Jurisdiction

Jurisdiction means the right and the official power to interpret and apply the law. Each court is responsible for certain suits. There are geographical limits wherein legal authority can be exercised. The jurisdiction is a condition for the verdict\(^1\). That means that only if the jurisdiction is given, the court is able to deliver the verdict\(^2\).

Development of Trade

Through the internet and the e-commerce cross-border trade is quite easy and the number of international legal transactions is increasing. Legally responsible persons are contracting with other persons all over the world. So, for example, it’s possible, that a company in Spain, with a server in the USA, sells its products to a customer in Germany. In this situation, when different nations are involved, the question arises which jurisdiction is responsible for the suits.

International Jurisdiction

Traditionally in Germany\(^3\) the jurisdiction is given for legally responsible natural persons and corporate bodies who are acting in the country and for legal transactions and events that occur within the borders of the nation (territorial principle)\(^4\). So jurisdiction is often based on geographical connecting factors, such as the domicile of the parties (§ 13 ZPO). Other connecting factors are for example the place of contracting or the place of performance (§ 29 ZPO).

The German civil process order (ZPO) doesn’t contain a general provision for the international jurisdiction. As a basic rule the German courts are cognizant if they have the jurisdiction ratione loci\(^5\).

Within the European Union (“EU”) exists a special rule, 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”\(^6\), entered into force on March 1st, 2002 (hereinafter the Regulation). Within the limits of the Regulation (Article 1 of the Regulation) it has priority over the national rules\(^7\). To emphasize are the special provisions for consumers.

Consumer Contracts in the EU

Consumer Protection

Consumers are defined as persons who conclude a contract for a purpose beyond their professional activities (Article 15.1 of the Regulation, § 13 BGB). They are specially protected by law, because when consumers enter a contract with a company, a professional seller, they are regarded as the weaker party\(^8\). Therefore the Regulation allows the consumer who purchases goods or services to institute proceedings against the seller either in the EU country in which he is living (court of his own domicile) or in the EU country in which the seller is physically located (court of the defendant’s domicile) (Article 16.1 of the Regulation). On the other side proceedings against the consumer by the
company can only be brought in the courts of the Member State in which the consumer is domiciled (Article 16.2 of the Regulation). An exception, the possibility to agree a jurisdiction, is only possible under the requirements of Article 17 of the Regulation (prorogation of jurisdiction).

**Relevance for the e-commerce**

It’s a debatable point in which form this regulations are applicable in the e-commerce: Concerning to Article 15.1 c) one requirement is that “the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities”. The “Bundesgerichtshof” (BGH) decided that Article 15.1 c) applies to consumer contracts which are concluded via an interactive website accessible in the State of the consumer’s residence. On the other hand the clause will not be triggered by the simply knowledge of a website which is passive in the consumer’s country of domicile (Advertisement of products but the consumer is not allowed to order or download the products online and to conclude a contract).

This judgement is another step for a definite provision, but there are still open questions especially concerning Web 2.0.

**Forum Shopping**

Forum shopping describes the circumstance that the plaintiff has the possibility to choose the jurisdiction. As a result the plaintiff will choose the best court for him. Thereby several facts can be crucial: chances for success, proximity to the domicile, quality and costs of the proceeding, rapidity, etc.\(^\text{10}\).

§ 32 ZPO justifies the jurisdiction of the unlawful act. According to this paragraph the court is responsible where the unlawful act is committed. The BGH interprets this norm in the following way: The place of effect can be every place where one of the legal prerequisites is achieved\(^\text{11}\).

As a consequence an unlawful act in the internet can be committed at every place where it's possible to call up the website. The user can choose the court whose jurisdiction he prefers.

In the law practice forum shopping is quite controversial. So the district court of Hamburg (LG Hamburg) decided\(^\text{2}\) that it is not sufficient that the user has the possibility to call up the website from a place in the court's district. Moreover it requires a special relation to the court applied to (e.g. domicile of the user) for becoming cognizant.

— Sabine Blumenberg 2012/12/04 10:54


\(^{3}\) This article is written with a focus to German and European civil law.


\(^{5}\) Groß, Martin. *Prozessvoraussetzungen und Zulässigkeit.* Uni Potsdam. Web. 01/12/2012.
http://www.uni-potsdam.de/u/lsassmann/gross/zpo/merkbl05.pdf.
9) BGH, Urteil vom 17.09.2008 - III ZR 71/08.
11) BGH, Urteil vom 05.05.2011 – IX ZR 176/10.