

“Consumer rights: The settled case law at the international level, regarding Regulation Rome I – The case of the Court of Justice of the European Union C-191/15 – Union for Consumer Information vs. Amazon EU Sàrl”

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Abstract: The legislative text of the Rome I Regulation is of great importance both for the legal world and for transactions. The aforementioned Regulation pertains to contractual obligations, which refer to the relationships between two parties, specifically the supplier and the consumer, arising from a contract, which forms their underlying basis. The decision regarding the case of the Court of Justice of the European Union C-191/15 – Union for Consumer Information vs. Amazon EU Sàrl, is connected, on one hand, with the very body responsible for protecting the rights and interests of consumers, and on the other hand, with a company of large turnover and significant reach. Through this decision, certain critical provisions of the Rome I Regulation are interpreted legally, while a complete listing of the articles related to the choice of law to be applied is provided, as well as the articles addressing the issue of the abusiveness of the General Terms and Conditions (GTC).

Keywords: Consumer rights, Case-law, Regulation Rome I, Court of Justice of the European Union, Amazon

1. INTRODUCTION

It is a fact that, regarding the consumer rights and the European Regulation Rome I, several decisions have been issued at an international level. Among these decisions, a representative legal case is the case of the Court of Justice of the European Union C-191/15 – Union for Consumer Information vs. Amazon EU Sàrl. This is because, through this decision, it is possible to highlight the way in which the Regulation Rome I is interpreted and how its application can be pursued.

2. THE FRAMEWORK OF THE ROME I REGULATION

The legislative text of the Rome I Regulation is of great importance both for the legal world and for transactions. It is a piece of legislation that could be said to primarily apply to cases of international trade in general, and subsequently also to international e-commerce¹.

Given the significant importance and the particularities of the Rome I Regulation, both in terms of its nature and its more specific provisions, it is necessary at this point to refer to the broader framework within which this regulation operates, before delving into the details of the individual articles. It should be noted that the Rome I Regulation is established under Regulation 593/2008 and originates from the European Union².

¹ Behr, V. (2011). Rome I Regulation a—mostly—unified Private International Law of Contractual relationships within—most—of the European Union. *Journal of Law and Commerce*, 29(233), pp. 233-272

² Moreno, G. (2016). *EU Regulation n° 593/2008 (Rome I): relationships with other provisions: in particular, the relationship with the existing international conventions (arts. 23 to 26). the united nations convention on contracts for the international sale of goods.* [online] Available at: <http://www.ejtn.eu/PageFiles/12473/EJTN%20Rome%20I%20GPalao%202016%20pdf.pdf>

The aforementioned Regulation pertains to contractual obligations, which refer to the relationships between two parties, specifically the supplier and the consumer, arising from a contract, which forms their underlying basis. Non-contractual obligations, those not originating from a contractual relationship between the parties and which can be based on any event, are governed by another European-origin Regulation, namely, the Rome II Regulation³.

More specifically, after studying the structure of the Regulation under examination, one can distinguish several categories of contractual relationships regulated by its provisions. Thus, the Rome I Regulation can be considered to apply to all categories of contracts existing in the legal world that are concluded between parties of different nationalities. The general categories of contracts governed by this Regulation are subject to its basic provisions⁴.

However, there are exceptions to this general rule, specifically four types of contractual obligations. This is because, as provided in the Regulation, it was deemed necessary to isolate these contracts from others and subject them to specific and distinct provisions for better regulation of international relations in the field of international trade and, subsequently, international e-commerce. These specific categories of contractual relationships include, first, the category of transport contracts, second, the category of consumer contracts, third, the category of insurance contracts, and fourth, the category of employment contracts⁵.

These cases are regulated distinctly from the general framework of the Regulation in a clear and explicit manner, even in terms of the structure of the text itself, as specific articles address them. Specifically, articles 5 to 8 of the Regulation govern these categories⁶.

