

CJEU on the place of the damage under Article 7(2) of Brussels Ia as regards violation of personality rights of a legal person

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For jurisdictional purposes, the localisation of cross-border violations of personality rights under European instruments, such as Regulation (EU) No 1215/2012 (Brussels Ia), has attracted the attention of a considerable number of scholars and often led to different legal solutions in the national judicial practice. At EU level, besides Shevill (C-68/93; ECLI:EU:C:1995:61) as well as eDate and Martinez (C-509/09 and C-161/20; ECLI:EU:C:2011:685), since 17 October 2017, a third judgment in case Bolagsupplysningen (C-194/16; ECLI:EU:C:2017:766) has given further clarification in this area. In the recently delivered judgment, the ECJ specified one of the two limbs of the connecting factor “where the harmful event occurred or may occur” under Article 7(2) of Brussels Ia, namely the place of the alleged damage.

Two key factual elements of Bolagsupplysningen differentiate this case from Shevill, as well as eDate and Martinez. First, one of the alleged victims is a legal person established under Estonian law and has business activities in Sweden (paras 9 and 10). Secondly, the case concerned “*the rectification of allegedly incorrect information published on ... [the] website [of the Swedish defendant], the deletion of related comments on a discussion forum on that website and compensation for [the entire] harm allegedly suffered*” (para 2; emphases omitted; words in square brackets added).

Regarding the determination of the jurisdictionally relevant place of damage, the ECJ basically ruled that a legal person asserting that its personality rights have been violated through the Internet may bring an action for rectification and removal of the allegedly infringing information, and compensation for all the damage occurred before the courts of the Member State in which its centre of interests is situated. In addition, it also stated that the courts of each Member

State in which the contested online information is or was accessible are not competent to hear actions brought for rectification and removal of that information.

In the present author's view, one of the most significant aspects of the judgment is that the ECJ treated the pecuniary and non-pecuniary damage equally for determining the jurisdictionally relevant place of damage (para 36). In addition, the ECJ applied the "centre of interests" connecting factor introduced in *eDate* and *Martinez* to this case and identified it vis-à-vis a legal person pursuing business activities in a Member State other than in the Member State in which its registered office is located (paras 40 ff.). The decisive element for this identification seems to be the pursuit of business activities. As a side note, it is worth questioning how to define this approach for entities that do not carry out such activities (cf. the centre of interests of a natural person generally coincides with his/her habitual residence in *eDate* and *Martinez*, para 49). Finally, and, in the opinion of the present author, most importantly, regarding claims for rectification and removal of allegedly infringing online information, the ECJ disregarded the so-called mosaic principle (paras 45 ff.).