ECLI:EU:C:2017:766

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

17 October 2017 (*)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Article 7(2) — Special jurisdiction in matters relating to tort, delict or quasi-delict — Infringement of the rights of a legal person by the publication on the internet of allegedly incorrect information concerning that person and by the failure to remove comments relating to that person— Place where the damage occurred — Centre of interests of that person)

In Case C-194/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Riigikohus (Supreme Court, Estonia), made by decision of 23 March 2016, received at the Court on 7 April 2016, in the proceedings

Bolagsupplysningen OÜ,

Ingrid Ilsjan

v

Svensk Handel AB,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, J.L. da Cruz Vilaça, A. Rosas and J. Malenovský, Presidents of Chambers, E. Juhász, A. Borg Barthet, J.-C. Bonichot, M. Safjan (Rapporteur), K. Jürimäe and C. Lycourgos, Judges,

Advocate General: M. Bobek,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 20 March 2017,

after considering the observations submitted on behalf of:

– Bolagsupplysningen OÜ and Ms Ilsjan, by K. Turk and K. Tomson, vandeadvokaadid, and by A. Prants and M. Pild, advokaadid,

– the Estonian Government, by K. Kraavi-Käerdi and N. Grünberg, acting as Agents,

– the Portuguese Government, by L. Inez Fernandes, M. Figueiredo and S. Duarte Afonso, acting as Agents,

– the United Kingdom Government, by J. Kraehling and C. Crane, acting as Agents, and by J. Holmes, Barrister,

– the European Commission, by M. Wilderspin, M. Heller and E. Randvere, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 July 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 7(2) of 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 (OJ 2012 L 351, p. 1).

2 The request has been made in proceedings brought by Bolagsupplysningen OÜ and Ms Ingrid Ilsjan against Svensk Handel AB regarding requests for the rectification of allegedly incorrect information published on Svensk Handel's website, the deletion of related comments on a discussion forum on that website and compensation for harm allegedly suffered.

Legal context

3 Recitals 15 and 16 of Regulation No 1215/2012 state:

'(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(16) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.'

4 The rules of jurisdiction are set out in Chapter II of that regulation.

5 Article 4 of Regulation No 1215/2012, which appears in Section 1 of Chapter II of that regulation, headed ‘General provisions’, provides in paragraph 1:

‘Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.’

6 Article 5 of that regulation, which is also in Section 1, provides in paragraph 1:

‘Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.’

7 Article 7 of that regulation, which forms part of Section 2, headed ‘Special jurisdiction’, of Chapter II, provides in paragraph 2:

‘A person domiciled in a Member State may be sued in another Member State:

...

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur’.

8 The wording of Article 7(2) of Regulation No 1215/2012 is identical to the wording of Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1), which was repealed by Regulation No 1215/2012, and corresponds to the wording of Article 5(3) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.

The dispute in the main proceedings and the questions referred for a preliminary ruling

9 On 29 September 2015, Bolagsupplysningen, a company incorporated under Estonian law, and Ms Ilsjan, an employee of that company, brought an action against Svensk Handel, a company incorporated under Swedish law which is a trade association, before the Harju Maakohus (Harju Court of First Instance, Estonia). The applicants in the main proceedings asked that court to require Svensk Handel to rectify incorrect information, published on its website, pertaining to Bolagsupplysningen and to delete the comments appearing there, to pay to Bolagsupplysningen the amount of EUR 56 634.99 as compensation for harm sustained and to pay to Ms Ilsjan fair compensation for non-material damage, as assessed by the court.

10 According to the application, Svensk Handel had included Bolagsupplysningen in a ‘blacklist’ on its website, stating that the company carries out acts of fraud and deceit. The application states that on the discussion forum on that site there are approximately 1 000 comments, a number of which are direct calls for acts of violence against Bolagsupplysningen and its employees, including Ms Ilsjan. Svensk Handel refused to remove Bolagsupplysningen from the list and to delete the comments, allegedly paralysing Bolagsupplysningen’s business activities in Sweden with the result that the company suffers material damage on a daily basis.

