. Jagielska, A. Kunkiel-Kryńska, *Wybór...*, pp. 35-36; r. Skibicki, *Ustalenie prawa właściwego dla umów sprzedaży zawartych za pośrednictwem serwisu e-commerce pomiędzy konsumentem z Polski a sprzedawcą z Chin*, "Prawo Mediów Elektronicznych" 2018, Vol. 2, p. 40.

the company's reputation. The plaintiff (a Polish company) demanded an apology from another Polish company which it mistakenly considered a branch of a foreign law company.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The case was decided under provisions of Polish law – the action was dismissed as the defendant had no capacity to be sued in this dispute. Though the action of blocking the websites might have constituted an infringement of plaintiff's personal rights, it was not carried out by the defendant. As a result, the Court neither elaborated on the international (transnational) character of the personal rights infringement nor applied EU PIL.

Judgement 8. Supreme Administrative Court of Poland, 09-04-2015, I OSK 2926/13

i) summary of facts

The Supreme Administrative Court was deciding on the claim against an operator of an Internet browser, which allows to access an entry in an online encyclopedia, which pertains to a claimant. The content has not been generated by the browser operator. The browser's operator is a company registered in Poland. The case tackled on the issue of the "right to be forgotten", after the CJEU judgment in the *Google Spain* case (C-131/12)³⁹, but before this right was incorporated into the GDPR. The court – building on the premises set forth by CJEU – ascertained that the operator of an Internet browser bears the obligation of removing certain data from search results. At the same time the judgment made a strong (yet partly implicit) case for transborder application of the right to be forgotten – as explained further below.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The Supreme Administrative Court focused predominantly on the question of the individual's right to remove data from an online service and the possible application of the CJEU *Google Spain* (C-131/12) decision in Poland. The case does not address the problem of conflicts of laws at length, the Court made, however, a few observations that reveal its take on the problem of transnational dimension of the right to be forgotten.

First of all, the Court made a strong claim in favor of the view that geographic "location" of data and of actions that concern its processing cannot affect the possibility to claim that this data is removed from the search results, under the *Google Spain* doctrine.⁴⁰ In particular, the Court pointed out that storing data on a server located abroad does not exclude them from the Polish jurisdiction – and does not exclude applicability of the right to be forgotten.

Secondly, the Court pointed out that it should be considered whether data processing can be understood as "creation of such technical premises, that make it *de facto* possible to get access to personal data without their physical retention." In doing so, the Court reinforced the view that transborder data processing can take a form of analysis and display of data (e.g. as an Internet search engine results), without a need to determine the physical (geographic) venue, where the data is stored.⁴¹

³⁹ CJEU Judgement of 13 May 2014, C-131/12, *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*, ECLI:EU:C:2014:317.

⁴⁰ D. Jerker, B. Svantesson, *Limitless Borderless Forgetfulness? Limiting the Geographical Reach of the 'Right to be Forgotten'*, "Oslo Law Review" 2015, No. 2, p. 118; B. Van Alsenoy, M. Koekoek, *Working Paper No. 152 – March 2015. Internet and Jurisdiction after Google Spain: the Extra-Territorial Reach of the EU's "Right To Be Forgotten"*, https://ghum.kuleuven.be/ggs/publications/working_papers/2015/152vanalsenoykoekoek, p. 8.

⁴¹ In a similar way: J. Barta, P. Fajgielski, R. Markiewicz, *Ochrona danych osobowych. Komentarz*, LEX 2015, Commentary to Article 7, points 2, 13.

Throughout adjudication of the case, the position of courts of subsequent instances varied. The court of first instance dismissed the appeal issued against the decision of the administrative authority on not granting the request to delete personal data on the website. It argued that as it did not take into account the specificities of functioning of online browser. The Supreme Administrative Court seen these issues as vital for ruling on the case and therefore it set aside the appealed decision of the District Administrative Court in Warsaw and referred the case to that court for re-examination.

Judgement 9. Court of Appeal in Warsaw, 25-11-2016, I ACa 1565/15

i) summary of facts

The plaintiff demanded removal of his personal data (information that he has an arrest warrant on himself) from search engine's results, as well as award of pecuniary compensation and an order to publish an apology. The claims were issued against a company domiciled in the United States, being the administrator of the search engine.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

In order to establish whether Polish courts have jurisdiction in the case, the court applied Article 16(2) of PPM. The plaintiff sought compensation for non-pecuniary damage. This entitled him to bring a claim before the court in a district of which the harm was caused. In the outcome the court resolved to decide the case under provisions of Polish law. In making this conclusion, the court did not elaborate further on the international (transnational) character of this personal rights infringement, though in the judgment's motives it referred to the CJEU decision in *Google Spain*. The argument presented by the court of first instance was followed by the Court of Appeal.

