Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.
José María Pino Suárez 400-2 esq a Lerdo de Tejada. Toluca, Estado de México. 7223898475
RFC: ATI120618V12

Revista Dilemas Contemporáneos: Educación, Política y Valores.
http://www.dilemascontemporaneoseducacionpoliticayvalores.com/
Año: VII Número:3 Artículo no.:53 Período: 1ro de mayo al 31 de agosto del 2020.

TÍTULO: La sentencia de apelación judicial de Guimarães, Portugal n. 733/18, y el impacto de la regulación de Bruselas ibis en el juicio.

AUTORA:

1. Ph.D. cand. Giselle Beran Medella D´Almeida.

RESUMEN: El propósito de este documento es, al realizar el estudio de la Sentencia del Tribunal de Apelación de Guimarães n. 733/18, para abordar desde una perspectiva global, las reglas tanto del derecho privado internacional como de la jurisdicción internacional. El juicio ilustra una controversia comercial que involucra a dos Estados miembros de la Unión Europea, Portugal y España. Cuando surge la disputa en la transacción, la primera cuestión que se aborda es establecer qué jurisdicción es competente para conocer el caso, lo que requiere la aplicación del derecho privado internacional y especialmente el Reglamento de Bruselas. El documento analizará el estudio de las leyes aplicables al caso, la doctrina y la jurisprudencia, las bases de la competencia internacional. También analizará la caracterización controvertida del contrato de compra y venta, y el contrato de prestación de servicios y cómo el Tribunal de Justicia de las Comunidades Europeas lo ha dictaminado en casos similares.

PALABRAS CLAVES: Derecho Privado Internacional, contratos comerciales, Reglamento Bruselas Ibis, contrato de compra y venta, contrato de prestación de servicios.

TITLE: The judgement of court appeal of Guimarães, Portugal n. 733/18, and the impact of Brussels ibis regulation on the trial.

AUTHOR:

1. Ph.D. cand. Giselle Beran Medella D´Almeida.

ABSTRACT: The purpose of this paper is, when carring out the study of the Judgment of Court of Appeal of Guimarães n. 733/18, to address from a global perspective, the rules of both the international private law and the international jurisdiction. The trial illustrates a commercial controversy involving two Member States of the European Union, Portugal and Spain. When the dispute arises in the transaction, the first issue that is addressed is to establish which jurisdiction is competent to hear the case, which requires the application of the international private law and especially the Brussels Regulation. The paper will analyze, with the study of the laws applicable to the case, the doctrine and the jurisprudence, the basis of international competence. It will also analyze the controversial characterization of the purchase and the sale contract and the service provision contract and how the European Court of Justice has ruled it in similar cases.

KEY WORDS: International Private Law, commercial contracts, Brussels Ibis Regulation, purchase and the sale contract, the service provision contract.

INTRODUCTION.

This paper aims at studying the Judgment given by Guimarães Court Appeal. In this paper, it will be discussed the concrete application of the rules and principles that involves international contractual relations, focusing on the Countries of the European Union, notably the application of Regulation 1.215/2012 (*Brussels Ibis Regulation*). The paper will analyze the application of the doctrine and jurisprudence applied in the case.

In the Judgment n. 733/18, the Court of Appeal of Guimarães, on June 21, 2018; unanimously dismissed the appeal, confirming the statement that decided the absolute incompetence of the Portuguese Courts to judge the case[1].

The analysis of the judgment will be supported by the study of the European Procedural Law, bringing its conceptualization, main characteristics, functions, historical background, evolution and main objectives, which are, in a way, evident in the reasons for deciding the studied case.

The decision is supported by other decisions in similar cases, as it will be demonstrated. It reaffirms the appreciation of the European Law for the harmonization of the International Procedural Law, to ensure the necessary legal certainty that must be presented in the international relations.

DEVELOPMENT.

This paper is about a decision of Guimarães Court, that brings the issue of the international jurisdiction and the application of the Regulation (UE) 1.215/12.

The process was about a charging action, proposed in Portugal, against the company which is in Spain. The Court decides controversy over the competent court.

The big issue in the decision is about the type of contract signed, whether it would be a purchase and sale contract or a service provision contract.

The author signed a contract with the defendant under which she would have the obligation to manufacture shirts. The deal valued for each product would include the fabric, accessories and the value of the transformation of the manufactured product. Due to the fact that the defendant did not pay the full price, under the allegation of defect in the material provided, the plaintiff filed an action at the Court Appeal of Guimarães.

[1] **Portugal. Guimarães Court Process 733/2018. In:** **http://www.dgsi.pt/jtrg.nsf/-/8E2523CAF59CE38A802582C60030043E**

The cause is based on failure to comply with the contract, due to the nonpayment of the agreed amount. The Plaintiff requires that the defendant will be ordered to pay €149.687,07, plus default interest.

As a defense, the Defendant alleges, in preliminary, the incompetence of the Portuguese Courts and, on the merits, the existence of defects in goods delivered by the Plaintiff.

The Court decided that a purchase and a sale were signed in a contract and the Court decided the absolute incompetence of the Portuguese Court.

Through an Appeal, the Plaintiff intends to classify the contract as a provision of the services contract, according to articles 1.154 and 1.207 of Portuguese Civil Code.

In order to achieve such an aim, the Plaintiff adds that was contracted to produce and manufacture clothing items, which would be sold by the Defendant. Also, it was determined that the production of the pieces took place under the instructions of the Defendant, which established the characteristics of the product, the model, the measurement and the materials.

After this decision, the Plaintiff requires the application of letter "b", n. 1 of the article 7 of Regulation 1.215/2012, which determines that the competent jurisdiction for the claim is the place of performance of the obligation. This will be the place where the service was or should be provided. That is the Judicial Court of District of Braga, Guimarães, would be the place where the service is performed.

Thus, the Plaintiff intends to reform the decision that judged the Portuguese Court incompetent, requiring to be declared internationally competent for the processing and judgment of the case.

As a subsidiary request, the Plaintiff adds that, due to the fact that the defendant´s presented a merit defense, the jurisdiction was established, according to article 26, n. 1 of the Regulation.

The judgment begins by emphasizing the uncontroversial application of the European law, especially the 1.215 Regulation, since the defendant is a company that has headquartered in a Member State.

The decision emphasized that there is no jurisdiction convention in the contract. In international law prevails the principle of autonomy of the will. In this case, the forum convention would be admitted. As this was not done by the parties, it is up to de Court to decide the question regarding the competent court.

The decision reinforces the general rule of jurisdiction. According to art. 4, n. 1 of the Regulation, the defendant that is domiciled in a Member State shall be sued in the courts of that Member State.

To exclude the general rule of jurisdiction of the defendant´s domicile, the plaintiff raises a question of substantive law, which has to be faced and decided by the Judgment: what would be the nature of the contract signed? Would it be a purchase and sale contract or a service contract?