11 By its order of 1 October 2015, the Harju Maakohus (Harju Court of First Instance) held that the action was inadmissible. According to that court, it was not possible to apply Article 7(2) of Regulation No 1215/2012, since it did not appear from the application that the damage had occurred in Estonia. The court found that the information and comments at issue were published in Swedish

and, without a translation, they were incomprehensible to persons residing in Estonia. Comprehension of the information at issue was language dependent. The occurrence of damage in Estonia had not been proved and the reference to turnover in Swedish kronor suggested that the damage had been caused in Sweden. The fact that the website at issue was accessible in Estonia could not automatically justify an obligation to bring a civil case before an Estonian court.

12 The applicants in the main proceedings appealed against the order of the Harju Maakohus (Harju Court of First Instance).

13 By order of 9 November 2015, the Tallinna Ringkonnakohus (Tallinn Court of Appeal, Estonia) dismissed that appeal and upheld the order of the Harju Maakohus (Harju Court of First Instance).

14 The applicants in the main proceedings requested that the referring court set aside the order of the Tallinna Ringkonnakohus (Tallinn Court of Appeal) and rule on the action. Svensk Handel opposed these requests.

15 The referring court disjoined the requests of Bolagsupplysningen from those of Ms Ilsjan, taking the view that, with regard to the latter, the appeal against the order of the Tallinna Ringkonnakohus (Tallinn Court of Appeal) is well founded, that the orders of that court and of the Harju Maakohus (Harju Court of First Instance) have to be set aside and that the case has to be referred back to the Harju Maakohus (Harju Court of First Instance) so that it can rule on the admissibility of Ms Ilsjan's claims.

16 Concerning the application lodged by Bolagsupplysningen, the referring court takes the view that it falls within the jurisdiction of the Estonian courts, at least with regard to the claim for compensation for damage that occurred in Estonia.

17 Nonetheless, the referring court adds that, unlike an intellectual and industrial property right, whose protection is limited to the territory of the Member State in which that right is registered, the rights that have allegedly been infringed in the present case are not, by their nature, rights that can only be protected within the territory of certain Member States (see, to that effect, judgment of 3 October 2013, *Pinckney*, C-170/12, EU:C:2013:635, paragraphs 35 to 37). Bolagsupplysningen claims, in essence, that the publication of the incorrect information has harmed its good name and reputation. In that regard, the Court of Justice has previously held that injury caused by a defamatory publication to the reputation and good name of a legal person occurs in the places where the publication is distributed and in which the victim claims to have suffered injury to its reputation (judgment of 7 March 1995, *Shevill and Others*, C-68/93, EU:C:1995:61, paragraphs 29 and 30).

18 However, it is the view of the referring court that it is not possible to determine with certainty whether Bolagsupplysningen may, on the basis of the principles mentioned in the paragraph above, also seek the rectification of the incorrect information and the deletion of the comments before an Estonian court.

19 Nor is it possible to determine whether Bolagsupplysningen may also seek compensation for the entirety of the damage that it claims to have suffered before the Estonian courts. Recalling the principle that a person who considers that his rights have been infringed by means of content placed online on a website has the option of bringing an action for damages, in respect of all the harm caused, either before the courts of the Member State in which the publisher of that content is established or before the courts of the Member State in which the centre of his interests is based (judgment of 25 October 2011, *eDate Advertising and Others*, C-509/09 and C-161/10,

EU:C:2011:685, paragraph 52), the referring court notes that that principle was adopted specifically in the context of the infringement of the personality rights of a natural person. The referring court states that this is why it has not been established that that principle also applies to legal persons.

20 Lastly, the referring court is uncertain whether the seat and/or the place of business of a legal person provide sufficient grounds for assuming that the centre of interests of that legal person is also located there. Regardless of whether such a premiss should be relied on, the question arises as to which circumstances and criteria a court is to take into account in determining where the centre of interests of a legal person is located.

21 In those circumstances, the Riigikohus (Supreme Court, Estonia) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 7(2) of [Regulation No 1215/2012] to be interpreted as meaning that a person who alleges that his rights have been infringed by the publication of incorrect information concerning him on the internet and by the failure to remove comments relating to him can bring an action for rectification of the incorrect information and removal of the harmful comments before the courts of any Member State in which the information on the internet is or was accessible, in respect of the harm sustained in that Member State?