Judgement 10. Supreme Court, 13-12-2018, I CSK 690/17

i) summary of facts

The Supreme Court (Civil Chamber) was deciding on the claim to remove particular data from search results in an online search engine (Google). The case was brought against a company that maintains an online search engine by an individual, who ascertained that the text available through a search is defamatory. The defendant is a firm registered in Poland, which is a branch of a worldwide company that operates an internet browser. During the proceedings, the case was joined by the US branch of the company, against which the plaintiff sustained her claim.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The problem of jurisdiction of Polish courts was taken into consideration in the proceedings before courts of the first and the second instance. Ultimately, the court of the second instance (Court of Appeal) concluded that Polish courts have jurisdiction in the case upon Article 1103⁷ CCP, which encompasses *inter alia* cases that concern unlawful deeds (such as torts), if a claim originated in the Polish territory. According to the court of the second instance, this provision encompasses also defamatory claims.⁴² The Court supported this claim with reference to the CJEU judgment C-509/09, *eDate Advertising*.⁴³ The Court did not analyze further the question of geographic location of the tortious deed. In particular, it

⁴² D. Olczak-Dąbrowska, in: T. Szanciło (ed.), *Kodeks postępowania cywilnego. Komentarz*, vol. II, Art. 506–1217, Legalis 2019, Commentary to Article 1103⁷, point 3.

⁴³ CJEU judgment of 25 October 2010, C-509/09, *eDate Advertising GmbH and Others v X and Société MGN LIMITED*, ECLI:EU:C:2011:685.

did not consider the possible implications of the transnational character of the browser and the possibility to access the information from any place in the world.

The Supreme Court did not explore further the issue of jurisdiction of Polish courts (agreeing with the position of the Court of Appeal in Warsaw). It also did not take into consideration the problem of provisions applicable to anti-defamatory protection claimed by the plaintiff. The Supreme Court abstained from analyzing consequences of the transnational character of the browser, as well as the problem that the alleged defamation took place without any particular geographic indication. It was assumed that Polish substantive law should be applied in the case in its entirety.

The approach towards jurisdiction of Polish courts and the applicable law was consistent during the trial.

Judgement 11. Supreme Court, 28-09-2011, I CSK 743/10

i) summary of facts

The Supreme Court (Civil Chamber) was deciding a case initiated by private individuals, who claimed remedies (injunction prohibiting proliferation of a press article on the Internet and its removal from the web) for defamation committed online. Courts of the first and of the second instance dismissed the claim and indicated – amongst other arguments – that depositing a press material on servers by the defendant does not constitute, in itself, infringement of plaintiffs' personal rights.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The Supreme Court dismissed the claim. Although the alleged violation was committed online, none of the courts adjudicating in the case addressed the issue of jurisdiction of Polish courts or the conflict-of-laws question. All the courts that decided on the plaintiffs' claim seem to have assumed that it is subjected exclusively to Polish law and should be adjudicated by Polish courts. Assumptively, both conclusions were drawn from the fact that the plaintiff has her headquarters situated in Poland and the alleged infringement took place in the Polish journal (and on its website). There is no clear evidence that courts investigated other circumstances that are possibly relevant for jurisdiction and conflicts of laws (such as the location where the data was stored by the defendant). Moreover, the case did not involve any analysis of the possible elements of foreign or international law (except from a brief reference to ECHR case-law on substantial matters of online defamation).

Judgement 12. Court of Appeal in Cracow, 22-12-2016, I ACa 1080/16

i) summary of facts

The plaintiff was a prisoner in Nazi camps during the Second World War. He sued a company that maintains an online informational portal registered in Germany (with a ".de" domain). The portal published a text which labelled former Nazi camps as "Polish death camps". The plaintiff felt that this expression was defamatory towards him and caused his emotional harm, therefore he demanded from the defendant removal of the text and publication of apology. The issue of jurisdiction was not raised by the parties.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The District Court and the Court of Appeal neither referred to an issue of jurisdiction of Polish courts, nor to the question of conflict of substantial laws. They assumed implicitly that the case can be decided before courts in Poland, under the Polish rules on protection of personal rights (including law on defamation). The factual background of the case could indicate that both problems should be analyzed

more thoroughly. Both the venue of headquarters of the plaintiff (a German company), as well as the geographic location of the allegedly defamatory publication (Germany) opened the possibility for application of German law. As opposed to the similar case I ACa 403/15 (described below), none of these elements has been addressed directly by the court.