In addition to the above, it should be noted that the Rome I Regulation contains a specific article addressing the time frame within which contracts, including electronic contracts, must be signed in order to fall under its specific provisions. This is particularly addressed in Article 28 of the Regulation, which explicitly states that contracts subject to its legal framework are those signed after December 17.12.2009⁷. Therefore, contracts signed before this date are not governed by this Regulation.

3. THE BACKGROUND OF THE CASE

The company Amazon EU Sàrl, whose headquarters, according to its articles of association, is located in Luxembourg, is the operator of the website Amazon.de, which it operates. From the .de suffix, it is easy to conclude that it was a German website, which, however, aimed to target individuals who usually resided in Austria. As a result, through this link, those usually residing in Austria entered into related contracts, which, by their nature, were electronic, meaning they took place without the simultaneous physical presence of both parties, seller and buyer, and with the help of technological advancements and the capabilities of the internet⁸.

Subsequently, in relation to the contracts that consumers entered into, they were required to accept certain terms. Within the framework of most of these terms, which the consumer-buyer was required

³ De Miguel Asensio, P. (2017). *Rome I and Rome II Regulations in International Commercial Arbitration*. Madrid: Universidad Complutense de Madrid, pp. 178-241

⁴ Pilich, M. (2016). Law applicable to insurance contracts in the light of the Rome I Regulation. *SSRN Electronic Journal*, 54(2016), pp. 197-220

⁵ Papassiopi – Pasia, Z. (2012). G. Regulation 593/2008 on the Applicable Law to Contractual Obligations (Rome I). Special and Other Provisions (Articles 5-9). In A. Grammatiki – Alexiou, et al., *Private International Law*. Athens - Thessaloniki: Sakkoulas, pp. 310-312.

⁶ Papassiopi – Pasia, Z. (2012). G. Regulation 593/2008 on the Applicable Law to Contractual Obligations (Rome I). Special and Other Provisions (Articles 5-9). In A. Grammatiki – Alexiou, et al., *Private International Law*. Athens - Thessaloniki: Sakkoulas, pp. 310-312

⁷ Official Journal of the European Union. (2008). *Regulation (EC) No. 593/2008 of the European Parliament and of the Council of June 17, 2008, on the Applicable Law to Contractual Obligations (Rome I)*. [online] Available at: <http://www.mib-hellas.gr/mib/Kanonismos%20593.pdf>

⁸ Hoofnagle, C.J., et. al. (2019). The European Union general data protection regulation: what it is and what it means. *Information & Communications Technology Law*, 28(1), pp. 65-98

to accept in order to continue the process of the remote electronic sale and, of course, to complete it, was the designation of Luxembourg law as the sole applicable law in any case where a dispute arose between the parties, provided that the dispute was based on the contract entered into. Specifically, this referred to clause number 12 of the electronic contracts, which imposed Luxembourg law as the exclusively applicable law. Additionally, according to clause 12, based on what can be understood by studying the disputed contracts and the related judicial decision of the aforementioned European Court, it was explicitly stated that no other law would be applicable under any circumstances⁹.

Regarding the nature of this term, it is critical to note that it falls into the category of standard pre-drafted clauses, which the consumer is required to accept in their exact content without having any ability to negotiate them. In any other case, that is, if the consumer does not accept them, they will not be able to contract with the seller, and thus, the contract will not be completed¹⁰. These terms are part of what is commonly referred to as General Terms and Conditions (GTC), which are set and determined unilaterally by the supplier—in this case, Amazon EU Sàrl—and must be accepted by the weaker party—the consumer—without any room for negotiation. Therefore, the consumer is faced with the choice of either accepting them unconditionally, as they are written, in order to complete the electronic sales contract, or rejecting them, which means that the contract will not be formed, leaving the consumer completely unable to negotiate further and subject to a "take-it-or-leave-it" process, meaning they are forced to either accept the clause or reject it.

