



SUNICOP

Brussels I Regulation

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Dr. Zoltán Nemessányi PhD

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Origins

- Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters
- 6 MS
- 27 September 1968 (entry into force: 1. February 1973)
- International convention
- No community competence



SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Article 220 EEC-Treaty (293 ECT)

- The member states shall, so far as necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals..... The simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitral awards.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Contracting States

- 1968: Belgium; France; Germany; Italy; Luxembourg; The Netherlands
- 1978: Denmark, Ireland, UK
- 1982: Greece
- 1989: Portugal, Spain

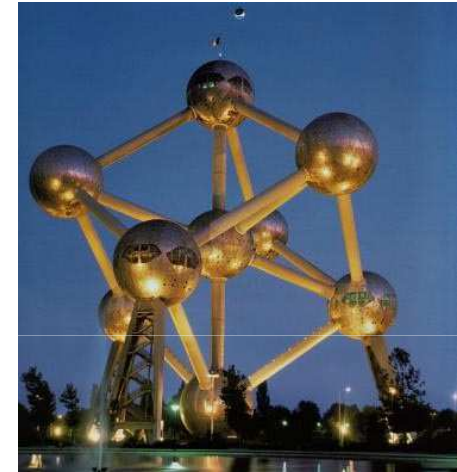
SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

ECJ interpretation competence

- **PROTOCOL (signed: 3 June 1971, entry into force: 1975)**
- **The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of the Convention.**
- 100 decisions (preliminary rulings)



SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Paralel Convention: Lugano Convention

-
- 16 September 1988
- Member States and EFTA States



SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Treaty of Amsterdam



- Civil matters became Community Competence
- Art 65 EC Treaty (81 TFEU) Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in so far as necessary for the proper functioning of the internal market, shall include:
 - (a) improving and simplifying:
 - - the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;

Mutual trust and avoiding forum shopping

- Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute



SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Brussels I Regulation: ECJ decisions

The interpretation provided by the Court in respect of the provisions of the Brussels Convention is also valid for those of the Brussels I Regulation whenever the provisions of those Community instruments may be regarded as equivalent



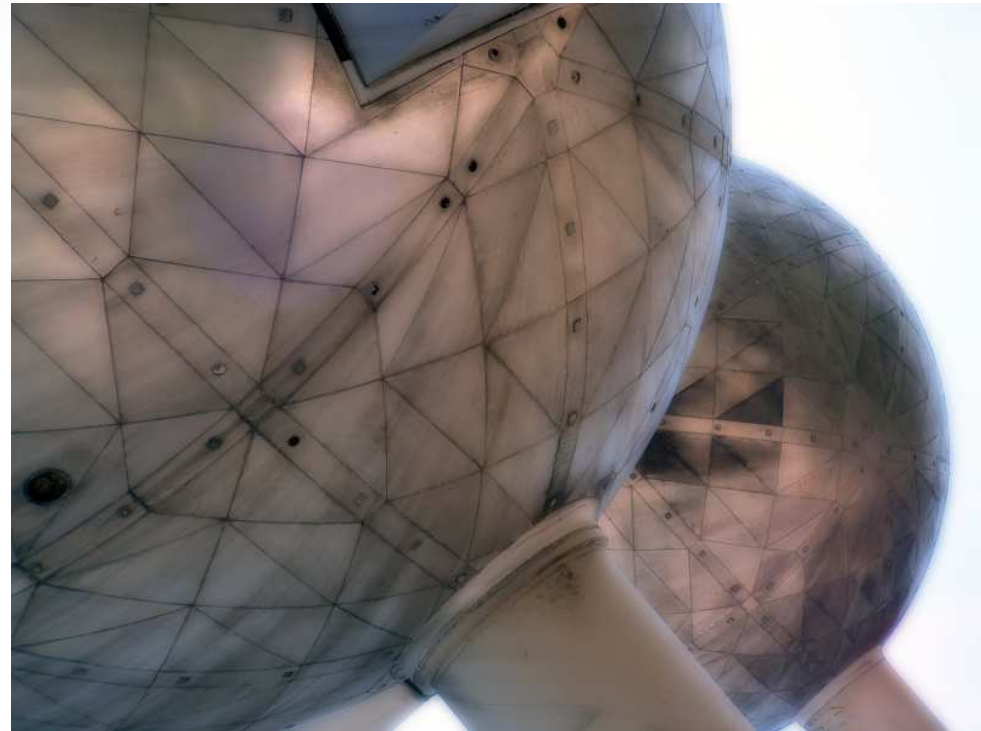
SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Brussels I overview