The difference of the signed contract is fundamental to decide the question and to determine where the obligation was or should have been fulfilled, that is, the place of delivery of the goods (Spain) or the manufactures of the products (Portugal).

The issue to be faced by the agreement is the nature of the contract. In order to make the general rule an exception of article 4, it has to be decided whether letter “a” or “b” of point 1 of article 7 of the Regulation is the chosen letter.

Therefore, it is necessary to decide where the obligation is to be fulfilled. If it was declined as a purchase and sale contract, the place is where the goods were delivered, Spain. If it was a provision of services contract, the compliance of the obligation would be where the services were provided, that is Portugal.

To differentiate one contract from another, the decision was based on the application of the International Law. This decision was taken by the jurisprudence of the Court of Justice of the European Union, as well as the Jurisprudence of the Portuguese Courts and also by the doctrine[2].

The judgment provides, that in contractual matters, the most frequent contracts are the purchase and sale and contracts of provision of services. The author claims to have signed a provision of service contract. So, the competent forum would be where the products were manufactured, Portugal[3]. The defendant claims to have entered into a purchase and sale contract, so the competent Court would be the place of delivery of the goods, Spain[4].

The decision analyses the characteristics of the activity provided by the defendant to define the nature of the contract signed. The judge observes that the appellant is obliged to supply clothing. The appellant was dedicated to make clothes in an usual way, without news.

The Court decides that the essential core of the business is the supply and the delivery of goods. It concludes, based on the analysis described above, that the contract would have more affinity with the mode of a purchase and sale. In other words, the place of fulfillment of the obligation of the place of delivery of the good is Spain, applying art. 7, paragraph 1, point "a" of Brussels Regulation.

The rule of article 26 is removed. The Court concluded that the defendant´s appearance does not establish the jurisdiction of the Court, even if summing up to contesting the jurisdiction, the defendant presents a defense of the merits of the case.

With these arguments, the Court dismissed the appeal, confirming the contested decision, which concluded that the Portuguese Court was incompetent for the case.

[2] See cartrimgmbh X jeysafety Systems Srl, C-381/08.
[3]See article 7º, 1), "a" and "b" of Brussels Ibis Regulation.
[4]See article 7º, 1), "b".

The Spanish Courts would be internationally competent to judge the case (which aims AT the condemnation to the payment of the value agreed in the contract), as the Portuguese Court had been internationally incompetent to judge it.

The Judgment covers and decides difficult and controversial issues in private international law, which will be analyzed in the following chapters.

Basis of International Competence in European Procedural Law.

Introduction to International Civil Procedure Law.

The need to establish rules of international competence is not current. The man, from his most remote origins, moves and interacts with societies outside his State, creating facts and legal businesses that need some regulations[5].

The existence of a plurality of sovereign States that interact with each other is old and can be observed since the remote origins of civilizations[6]. However, nowadays, there is a visible and growing internationalization of social relations, with the increasing movement of people and goods across borders. This has brought the need for legal regulation of transnational situations even greater[7].

Each sovereign State has its own legal system. The plurality of legal arises the need to regulate a common law, which will be applied to privet relations.

The globalized and instant world brings situations that involve individuals, legal affairs, contracts, childhood and youth issues evolving two or more sovereign States.

[5] See Pinheiro, Luis de Lima. Direito Internacional Privado. v. 3. Competência Internacional e Reconhecimento de Decisões Estrangeiras. 2. ed. Ref. Coimbra: Almedina, 2012, p.25.

[6]PINHEIRO, Luis de Lima. Direito Internacional Privado. v. 1. Introdução e Direito de Conflitos – Parte Geral. 3. ed. Coimbra: Almedina: 2014, p.25.

7See Pinheiro, Luis de Lima. Direito Internacional Privado. v. 3. Op. Cit., p.18.

The international civil process is an essential tool in the view of the complexity of the world relations and the occurrence of transnational situations[8].

The principle of international harmony of judges calls for the same question of law to be decided in the same way in all Countries, with jurisdiction to decide.

The legal regulation of transnational situations must be made not only in relation to the applicable law, but also in the determination of the competent State. [9] Court. This will be made after the decision which competent State Court is the central issue of the controversy faced by the Judgment.

One of the foundations of private international law is the search of legal certainty and stability. This aims at reducing instability and ensure respect for international legal relations.

This makes international legal harmony possible, as Savigny[10] said. For this, it was necessary to develop instruments and techniques to balance the rules of conflicts, in order to promote the uniformity of judicial decisions.

Erik Jayme emphasizes that the primary objectives of Private International Law are the equal treatment of people, the harmony of decisions and the predictability of the solutions[11].

In the international law, as a rule, the principle of autonomy of will prevails[12]. In the absence of a convention by the parties for the adoption of an alternative mechanism of dispute resolution, as the

---

[8]"Cultural, social, and commercial exchanges between private individuals or corporations from different corners of the globe are intensifying. As businesses continue to carry out activities across international borders, the number of international commercial relationships is growing. Inevitably, this also leads to international legal disputes in civil and commercial matters". LITH, Hélène van. *International Jurisdiction and Commercial Litigation Uniform Rules for Contract Disputes. The Hague: Asser Press, 2009, p.3.*

[9]See Pinheiro, Luis de Lima. Direito Internacional Privado. v. 3. Op. Cit., p.27.

[10]Correia, Alexandre Ferreira. Direito Internacional Privado. Alguns Problemas. Coimbra: s.e., 1985, p.111.

[11]Jayme, Erik. *Identité culturelle et intégration: Le droit international privé postmoderne. Recueil dês Cours,* v.251, p.9-267, 1995, p.44.

[12]About the principle of autonomy of will see PINHEIRO, Luis de Lima. Direito Internacional Privado. v. 3. Op. Cit., p.28.

arbitration, disputes arising from international trade are appreciated by the State Courts, according to the regulation of the State Law[13].

Private procedural international Law, as a rule, will not bring the substantive law solution to the case, but will outline the rules that will determine which Court will have jurisdiction for it[14].

As João Baptista Machado says, the Private International Law, instead of directly or materially regulating the relationship, adopts an indirect process, consisting in determining the law that will govern the case[15].

The competent Court must be the one with the greatest connection, affinity with the cause[16]. The greatest affinity can be given either by the ease of collecting the evidence, OR by the defendant´s residence or even by the place of performance of the obligation.

The greatest connection with the cause is emphasized in judgments involving controversial decisions about the Competent Forum. It is emphasized in judgments involving controversial decisions about the competent forum[17].

The definition of the competent forum must obey the legal parameters previously established. Without well-defined legal parameters, the choice would be at the discretion of Judges, which does not desire. This would increase the risk of unwanted *"forum shopping"*[18].

---

[13]Pinheiro, Luis de Lima. Direito Internacional Privado. v. 1. Op. Cit., p.158.