Judgement 13. Court of Appeal in Bialystok, 30-09-2015, I ACa 403/15

i) summary of facts

Also in this case the plaintiff was a prisoner in Nazi camps during the Second World War and felt that the publication (labelling former Nazi camps as “Polish death camps”) was defamatory towards her and caused her emotional harm. On these grounds she demanded from the defendant (a firm maintaining an online informational portal registered in Germany) removal of the text and publication of apology. In contrast to the previous case, here the defendant claimed lack of jurisdiction of Polish courts.

ii) summary of the court’s judgment interpreting the relevant EU PIL instrument’s disposition

The District Court found that Polish courts have jurisdiction in the matter of the case, referring to articles 3 and 5 of the Brussels I Regulation. Under these provisions, cases concerning torts fall within jurisdiction of courts proper for the place where the tort has been committed. The court referred also to previous decisions of CJEU, which provide interpretation of these rules with regard to torts committed on Internet (cases C-170/12⁴⁴ and C-441/13,⁴⁵ as well as joined cases C-509/09 and C-161/10⁴⁶). Building upon these rules, the court concluded that – since the plaintiff has a permanent place of residence in Poland – Polish courts have jurisdiction over her case.

Further, the court attempted to identify substantial law relevant for the case. It excluded application of the regulation 864/2007, resting on the exclusion for cases involving privacy and personality rights, in article 1(2)(g) of this act. In the final conclusion, the court found that the directive 2000/31/EC does not pertain to the case, since the alleged infringement of personal rights of the plaintiff did not take place within provision of information society services (but only as a consequence of using technical measures designed to provide them). Finally, the court referred to Polish domestic provisions on private international law (PPM), which indicates Polish law as relevant for the matters of privacy and defamation in the case of Polish residents and defamatory deeds committed in Poland.⁴⁷

The Court of Appeal fully approved for the conclusions of the court of the first instance.

Judgement 14. Court of Appeal in Warsaw, 31-03-2016, I ACa 971/15

i) summary of facts

The plaintiff was a prisoner in Nazi camps during the Second World War. He sued a publisher of a German newspaper (published also online). The journal published a text which labelled former Nazi camps as “Polish death camps”. The plaintiff felt that this expression was defamatory towards her and caused her emotional harm and demanded from the defendant removal of the text and publication of apology. The defendant claimed lack of jurisdiction of Polish courts.

⁴⁴ CJEU judgement of 3 October 2013, C-170/12, *Peter Pinckney v KDG Mediatech AG*, ECLI:EU:C:2013:635.

⁴⁵ CJEU judgement of 22 January 2015, C-441/13, *Pez Hejduk v EnergieAgentur.NRW GmbH*, ECLI:EU:C:2015:28.

⁴⁶ CJEU judgement of 25 October 2011, C-509/09 and C-161/10, *eDate Advertising GmbH and Others v X and Société MGN LIMITED*, ECLI:EU:C:2011:685.

⁴⁷ Article 1103⁷ CCP.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The Court of Appeal upheld the conclusions of the court of first instance. The reasoning in this case was nearly identical to the one in the judgement No. 13. The court merely rephrased the arguments presented in the aforementioned judgement, following closely the line of reasoning of the other court. In both proceedings the courts established the jurisdiction on the same grounds, referred to the same CJEU judgements, considered (and excluded) application of the same EU rules (the regulation 864/2007, the directive 2000/31/EC) for the same reasons, and concluded that Polish domestic provisions of PPM indicate Polish law as relevant for the matters of privacy and defamation in the case of Polish residents and defamatory deeds committed in Poland.

Judgement 15. Supreme Court, 15-05-2019, II CSK 158/18

i) summary of facts

The plaintiff was a director of Polish School in Ireland. The defendant posted on the website [www.f\[...\]com](http://www.f[...]com) and others information on the embezzlement of school money by the plaintiff. She also emailed numerous institutions as well as tried to influence plaintiff's position as a candidate to the Polish parliament. The plaintiff sued defendant for compensation and demanded an apology in a newspaper in Poland. Both parties are residents of Ireland, Ireland is also the main place of their professional and private life activities.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The Supreme Court (Civil Chamber) decided that in terms of liability for harm, Polish courts have jurisdiction for infringement of the plaintiff's personal rights only as to the harm or damage caused in Poland.⁴⁸

Having in regard Article 5 paragraph 3 of the Brussels I Regulation and case law of the CJEU⁴⁹, the Supreme Court agreed with the lower instances that the Polish courts have jurisdiction for infringement of the plaintiff's personal rights only as to harm or damage caused in Poland. Therefore, it was essential to demonstrate materialization of damage resulting from the violation of plaintiff's personal rights in the territory Republic of Poland.⁵⁰

The substantive law established in accordance with national conflict-of-law rules determines whether a causative event can be regarded as causing damage. Therefore, taking into account the exclusion provided for in Article 1.2.g of the Rome II Regulation and Article 16.2 PPM, it should be stated that it is appropriate to assess whether the claimant suffered damage in Poland under the Polish law provisions.