Thus, due to the compulsory nature of the term, which essentially acted as a pressure mechanism for consumers who wanted to contract, the existence of the term, its nature, characteristics, validity or invalidity, and its abusiveness or lack thereof, became crucial factors that led the Union for Consumer Information of Austria to approach the courts of the country in order to protect its citizens and usually residents—consumers who used the website and accepted the term in question.

4. THE COURTS OF AUSTRIA – THE DIAGNOSIS OF THE ELEMENT OF INTERNATIONAL DISPUTE

Initially, the Austrian courts dealt with this specific issue, as they were faced with a collective consumer lawsuit filed by the Union for Consumer Information of Austria¹¹.

From the very beginning, the first-instance court, and subsequently the appellate court, observed and accepted that this was a dispute with a strong element of internationality. In other words, it was a dispute arising between parties subject to different national laws, with the law of a specific country being designated as exclusively applicable, even though it was neither the law of the country of the consumers' habitual residence, nor the law corresponding to the domain extension of the link under which the contracts were concluded, i.e., Germany. The direct result of this was, without a doubt, the need to identify the law of the country that should apply¹².

5. THE RULINGS OF THE FIRST AND SECOND INSTANCE COURTS – BOTH REFER TO THE ROME I REGULATION

It is a fact that both the first-instance and second-instance courts of Austria, before which the aforementioned dispute was brought, immediately referred to the Rome I Regulation in order to address the issue of the applicable law.

More specifically, given the characteristics outlined above that accompany and define the particular term, it should be noted that, according to the views of the judges of both the first-instance and

⁹ InfoCuria - Case-Law of the Court (2016). *Judgment of the Court (Third Chamber) of 28 July 2016*. [online] Available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=182286&pageIndex=0&doclang=EL&mode=req&dir=&occ=first&part=1>

¹⁰ Bond, R. & Speechlys, C.R. (2016). *ECJ Decision VKI v Amazon*. [online] Available at: <https://www.law.ox.ac.uk/business-law-blog/blog/2016/09/ecj-decision-vki-v-amazon>

¹¹ Kono, T., et. al. (2018). *Transnational Commercial and Consumer Law. Current Trends in International Business Law*. USA: Springer, pp. 131-142

¹² T'Syen, K. (2016). *Belgium: ECJ Rules On Fairness Of Standard Choice Of Law Clauses In B2C Relationships*. [online] Available at: <http://www.mondaq.com/x/528274/Consumer+Trading+Unfair+Trading/ECJ+Rules+On+Fairness+Of+Standard+Choice+Of+Law+Clauses+In+B2C+Relationships>

second-instance courts of Austria, this specific General Terms and Conditions clause regarding the applicable law directly conflicts with paragraph 2 of Article 6 of the Rome I Regulation. Specifically, according to the provisions of this article of the Regulation, the application of Luxembourg law to Austrian customers deprived them of the opportunity provided by their national law to enjoy the special protection afforded to them by the relevant provisions of their national law. This is despite the fact that this particular paragraph of Article 6 of the Rome I Regulation explicitly stipulates that no agreement between the contracting parties may lead one party, usually the weaker party, to a reduction of the protection provided by their national law¹³.

Furthermore, it is crucial to highlight the special mention made by the aforementioned courts regarding the problem outlined above, and within the context of the case law under study, which is connected to the issue of abusiveness in depriving the consumer of the enhanced and additional protection from the supplier, to the detriment of the consumer. This abusiveness occurs primarily due to the lack of any information provided to the consumer, preventing the consumer from being aware that by accepting this General Term and Condition, they are deprived of the enhanced protection under their national law.

Particularly with regard to this element of knowledge, it must be stated that knowledge requires exposing the consumer to the exact content of the term, as well as the consequences and effects it will have on the consumer and the potential protection they may seek from the electronic remote transaction¹⁴.