***[14]"Private international law is not substantive law in this sense, for, as we have seeN, it merely provides a body of rules which determine whether the English court has jurisdiction to hear and decide a case, and if has, what system of law, English or foreing, will be employed to decide it, or whether a judgment of a foreign, will be recognized and enforced by English court"* Collier, John Greenwood. *Conflict of Laws.3. ed. Cambridge: Cambridge University Press*, 2001, p.6.**

[15] Machado, João Baptista. Lições de Direito Privado. 3. ed. Coimbra: Almedina, 1985, p.16.

[16]Pinheiro, Luis de Lima. Direito Internacional Privado. v. 1. Op. Cit., p.326.

[17] Case C 381/2008, C 87/2008, C 386/05, C 9/12, C 496/12, C 533/07 ECR

[18]About *"forum shopping"* see Araujo, Nadia de. Solução de controvérsias no Mercosul. In: Casella, Paulo Borba (Coord.) Mercosul. Integração regional e globalização. Rio de Janeiro. Renovar, 2000, p.136.

As a rule, the autonomy of the will provided in the contract must be respected. The jurisdiction pact in a contract must be applied, excluding the legally provided forum[19].

Private international Law seeks legal stability. This is more difficult to achieve than in domestic law relations[20]. Therefore, it is imperative to have consistency in judgments. The lack of harmony in decisions in Court would increase insecurity, damaging international commercial relations.

This short introduction aims at shed light on the importance of international civil procedure law, which aims at regulating and providing solutions to transnational situations, that is, situations involving more than one Country where the competence and the application of the various applicable legal systems are being discussed[21].

Thus, the controversies that may occur as a result of this immense number of people who interact, in different States, will be helped by the rules of private international law[22].

---

[19]See Process:6156/18.9T8CBR.C1 JTRC and Process (09/07.3 TBOFR.C1). (COIMBRA. Tribunal da Relação. Processo 6156/18.9T8CBR.C1. Relator: Carlos Moreira. Julgado em: 17/09/2019. 2019. Disponível em: http://www.dgsi.pt/jtrc.nsf/c3fb530030ea1c61802568d9005cd5bb/a10c52e88783b3b58025849a004a0269?OpenDocument&Highlight=0,6156%2F18. Acesso em 13 fev. 2020). Também neste sentido ver Acórdão do Tribunal da Relação de Guimarães 6919/16.0T8PRT.G1. GUIMARÃES. Tribunal da Relação. Processo 6919/16.0T8PRT.G1. Relator: Alcides Rodrigues. Julgado em: 07/12/2017. Disponível em: http://www.dgsi.pt/jtrg.nsf/86c25a698e4e7cb7802579ec004d3832/08ac60c5a1a7938780258224003820d9?OpenDocument&Highlight=0,6919%2F16 Acesso em 13 fev. 2020.

[20]Correia, Alexandre Ferreira. Op. Cit. p.107.

21"*Le droit international privé trouve sa raison d'être dans la diversité des lois des Etats, d'une part, et la nécessite de trouver les solutions justes dans la communauté internationale.*" Jayme, Erik. Op. Cit., p.39.

22 For more see: Ramos, Rui Manuel Moura. Estudos de Direito Internacional Privado da União Europeia. Coimbra: Imprensa da Universidade de Coimbra, 2016, p.13.

Articles 4o and 7o of Brussels Ibis Regulation and its repercussions in the Judgment.

Brief Considerations about the Brussels Regulation.

The Regulation 1.215 of European Parliament deals with jurisdiction, the recognition of judgments and civil and commercial matters.[23] It is considered the foundation of the European Civil Procedure Law and, although there are other instruments, it is certainly the most important of them[24].

The Regulation 1.215/12 succeeded the Regulation 44/2001. It is like the law and came into force with the same text, immediately in all Member States, in 27 Countries of the European Union[25].

The increasing circulation of goods and the carrying out of legal transactions among various States has led to an increase in the dissent and the inherent legal problems. In this way, national law no longer solved legal problems, which created barriers to the conduction of legal business[26].

The different national rules on jurisdiction created barriers to the internal market difficulties in bringing A civil action. This fact discouraged individuals and companies from doing business and contracts beyond their borders, which were mitigated by the new legislation[27].

The unification of Private International Law was the instrument found to strengthen judicial cooperation, to consolidate the concept of European citizenship and to ensure the proper functioning of the internal market[28].

---

[23]The Regulation (UE) n. 1215/2012 repeal the Regulation (CE) n. 44/2001 (art. 80) – For more see Neto, Abílio. Novo Código de Processo Civil anotado. 2. ed. Rev. e ampl. Lisboa: Ediforum, 2014, p.109.

[24]About the Regulation, Hélène van Lith said *"Regional unification of jurisdiction rules has proved most successful in Europe. The 1968 Brussels Convention on Jurisdiction and Enforcement of Judgements51 turned out to be a successful regional unification instrument of jurisdiction rules in the field of THE civil and commercial matters."* Lith, Hélène Van. Op. Cit., p.11.

[25]According to the Regulation, with the exception of Denmark, the Regulation applies to all Member States of European Union.

[26]To know more about this issue read ALMEIDA, Carlos Ferreira de.Op. Cit., p.48.

[27]MAGNUS, Ulrich; Mankowski, Peter. *European Commentaries on Private International Law (ECPIL). v. 1. Brussels Ibis Regulation. München: Sellier European Law Publishers*, 2016, p.11.

[28]This way see: Britto, Maria Helena. Op. Cit., p.86.

The Regulation was designed to unify the rules of jurisdiction, since different national rules and the obstacles to the recognition of judicial decisions hindered the smooth functioning of the internal market.

It aims at achieving one of the objectives of the European Union, which is the adoption of judicial cooperation measures in civil matters across borders, with the aim of improving the functioning of internal market every day.

The Regulation intends to facilitate the judgments in the Member States with the standardization of the rules in the States, bringing agility to the procedures beyond the borders of the Countries that are part of the European Union, thus facilitating, in final analysis, the access to justice[29].

Another objective is to make the enforcement of judgments in the Member States of European Union easier and to ensure that the judicial decisions have faith and credit in the Courts. With that, it can be said that the Brussels Regulation achieves its goals of providing legal certainty and protection for people domiciled in the European Union[30].

It seeks mutual trust in the legal system of Countries that are Member States[31]. It seeks also to base the jurisdiction and therefore to break national jurisdiction laws. The Regulation is above national law, prevailing, in case of contradiction, over national law.

In this way, the domestic procedural laws of each Member State can be applied when the convention is not. *Mutatis mutandis,* when the convention is applied, domestic Law is waived[32].

---

[29]"*The main objective of the Brussels system is the facilitation of recognition and enforcement of judgments within the EU*" GRUŠIĆ, Uglješa. Jurisdiction in Complex Contracts under the Brussels I Regulation. 2011. In https://doi.org/10.5235/174410411796868661. Acess in 13 fev. 2020.

