### Assingment 2 – Legal Report – Evaluation 1

### 1. Prepare a title

The second part of the assignment, Assignment B, aims at preparing the student to correctly accomplish a judicial inquiry. The inquiry presupposes the question formulation, the purpose and the research method mentioned in the presentation of the issue.

### 2. Write a brief introductory academic section

The final report is founded on the work done in phase one. The presentation of the report starts with a brief introductory (“academic”) section, which contains your exact purpose, research method, material used, delimitations and overall structure as further discussed.

### 3. Write a *factual presentation*

The introductory academic section is followed by a factual presentation. In this section you present the relevant facts for solving the issue presented in phase one. This section included references to external relevant sources. Please see the Law faculty’s lectures regarding sources and use of legal material

### 4. Write a *discussion*

The final section of your report is a discussion, containing and analyses of the case selected from the annexed list. The analyses shall be based on the chosen specific question/questions formulated, the purpose, the research method, and the factual presentation. Note that no sources are to be introduced in your discussion. In your analysis, you should assess the implications of the results and reach a conclusion by proposing measures to the board. The board wants to know the consequences of the case on the basis of your question/questions and you shall present suggestions to deal with the issue at hand.

### Evaluation/feedback on the submitted works

**1.  Structure and presentation:** The assignment has a clear and elaborate structure.   
Purpose: The reviewing student shall assess and grade the reviewed students structure and presentation based on the below mentioned criteria. The grading offers the reviewed student a clear indication of what needs to improve.

3 points – The assignment has a clear and elaborate structure.  
2 points – The greater part of the assignment has a clear and elaborate structure. Some parts of the assignment structure are unclear, and it is sometimes difficult to understand the context.  
1 points – The reviewer is able to understand the main parts of the assignment, but there is no clear structure and the presentation is unsystematic.  
0 points – The assignment lacks structure, is inconsistent and unintelligible.

**2.  Argumentation:** The student shall present convincing arguments.  
 Purpose: The reviewing student should assess if the reviewed student presents arguments and if these are relevant and objective. The reviewer should see if the arguments are based on relevant sources.

3 points – The student presents at least three objective and relevant arguments.

2 points – The student presents two objective and relevant arguments.

1 points – The student presents one objective and relevant argument.

0 points – No arguments presented in the assignment.

**3.  Answers to the specific questions:** The student has formulated an answer for the specific problem mentioned in phase one.   
Purpose: The reviewer shall assess if the reviewed student has answered the question(s) formulated in phase one.

3 points – The student clearly answers the formulated questions relevant for the assignment.   
2 points – The student has partially answered the formulated questions.   
1 points – The student has partially answered the formulated questions incorrectly.  
0 points – The student has not at all answered, or entirely incorrectly answered, the formulated questions.

**4.  Conclusion:** The student’s conclusions should be well motivated and elaborate in the presentation. The student presents conclusions for the formulated questions relevant for the assignment.  
Purpose: The reviewer shall assess if the reviewed student has presented conclusions and if these are well motivated.

3 points – The student’s conclusions are well motivated and elaborate in the presentation.  
2 points – The student’s conclusions are partially motivated in the presentation, and there is some confusion and indetermination in the conclusions.   
1 points – The student’s conclusions are present, but unmotivated, and lack support in the presentation.  
0 points – The student has reached incorrect conclusions or none at all.

**5.  References:** The student has applied two external sources in a correct manner.   
Purpose: The reviewing student shall assess and grade the reviewed students references and use of relevant external sources.

3 points – The student has applied two relevant external sources in a correct manner.   
2 points – The student has applied at least one relevant external source in a correct manner.  
1 points – The student has applied at least one external source, but the source/sources are incorrectly used in the presentation.  
0 points – The presentation lacks use of external sources.

### Overall evaluation/feedback

Write an opinion containing 100-300 words regarding the content of the assignment, which you have read, based on the following points:

* Has the student connected the written assignment to the purpose and question formulation mentioned in phase one?
* Has the student applied the method chosen in phase one?
* Has the student used external sources to address relevant facts?
* Has the student conducted a final discussion and reached a conclusion?
* What did the student do really well and what can the student improve?