- Scope of application
 - Exclusions
- Jurisdiction
 - General
 - Special
 - Contracts
 - Torts
 - etc
 - Exclusive jurisdiction
 - Prorogation of jurisdiction
- Recognition
 - Refusal grounds
- Enforcement



SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Scope of application

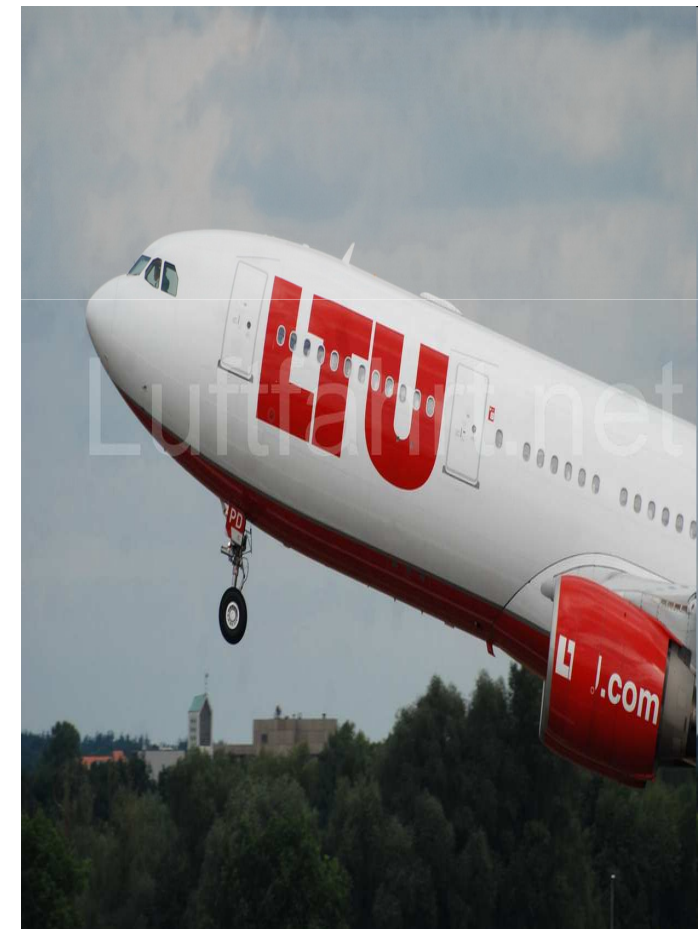
- **Article 1**
- 1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

29/76 LTU v Eurocontrol



SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

29/76 LTU v Eurocontrol

„Civil or commercial matter” ?

- May be interpreted
 - according to the national jurisdictional (conceptual) meaning
 - independent from the national rules and concepts

- Arguments:
 - *in order to ensure, as far as possible, that the rights and obligations which derive from the Brussels I for the states and the persons to whom it applies are equal and uniform*
 - „whatever the nature of the court or tribunal”

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

29/76 LTU v Eurocontrol

Independent

-
- The terms of that provision should not be interpreted as a mere reference to the internal law of one or other of the states concerned
- Cannot be interpreted solely in the light of the division of jurisdiction between the various types of courts existing in certain states.



SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

29/76 LTU v Eurocontrol

Autonom interpretation of „civil and commercial matters”

- *It must be interpreted by reference,*
 - *to the objectives and scheme of the Brussels I and,*
 - *to the general principles which stem from the corpus of the national legal systems.*

- *Consequence: certain types of judicial decision must be regarded as excluded from the area of application of the convention, either*
 - *by reason of the legal relationships between the parties to the action or*
 - *of the subject-matter of the action.*

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

29/76 LTU v Eurocontrol

Public authority in a civil matter?

- *certain judgments given in actions between a public authority and a person governed by private law may fall within the area of application of the Brussels I*
 - *BUT: this is not so where the public authority acts in the exercise of its powers .*

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

29/76 LTU v Eurocontrol

Is it a civil matter?

- NO
- Arguments:
 - *The use of Eurocontrol's equipment was obligatory and exclusive.*
 - Eurocontrol selected the national courts with jurisdiction to adjudicate upon the performance of the obligation.
 - EUROCONTROL unilaterally fixed
 - The rate of charges,
 - the methods of calculation and the procedures for collection are
 - the place of performance of the obligation at its registered office

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Exclusions

- Article 1 (2) The Regulation shall not apply to:
- (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
- (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- (c) social security;
- (d) arbitration.



SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

C-185/07 Allianz v West Tankers

- In August 2000 the Front Comor, a vessel owned by West Tankers and chartered by Erg Petroli, collided in Syracuse (Italy) with a jetty owned by Erg and caused damage.
- The charter contract was governed by English law and contained a clause providing for arbitration in London.
- Erg claimed compensation from its insurers Allianz and Generali up to the limit of its insurance cover and commenced arbitration proceedings in London against West Tankers for the excess.
- Allianz paid Erg compensation under the insurance policies for the loss it had suffered

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

C-185/07 West Tankers

Competence collision



- Allianz brought proceedings on 30 July 2003 against West Tankers before the Tribunale di Siracusa in order to recover the sums they had paid to Erg.

West Tankers brought proceedings, on 10 September 2004, before the High Court of Justice of England and Wales, Queens Bench Division (Commercial Court), sought an injunction restraining Allianz from pursuing any proceedings other than arbitration and requiring them to discontinue the proceedings commenced before the Tribunale di Siracusa

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Anti suit injunction

- English provisional measure
- May be directed against actual or potential claimants in proceedings abroad.
- Non-compliance with an anti-suit injunction is contempt of court, for which penalties can be imposed, including imprisonment or seizure of assets.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

ECJ on anti-suit injunctions (concerning state courts) earlier

- C-159/02 Turner
- An injunction restraining a party from commencing or continuing proceedings in a court of a Member State cannot be compatible with the system established by Regulation No 44/2001.
- Argument:
- The regulation provides a complete set of uniform rules on the allocation of jurisdiction between the courts of the Member States which must trust each other to apply those rules correctly.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

The question

- With regards the exclusion of arbitration from the scope of the regulation, is the answer the same?
- „Is it consistent with Regulation No 44/2001 for a court of a Member State to make an order to restrain a person from commencing or continuing proceedings in another Member State on the ground that such proceedings are in breach of an arbitration agreement?”

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Findings of the ECJ I.

- An anti-suit injunction may have consequences which undermine the effectiveness of the Regulation:
 - preventing the attainment of the objectives of unification of the rules of conflict of jurisdiction in civil and commercial matters and the free movement of decisions in those matters;
 - such proceedings prevent a court of another Member State from exercising the jurisdiction conferred on it by Regulation No 44/2001.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Findings of the ECJ II.

- In order to determine whether a dispute falls within the scope of Regulation No 44/2001, reference must be made solely to the subject-matter of the proceedings.
- What is the subject-matter of the proceeding?
 - Claim for damages [Art 5 (3) of the Regulation]

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Subject-matter and preliminary issue

- Proceedings concerning claim for damages come within the scope of Regulation No 44/2001
- a preliminary issue concerning the applicability of an arbitration agreement, including in particular its validity, also comes within its scope of application.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Argumentation of the ECJ

- The objection of lack of jurisdiction raised by West Tankers before the Tribunale di Siracusa on the basis of the existence of an arbitration agreement, including the question of the validity of that agreement, comes within the scope of Regulation No 44/2001 and that it is therefore exclusively for that court to rule on that objection and on its own jurisdiction, pursuant to Articles 1(2)(d) and 5(3) of that regulation.
- Such an anti-suit injunction also runs counter to the trust which the Member States accord to one another's legal systems and judicial institutions and on which the system of jurisdiction under Regulation No 44/2001 is based

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Conclusion

- An anti-suit injunction, such as that in the main proceedings, is not compatible with Regulation No 44/2001.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Jurisdiction by contracts

- Article 5 (1)
- A person domiciled in a Member State may, in another Member State, be sued:
- 1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
- (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
 - - in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
 - - in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Contract according to the ECJ

- A legal obligation freely consented to by one person towards another

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Jurisdiction by torts

- Article 5 (3) a person domiciled in a Member State may, in another Member State, be sued in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

C-68/92 Sheville v Presse Alliance SA.

- Claimant: Miss Fiona Shevill, a United Kingdom national residing in North Yorkshire
- Defendent: **Presse Alliance SA.** publisher of the France soir



SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

C-68/92 Sheville

France Soir 23. September 1989

- published an article about an operation which drug squad officers of the French police.
- That article mentioned "a young woman by the name of Fiona Shevill-Avril,,
- action for damages for harm caused by the publication of a defamatory newspaper article
- The article suggested that she was part of a drug-trafficking network for which she had laundered money.