Upon these grounds, the reasoning of the court of the courts of lower instances and the Supreme Court diverged. The Regional Court and the Court of Appeal observed that the defendant's behavior did not cause any negative consequences for the plaintiff in Poland. Thus, there were no grounds to conclude that the plaintiff's personal rights were violated and the result of this violation arose on Polish territory. The claimant failed to prove that, as a result of the defendant's behavior, she suffered pecuniary damage

⁴⁸ This approach is commonly accepted in the Polish doctrine: W. Lamik, *Ochrona dobrego imienia w Internecie*, "Prawo Mediów Elektronicznych" 2016, No. 2, pp. 38-39; A. Sojat, *Prawo właściwe dla naruszenia wizerunku w sieci Internet*, "Prawo Mediów Elektronicznych" 2016, No. 2, p. 53-54.

⁴⁹ CJEU judgments of 7 March 1995, C-68/93, *Fiona Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd. v. Presse Alliance SA*, ECLI:EU:C:1995:61 and of 25 October 2011 in joined cases C-509/09 and C-161/10, *eDate Advertising GmbH v X and Olivier Martinez and Robert Martinez v. MGN Limited*, ECLI:EU:C:2011:685.

⁵⁰ M. Pilich, *Prawo właściwe dla dóbr osobistych i ich ochrony*, "Kwartalnik Prawa Prywatnego" 2012, Vol.21(3), p. 634.

(in the meaning of Article 24 § 2 CC⁵¹) or non-pecuniary damage (in the meaning of Article 24 § 1 CC) in the territory of the Republic of Poland. As a result, the claim was dismissed. However, the Supreme Court found that the fact that the defendant addressed 'offensive' e-mails to institutions located in Poland with which the plaintiff cooperated is sufficient to state that negative effects to plaintiff's good name.

Judgement 16. Court of Appeal in Warsaw, 6-12-2007, VI ACa 842/07

i) summary of facts

The plaintiff was an Austrian airline company, performing flights *inter alia* between Vienna and Warsaw. The defendant was a Slovak entrepreneur providing transport services (airline and bus transport) between a few Polish cities (including Warsaw) and some European ones. The defendant launched an online advertising campaign in which he offered cheap connections, including from Warsaw to Vienna. Despite information on banners and pop-ups, these were not direct flights, but flights to Bratislava, from where the travelers were taken by bus to Vienna. The plaintiff brought an action against the Slovak company to prohibit unfair competition by ordering the defendant to cease misleading advertising.⁵²

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

According to the court of the first instance, the jurisdiction of Polish courts resulted from Article 5 point 3 of the Brussels I Regulation. This conclusion, though, was not justified anyhow in the judgement, was not challenged by the court of the second instance. Notably, while the court of the first instance argued that the advertisement constituted a misleading practice, the second instance ascertained that due to the fact that the campaign was launched online, it was directed to a specific group of consumers⁵³ – i.e. online users who are more informed and critical than the average and therefore cannot be misled by such content.

Judgement 17. Supreme Court, 15-12-2017, III CZP 82/17

i) summary of facts

The Supreme Court (Civil Chamber) resolved a question referred to it by the Court of Appeal in Warsaw. The inquiry has been made within a special "internal" preliminary procedure, which allows every court of second instance (except from administrative courts) to ask the Supreme Court about interpretation of a particular provision. The reply of the Supreme Court (in the form of resolution) does not resolve the case directly, but is binding (in terms of the interpretation) on the court that referred a question. It can also be used as a point of reference in legal interpretation by other courts.

The inquiry was made in an unfair competition dispute between two producers of veterinarian medicine. According to the plaintiff, the defendant proliferated untrue information about comparison

⁵¹ Act of 23 April 1964, The Civil Code, Journal of Laws 1964, No. 16, item 93.

⁵² On meta-tagging see as an act of unfair competition see: M. Szczotkowska, *Czyny nieuczciwej konkurencji w Internecie z wykorzystaniem słów kluczowych, czyli meta-tagging i keyword-advertising*, „Prawo Mediów Elektronicznych” 2015, Vol. 2, p. 51.