[30] In this sense:*:"The objective of the Convention is to secure the free movement of judgments thoughout the member states of the Commmunity and to ensure that judgments of the courts of each contracting state are accorded "full faith and credit by the courts of all the others. Other objectives are attainment of legal certainty and protection of persons domiciled in the European Union".* Collier, John Greenwood. Op. Cit., p.133.

[31]See Magnus, Ulrich; Mankowski, Peter. Op. Cit.

[32]*"The Brussels Model consists of a 'closed' set of uniform jurisdiction rules which replaces national jurisdiction rules".* Lith, Hélène van. Op. Cit., p.2.

The Regulation is interpreted by the Court of Justice of the European Union, with judges from all over Europe. The Court´s decisions are effective in all Countries.

The Regulation is applied in relation to civil (except family matters) and commercial matters and does not cover taxes, customs or administrative matters.[33] If there is an arbitration agreement, the Regulation is also not applied[34].

The Regulation affects those who are domiciled in Member States, regardless of their nationality. The general rule of jurisdiction provides that persons domiciled in a Member State must be sued, regardless of their nationality, in the Courts of that Member State. The author´s domicile or nationality are irrelevant, unless he resides outside a Member State. [35]

If the defendant is not domiciled in a State covered by Regulation 1.215/2015, jurisdiction will be regulated by the domestic Law of the State in which the action was brought. However, exclusive powers and the possibility of entering into a jurisdiction pact must be observed[36].

Decisions given in one State are recognized and enforced in any other State, regardless of the domicile of the party against whom enforcement is sought.

The Impact of the Regulation in the Judgment under Study.

As it will be shown, the Brussels Regulation is applied in the judgment that is studied.

The Portuguese and the Spanish Civil Procedure Code establish rules of the international jurisdiction

The rules of the international jurisdiction are found in articles 59 to 63 of the Portuguese civil procedure code. The article 59 provides that the Portuguese Courts are internationally competent

[33]See article art. 1º of Brussels Regulation.
[34] According to article 12º and article 2º, "d" of the Regulation.
[35]See article 4º of the Regulation.
[36]Souza, Miguel Teixeira de. In: Estudos em Homenagem à Professora Doutora Isabel Magalhães Collaço, v. 2. Coimbra: Almedina, 2002, p. 681.

when arise some of the elements of connection provided in article 62. The article 63 provides the exclusive jurisdiction of the Portuguese Courts.

In the Spanish Civil Procedure Code, the article 36 establishes that the extension and limits of the jurisdiction of Civil Courts will obey the Organic Law of Judicial Power. The Organic Law brings, in article 22, the rules for delimiting jurisdiction[37].

However, due to the existence of a supranational normative source, that is the Brussels Ibis Regulation, which determines the international jurisdiction of the different Courts of its Member States, the provisions of the Civil Procedure Code of both Countries involved are removed[38].

In this judgment, we have the plaintiff, a company based in Portugal and the defendant, a company based in Spain. Both are part of the European Union and are domiciled in a Member State. The case has a connection with Portuguese and Spanish legal order.

Despite the connection with the legal order of the two Countries that are involved, the dispute issue is governed by the Brussels Regulation. This occurs because the parties are domiciled in a Member State.

Due to the non-payment in full of the price stipulated in the contract, the plaintiff filed a lawsuit at your domicile, Portugal, making an exception to the general rule of jurisdiction set in article 4o of the Regulation, which provides that actions must be filed at the defendant´s domicile, Spain[39].

---

[37]Article 22 of the Organic Law: '*Artículo 22*: *quinquies. Asimismo, en defecto de sumisión expresa o tácita y aunque el demandado no tuviera su domicilio en España, los Tribunales españoles serán competentes: a) En materia de obligaciones contractuales, cuando la obligación objeto de la demanda se haya cumplido o deba cumplirse en España."*

[38]For more see A. NETO, Abílio. Op. Cit., p.109.

[39]According to Grušić, *"Sufficiently Close Connection - The basic jurisdictional rule in the Brussels system is actor sequitur forum rei: the claimant should pursue his claim in the courts of the defendant's domicile"*. GRUŠIĆ, Uglješa. Op. Cit.

The general rule is at article 4o and can just be removed in specific cases, provided by law, for a better administration of the Justice.[40] This exception cases are constantly invoked by the parties in the Courts, that have to express their opinion on the interpretation of the articles[41].

However, the rules that except the general rule of jurisdiction are interpreted by the Courts strictly, in order to privilege the prevalence of the general rule of the forum of the defendant´s domicile[42].

The general rule of jurisdiction of the defendant´s domicile may have exceptions. For this reason, the special competence criteria provided for sections 2 to 7 of Chapter II, Articles 4 to 9 of the Regulation must be combined.

The existence of alternative forums is justified by the existence itself, in some cases, of a greater link between jurisdiction and litigation, which makes the proper administration of justice easier.

The defendant may be sued in a Member State rather than this domicile, if any of the special jurisdiction criteria are verified, as the plaintiff intended in the studied case, proposing the claim at his domicile, Portugal.

The article 7 establishes a new rule of jurisdiction, rather than the general rule of the defendant´s domicile, provided in article 4o. The "apparent" freedom to choose a forum is due to the fact that, in certain cases, there is a relationship of proximity and convenience with another Court rather than that of the defendant´s domicile.

---

[40] According to Bernard Audit, "*La règle Actor sequitur fórum rei est considérée dans Le pays de tradition romaniste comme de droit naturel*. Audit, Bernard. Droit International Privé. 2. ed. Paris: Economica, 2008, p.427.

[41] See Process C-386/2005 Court of Justice of Europena Union.

[42] "*Ces diverses dispositions répondent pour la plupart à l'idée de bonne administration de la justice: celles de l´art. 5, fondées sur la nature du litige en permettant normalement de saisir un tribunal souvent plus proche de celui-ci que les jurisdictions de l´État du domicile du défendeur; celles des art. 6 et 6 bis, en permettant de prevenir des contrariétes de décisions...Cela explique que certaines de ces dispositions soint constamment invoquées et que la Court de justice soit regulièrement appelée à statuer sur leur interpretation. Elle a affirmé à cet égard un príncipe d´interpretation restrictive, afin de préserver pour la règle fondamentale de l´art.2."* Audit, Bernard. Op. Cit., p. 429-30.

It may even happen that the Court of more than one State has competing competence to know the cause[43].

Certainly, the Court with jurisdiction should be the most suitable to hear the case, as it contains a close connection to know and to solve[44]. The command aims at balancing the existing relationship between the parties since only with the application of article 4th, the defendant would be in a position of advantage over the plaintiff, which would bring imbalance in the contractual relationship[45].

The rules that make the general criteria an exception are expressly specified in the law, in exhaustive terms, and the circumstances for the exception must be fully justified[46].

The law´s intention in creating specific rules to change the general jurisdiction rule of the defendant´s domicile is to make the access to justice for persons domiciled in the European Union and to provide legal certainty to the business carried out.

