



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

17 June 2021 *

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 1215/2012 – Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – Article 7(2) – Special jurisdiction in matters relating to tort, delict or quasi-delict – Place where the harmful event occurred or may occur – Person claiming infringement of his personality rights resulting from the publication of an article online – Place in which the damage occurred – Centre of the interests of that person)

In Case C-800/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw, Poland), made by decision of 30 October 2019, received at the Court on 30 October 2019, in the proceedings

Mittelbayerischer Verlag KG

v

SM,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, L. Bay Larsen, M. Safjan and N. Jääskinen, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mittelbayerischer Verlag KG, by P. Niezgódka, adwokat,
- SM, by M. Brzozowska-Pasieka, adwokat, and by S. Topa, radca prawny,
- the Polish Government, by B. Majczyna, acting as Agent,

* Language of the case: Polish.

– the European Commission, by M. Heller and K. Herrmann, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 23 February 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 Mittelbayerischer Verlag KG and SM concerning an alleged infringement of the latter's personality rights resulting from the publication of an article on that company's website.

Legal context

- 3 Recitals 4, 15 and 16 of Regulation No 1215/2012 state:

'(4) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions 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, are essential.

...
(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 Article 4 of that regulation, which appears in Section 1 of Chapter II thereof, 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.'

- 5 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.’
- 6 Article 7 of that regulation, which appears in Section 2 of Chapter II of that regulation, headed ‘Special jurisdiction’, 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.’

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

- 7 SM is a Polish national residing in Warsaw (Poland) who was a prisoner in the extermination camp at Auschwitz (Poland) during the Second World War. He carries out in activities aimed at preserving the memory, in the public consciousness, of the victims of crimes committed by Nazi Germany against Polish nationals during that conflict.
- 8 Mittelbayerischer Verlag is a company established in Regensburg (Germany). It publishes a regional online newspaper in German on its website, which is also accessible from other countries, including Poland.
- 9 On 15 April 2017, an article entitled ‘Ein Kämpfer und sein zweites Leben’ (A Fighter and his Second Life) was published on that website. That article, concerning the fate of Mr Israël Offman, a Jewish Holocaust survivor, during and after the Second World War, states that his sister ‘was murdered in the Polish extermination camp of Treblinka’.
- 10 The referring court, the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw, Poland), states that it is historically undeniable that the Treblinka camp was a Nazi extermination camp situated in occupied Polish territory during that conflict.
- 11 According to that court, the expression ‘Polish extermination camp of Treblinka’ was available on the internet for a few hours only, until, after an email from the Polish Consulate in Munich (Germany), that expression was replaced by the words ‘was murdered by the Nazis in the German Nazi extermination camp of Treblinka in occupied Poland’.
- 12 On 27 November 2017, SM brought an action against Mittelbayerischer Verlag before the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland), seeking protection of his personality rights, in particular his national identity and dignity, which, he claimed, had been infringed as a result of the use of that expression.
- 13 In order to justify the jurisdiction of that court, SM relied on the judgment of 25 October 2011, *eDate Advertising and Others* (C-509/09 and C-161/10, EU:C:2011:685).

- 14 For its part, Mittelbayerischer Verlag raised a plea of inadmissibility, arguing that the Polish courts did not have jurisdiction to hear the action brought by SM on the ground that, unlike the situations at issue in the cases that gave rise to that judgment, the article it published on its website did not concern SM directly. It adds that the scope of its activity is limited to the Upper Palatinate region (Germany) and the newspaper it publishes on its website concerns primarily regional news and is available in German only.
- 15 In that regard, referring to the requirement of foreseeability of the rules of jurisdiction laid down in Regulation No 1215/2012, Mittelbayerischer Verlag argued that, in such circumstances, it could not have objectively foreseen the jurisdiction of the Polish courts. Consequently, it claims that it is not Article 7(2) of that regulation, but Article 4(1) thereof, which should be applied and lead to the recognition of the jurisdiction of the German courts.
- 16 By order of 5 April 2019, the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) rejected the plea of inadmissibility raised by Mittelbayerischer Verlag and held that the conditions for hearing the action brought by SM under Article 7(2) of that regulation were satisfied. According to that court, in so far as the website of Mittelbayerischer Verlag and the article at issue published therein could be consulted in Poland, where the expression ‘Polish extermination camp’ featured in that article might be noticed by Polish readers, Mittelbayerischer Verlag could have foreseen that Poland could be considered to be the place where the personality rights of those readers were infringed and that it could be sued before the Polish courts.
- 17 On 25 April 2019, Mittelbayerischer Verlag brought an appeal against that order before the referring court, the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw), alleging infringement of Article 7(2) of Regulation No 1215/2012. According to Mittelbayerischer Verlag, that provision was applied even though it could not reasonably have foreseen that an action would be brought against it before the Polish courts because of the publication of that article, since the content of that article does not concern SM or even the Republic of Poland.
- 18 That court states that, at that stage, the Polish courts declared that they had jurisdiction in similar cases. However, it is uncertain as to the interpretation of that provision, in particular in the light of the requirement of predictability of the rules of jurisdiction laid down in Regulation No 1215/2012, set out in recitals 15 and 16 thereof.
- 19 In particular, while acknowledging that the expression ‘Polish extermination camp’, used in the article at issue in the proceedings before it, might elicit a negative reaction in Poland, create the false impression with some readers that Polish nationals are responsible for creating extermination camps and that they are responsible for the crimes committed therein, and cause offence to the persons who were themselves incarcerated in those extermination camps or whose relatives were killed by the German occupying forces during the Second World War, the referring court is nevertheless uncertain as to whether the specific circumstances of the present dispute are sufficient to consider that Mittelbayerischer Verlag could have reasonably foreseen that it might be sued before a Polish court on the ground that the content of that article allegedly infringes the personality rights of a Polish resident, even though, even in its broadest interpretation, the text of that article does not in any way accuse SM or any other Polish national for having committed any act whatsoever and does not refer to him directly or indirectly.
- 20 In that regard, the referring court states that those circumstances are different from those at issue in the cases which gave rise to the judgments of 25 October 2011, *eDate Advertising and Others* (C-509/09 and C-161/10, EU:C:2011:685), and of 17 October 2017, *Bolagsupplysningen and Ilsjan*