(2) Is Article 7(2) of [Regulation No 1215/2012] to be interpreted as meaning that a legal person which alleges that its rights have been infringed by the publication of incorrect information concerning it on the internet and by the failure to remove comments relating to that person can, in respect of the entire harm that it has sustained, bring proceedings for rectification of the information, for an injunction for removal of the comments and for damages for the pecuniary loss caused by publication of the incorrect information on the internet before the courts of the State in which that legal person has its centre of interests?

(3) If the second question is answered in the affirmative: is Article 7(2) of [Regulation No 1215/2012] to be interpreted as meaning that:

– it is to be assumed that a legal person has its centre of interests in the Member State in which it has its seat, and accordingly that the place where the harmful event occurred is in that Member State, or

– in ascertaining a legal person's centre of interests, and accordingly the place where the harmful event occurred, regard must be had to all of the circumstances, such as its seat and fixed place of business, the location of its customers and the way and means in which its transactions are concluded?'

Consideration of the questions referred

The second and third questions

22 By its second and third questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that a legal person claiming that its personality rights have been infringed by the publication of incorrect information concerning it on the internet and by a failure to remove comments relating to that person can bring an action for rectification of that information, removal of those comments and compensation in respect of all the damage sustained before the courts of the

Member State in which its centre of interests is located and, if that is the case, what are the criteria and the circumstances to be taken into account to determine that centre of interests.

23 In order to answer those questions, it should be noted that Article 7(2) provides that, in matters relating to tort, delict or quasi-delict, a person domiciled in a Member State may be sued in another Member State in the courts for the place where the harmful event occurred or may occur.

24 In that regard, it is necessary to make clear that the interpretation given by the Court concerning Article 5(3) of Regulation No 44/2001 also applies with regard to the equivalent provision of Article 7(2) of Regulation No 1215/2012 (see, by analogy, judgment of 15 June 2017, *Kareda*, C-249/16, EU:C:2017:472, paragraph 27).

25 It is settled case-law that the rule of special jurisdiction in matters relating to tort, delict or quasi-delict must be interpreted independently, by reference to the scheme and purpose of the regulation of which it forms part (see, to that effect, judgment of 25 October 2011, *eDate Advertising and Others*, C-509/09 and C-161/10, EU:C:2011:685, paragraph 38).

26 That rule of special jurisdiction is based on the existence of a particularly close connecting factor between the dispute and the courts of the place where the harmful event occurred or may occur, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (see, inter alia, judgments of 25 October 2011, *eDate Advertising and Others*, C-509/09 and C-161/10, EU:C:2011:685, paragraph 40, and of 22 January 2015, *Hejduk*, C-441/13, EU:C:2015:28, paragraph 19 and the case-law cited).

27 In matters relating to tort, delict or quasi-delict, the courts for the place where the harmful event occurred or may occur are usually the most appropriate for deciding the case, in particular on the grounds of proximity and ease of taking evidence (judgments of 16 May 2013, *Melzer*, C-228/11, EU:C:2013:305, paragraph 27, and of 21 May 2015, *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335, paragraph 40).

28 It is also appropriate, when interpreting Article 7(2) of Regulation No 1215/2012, to bear in mind recital 16 of that regulation, which states that the existence of a close connection between the court and the action should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen, which is important, in particular, in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

29 Having noted that, it should be borne in mind that, according to settled case-law of the Court, the expression ‘place where the harmful event occurred or may occur’ is intended to cover both the place where the damage occurred and the place of the event giving rise to it, since each of them could, depending on the circumstances, be particularly helpful in relation to the evidence and the conduct of the proceedings (judgment of 25 October 2011, *eDate Advertising and Others*, C-509/09 and C-161/10, EU:C:2011:685, paragraph 41 and the case-law cited).

30 The case in the main proceedings does not concern the question whether or not the action can be brought before the Estonian courts by virtue of them being the courts for the place of the event giving rise to the damage. It is common ground that that place is not situated within the jurisdiction of the courts seised by Bolagsupplysningen and Ms Ilsjan. On the other hand, the question arises as to whether those courts have jurisdiction on the ground that they are the courts for the place where the alleged damage occurred.