Under these premises, the Judgment decides the rule of jurisdiction whose criteria will be studied in detail, throughout this paper.

The general rule of jurisdiction and the exceptions are provided by the law. The exception to the general rule is expressed in article 5, which provides that persons domiciled in one Member State can only be sued in another Member State in the cases provided in sections 2 to 7 of Chapter II, that is in the articles 7, 8 and 9 of the Regulation.

The article 7 establishes rules of jurisdiction in Courts rather than the defendant´s domicile. The choice is up to the author, but the competent Court must be the one that has the closest relationship with the case.

---

[43]About the *"forum shopping"* see Pinheiro, Luis de Lima. Direito Internacional Privado. v. 3. Op. Cit.
[44] To read more about it see Pinheiro, Luis de Lima. Direito Internacional Privado. v. 3. Op. Cit.;
[45]Magnus, Ulrich; Mankowski, Peter.Op. Cit., p.143.
[46] See Correia, Alexandre Ferreira. Op. Cit.

So, the choice is not a discretionary right of the author. The article 7 aims at balancing the relationship between the plaintiff and the defendant, considering that, only with the article 4 the defendant would be more favored than the plaintiff.

The article 7 can be considered one of the most important articles of the Brussels Regulation. However, its interpretation raises important controversies. How to define, at European level, the differences between a service contract and a purchase and sale contract? How to identify the place of delivery of goods or services?[47]

The jurisdiction rules of article 7 observe two criteria, one general, in item "a" and another special, for sale of goods (place where the goods were or should be delivered) for provision of service (where the services were or should be provided), present in item "b".

The rule contained in item "b" covers most international contracts (as in the Judgment under study) since these are, in their majority, purchase and sale contracts or service provision contracts. However, many contracts do not fall into these two categories.

Because of this, the Courts are responsible for providing a fair solution to the specific case[48].

The criteria used in these cases to establish jurisdiction is the place where the obligation is fulfilled. Therefore, in the search for the best solution for the competent forum, not being the contract for the

---

[47] Neste sentido: *"Toutefois, depuis son adoption, l'interprétation de l'article 5, 1°, b) donne lieu {d'importantes controverses, qui prolongent, comme par un effet de miroir, celles ayant entouré le contenu de l'actuel point a). Elles concernent, comme autrefois, la délimitation de la portée de la disposition et la localisation des obligations pertinentes. Premièrement, comment définir et distinguer, au niveau européen, un contrat vente et un contrat de fourniture de services, alors que les conceptions des Etats membres diffèrent à ce propos? Ensuite, le point b) peut-il s'appliquer lors que les obligations découlant du contrat ont été exécutées dans une pluralité d'Etats membres ? Si oui, comment identifier le lieu de livraison des marchandises ou de fourniture du service? Finalement, quel sens prêter à la partie de phrase qui entend fixer le lieu de livraison des marchandises ou de fourniture du service « en vertu du contrat?* Francq, Stéphanie; Armas, Alvarez; Dechamps, Marie. *L´Actualité de l´article 5.1 du règlement bruxelles I: evaluation des premiers arrêts interprétatifs por tant surr La disposition relative à La compétence judiciaire internationa Le enmatière contractuelle. Brussel: EditionsKluwer,* 2012.

[48] See C 496/12, C 533/07, C -496/2012 ECR

provision of services or purchase and sale, the competent Court must be fixed according to the place where the obligation is to be fulfilled[49].

It can be said that the Regulation established an autonomous concept of the place of fulfillment of the obligation in the Regulation. In the case of buying and selling, it is the place of delivery of goods. In the provision of services where the services were provided[50].

Issues faced in the decision.

The first question faced in studying the decision is to identify if, in fact, there is a contract.

According to Carlos Ferreira Almeida, the contract is a bilateral legal business, which can be defined as "an agreement", designed for the future, that engenders, for one or more people who take part in it, obligations to give, to do or not to do"[51].

In contracts, the principles of contractual freedom and voluntariness must be applied[52]. In the judgment, there is no dispute that there is a valid contract, signed between the plaintiff and the defendant.

The author would have the obligation to manufacture shirts, supplying all the material and the accessories for transforming the fabrics into clothes. The defendant had the obligation to pay the price.

The controversy remains in the nature of the contract.

The author argues that it is a service provision contract. That it was contracted to produce manufacture clothes, which would be sold by the defendant, that only produces clothes, following the instructions

---

[49] See Process - 569/09.4TVPRT.P1 – JTR. PORTO. Tribunal da Relação. Processo 569/09.4TVPRT.P1. Relator: Guerra Banha. Julgado em: 07/09/2010. www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/6c63a3d53f81cbb9802577d1005602b3?OpenDocument&Highlight=0,569%2F09 Acesso em 13 fev. 2020.

[50] See Ac. STJ, de 11.5.2006:CJ/STJ, 2006, 2º - 84.

[51] Almeida, Carlos Ferreira de. Op. Cit., p.25.

[52] See Brazilian Civil Code Law nº 10.406/2002, articles 421 e 422.

of the defendant, who defined the characteristics of the product such as model, measurement and materials for making the clothes.

Supported by these affirmations, the plaintiff requires the application of article 7, (1), "b" , second category of the Brussels Regulation, which determines that the competent jurisdiction is the place where the obligation was rendered, that is the Court of Justice of Guimarães, Portugal, that is the place of the performance and execution of the work.

The defendant claims to have entered a purchase and sale contract, requesting that the Court of Portugal declare that it does not have jurisdiction to hear the dispute, requiring the application of article 7, first category covered buy "b", since the goods were delivered in Spain.

The qualification of the contracts is carried out autonomously and case-by-case by the Courts. The sale of goods requires the application of the first category covered by (b) article 7. The provision of service requires the application of the second category covered by (b) article 7.

In many cases, new issues to be solved arises by the Courts regarding the qualification of the contracts, covering loan contracts, concessions, subcontracting, research and development contracts etc.[53]

Another difficulty (which does not occur in the judgment under study) would be the hypothesis that the provision of service or delivery of the goods occurred in more than one place, in more of a Member State, which would be another complication to determine the competent Court. The identification of the main obligation is not always easy to do and A mistake can be costly for the author[54].

---

[53]As example see Case 496/12 and C-9/2012. Op. Cit.).

[54]*"The determination of the principal place and the principal services will be a question of fact for the national court seised. Under the Convention, identifying the principal obligation was not always easy and the same difficulty would beset the Regulation. The principal place should be easier to identify as the comparison is between the places where the same performance was or should have been effected. The main criteria will be the volume of goods delivered and the frequency of services provided… A mistake in the identification of the principal place could be costly for the plaintiff".* Takahashi, Koji. *Jurisdiction In: Matters Relating To Contract: Article 5 (1) Of The Brussels Convention And Regulation*. 2002. in: https://www1.doshisha.ac.jp/~tradelaw/PublishedWorks/EURegContract.doc. Acesso em 13 fev. 2020.