⁵³ A. Tischner, *Model przeciętnego konsumenta w prawie europejskim*, „Kwartalnik Prawa Prywatnego” 2006, No. 1, pp. 242-244; M. Sieradzka, *Wzorzec przeciętnego konsumenta jako punkt odniesienia przy dokonywaniu oceny nieuczciwości praktyki rynkowej. Głosa do wyroku SN z dnia 4 marca 2014 r. III SK 34/13*, „Internetowy Kwartalnik Antymonopolowy i Regulacyjny” 2014, No. 6, p. 127; A. Wiewiórowska-Domagalska, A. Kunkiel-Kryńska, in: K. Osajda (ed.), *Ustawa o przeciwdziałaniu nieuczciwym praktykom rynkowym. Komentarz*, Legalis 2019, Commentary to Article 15, point 14.

between her product and the product of the plaintiff. The text was spread not only through printed publications, but also online, on the plaintiff's website and the Facebook site. This led to a question about which of the courts in Poland or abroad is legitimized to decide on the claim.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The Supreme Court based its opinion on Article 35 CCP. Under this provision, in the case of tort (including responsibility for the acts of unfair competition), the case falls into jurisdiction of a court that encompasses the venue, where a tortious deed occurred. The court took into account the case-law of Polish courts and of CJEU (cases: C-21/76,⁵⁴ C-68/93,⁵⁵ C-364/93,⁵⁶ C-189/08,⁵⁷ C-228/11,⁵⁸ as well as in joined cases C-509/09 and C-161/10). The court observed also that the structure of Article 35 CCP is similar to Article 7(2) of the Brussels I *bis* Regulation.

Building upon this premise, the court concluded that action against an unfair competition act – being an online publication of a certain content – may be sought before a court of a place, where the publication has been uploaded online or where the content posted on this website caused infringement (or a risk of infringement) of other competitor's interest.

The court reasoned that when an unfair competition act was a publication of a content on a website, then the tortious deed is carried out in a place, where (or from where) a tortfeasor uploaded the content. By default, if the circumstances of the case do not indicate otherwise, it may be ascertained that a tort has been committed in a place, where the tortfeasor has her place of residence or where company's headquarter is located.

As the court observed, Internet platforms are substantially beneficial for business activity, therefore a professional who uses these means of communication should accept also responsibility for potential infringements. At the same time, it is hard to identify the venue of such tort precisely, since most websites are available worldwide. It is possible to assert that the venue of tortious deed is the venue where the Internet website could have inflicted actual harmful effect on competition. To conclude, in the circumstances of the case, the venue in question should be understood as a place, where the harm to competition, caused by the online material, actually occurred.⁵⁹

4.3 Copyright (national trademark; national and EU design)

Three cases on application of European International Law in Internet related to copyright were found.

⁵⁴ CJEU judgment of 30 November 1976, 21/76, *Handelskwekerij G.J. Bier B.V. Mines de Potasse d'Alsace SA*, ECLI: ECLI:EU:C:1976:166.

⁵⁵ CJEU judgment of 7 March 1995, C-68/93, *Fiona Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd. v. Presse Alliance SA*, ECLI: ECLI:EU:C:1995:61.

⁵⁶ CJEU judgment of 19 September 1995, C-364/93, *Antonio Marinari v. Lloyds Bank plc and Zuibaidi Trading Company*, ECLI: ECLI:EU:C:1995:289.

⁵⁷ CJEU judgment of 16 July 2009, C-189/08, *Zuid Chemie BV v. Philippos Mineralenfabrik NV/SA*, ECLI:EU:C:2009:475.

⁵⁸ CJEU judgment of 16 May 2013, C-228/11, *Melzer p MF Global UK Ltd*, ECLI:EU:C:2013:305.

⁵⁹ Cf. E. Góralczyk, *Nieuczciwa konkurencja w prawie prywatnym międzynarodowym*. Warszawa: Wolters Kluwer 2017, p. 320.

Judgement 18. Court of Appeal in Warsaw, 28-11-2018, VII AGa 1026/18

i) summary of facts

The plaintiff was a company (headquarters in Switzerland), producing luxury goods (clothing, shoes, accessories and perfumes, etc.). The capital group, to which the plaintiff belongs, uses the domain michaelkors.com.

The defendant was conducting business activity in the field of plumbing, heating, and other installations, as well as in the retail sale of cosmetics *inter alia* on the Internet. The defendant registered a domain 'michaelkors.pl'. After entering the michaelkors.pl website, users were automatically redirected to defendant's domain.⁶⁰

As the sign "Michael Kors" was a registered EU wordmark and at the same time the trade name under which the plaintiff operated all over the world, the plaintiff alleged that the defendant was infringing the trademark protection right and the company's rights. In addition, the defendant's action constituted also an act of unfair competition.

The case was decided by an arbitration court, but its decision was subsequently challenged by the defendant, who appealed also against the judgement of the court of the first instance. He reasoned that the arbitration court's decision was contrary to the basic principles of the legal order of the Republic of Poland.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The court applied Article 8 of the Paris Convention for the Protection of Industrial Property and applicable Polish law provisions – the principle of assimilation dictates that in the protection of the trade name, foreign entrepreneurs should be treated in the same way as domestic ones. It ascertained that registration and use of Internet domains in which a name of a company or a name of another entity appears may conflict with personal rights of both natural and legal persons. In particular, the registration and use of such domains may threaten the rights to the company.