6. REFERRAL TO THE COURT OF JUSTICE OF THE EUROPEAN UNION – THE PRELIMINARY QUESTIONS OF THE AUSTRIAN COURT OF APPEAL TO THE COURT OF JUSTICE OF THE EUROPEAN UNION – THE ANSWER TO THE PRELIMINARY QUESTIONS WITH THE ISSUANCE OF JUDGMENT C-191/15

Although both the first-instance and second-instance courts, having dealt with the above-described dispute, referred to the Rome I Regulation and seemed to have identified the guiding principle by which the dispute should be addressed, the Court of Appeal did not fail to submit certain preliminary questions to the Court of Justice of the European Union, which led to the drawing of extremely important legal conclusions. The preliminary questions were as follows:

- A. Should Regulation 593/2008 (Rome I) apply for determining the applicable law for contractual obligations, or should Regulation 864/2007 (Rome II) apply for determining the applicable law for non-contractual obligations?
- B. Should the choice-of-law clause selecting Luxembourg law as the exclusively applicable law be considered as abusive under Article 3 of Directive 93/13 concerning unfair terms in contracts concluded with consumers, taking into account the case law of the CJEU¹⁵?

From the judgment C191/15, which was issued in response to the above preliminary questions, some extremely interesting rulings were drawn. Specifically:

- Regarding the first preliminary question, the Court of Justice of the European Union initially stated that Regulation 593/2008 (Rome I) applies to contractual obligations, while Regulation 864/2007 (Rome II) applies to non-contractual obligations.

In the context of this case, the Court of Justice of the European Union, identifying the basis of the dispute as the contractual relationship between consumers and suppliers, emphasized that, according to Articles 1(1) and 1(3) of Regulation 593/2008 (Rome I), this Regulation applies. This was the case

¹³ InfoCuria - Case-Law of the Court (2016). *Judgment of the Court (Third Chamber) of 28 July 2016*. [online] Available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=182286&pageIndex=0&doclang=EL&mode=req&dir=&occ=first&part=1>

¹⁴ JUDGE (2016). *CJEU (Preliminary Ruling): Determination of the law governing the processing of personal data of consumers*. [online] Available at: http://dikastis.blogspot.com/2016/09/blog-post_8.html

¹⁵ Rutgers, J. (2017). Judicial Decisions on Private International Law. *Netherlands International Law Review*, 64(1), pp. 163–175

despite the fact that it was a collective action filed by the Union for Consumer Information, as such actions had been judged under Article 5(3) of the Brussels Convention as being considered actions based on tort or quasi-tort for preventive reasons.

- The Court of Justice of the European Union ruled that the clause in the contract between the consumers and the suppliers, which stipulated the application of Luxembourg law, is abusive according to Article 3(1) of Directive 93/13/EEC. This is because, by signing this clause, consumers were led to believe that the only law that applied was Luxembourg law, without being aware of Article 6(2) of Regulation 593/2008 (Rome I). However, knowledge of this article is of paramount importance for the effective protection of consumers, given that this article provides for the application of mandatory provisions of the law that would apply if the clause had not been signed.

7. CONCLUSION

The case of Union for Consumer Information vs. Amazon EU Sàrl (C-191/15) underscores the critical role of consumer protection within the framework of European Union law, particularly under the Rome I Regulation. The Court of Justice of the European Union's ruling highlighted the tension between the unilateral imposition of terms in electronic contracts and the need to safeguard consumers' rights. By ruling that the clause designating Luxembourg law as the exclusive applicable law was abusive, the Court reinforced the principle that consumers should not be deprived of the protection offered by their national law, especially in the context of cross-border electronic transactions.

The case also clarified that the Rome I Regulation governs contractual obligations, while Rome II applies to non-contractual obligations, further distinguishing the boundaries between the two regulations. Most importantly, the ruling emphasized that consumers must be fully informed about the legal consequences of accepting such terms, ensuring that they are not unknowingly stripped of legal protections. This decision serves as a reminder of the need for fairness and transparency in digital commerce, ensuring that the legal rights of consumers are adequately protected even in the face of standardized, non-negotiable contract terms.

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