31 In that regard, the Court has held, in relation to actions seeking compensation for non-material damage allegedly caused by a defamatory article published in the printed press, that the victim may bring an action for damages against the publisher before the courts of each Member State in which the publication was distributed and where the victim claims to have suffered injury to his reputation, which have jurisdiction to rule solely in respect of the harm caused in the Member State of the court seised (judgment of 7 March 1995, *Shevill and Others*, C-68/93, EU:C:1995:61, paragraph 33).

32 In the specific context of the internet, the Court has, nonetheless, ruled, in a case relating to a natural person, that, in the event of an alleged infringement of personality rights by means of content placed online on a website, the person who considers that his rights have been infringed must have the option of bringing an action for damages, in respect of all the harm caused, before the courts of the Member State in which the centre of his interests is based (judgment of 25 October 2011, *eDate Advertising and Others*, C-509/09 and C-161/10, EU:C:2011:685, paragraph 52).

33 As regards such content, the alleged infringement is usually felt most keenly at the centre of interests of the relevant person, given the reputation enjoyed by him in that place. Thus, the criterion of the 'victim's centre of interests' reflects the place where, in principle, the damage caused by online material occurs most significantly, for the purposes of Article 7(2) of Regulation No 1215/2012.

34 The courts of the Member State in which the centre of interests of the person affected is located are, consequently, best placed to assess the impact of such content on the rights of that person (see, to that effect, judgment of 25 October 2011, *eDate Advertising and Others*, C-509/09 and C-161/10, EU:C:2011:685, paragraph 48).

35 Moreover, the criterion of the centre of interests accords with the aim of predictability of the rules governing jurisdiction, since it allows both the applicant easily to identify the court in which he may sue and the defendant reasonably to foresee before which court he may be sued (judgment of 25 October 2011, *eDate Advertising and Others*, C-509/09 and C-161/10, EU:C:2011:685, paragraph 50).

36 In the light of the circumstances of the main proceedings and the doubts raised in certain written and oral observations, it is necessary to make clear, first, that the above considerations apply regardless of whether the damage allegedly suffered is material or non-material in nature.

37 While the question whether the damage is material or non-material may, depending on the applicable law, have an influence on whether the damage allegedly suffered is reparable, it has no bearing on the determination of the centre of interests as the place in which a court can best assess the actual impact of the publication on the internet and its harmful nature.

38 Second, given that the option of a person who considers that his rights have been infringed to bring an action before the courts of the Member State in which his centre of interests is located for all the alleged damage is justified in the interests of the sound administration of justice and not specifically for the purposes of protecting the applicant, the matter of whether the person is a natural or legal person is also not conclusive.

39 In that regard, the Court has pointed out that the rule of special jurisdiction in matters relating to tort, delict or quasi-delict does not pursue the same objective as the rules on jurisdiction laid down in Sections 3 to 5 of Chapter II of Regulation No 1215/2012, which are designed to offer the weaker party stronger protection (see, to that effect, judgment of 25 October 2012, *Folien Fischer*

and Fofitec, C-133/11, EU:C:2012:664, paragraph 46). The criterion of the centre of interests is intended to determine the place in which damage caused by online content occurs and, consequently, the Member State whose courts are best able to hear and to rule upon the dispute.

40 As to the identification of the centre of interests, the Court has stated that, with regard to a natural person, this generally corresponds to the Member State of his habitual residence. However, such a person may also have his centre of interests in a Member State in which he does not habitually reside, in so far as other factors, such as the pursuit of a professional activity, may establish the existence of a particularly close link with that State (judgment of 25 October 2011, *eDate Advertising and Others*, C-509/09 and C-161/10, EU:C:2011:685, paragraph 49).

41 As regards a legal person pursuing an economic activity, such as the applicant in the main proceedings, the centre of interests of such a person must reflect the place where its commercial reputation is most firmly established and must, therefore, be determined by reference to the place where it carries out the main part of its economic activities. While the centre of interests of a legal person may coincide with the place of its registered office when it carries out all or the main part of its activities in the Member State in which that office is situated and the reputation that it enjoys there is consequently greater than in any other Member State, the location of that office is, not, however, in itself, a conclusive criterion for the purposes of such an analysis.