By making an arbitration clause, the parties waived jurisdiction of any state courts and entrusted their dispute to an organ acting by virtue of will. Consequently, the control exercised by a state court over the decision an arbitration court, however necessary and guaranteed by law, does not constitute an instance-based control. For these reasons, the court cannot control the arbitration award in its entirety.⁶¹ At the same time, the court did not observe contradictions of the arbitration court's judgment with the basic principles the legal order of the Republic of Poland (*ordre public* clause). As a result, the court dismissed the appeal.

The issue of jurisdiction of Polish court was not further explored in the case. During the procedure (both in arbitration and state courts) no attention was paid to the fact that the infringement of the trademark protection and the company's rights took place online.

⁶⁰ On this practice as an act of unfair competition see: M. Sieradzka, *Naruszenie prawa do znaku towarowego użytego w meta-tags*, *Monitor Prawniczy* 2008, Vol. 12, pp. 640-641; M. Szczotkowska, *Czyny nieuczciwej konkurencji...*, p. 49.

⁶¹ Cf. E. Marszałkowska-Krześ, Ł. Błaszczak, *Kontrola wyroku sądu polubownego przez sąd powszechny*, "ADR. Arbitraż i Mediacja" 2011, No. 4, p. 65.

Judgement 19. Supreme Court, 9-05-2019, I CSK 263/18

i) summary of facts

Plaintiffs (three companies – two based in Switzerland, and the third one in Poland) sued a Polish entrepreneur due to alleged infringement of the right to a Community trademark (wordmark) and due to alleged acts of unfair competition. The plaintiffs demanded that the defendant refrained from using the word Community trademark on defendant's website. Upon receiving a request to stop using the specified term, she closed down an information service website, which used this term in its internet domain and continued its activities using a different domain.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The Supreme Court refrained from explaining the reasoning behind establishing jurisdiction of Polish courts in the case. As to the substantive law, the Court considered Article 9(2)(b)-(c) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark,⁶² appropriate Polish provisions and EU case law.⁶³

Judgement 20. Court of Appeal in Warsaw, 28-10-2013, I ACa 410/13

i) summary of facts

The plaintiffs (two companies – one based in Japan and the other in Belgium) applied for prohibiting the Polish limited liability company from using the word and graphic Community trademark registered in the Office for Harmonization in the Internal Market (OHIM) as a figurative Community trademark. The injunction sought by the plaintiff pertained to trade services in cars, car parts and accessories, including information displayed on defendant's websites.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

Jurisdiction Polish court was established upon Articles 27 and 379 § 1 CCP, in connection with Articles 106(1)–(2), 94 and 96 of the regulation 207/2009, in connection with Article 286 of the Polish act on industrial property rights.⁶⁴ Proceedings in respect of the actions and claims referred to in Article 96 of the regulation 207/2009 shall be brought before the courts of the Member State in which the defendant is domiciled or, if he is not domiciled in any of the Member States, in which he has an establishment. Within the Member State whose courts have jurisdiction under Article 94(1) those courts shall have jurisdiction for actions other than those referred to in Article 96, which would have jurisdiction *ratione loci* and *ratione materiae* in the case of actions relating to a national trade mark registered in that State. Since in the case the defendant had its registered office in the territory of the Republic of Poland, Polish courts have jurisdiction over all claims related to infringement of a Community trademark.

⁶² OJ L 78, 24.3.2009, p. 1–42.

⁶³ CJEU judgment of 24 March 2011, C-552/09 P. *Ferrero SpA v. Office for Harmonisation in the Internal Market*, ECLI:EU:C:2011:177.

⁶⁴ Act of 30 June 2000 The Law on industrial property rights, Journal of Laws 2001, No. 49, item 508.

4.4 Administrative penalties – online gambling

Judgement 21. Supreme Administrative Court, 14-12-2018, II GSK 3647/16

i) summary of facts

The Court was deciding on imposition of administrative penalties for online gambling (prohibited under Polish provisions, which implement the directive 2000/31/EC).⁶⁵ The alleged deed was carried out with use of gambling machines situated in the premises in Poland. The cases do not specify, whether the online gambling activity had a limited territorial scope or whether it was carried without clear geographic frontiers.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The Court applied in the case Polish law – with particular regard to provisions that implement the directive 2000/31/EC. Most plausibly, the Court was building on the assumption that the Polish provisions on online gambling apply in the case because the gambling machines were located in Poland. Further circumstances that might have been determinative for the applicable law were not taken into consideration.

