[AT] International jurisdiction of national court regarding satellite television

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In a decision of 21 February 2017 (case no. 4 Ob 137/16z), the Oberste Gerichtshof (Supreme Court) ruled that the courts of the state in which satellite broadcasts are received have jurisdiction to hear complaints about copyright breaches relating to works from the catalogue of a collecting society based in the receiving state.

An Austrian collecting society filed a complaint with the national courts about a Luxembourg-based company, claiming an injunction and financial compensation because the company had offered customers in Austria access to encrypted and unencrypted television programmes broadcast via satellite by selling them, via the Internet, an access key that enabled them to decrypt the broadcast signal. The plaintiff owned the rights to some of the broadcast programmes. The lower courts rejected the complaint on the grounds that they lacked international jurisdiction. In an appeal procedure, the plaintiff requested, inter alia, that the defendant's claim of insufficient jurisdiction should be dismissed.

In its decision, the Supreme Court rejected the claim of insufficient international jurisdiction and referred the case back to the first instance court, which must now conduct the proceedings without reference to the jurisdiction claim.

The Supreme Court explained its decision by stating that the "country of origin" principle enshrined in the Satellite and Cable Directive did not regulate international jurisdiction because it neither described international jurisdiction nor governed conflicts of national law. It should also be borne in mind that it did not contain any procedural provisions, including any that regulated international jurisdiction; rather, it was designed to harmonise different national laws and to prevent the cumulative application of several national laws to a single broadcast.

According to the Supreme Court's explanation, international jurisdiction was governed by Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which stated that international jurisdiction depended on where the offence had been committed. In the case at hand, the alleged offence had been committed in Austria because it had comprised the infringement of the exploitation rights of rightsholders

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represented by the plaintiff and the company's failure to pay compensation. With regard to compensation claims, the offence had taken place in Austria because financial debts had to be discharged at the domicile of the creditor, that is to say, that of the collecting society in this case.

Moreover, according to European Court of Justice case law relating to intellectual property rights, international jurisdiction lay with the courts of the country in which the infringed right was protected. This also suggested that the Austrian courts had international jurisdiction to hear all the claims in this case.

Beschluss des Obersten Gerichtshofs vom 21. Februar 2017 (Az. 4 Ob 137/16z)

http://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=6e49f2d1-90cf-4213-ad30-ec8fb9acd889&Position=1&Abfrage=Justiz&Gericht=&Rechtssatznummer=&Rechtssatz=&Fundstelle=&AenderungenSeit=Undefined&SucheNachRechtssatz=False

Decision of the Supreme Court of 21 February 2017 (case no. 4 Ob 137/16z)

Mitteilung des Obersten Gerichtshofs über den Beschluss

http://www.ogh.gv.at/entscheidungen/entscheidungen-ogh/satellitenfernsehen-internationale-zustaendigkeit-oesterreichischer-gerichte/

Press release of the Supreme Court concerning the decision

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