(C-194/16, EU:C:2017:766), in which the natural and legal persons concerned were directly referred to in the contested publications, which mentioned them by their surname and first name or by their company name.

- 21 In that context, that court notes that other potential applicants, namely Polish nationals residing in other Member States, could rely on the same reasons as those relied on by SM to confer jurisdiction on the Polish courts, in order to confer jurisdiction on the courts of the Member State in which the centre of their interests is situated. Thus, recognising the jurisdiction of the Polish courts pursuant to Article 7(2) of Regulation No 1215/2012 would amount to also recognising that Mittelbayerischer Verlag should have foreseen that, by publishing the article at issue, it could be sued in the courts of any Member State.
- 22 In addition, the referring court states that if the Court of Justice were to find that jurisdiction under that provision may be recognised in circumstances such as those at issue in the main proceedings, it would then be necessary to identify more precisely the assessment criteria enabling a national court to declare that it has jurisdiction.
- 23 In those circumstances, the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
 - ‘(1) Should Article 7(2) of [Regulation No 1215/2012] be interpreted as meaning that jurisdiction based on the centre-of-interests connecting factor is applicable to an action brought by a natural person for the protection of his personality rights in a case where the online publication cited as infringing those rights does not contain information relating directly or indirectly to that particular natural person, but contains, rather, information or statements suggesting reprehensible actions by the community to which the applicant belongs (in the circumstances of the case at hand: his nation [Poland]), which the applicant regards as amounting to an infringement of his personality rights?
 - (2) In a case concerning the protection of material and non-material personality rights against online infringement, is it necessary, when assessing the grounds of jurisdiction set out in Article 7(2) of Regulation [No 1215/2012], that is to say, when assessing whether a national court is the court of the place where the harmful event occurred or may occur, to take account of circumstances such as:
 - the public to whom the website on which the infringement occurred is principally addressed;
 - the language of the website and in which the publication in question is written;
 - the period during which the online information in question remained accessible to the public;
 - the individual circumstances of the applicant, such as the applicant’s wartime experiences and his current social activism, which are invoked in the present case as justification for the applicant’s special right to oppose, by way of judicial proceedings, the dissemination of allegations made against the community to which the applicant belongs?’

Consideration of the questions referred

- 24 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that the courts of the place in which the centre of interests of a person claiming that his or her personality rights have been infringed by content placed online on a website is situated have jurisdiction to hear, in respect of the entirety of the alleged damage, an action for damages brought by that person only if that content makes it possible to identify, directly or indirectly, that person as an individual.
- 25 As is apparent from recitals 4 and 15 of Regulation No 1215/2012, that regulation aims to harmonise the rules regarding conflicting jurisdictions in civil and commercial matters by means of creating rules governing jurisdiction that are highly predictable. Therefore, the purpose of this regulation is to strengthen the legal protection of persons established in the European Union by enabling the applicant to identify easily the court in which he may sue and a normally well-informed defendant to reasonably foresee in which court he may be sued (judgment of 4 October 2018, *Feniks*, C-337/17, EU:C:2018:805, paragraph 34).
- 26 As a derogation from the jurisdiction provided for in Article 4 of Regulation No 1215/2012, namely that the courts of the Member State in which the defendant is domiciled are to have jurisdiction, which constitutes the general rule, the rule of special jurisdiction in matters relating to tort, delict or quasi-delict laid down in Article 7(2) of the regulation must be interpreted restrictively (see, to that effect, judgment of 8 May 2019, *Kerr*, C-25/18, EU:C:2019:376, paragraphs 21 and 22 and the case-law cited).
- 27 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).
- 28 As recalled in recital 16 of Regulation No 1215/2012, which must be taken into account for the purposes of interpreting Article 7(2) of Regulation No 1215/2012, 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 (judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 28).
- 29 Furthermore, according to settled case-law, the expression ‘place where the harmful event occurred or may occur’ employed in that provision 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).
- 30 In the present case, the referring court is uncertain whether it may assume jurisdiction on the basis of the place where the alleged damage occurred, in circumstances such as those of the dispute in the main proceedings.

