Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

21 December 2021 (*)

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Article 7(2) – Special jurisdiction in matters relating to tort, delict or quasi-delict – Publication on the internet of allegedly disparaging comments concerning a person – Place where the harmful event occurred – Courts of each Member State in which content placed online is or has been accessible)

In Case C-251/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 13 May 2020, received at the Court on 10 June 2020, in the proceedings

Gtflix Tv

v

DR,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, I. Jarukaitis and N. Jääskinen, Presidents of Chambers, T. von Danwitz, M. Safjan (Rapporteur), L.S. Rossi, A. Kumin and N. Wahl, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Gtflix Tv, by P. Spinosi, L. Chevallier and A. Michel, avocats,

– the French Government, by E. de Moustier and A. Daniel, acting as Agents,

– the Greek Government, by S. Chala, A. Dimitrakopoulou and K. Georgiadis, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 16 September 2021,

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 between Gtflix Tv, an adult entertainment company established in the Czech Republic, and DR, another professional in that field, domiciled in Hungary, concerning an application for rectification and removal of allegedly disparaging comments about that company which DR placed online on several websites and internet forums and a claim for compensation for the damage allegedly suffered as a result.

Legal context

3 It is apparent from recital 4 thereof that Regulation No 1215/2012 is intended, in the interests of the sound operation of the internal market, to unify the rules of conflict of jurisdiction in civil and commercial matters, and to ensure rapid and simple recognition and enforcement of judgments given in a Member State.

4 Recitals 15 and 16 of that regulation 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.’

5 The rules of jurisdiction are set out in Chapter II of that regulation. Section 1 of Chapter II, entitled ‘General provisions’, contains Articles 4 to 6 of Regulation No 1215/2012.

6 Article 4(1) of that regulation provides:

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

7 Article 5(1) of that regulation states:

‘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.’

8 In Section 2 of Chapter II of that regulation, entitled ‘Special jurisdiction’, Article 7(2) thereof provides:

‘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’.

9 The wording of Article 7(2) of Regulation No 1215/2012 is essentially identical to that 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.

10 Section 4 of Chapter II of Regulation No 1215/2012, entitled 'Jurisdiction over consumer contracts', contains Article 17(1), which states:

'1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:

…

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.'

The main proceedings and the question referred for a preliminary ruling

11 Gtflix Tv, which is established in the Czech Republic and has its centre of interests in that Member State, produces and distributes, inter alia via its website, adult audiovisual content. DR, who is domiciled in Hungary, is a director, producer and distributor of films of the same type which are marketed on websites hosted in Hungary.

12 Gtflix Tv alleges that DR made disparaging comments about it on a number of websites and forums.

13 After giving DR formal notice to remove those comments, Gtflix Tv brought an action for interim measures against him before the President of the tribunal de grande instance de Lyon (Regional Court, Lyon, France) seeking an order requiring DR (i) on pain of a fine, to cease all acts of disparagement towards Gtflix Tv and a website belonging to that company and to publish a legal notice in French and English on each of the internet forums in question, (ii) to allow Gtflix Tv to post a comment on those forums and (iii) to pay Gtflix Tv a symbolic sum of EUR 1 as compensation for economic damage and EUR 1 for non-material damage.

14 Before that court, DR raised an objection that the French court lacked jurisdiction, which was upheld by order of 10 April 2017.

15 Gtflix Tv brought an appeal against that order before the cour d'appel de Lyon (Court of Appeal, Lyon, France), increasing to EUR 10 000 the provisional sum claimed as compensation for the economic and non-material damage suffered in France. By confirmatory judgment of 24 July 2018, that court also upheld the objection of lack of jurisdiction.

16 Before the referring court, Gtflix Tv criticises that judgment for having found that the Czech courts, rather than the French courts, have jurisdiction, whereas, in Gtflix Tv's view, if content placed on the internet is accessible in a Member State, then the courts of that Member State have jurisdiction to rule on cases concerning the damage caused by that content in that Member State. Gtflix Tv submits that the cour d'appel de Lyon (Court of Appeal, Lyon) infringed Article 7(2) of Regulation No 1215/2012 by excluding the jurisdiction of the French courts on the ground that it is not sufficient that the comments deemed to be disparaging are accessible within the jurisdiction of the court seised, but that those comments must also be of some interest to internet users residing within that jurisdiction and must be liable to cause damage there.