When the main obligation is fulfilled in an indivisible manner in several Member States, the different locations are relevant to determine the competent Court. The Color Drack case is cited as an example[55]. The importance of this case resides in find the main obligation of the contract.

There are legal differences between the categories of a purchase and sale and service provision.

In contracts of sale of goods, the characteristic obligation is the delivery of the goods, and can be determined through an economic criterion.

The contracts of provision of service encompass various contracts, with services of different natures[56].

The terms of the second category covered by (b) are not self- sufficient. Knowing the main characteristic of the contract is sometime as difficult as defining the main place of delivery or the service.

When the dispute reaches the Courts, they must identify the main characteristic of the obligation and the location of the place of performance, if it is not clear under the terms of the contract[57].

To proceed the study of the judgment, in the next chapter, the main characteristics and differences demarcated will be studied by the doctrine and the Jurisprudence between the purchase and the sale and the provision of the service contracts.

Legal grounds of the judgment.

Substantive Law Criteria used by the Courts.

The analysis of the judgment under study and the numerous judicial decisions of the Court of Justice of the European Union demonstrate the adoption of supra-national criteria to conceptualize and differentiate the purchase and the sale contract and the provision of services contract[58].

---

[55]See Case C-386-05.
[56]See Magnus, Ulrich; Mankowski, Peter. Op. Cit., p.200-1.
[57]Francq, Stéphanie; Armas, Álvarez; Dechamps, Marie. Op. Cit.
[58]*"The notion of "service" bears an autonomous meaning independent from any respective notions contained in the national legal orders of the Member States".* Magnus, Ulrich; Mankowski, Peter.Op. Cit., p.198.

There is no European Codification on matters involving material law. The Courts seek in each case the characteristic obligation of the contract.[59] To this end, they use certain provisions of the Union Law and the international law, that serve as a guide in the interpretation of contractual concepts[60].

The Court of Justice of the European Union and the European Courts interpret the Union Law and the International Law. Based on this interpretation, they draw the concepts of material law, giving characteristics and differences between the purchase and sale contracts and the provision of services contracts.

As mentioned before, the Courts try to find the main obligation in the contracts, as it had stated in *CarTrim* decision[61].

Adopting provisions of Union Law and International Law, the Car Trim case cites the Directive 1999/44 of the European Parliament. This Directive brings aspects related to the sale of consumer goods. It provides in the article 1º, n. 4 that can be considered as a purchase and sale contracts the supply of goods that will be manufactured.

The United Nation Convention of 1980 is also used for the Court in Car Trim Case.

Article 3º, n. 1 says that the contracts for supply of goods to be manufactured or produced can be considered a contract of purchase and sale, unless the contracts which ordered them has to supply an essential part of the elements and materials necessary for manufacture or production.

The United Nations Convention of 1974 is also used. It provides that the contracts for goods to be produced are equated with purchase and sale contracts, unless the party that ordered it supplies an essential part of the materials necessary for manufacture[62].

---

[59] About the benefits of Codification see Ascensão, José de Oliveira. O Direito – Introdução e teoria geral. 13. ed. Coimbra: Almedina, 2017, p.369.
[60]Case Process C-381/08. Op. Cit.
[61]See Regulation (CE) Nº 44/2001.
[62]See Case C-381/08. Op. Cit.

Therefore, in addition to the classic concepts of purchase and sale and provision of services contracts found in the doctrines of each Country, the criterion used to differentiate the contracts taking into account the search for the characteristic obligation of the contract.

Note that not every service provision contract truly fits as a real "service provision". Depending on the true will of the contractors and the characteristics of the contract it can be characterized as a purchase and sale[63].

Another distinction lies in who supplies the materials of manufacturing the products. This criterion is also adopted by the Commission of the European Communities.

The supply of materials by the buyer for the manufacture of the goods is an indication that will be a service provision contract. On the other hand, if the seller supplies the materials, there is a strong indication that it is a purchase and sale contract[64].

Another criterion adopted is related to the supplier´s responsibility for the product quality.

When the seller is responsible for the quality and conformity of the goods, it is an indication that it is a sale and A purchase contract. On the contrary, the fact that the seller has no responsibility for the quality of the goods, but only has the responsibility for the correct execution of the contract, according to the buyer´s instructions, it is a sign that it is a provision of the contract[65].

These were the criteria adopted by the Case Car Trim and in other Judgments of the Court of Justice of European Union. These are the jurisprudential parameters for other decisions.

In the studied case, in addition to the criteria listed above, the criterion of habituality with which the author manufactured the products was addressed. The decision states that the production of clothing did not imply an effective novelty in the normal production of the author.

---

[63]See Case C- 381/2008, C 496/12.

[64]For more read Lima, Pires de; Varela, Antunes. Código Civil Anotado II. 4. ed. Coimbra: Almedina, 2010, p.863-4.

[65] See Case C-381/08. Op. Cit.

The substantive criteria used by the Court of Justice of European Union defines the nature of the contract and the place of the performance of the obligation comply with the provisions of Union and International Law.

So, previous Courts decisions serve as a guide in the interpretation of contractual concepts.

Considerations about the Service and the Provision Contracts and the Purchase and Sale Contracts – Differences and legal Consequences.

The service provision contract is bilateral and onerous[66]. In this contract, one party is obliged to carry out a certain work to another, upon the payment of a price[67].

This contract is provided in the article 1207 of the Portuguese Civil Code. The payment of the remuneration is essential to characterize the contract[68].

From the concept of the service provision contract, two essential elements stand out, the execution of the work and the payment of the price[69].

It is a commercial contract. In the Judgment under study, it would be the manufacture of clothes.

The Portuguese Civil Code states that, in the provision of the services contracts, materials must be provided by the providers. However, there may be a convention to the contrary[70].

According to Ana Prata, the essential element of the provision of the service contract is the realization of a work[71].

---

[66]*"Remuneration must be understood as an economic function, as an exchange of services for corporeal, financial or immaterial assets which have a market value or could be acquired for a price to be expressed in money"* Magnus, Ulrich; Mankowski, Peter. Op. Cit., p.202.

[67]See Almeida, Carlos Ferreira de. Contratos II: Conteúdo, contratos de troca. 2. ed. Almedina, 2011, p.152.

[68]About the remuneration see Fiuza, Ricardo (Coord.). Novo Código Civil Comentado. 5. ed. Atual. São Paulo: Saraiva, 2006, p. 482-3.

[69]Prata, Ana (Coord.). Código Civil Anotado. v. 1. Coimbra: Almedina, 2017, p.1.490.

[70]According to article 1.210 of Portuguese Civil Code.

[71]Prata, Ana (Coord.). Código Civil Anotado. v. 1. Coimbra: Almedina, 2017, p.1.500.

At first, for the doctrine, the supply of the material by those who do the work is not essential do characterize the provision of the work contract[72].