Judgement 22. Supreme Administrative Court, 25-09-2018, II GSK 2862/16

i) summary of facts

The Court was deciding on imposition of administrative penalties for online gambling (prohibited under Polish provisions, which implement the directive 2000/31/EC). The alleged deed was carried out with use of gambling machines situated in the premises in Poland. The case does not specify, whether the online gambling activity had a limited territorial scope or whether it was carried without clear geographic frontiers.

ii) summary of the court's judgment interpreting the relevant EU PIL instrument's disposition

The Court applied the Polish law, with particular regard to provisions that implement the directive 2000/31/EC. Most plausibly, the court was building on the assumption that the Polish provisions on online gambling apply in the case because the gambling machines were located in Poland. Further circumstances that might have been determinative for the applicable law were not taken into consideration. The case is similar to case II GSK 3647/16, discussed above.

5. Conclusions

Although Polish case law applying EU PIL in Internet-related situations is limited in scope, it is possible to make a few substantial observations. In general, courts paid relatively little attention to PIL issues. Although, in principle, in every case the court should verify jurisdiction and apply proper substantial law, the motives of judicial decisions that were examined in this study quite rarely discuss this issue at length. In certain situations, the relative scarcity of PIL-related arguments can be seen as a consequence of particular procedural provisions. First of all, under Article 1165 CCP if a case regards a dispute that has been covered by an arbitration agreement, made by the parties beforehand, the court shall reject the application or a motion to initiate non-litigious proceedings, only if the defendant or a participant (in non-litigious proceedings) refers to the arbitration agreement before entering the dispute as to the substance of the case. Secondly, if a court decides on a plea to repel an arbitration award, it does not act as a second-instance court and is not authorized to examine substantive matters using substantive law.

⁶⁵ See fn. 9.

It is entitled only to verify, whether particular grave infringement, listed exhaustively in Article 1206 CCP, took place.

The attitude of courts towards PIL issues in Internet-related disputes differed depending on a few features specific for the particular cases. In judgments regarding contractual obligations, the online element was either neglected or considered of lesser importance. In judgements No. 1 and 2 the fact that a contract was concluded via online B2B platform was disregarded. Neither the venue of the contract conclusion was determined nor its impact on the applicable law was investigated. In the third judgement, instead of establishing how to determine the place in which the legal act is taken when it is issued within the online environment, the court made an implied assumption that a proxy representing a Polish entity was acting in Poland. By this simplification, the court avoided analysis of the specific issues resulting from the use of Internet for submitting the statement of will (the priority was given to the presumed physical location of the proxy and the impact of online context of his acts was deemed negligible). In the judgement No. 4, where the parties concluded the agreement by exchanging e-mails, the Internet was seen by the Court only as a mean of remote communication, which has no peculiarities, and does not *per se* introduce transnational (or international) element at the stage of shaping a contractual bond.

In contrast, where the need of applying consumer protection mechanisms to online transactions appeared, legal difficulties resulting from the application of EU PIL did not reduce the protection level that could be reasonably expected by a consumer dealing with the foreign party. The key issue in these cases was the unfair character of arbitration and choice of law clauses.

In the judgment No. 5 the Supreme Court took into consideration the direct (difficulties in establishing the rights and obligations stemming from the applicable law) and indirect (practical limitations of effective redress before the indicated authority due to improbability of obtaining a visa by a Polish citizen) consequences that result from the international character of the agreement which could influence the situation of the weaker party within this contractual relationship. Furthermore, the court investigated specificities of the legal acts commenced via the Internet. Due to the lack of specific New York Convention rules on incorporation of standard terms in the online environment, the Court interpreted Article II (1) and (2) of the Convention as not allowing implicit incorporation of the arbitration clause. This meant that the clause, which was included in standard terms displayed on the business' website (the agreement was concluded by consenting to these terms online and downloading a software) could not shape the contractual bond between the parties.

In the judgement No. 6, the Supreme Court applied PPM, along with the Rome I Regulation and concluded that, though the private international law does not exclude choice of law clauses in consumer contracts, the mechanism of consumer protection established in the Regulation might lead to higher disputability of choice-of-law clauses, incentivizing parties to challenge them. The reason behind the court's conclusion was the higher consumer awareness. Under this view establishing the hybrid standard of protection was, in principle, considered disproportionately burdensome for the weaker party.

The approach of Polish courts towards the application of EU PIL in contract-related disputes differs depending on the status of the parties involved. In the B2C transactions the international as well as online elements are taken into consideration and the peculiarities of the contractual situation of the parties are addressed, whereas in other contract-related disputes the international character of the agreement is referred to, but the online environment in which the contract was concluded is deemed to be of marginal importance.