42 Thus, when the relevant legal person carries out the main part of its activities in a Member State other than the one in which its registered office is located, as is the case in the main proceedings, it is necessary to assume that the commercial reputation of that legal person, which is liable to be affected by the publication at issue, is greater in that Member State than in any other and that, consequently, any injury to that reputation would be felt most keenly there. To that extent, the courts of that Member State are best placed to assess the existence and the potential scope of that alleged injury, particularly given that, in the present instance, the cause of the injury is the publication of information and comments that are allegedly incorrect or defamatory on a professional site managed in the Member State in which the relevant legal person carries out the main part of its activities and that are, bearing in mind the language in which they are written, intended, for the most part, to be understood by people living in that Member State.

43 It is also appropriate to point out that, in circumstances where it is not clear from the evidence that the court must consider at the stage when it assesses whether it has jurisdiction that the economic activity of the relevant legal person is carried out mainly in a certain Member State, so that the centre of interests of the legal person which is claiming to be the victim of an infringement of its personality rights cannot be identified, that person cannot benefit from the right to sue the alleged perpetrator of the infringement pursuant to Article 7(2) of Regulation No 1215/2012 for the entirety of the compensation on the basis of the place where the damage occurred.

44 The answer to the second and third questions therefore is that Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that a legal person claiming that its personality rights have been infringed by the publication of incorrect information concerning it on the internet and by a failure to remove comments relating to that person can bring an action for rectification of that information, removal of those comments and compensation in respect of all the damage sustained before the courts of the Member State in which its centre of interests is located.

When the relevant legal person carries out the main part of its activities in a different Member State from the one in which its registered office is located, that person may sue the alleged perpetrator of the injury in that other Member State by virtue of it being where the damage occurred.

The first question

45 By its first question, the referring court asks, in essence, whether Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that a person who alleges that his personality rights have been infringed by the publication of incorrect information concerning him on the internet and by the failure to remove comments relating to him can bring an action for rectification of that information and removal of those comments before the courts of each Member State in which the information published on the internet is or was accessible.

46 That question must be answered in the negative.

47 It is true that, in paragraphs 51 and 52 of the judgment of 25 October 2011, *eDate Advertising and Others* (C-509/09 and C-161/10, EU:C:2011:685), the Court held that the person who considers that his rights have been infringed may also, instead of an action for damages in respect of all the harm caused, bring his action before the courts of each Member State in whose territory content placed online is or has been accessible, which have jurisdiction only in respect of the harm caused in the territory of the Member State of the court seised.

48 However, in the light of the ubiquitous nature of the information and content placed online on a website and the fact that the scope of their distribution is, in principle, universal (see, to that effect, judgment of 25 October 2011, *eDate Advertising and Others*, C-509/09 and C-161/10, EU:C:2011:685, paragraph 46), an application for the rectification of the former and the removal of the latter is a single and indivisible application and can, consequently, only be made before a court with jurisdiction to rule on the entirety of an application for compensation for damage pursuant to the case-law resulting from the judgments of 7 March 1995, *Shevill and Others* (C-68/93, EU:C:1995:61, paragraphs 25, 26 and 32), and of 25 October 2011, *eDate Advertising and Others* (C-509/09 and C-161/10, EU:C:2011:685, paragraphs 42 and 48), and not before a court that does not have jurisdiction to do so.

49 In the light of the above, the answer to the first question is that Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that a person who alleges that his personality rights have been infringed by the publication of incorrect information concerning him on the internet and by the failure to remove comments relating to him cannot bring an action for rectification of that information and removal of those comments before the courts of each Member State in which the information published on the internet is or was accessible.

Costs

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 7(2) of 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 must be interpreted as meaning that a legal person claiming that its personality rights have been infringed by the publication of incorrect information concerning it on the internet and by a failure to remove comments relating to that person can bring an action for rectification of that information, removal of those comments**

and compensation in respect of all the damage sustained before the courts of the Member State in which its centre of interests is located.

When the relevant legal person carries out the main part of its activities in a different Member State from the one in which its registered office is located, that person may sue the alleged perpetrator of the injury in that other Member State by virtue of it being where the damage occurred.

2. **Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that a person who alleges that his personality rights have been infringed by the publication of incorrect information concerning him on the internet and by the failure to remove comments relating to him cannot bring an action for rectification of that information and removal of those comments before the courts of each Member State in which the information published on the internet is or was accessible.**

[Signatures]

* Language of the case: Estonian.