The material can be supplied by the person responsible for the work. However, the European Union Court of Justice has already understood in an opposite sense in Case *CarTrimGmbH* X *KeySafety Systems Srl*[73].

The purchase and the sale contract is the one through which the ownership of a thing or a right transmitted to other through the payment of a price. It is an onerous contract and the essential obligation is to deliver something, upon payment of the price. It is seT out in the article 874 et seq. of Portuguese Civil Code[74] [75].

The transfer of ownership is essential to the purchase and the sale contract. The payment of the price must occur at the time and the place of delivery of the thing sold. However, failure to pay is not a basis for terminating the contract.

According to Rémy Cabrillac, the purchase and the sale contract is defined as "a contract that organizes the transfer of ownership of the seller´s property to that of the buyer, obliging the first to deliver the property sold and the second to pay the agreed price[76].

With this definition, the Professor approaches the Vienna Convention of 1.980 on the international sale of goods and articles.

The purchase and sale and the provision of service contract have different regulations in several aspects, especially in terms of purpose.

---

[72]See Lima, Pires de; Varela, Antunes. Op. Cit.
[73]See Case C-381/08. Op. Cit.
[74]Prata, Ana (Coord.). Código Civil Anotado. v. 1. Coimbra: Almedina, 2017, p.1.087.
[75]See Lima, Pires de; Varela, Antunes. Op. Cit., p.162.
[76]"*un contrat organisant le transfert de propriété d'un bien du patrimoine du vendeur à celui de l'acheteur, obligeant le premier à délivrer le bien vendu et le second à payer le prix convenu"* Cabrillac (R.), Dictionnaire du vocabulaire juridique, Paris, édition Litec, 2008, p.408.

Pedro Romano Martinez makes a comparative analysis of the two contracts and adds that the purpose of the contracts are different. The contractor has to provide a service while the seller has the obligation to give.

The purchase and sale is a real contract. The provision of services is a consensual business contract with mandatory effects.

Lastly, in the purchase and sale the execution is of the builder. Whereas in the provision of service contract the contractor executes it according to the directions and the supervision of those who ordered it[77].

Several criteria are pointed out by the doctrine and jurisprudence to distinguish the two contracts when the distinction becomes obscure.

One of the criteria is the supply of the material. Another criterion would be to find the preponderant element of the contract according to the rule that the accessory must follow the main one[78].

Another point for differentiation would be the price. In the buying and selling, the price is fixed taking into account the object to be sold. In the provision of the service contract, the price is fixed due to the work.

Often, there is a mixed contract, which the doctrine calls a combined or multiple joint contract[79].

However, the real will of the contractors is that this will truly determines the distinction and the type of the contract.

The transfer of ownership is one of the essential effects of the buying and selling contract. In the case of a provision of the service contract, the delivery of the service is essential to conclude the contract.

---

[77]See Martinez, Pedro Romano. Comemorações dos 35 anos do Código Civil e dos 25 anos da Reforma de 1977. v. 3. Direito das Obrigações. Coimbra: Coimbra Editora, 2007, p.238.
[78]See Martinez, Pedro Romano. Op. Cit., p.239.
[79]See Cordeiro, Antonio Menezes. Op. cit. v. 1. p. 425-6.

Issues addressed in the Judgment about the purchase and sale contracts and THE service provisions contracts.

In the case under study, the author tries to define the service provision contract based on the following premises: It states that she was obliged to produce articles of clothing following the defendant´s instructions and characteristics, models, measurement and materials, which does not sell, just manufactured clothes.

In the decision, the Court emphasizes that the author is engaged in the activity of making clothing in an usual way. The characteristic obligation of the contract would be the supply and the delivery of goods.

The Court invokes the Case *CarTrim*, that brought new element to differentiate the purchase and sale contract from the service provision contract. According to the decision, the contracts will be for purchase and sale when the materials used to make the products are supplied by the seller.

The parameters adopted in the Case *CarTrim* to say that it was a seller and purchase contract were the same used in the Judgment 733/18 of the Court Appeal of Guimarães, the contracts. The Car Trim case is cited as the basis for the Judgment.

In the Judgment under study, the author had the obligation to manufacture the shirts, according to the instructions of the purchasing company, providing all the necessary material for the transformation of the product.

The Court understood that since the buyer did not supply material and that the seller was responsible for the quality and conformity of the product, the contract was qualified as a purchase and sale contract.

However, the Judgment brings one more component to characterize the contract as being a purchase and sale. The making of the articles did not imply in an effective novelty in the normal production of

the Plaintiff, who dedicates herself with the lucrative purpose in the making of clothing, in particular shirts and blouses.

As a conclusion, the legislation, the doctrine and the jurisprudence join efforts to classify and draw distinctions about these two kinds of contracts and the contracts that would be outside these two classifications.

Such distinctions are necessary to establish the place of performance of the obligation and the competent forum for the cause.

The Court of Justice of the European Union uses uniform parameters to distinguish categories. However, sometimes differences and characteristics are added in the judgments that are not repeated. However, there is still a lot of controversy on the subject and the Courts are frequently called upon to rule the matter.

CONCLUSIONS.

Some points can be fixed as conclusions of the present work.

With the increasing internationalization of social and commercial relations beyond the borders of each Country, the increase in litigation and legal problems are inevitable. This brought the need for legal regulation of transnational situations.

The Judgment under analysis is an example of commercial controversy involving two Countries, Portugal and Spain, that resort to Private International Law to establish jurisdiction.

As the Defendant is a legal entity based in Spain, the rules provided are considered in the Brussels Ibis Regulation.

The Regulation in one of the most important instruments of published in International Law. It is considered to be the foundation of the European Civil Procedure Law. It was edited with the intention

of facilitating the treatment of controversies and judgments reached by it, with rules that seek to unify the rules of international jurisdiction.

The study of the Judgment demonstrated that the Regulation has wide application, serving its purpose to facilitate the establishment of international jurisdiction.

One of the principles of international law is that the rules of jurisdiction must retain a high degree of legal certainty, based on the defendant´s domicile. The Regulation fulfills its role in this regard.

The rule in article 4 of the Regulation includes exceptions, being complemented by alternative forums allowed due to the strong link between the jurisdiction and the dispute. The exceptions are intended to facilitate the proper administration of justice.

The exceptions are provided in the Regulation, in sections 2 to 7 of chapter II, article 4 to 9. In the Judgment the Plaintiff wants to exempt the general rule of the Defendant´s domicile, proposing the action in Portugal.

The article 7 contains the heart of the controversy of the Judgment under study, since the characterization of the contract as a purchase and sale or as a service provision changes the place of fulfillment of the obligation, which is decisive for the establishment of the competent Court for processing and judging the cause.

In order to characterize the contract as a purchase and sale, the Court brings notions of Portuguese substantive law, but also seeks a basis in decisions of the Court of Justice of the European Union especially the Court decision Case C 381/2008, (*CarTrim).*

Some factors are decisive for the characterization of a purchase and sale contract. The name of the contract is essential to determine the place the performance of the obligation, under the terms of the Regulation.