**Evaluation 1:**

Who judges the crimes committed via Internet?

***The introductory academic section***

In this section the purpose, the research method, the materials used, the delimitations and the structure of the assignment should be introduced in this section. So, my purpose is to analyze the case C-509/09 and to single out all the information that is relevant to the question posed in the Assignment 1 – The Presentation. The question is “Which national jurisdiction is authorized to adjudicate in the case of someone’s private life being exposed to the public by another Member State’s resident?” As for the method, the legal (dogmatic) one will be the main as well the general method of analyzing  because exploring case C-509/09, which raises this issue, I tried to select exactly the information that is correlated with elevated above question. As far as the materials used are concerned, the Judgment of the Case C-509/09 1should be certainly mentioned.  I have also read the Opinion of the Advocate General about this Case2. Also the Regulation and the Directive, which investigate the question raised by the national courts, should be regarded as the necessary sources.

***The factual presentation***

The structure of the case should be explained before the start of the presentations of facts. The Case C-509/09 consists in fact of 2 different cases: the Case C -509/09 itself that was started by the Supreme Court of Germany and the Case C-161/10 that was initiated by the Tribunal de grande instance de Paris. Eventually the two cases were decided to be combined in one as the both cases are about the same subject: the infringement of human rights via Internet committed by another member state resident. Consequently, the facts of two cases should be regarded separately.

I)                   The Case C-509/09:

In 1993, Mr X, of German nationality and resident in the Federal Republic of Germany, was sentenced by a German court to life imprisonment for the murder of a well-known German actor. Mr X has been free on parole since January 2008.

eDate Advertising GmbH (‘eDate’) is an Austrian company which operates an internet portal, and its website is described as a ‘liberal and politically independent medium’ aimed at ‘homosexual, bisexual and transgender’ groups. Since 23 August 1999, eDate has disseminated to its readers information about Mr X, identifying him by his full name and stating that both he and his brother (who was convicted of the same crime) had lodged appeals against their convictions with the German Constitutional Court.

On 5 June 2007, Mr X gave the defendant formal notice to desist from all dissemination of information about him, a request which did not receive a written reply although, several days later, on 18 June, the information in question was removed from the defendant’s internet site.

Mr X brought an action before the German courts seeking an injunction against eDate, to apply throughout the territory of the Federal Republic of Germany, ordering it to refrain from publishing any information about him. The Landgericht Hamburg (Hamburg Regional Court), which was seised of the case at first instance, ruled in favour of Mr X, as did the Hanseatisches Oberlandesgericht (Hanseatic Higher Regional Court) on appeal.

eDate contested the action in both of the lower courts by calling into question the international jurisdiction of the German civil courts. eDate lodged an appeal on a point of law before the Bundesgerichtshof against the judgment of the Hanseatisches Oberlandesgericht, arguing once again that the German courts lacked jurisdiction, the issue which is the focus of the three questions referred for a preliminary ruling by that court.

II)                The Case C-161/10:

On 3 February 2008, the British newspaper the *Sunday Mirror* published in its internet edition a number of photographs accompanied by a text, entitled ‘Kylie Minogue back with Olivier Martinez’. The article described how the couple had met in Paris, referring to the fact that they had ‘separated last year’ and that the ‘23-hour romantic trip’ confirmed the renewal of their relationship. The article also attributed a number of remarks to Robert Martinez, Olivier Martinez’s father.

Olivier and Robert Martinez, both of French nationality, brought an action before the tribunal de grande instance de Paris against the owner of the *Sunday Mirror*, MGN Limited, a company governed by English law. They both considered the information published by that media outlet to be an infringement of their right to privacy and of the right of Olivier Martinez to his own image. The defendant, which was served with the writ on 28 August 2008, objected to the international jurisdiction of the French court, arguing that international jurisdiction lay with the United Kingdom courts, more specifically the High Court of Justice.

After hearing the parties and after making a reference for a preliminary ruling to the Court of Justice (which was ruled inadmissible on the ground of a manifest lack of jurisdiction (7)), the tribunal de grande instance sought a further ruling from the Court in order to confirm the scope of the jurisdiction of the French courts.