SUNICOP



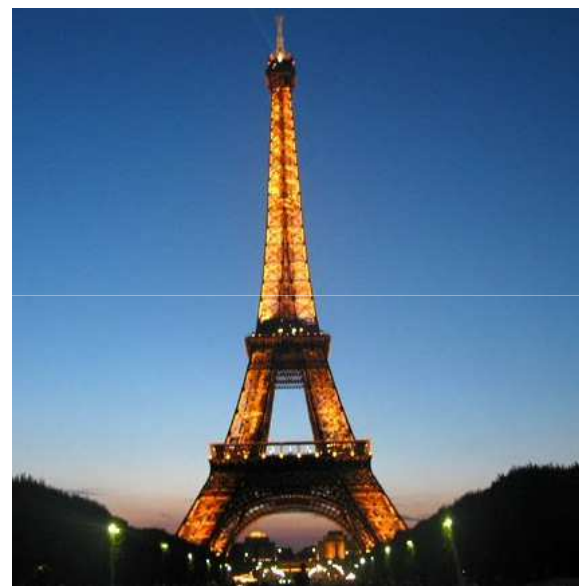
PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

C-68/92 Sheville

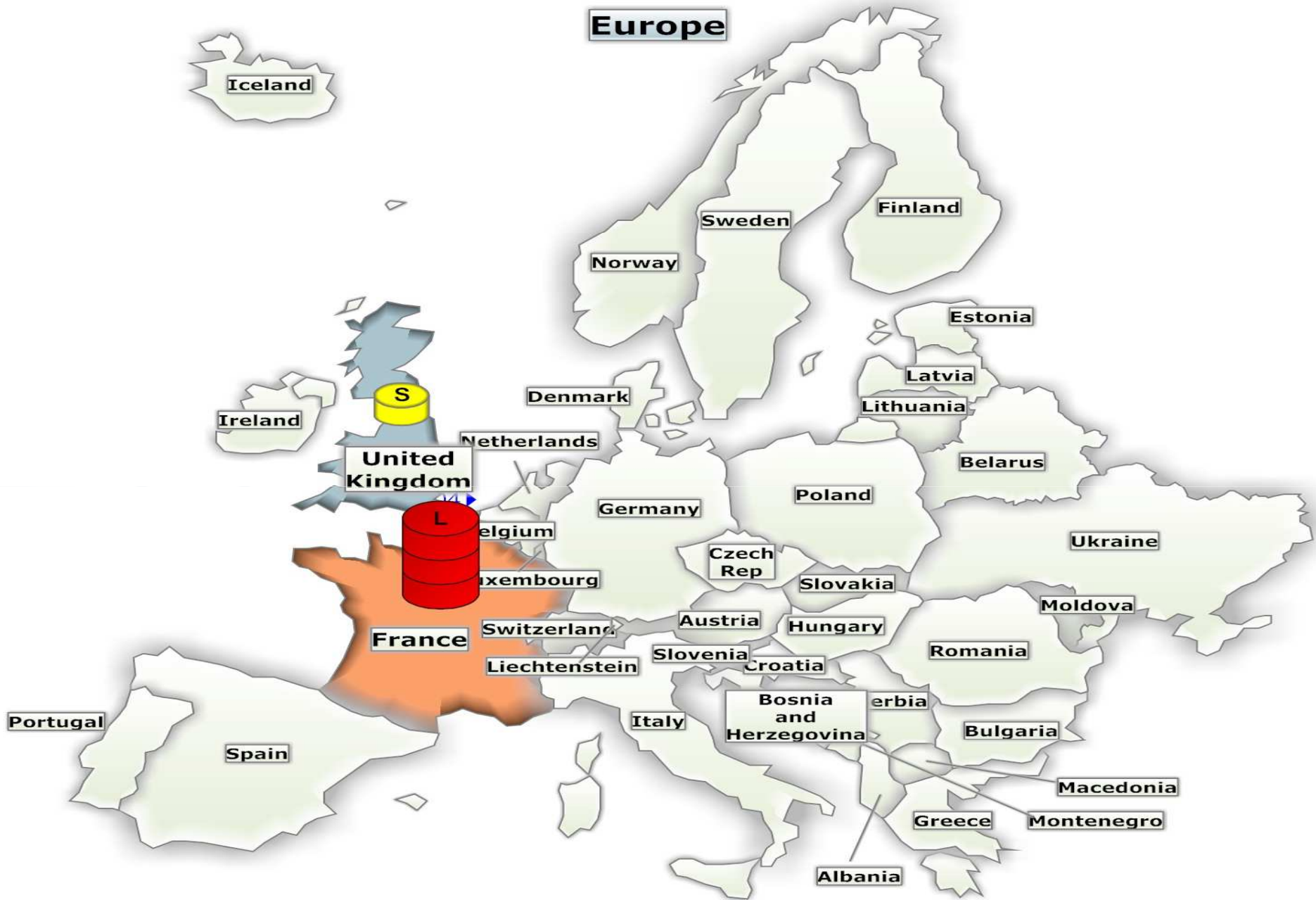
Jurisdiction ?