The majority of the analysed cases on non-contractual obligations regarded online defamation. The courts adopted two different approaches towards PIL-related issues. In the judgment No. 12, where the jurisdiction of Polish court was not challenged, the Court abstained from analysing jurisdiction and conflict of substantial laws, assuming jurisdiction of Polish courts and applicability of Polish law. The international elements of the cases, stemming from the fact that the alleged deed was committed online, were disregarded. On the contrary, in other cases (judgements No. 13 and 14), where the issue of jurisdiction was raised by the defendant, courts took the international accessibility of the website into

account. In the outcome, the relevant provisions of the private international law were applied together with the corresponding case law of CJEU.

The other judgements (No. 7–10) were related to the right to be forgotten in the context of online search engine. In the seventh judgement the court abstained from analysing EU PIL issues. In the eighth and ninth, it applied Polish law, but strengthened its argumentation with reference to ECJ judgement. In the tenth sentence, the court of appeal concluded that Polish courts have jurisdiction upon Article 11037 of the Code of Civil Proceedings, which encompasses *inter alia* cases that concern unlawful deeds (including torts), if a claim originated from the Polish territory. The reasoning of the Court was strengthened by a reference to the CJEU judgment C-509/09, eDate Advertising. However, the court abstained from in-depth analysis of possible implications of the transnational character of the browser and the possibility to access the information from any place in the world.

Moreover, the judgment No. 15 concerned defamatory messages posted online. The Supreme Court agreed with the lower courts that in respect to liability for infringement of the plaintiff's personal rights, Polish courts shall have jurisdiction only as to the harm or damage caused in Poland.

Finally, two judgements (No. 16 and 17) delved into the issue of jurisdiction in case of unfair competition deeds in online environment. The Supreme Court based its decision on Polish law, but made relatively ample reference to the EU law. It noticed the issues related to the accessibility of the online content and the multitude of places where the harm may occur as well as the benefits of using this environment for business activities. In conclusion, it ascertained that provided the unfair competition act is carried out by posting particular content online, the jurisdiction falls upon courts of the venue where this content might harm the competition.

Though in the majority of judgements the online context of the case was taken into account, the reasoning behind the application of EU international private law was not fully developed. Also, once a comprehensive reasoning was given in one judgement (e.g. issued by District Court in Olsztyn, I C 726/13, being the first instance for the judgement No. 13), the other courts tended to follow this line of argumentation.

In judgement No. 18 concerning copyright law the issues related to the impact of arbitration proceeding on the scope of the adjudication of national court were investigated. In the other two decisions (No. 19 and 20) the courts discussed neither the jurisdiction nor the applicable law specific issues related to the Internet-based elements of disputes.

Two cases (No. 21 and 22) focused on imposition of administrative penalties for online gambling (prohibited under Polish provisions, which implement the directive 2000/31/EC). The location of the gambling machines was considered sufficient for establishing applicability of Polish provisions, whereas the fact that the gambling activity took place online was disregarded.

To sum up, Polish courts tend to attribute little importance to the circumstances related to the development of online relations in market- and non-market-related context. This approach is especially visible in case of elements that may substantially influence traditional ways of reasoning when defining jurisdiction and applicable law (e.g. involvement of an online platform domiciled abroad). However, if a particular legal issue was previously discussed in CJEU case law, Polish courts were more inclined to strengthen their argumentation with the EU-based reasoning, usually by direct reference to argumentation developed by CJEU. Courts also seem to follow the same patterns internally, especially by adopting argumentative schemes provided at the highest tiers of the judicial system.

Nevertheless, it must be underlined that the cases in which the EU international private law is applied are sparse. This may suggest *per se* that the national courts tend to neglect possible international element in the disputes. Apart from the structural issues discussed above, one of the reasons behind this state of matters may be a relatively low number of legal relationships forged by Polish individuals and entities with foreign contractors within online environment. It seems hence plausible that the trends observed in the paper may, in the course, of time, change substantially.

Author contacts:

Mateusz Grochowski

Ph.D., LL.M. (Yale), Senior Research Fellow at the Max Planck Institute for Comparative and International Private Law, Assistant Professor in the Institute of Law Studies of the Polish Academy of Sciences, Emile Noël Fellow at New York University School of Law and Affiliated Fellow in the Information Society Project, Yale Law School

Max-Planck-Institut für ausländisches und internationales Privatrecht
Mittelweg 187
20148 Hamburg
Deutschland

E-mail: grochowski@mpipriv.de

Katarzyna Południak-Gierz

Ph.D., Jagiellonian University in Cracow, Poland and University of Osnabrück, Germany.

Department of Civil Law
Faculty of Law and Administration
Jagiellonian University
Olszewskiego 2
31-007 Kraków
Poland

E-mail: katarzyna.poludniak@uj.edu.pl



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