Also two legal sources must be presented in this part. Consequently, it’s the **Brussels Regulation**[i]**. The article №5 of that Regulation is the one that interests us. The precise text is : “**A person domiciled in a Member State may, in another Member State, be sued:. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur”.

Most certainly the **Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') should be presented as it was mentioned in both the Judgment and the Opinion of the Advocate General.**

### *The discussion*

The Brussels Regulation3 provides that persons domiciled in a Member State are, in principle, to be sued before the courts of that State. However, in matters relating to tort, delict or quasi-delict, a person may also be sued in another Member State before the courts for the place where the harmful event occurred or may occur. Thus, in the case of defamation (the communication of a false statement that harms the reputation of an individual person, business, product, group, government, religion, or nation. er various kinds of defamation and retaliate against groundless criticism5) by means of a written newspaper article distributed in several Member States, the victim has two options for bringing an action for compensation against the publisher. On the one hand, he may bring an action before the courts of the State in which that publisher is established, which have jurisdiction to award damages for all of the harm caused by the defamation. On the other hand, he may bring an action before the courts of each Member State in which the publication was distributed and where he claims to have suffered injury to his reputation (place in which the damage occurred). In the latter case, however, the national courts have jurisdiction only in respect of damage caused in the State in which they are located.

In its judgment delivered the Court points out that the placing online of content on an internet website is to be distinguished from the regional distribution of printed matter by reason of the fact that it can be consulted instantly by an indefinite number of internet users world-wide. Thus, universal distribution, firstly, is liable to increase the seriousness of the infringements of personality rights and, secondly, makes it extremely difficult to locate the places in which the damage resulting from those infringements has occurred. In those circumstances, - given that the impact which material placed online is liable to have on an individual’s personality rights might best be assessed by the court of the place where the victim has his centre of interests -, the Court of Justice designates that court as having jurisdiction in respect of all damage caused within the territory of the European Union. In that context, the Court states that the place where a person has the centre of his interests corresponds in general to his habitual residence.

The Court points out that in place of an action for liability in respect of all of the damage the victim may always bring an action before the courts of each Member State in the territory of which the online content is or has been accessible. In that case, in the same way as damage caused by printed matter, those courts have jurisdiction to deal with cases only in relation to damage which occurred within the territory of the State in which they are situated. Similarly, the person whose rights have been infringed may also bring an action, in respect of all of the damage caused, before the courts of the Member State in which the publisher of the online content is established.

Finally, in interpreting the e-commerce directive4, the Court rules that the principle of the freedom to provide services restrains the provider of an electronic commerce service from being made subject, in the host Member State, to stricter requirements than those provided for by the law of the Member State in which that service provider is established.

1 the Court (Grand Chamber) of 25 October 2011. eDate Advertising GmbH v X ( C-509/09) and Olivier Martinez and Robert Martinez v MGN Limited (C-161/10).  
2 OPINION OF ADVOCATE GENERAL CRUZ VILLALÓN delivered on 29 March 2011 ( 1) Joined Cases C‑509/09 and C‑161/10 eDate Advertising GmbH v X (C‑509/09) and Olivier Martinez and Robert Martinez v Société MGN Limited (C‑161/10)

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

4 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ 2000 L 178, p. 1).

5"Legal dictionary". findlaw.com. Retrieved 2006-11-24.

**Evaluation Points: 15/15**

**1.  Structure and presentation: 3**

**2.  Argumentation: 3**

**3.  Answers to the specific questions: 3**

**4.  Conclusion: 3**

**5.  References: 3**

**Evaluation Comments:**

I thought the student connected the written assignment to the purpose and question formulation mentioned in phase one. The method from phase one was applied. The student used external sources to address the relevant facts. The student's final discussion and conclusion were well motivated and elaborated in the presentation. They applied enough external sources in a correct manner. The only thing I can offer for improvement might be even more diverse examples of applying this topic. The student demonstrated someone from the homosexual population who was convicted of a murder of an actor, and won a court case against an online dating service for gay people, and another musical celebrity and actress involved in a court case about the internet disclosing her dating status, but perhaps demonstrating examples with people from all different groups in society would make the presentation of this case even better.