- Article 5 (3)
- „where the harmful event occurred”



- Article 2
- „No harmful event occurred in England”



France	England	Yorkshire
237000	230	3

SUNICOP



Previously: 21/76 Mines de Potasse
d'Alsace

○ ...

„ where the harmful event occurred ”

the place of the event giving rise
to damage

where the damage occurred

ECJ: option of the plaintiff

(forum shopping)

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

C-68/92 Sheville

Libel by a newspaper article distributed in several States

- **the place of the event giving rise to damage**
- where the publisher of the newspaper in question is established
- jurisdiction to hear the action for damages for all the harm caused by the unlawful act.
- **where the damage occurred**
- in the places where the publication is distributed, when
- the victim is known in those places
- jurisdiction to rule on the injury caused in that State to the victim' s reputation

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Change?

- Joined Cases C-509/09 and C-161/10 eDate Advertising GmbH v X and Olivier Martinez, Robert Martinez v MGN Limited. Judgement of 25 October 2011.



SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

C-509/09 and C-161/10 eDate/Martinez

History of the proceeding C-161/10 Martinez



- www.sundaymirror.co.uk
- Publisher: MGN limited
- 3 February 2008
- Kylie Minogue is back with Olivier Martinez' with details of their meeting
- complained of interference with his private life and infringement of the right of Olivier Martinez to his image

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

C-509/09 and C-161/10 eDate/Martinez

Jurisdiction?

- Tribunal de grande instance de Paris
- Article 5(3) of the Regulation



SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

C-509/09 and C-161/10 eDate/Martinez

Sheville applicable?

- ECJ : The speciality of online media content
- The placing online of content on a website is to be distinguished from the regional distribution of media such as printed matter in that it is intended, in principle, to ensure the ubiquity of that content.
- Consequence:
- the internet reduces the usefulness of the criterion relating to distribution

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

C-509/09 and C-161/10 eDate/Martinez

Differences to Sheville

- ...the serious nature of the harm which may be suffered by the holder of a personality right who establishes that information injurious to that right is available on a world-wide basis.
- The connecting criteria must therefore be adapted .

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Which jurisdiction?

- victims centre of interests
- where content placed online is or has been accessible
- in respect of all the damage caused
- only in respect of the damage caused in the territory of the Member State of the court seised

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Refusal of recognition and enforcement

- **Article 34**
- A judgment shall not be recognised:
- 1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

C-7/98 Krombach v Bamberski

○ ...



SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

○ ...



SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Kalina Bamberski

- 14-year-old girl of French nationality
- lived with his german step-father Krombach in Germany
- Krombach gave her in 1982 a Kobalt-Fercelit injection
- A few days later she died.



SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

History of the proceeding I.

- German criminal authorities, after investigating the case, had dismissed the charges in the 1980s
- A preliminary investigation was opened in France, the French courts declared jurisdiction by virtue of the fact that the victim was a French national.
- Bamberski had also civil claim (damages) against Krombach.



SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

History of the proceeding II.



- Krombach was ordered to by the Cour d'Assises de Paris appear in person.
- He did not attend the hearing.
- French criminal procedure would not, at the time, allow his lawyer to represent him.
- Krombach - without hearing the defence counsel - was found guilty of killing the child, but also ordered to pay damages (350.000FRF)

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

History of the proceeding III.



- Bamberski initiated the enforcement of the civil aspects of the french judgement in Germany.
- Question: Violates the french judgement the german public policy?

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

ECJ I:

- Member States are in principle free, to determine, according to their own conceptions, what public policy requires,
- the limits of that concept are a matter for interpretation of the Convention.
- Public policy of the State in which enforcement is sought cannot be raised as a bar to recognition or enforcement of a judgment given in another Contracting State solely on the ground that the court of origin failed to comply with the rules of the Convention which relate to jurisdiction.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

ECJ II

- Violation of public policy can only be exceptional!!!
- Infringement would have to constitute a manifest breach of a rule of law regarded as essential in the legal order of the State.
- Refusal to hear the defence (right to a fair hearing) of an accused person who is not present at the hearing constitutes a manifest breach of a fundamental right.
- Enforcement can be refused!



- THANK YOU!