17 In the light of the judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan* (C-194/16, EU:C:2017:766), the referring court determined that the French courts had no jurisdiction to hear the application for the removal of allegedly disparaging comments and the rectification of information by the publication of a statement, on the grounds, inter alia, that Gtflix Tv's centre of interests was established in the Czech Republic and that DR is domiciled in Hungary.

18 However, the referring court has doubts as to whether a person who, considering that his or her rights have been infringed by the dissemination of disparaging comments on the internet, seeks not only the rectification of the information and the removal of the content but also compensation for the resulting non-material and economic damage, may claim, before the courts of each Member State in which content published online is or was accessible, compensation for the damage caused in that Member State, in accordance with the judgment of 25 October 2011, *eDate Advertising and Others* (C-509/09 and C-161/10, EU:C:2011:685, paragraphs 51 and 52), or whether, pursuant to the judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan* (C-194/16, EU:C:2017:766, paragraph 48), that person must make that application for compensation before the court with jurisdiction to order rectification of the information and removal of the disparaging comments.

19 In those circumstances, the Cour de cassation (Court of Cassation, France) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 7(2) of Regulation No 1215/2012 be interpreted as meaning that a person who, considering that his or her rights have been infringed by the dissemination of disparaging comments on the internet, brings proceedings not only for the rectification of data and the removal of content but also for compensation for the resulting non-material and economic damage, may claim, before the courts of each Member State in the territory of which content published online is or was accessible, compensation for the damage caused in the territory of that Member State, in accordance with the judgment of 25 October 2011, *eDate Advertising and Others* (C-509/09 and C-161/10, EU:C:2011:685, paragraphs 51 and 52), or whether, pursuant to the judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan* (C-194/16, EU:C:2017:766, paragraph 48), that person must make that application for compensation before the court with jurisdiction to order rectification of the information and removal of the disparaging comments?'

Consideration of the question referred

20 By its 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, considering that his or her rights have been infringed by the dissemination of disparaging comments on the internet, seeks not only the rectification of the information and the removal of the content placed online concerning him or her but also compensation for the damage resulting from that placement may claim, before the courts of each Member State in which those comments are or were accessible, compensation for the damage suffered in the Member State of the court seised, even though those courts do not have jurisdiction to rule on the application for rectification and removal.

21 In that respect, it should be noted that Article 7(2) of Regulation No 1215/2012 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.

22 Since that provision is equivalent to Article 5(3) of Regulation No 44/2001, the interpretation given by the Court concerning that provision also applies with regard to Article 7(2) of Regulation No 1215/2012 (see judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 24 and the case-law cited).

23 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 (judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 25 and the case-law cited).

24 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 (judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 26 and the case-law cited).

25 As can be seen from recital 16 of Regulation No 1215/2012, the requirement of such a connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he or she 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 (see, to that effect, judgment of 17 October *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 28).

26 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 (judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 27 and the case-law cited).

27 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 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 29 and the case-law cited).

28 There is nothing in the order for reference to suggest that the case in the main proceedings concerns the possibility of bringing an action before the French courts on the basis of the place of the event giving rise to the damage. The question does arise, however, as to whether the French courts have jurisdiction on the basis of the place where the alleged damage occurred. In addition, as noted by the referring court, Gtflix Tv did not request that the information and the comments at issue in the main proceedings be rendered inaccessible in France.

29 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 or her 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).

30 As regards, specifically, allegations of infringement of personality rights by means of content placed online on a website, the Court has held that, in accordance with Article 7(2) of Regulation No 1215/2012, a person who considers that his or her rights have been infringed has the option of bringing an action for liability, in respect of all the damage 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 or her interests is based. That person may also, instead of an action for liability seeking compensation in respect of all the damage caused, bring an action before the courts of each Member State in which content placed online is or has been accessible. Those courts have jurisdiction only in respect of the damage caused in the Member State of the court seised (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 52).

31 That option is also available to a legal person which carries out an economic activity and seeks compensation for harm resulting from the damage to its commercial reputation caused by the publication of incorrect information concerning it on the internet and by a failure to remove comments relating to that

person (see, to that effect, judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 44).

32 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, the Court has nevertheless specified that 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, and not before a court that does not have jurisdiction to do so (judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 48).

33 It follows that, in accordance with Article 7(2) of Regulation No 1215/2012, a person who considers that he or she has been harmed by the placement of information on a website may, for the purposes of rectifying that information and removing the content placed online, bring proceedings before either the court of the place of establishment of the publisher of that content or the court within whose jurisdiction the centre of interests of that person is situated.