The material provided by the author was one of the determining factors for the characterization. Another factor was the habitual character with which the author did the activity.

It can be said that the Judgment is in line with other decisions of the European Court of Justice and the Courts of Portugal.

The study also reveals that the distinction between purchase and sale contract, service provision contract and other contracts that are outside these two qualifications is not always easy and still generates controversy in the Courts.

As a consequence, Courts are constantly called upon to express their opinion on the application of the article 7 of the Brussels Regulation.

In the absence of the European Codification of substantive Law, the European Court of Justice relies on the assistance of certain provisions of Union law and international law, which serve as a guide in the interpretation of contractual concepts.

This study revealed that the Courts also base the decisions with the help of judicial decisions previously pronounced on the subject, always in the search for the uniformity of the judicial decisions and legal security.

Another conclusion of remarkable importance is that substantive law criteria raised in the European Court of Justice judgments are transnational. The development of the case law on the Brussels I Regulation in the embryo of a European private law, including not only European private international law, but also substantive contract law.

Finally, it is concluded that the Judgment under study is therefore in line with both International Law and Portuguese national law.

This is the final conclusion of this work.

BIBLIOGRAPHIC REFERENCES.

1. Almeida, Carlos Ferreira de. **Contratos II:** Conteúdo, contratos de troca. 2. ed. Almedina, 2011.
2. Ascensão, José de Oliveira. **O Direito – Introdução e teoria geral.** 13. ed. Coimbra: Almedina, 2017.
3. Britto, Maria Helena. **Direito Internacional Privado sob a influência do Direito Europeu.** 1. ed. Lisboa: Âncora, 2017.
4. Cabrillac, Rémy. ***Dictionnaireduvocabulairejuridique.*** *Paris: ÉditionLitec*, 2008.
5. Casella, Paulo Borba (Coord.) Mercosul. **Integração regional e globalização.**Rio de Janeiro. Renovar, 2000.
6. CISG-BRASIL. **A CISG.**s.d. Disponível em: http://www.cisg-brasil.net. Acesso em 13 fev. 2020.
7. Collier, John Greenwood. ***Conflict of Laws.*** 3. ed. Cambridge: Cambridge University Press, 2001.
8. Correia, Alexandre Ferreira. **Direito Internacional Privado.** Alguns Problemas. Coimbra: s.e., 1985.
9. Correia, António de Arruda Ferrer. **Da questão prévia em Direito Internacional Privado.** Coimbra: Faculdade de Letras da Universidade de Coimbra. Instituto de Estudos Históricos Doutor Antônio de Vasconcelos, 1970.
10. Fiuza, Ricardo (Coord.). **Novo Código Civil Comentado.** 5. ed. Atual. São Paulo: Saraiva, 2006.
11. Francq, Stéphanie; ARMAS, Alvarez; DECHAMPS, Marie. L´Actualité de l´article 5.1 du règlement bruxelles I: evaluation des premiers arrêts interprétatifs por tant surr La disposition relative à La compétence judiciaire internationa Le enmatière contractuelle. Brussel: Editions Kluwer, 2012.
12. Grušić, Uglješa. Jurisdiction in Complex Contracts under the Brussels I Regulation. 2011. Disponível em: https://doi.org/10.5235/174410411796868661 Acesso em 13 fev. 2020.

13. Jayme, Erik. Identité culturelle etintégration: Le droit international prive post moderne. Recueildes Cours, v.251, p.9-267, 1995.
14. Lith, Hélène van. ***International Jurisdiction and Commercial Litigation Uniform Rules for Contract Disputes.*** *The Hague: Asser Press, 2009.*
15. Machado, João Baptista. **Lições de Direito Privado.**3. ed. Coimbra: Almedina, 1985.
16. Magnus, Ulrich; Mankowski, Peter. ***European Commetaries on Private International Law (ECPIL).*** *v. 1. Brussels Ibis Regulation.München: Sellier European Law Publishers*, 2016.
17. Martínez, Pedro Romano. **Comemorações dos 35 anos do Código Civil e dos 25 anos da Reforma de 1977.**v. 3. Direito das Obrigações. Coimbra: Coimbra Editora, 2007.
18. Neto, Abílio. **Novo Código de Processo Civil anotado.** 2. ed. Rev. e ampl. Lisboa: Ediforum, 2014.
19. Pinheiro, Luis de Lima. **Direito Internacional Privado.**v. 1. Introdução e Direito de Conflitos – Parte Geral. 3. ed. Coimbra: Almedina: 2014.
20. Prata, Ana (Coord.). **Código Civil Anotado.**v. 1. Coimbra: Almedina, 2017.
21. _____. **Direito Internacional Privado.**v. 3. Competência Internacional e Reconhecimento de Decisões Estrangeiras. 2. ed. Ref. Coimbra: Almedina, 2012.
22. Ramos, André de Carvalho. **Curso de direito internacional privado.** São Paulo: Saraiva, 2018.
23. Ramos, Rui Manuel Moura. **Estudos de Direito Internacional Privado da União Européia.** Coimbra: Imprensa da Universidade de Coimbra, 2016.
24. Souza, Miguel Teixeira de. **Âmbito da Aplicação do Regulamento n. 44/2001** (Regulamento de Bruxelas I). In: Estudos em Homenagem à Professora Doutora Isabel Magalhães Collaço, v. 2. Coimbra: Almedina, 2002.

25. Takahashi, Koji. ***Jurisdiction In Matters Relating To Contract:*** *Article 5 (1) Of The Brussels Convention And Regulation*. 2002. Disponívelem: https://www1.doshisha.ac.jp/~tradelaw/PublishedWorks/EURegContract.doc Acessoem 13 fev. 2020

26. UNIÃO EUROPEIA. Conselho. **Regulamento (CE) Nº 44/2001, de 22 de dezembro de 2000.** 2000. Disponível em: https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2001R0044:20081204:PT:PDF Acesso em 13 fev. 2020.

27. _____. Parlamento Europeu e Conselho. **Regulamento (EU) nº 1215/2012, de 12 de dezembro de 2012.** 2012. Acesso em 13 fev. 2020. Disponível em: https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32012R1215&from=EN

DATA OF THE AUTHOR.

1. **Giselle Beran Medella D'Almeida**. PhD student in Law at Universidade Nova de Lisboa. Member of CEDIS - Centre for Research and Development on Law and Society. Master in Access to Justice by Estácio de Sá University. Graduated from UERJ- Universidade Estadual do Rio de Janeiro in 1998. Public Defender with entry in the career in 2001, having dedicated herself mainly in the civil and family areas. Mediator by IMAP (Portugal Institute of Mediation and Arbitration). E-mail: gisaberan@hotmail.com

RECIBIDO: 1 de abril del 2020. **APROBADO:** 26 de abril del 2020.