34 According to the referring court, because of the 'necessary link of dependence' between the application for rectification of information and for the removal of content placed online and the joint application for compensation in respect of all or part of the damage resulting from that placement, it should be considered that one of the courts referred to in the preceding paragraph has exclusive jurisdiction to hear those two applications. The interests of the sound administration of justice might thus justify that conferral of exclusive jurisdiction.

35 However, such a conferral of jurisdiction does not follow from Article 7(2) of Regulation No 1215/2012 as interpreted in paragraph 32 above, since, unlike an application for rectification of information and removal of content, which is a single and indivisible application, an application for compensation may seek either full or partial compensation. While the fact that an application for rectification of information and removal of content cannot be brought before a court other than the court with jurisdiction to rule on the entirety of an application for compensation for damage is justified on the ground that it constitutes a single and indivisible application, no such justification exists for excluding, on that same ground, the possibility for that applicant to claim partial compensation before any other court within whose jurisdiction he or she considers that he or she has suffered damage.

36 Moreover, a need to confer exclusive jurisdiction on the court of the place of establishment of the publisher of the content placed online or on the court within whose jurisdiction the applicant's centre of interests is situated does not follow, inter alia, from what the referring court presents as a 'necessary link of dependence' between, on the one hand, the application for rectification of information and removal of content placed online and, on the other hand, the application for compensation for the damage which allegedly resulted from that placement. While those applications are based on the same facts, their purpose, their cause and their divisibility are different, and there is therefore no legal necessity that they be examined jointly by a single court.

37 Nor is such an attribution of jurisdiction necessary with regard to the sound administration of justice.

38 In that respect, a court which has jurisdiction to rule solely on the damage at issue in its own Member State appears perfectly capable of assessing, in the context of proceedings conducted in that Member State and in the light of the evidence gathered there, the existence and the extent of the alleged damage.

39 Furthermore, the possibility for the applicant to bring an action for damages before the courts of each Member State having jurisdiction to rule on the damage caused in their own Member State contributes to the sound administration of justice where the applicant's centre of interests cannot be identified. The Court has held that, in such a situation, that person cannot benefit from the right to sue the alleged perpetrator of an infringement of its personality rights pursuant to Article 7(2) of Regulation No 1215/2012 for the entirety of the compensation for the damage suffered on the basis of the place where the damage occurred (see judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766,

paragraph 43). However, that person may, by virtue of that option and on the same basis, also benefit from that right in order to obtain partial compensation which is limited solely to the damage caused in the Member State of the court seised.

40 The attainment of the objective of ensuring the sound administration of justice is therefore not undermined by the option available to the applicant to bring an action for damages before the courts with jurisdiction to rule on the damage caused in their own Member State.

41 Finally, it must be borne in mind that the attribution to the latter courts of jurisdiction to rule solely on the damage caused in their own Member State is subject to the sole condition that the harmful content must be accessible or have been accessible in that Member State. Unlike Article 17(1)(c) of Regulation No 1215/2012, Article 7(2) thereof does not impose any additional condition as regards the determination of the competent court, such as requiring that the activity concerned be 'directed to' the Member State in which the court seised is situated (see, to that effect, judgments of 3 October 2013, *Pinckney*, C-170/12, EU:C:2013:635, paragraph 42, and of 22 January 2015, *Hejduk*, C-441/13, EU:C:2015:28, paragraph 32).

42 A limitation, by means of additional conditions, of the option to claim compensation before one of the courts referred to in paragraph 40 above could lead, in some cases, to the de facto exclusion of that option, whereas, according to the settled case-law of the Court cited in paragraph 26 above, a person who considers that he or she has been injured must always be able to bring proceedings before the courts of the place where the damage occurred.

43 In the light of all the foregoing, the answer to the question referred is that Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that a person who, considering that his or her rights have been infringed by the dissemination of disparaging comments concerning him or her on the internet, seeks not only the rectification of the information and the removal of the content placed online concerning him or her but also compensation for the damage resulting from that placement may claim, before the courts of each Member State in which those comments are or were accessible, compensation for the damage suffered in the Member State of the court seised, even though those courts do not have jurisdiction to rule on the application for rectification and removal.

Costs

44 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:

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 person who, considering that his or her rights have been infringed by the dissemination of disparaging comments concerning him or her on the internet, seeks not only the rectification of the information and the removal of the content placed online concerning him or her but also compensation for the damage resulting from that placement may claim, before the courts of each Member State in which those comments are or were accessible, compensation for the damage suffered in the Member State of the court seised, even though those courts do not have jurisdiction to rule on the application for rectification and removal.

[Signatures]

* Language of the case: French.