- 31 In that regard, in the specific context of the internet, the Court has ruled 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 has 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 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 32 and the case-law cited).
- 32 In that context, the Court specified that that option is justified in the interests of the sound administration of justice and not specifically for the purposes of protecting the applicant (see, to that effect, judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 38).
- 33 The rule of special jurisdiction in matters relating to tort, delict or quasi-delict provided for in Article 7(2) of Regulation No 1215/2012 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 (judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 39 and the case-law cited).
- 34 In addition, in the cases which gave rise to the judgments of 25 October 2011, *eDate Advertising and Others* (C-509/09 and C-161/10, EU:C:2011:685), and of 17 October 2017, *Bolagsupplysningen and Ilsjan* (C-194/16, EU:C:2017:766), the Court held that jurisdiction of the court of the place where the alleged victim has the centre of his interests is in accordance with the aim of predictability of the rules governing jurisdiction also with regard to the defendant, given that the publisher of harmful content is, at the time at which that content is placed online, in a position to know the centres of interests of the persons who are the subject of that content, such that the criterion of the centre of interests 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 (judgments of 25 October 2011, *eDate Advertising and Others*, C-509/09 and C-161/10, EU:C:2011:685, paragraph 50, and of 17 October 2017, *Bolagsupplysningen and Ilsjan*, C-194/16, EU:C:2017:766, paragraph 35).
- 35 Those cases concerned situations in which the persons whose personality rights were allegedly infringed were directly referred to in content placed online on the internet, since they were mentioned by name.
- 36 However, unlike those cases, the case in the main proceedings concerns a situation in which the person who considers that his personality rights have been infringed by the content placed online on the Mittelbayerischer Verlag website is not, as the referring court points out, referred to at all, either directly or indirectly, in that content, including by interpreting that content in the broadest sense. It appears that that person based his claims on the attack on his identity and national dignity allegedly resulting from the use of the expression ‘Polish extermination camp of Treblinka’.
- 37 The attribution of jurisdiction to the courts of the place where that person’s centre of interests is situated to hear and determine, in respect of the entirety of the alleged damage, the action brought by that person, where that person is neither mentioned by name nor indirectly identified as an individual in that content, would undermine the predictability of the rules of jurisdiction laid down by Regulation No 1215/2012 and the legal certainty which that regulation seeks to guarantee, particularly with regard to the issuer of the content concerned.

- 38 That person cannot reasonably foresee being sued before those courts, since they are not, at the time when they place content online on the internet, in a position to know the centres of interests of persons who are not in any way referred to in that content.
- 39 An interpretation to the contrary would lead to a multiplication of the potential heads of jurisdiction and would therefore also be liable to undermine the predictability of the rules of jurisdiction laid down by Regulation No 1215/2012, and consequently to undermine the principle of legal certainty on which it is based (see, by analogy, judgment of 13 July 2006, *Roche Nederland and Others*, C-539/03, EU:C:2006:458, paragraph 37).
- 40 Furthermore, in addition to the fact that the derogations from the principle of jurisdiction of the defendant's domicile must be exceptional in nature and be interpreted strictly (judgment of 31 January 2018, *Hofsoe*, C-106/17, EU:C:2018:50, paragraph 40 and the case-law cited), an interpretation of Article 7(2) of Regulation No 1215/2012, according to which, in a situation such as that at issue in the main proceedings, the courts of the place where the centre of interests of a person who considers that his personality rights have been infringed in its entirety is based have jurisdiction to hear an action brought by that person in respect of the entirety of the alleged damage would be to disregard the principle on which the rule of special jurisdiction laid down in that article is based, that is to say, the existence of a particularly close connection between the dispute and the courts designated by that rule, which, as recalled in paragraph 28 of the present judgment, seeks to 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.
- 41 Thus, only the existence of that connection makes it possible to derogate, under that provision, from the principle, provided for in Article 4(1) of that regulation, that jurisdiction is generally attributed to the courts of the Member State of the defendant's domicile.
- 42 In order for the objectives of predictability of the rules of jurisdiction laid down by Regulation No 1215/2012 and of legal certainty pursued by that regulation to be achieved, that connection must, where a person claims that his or her personality rights have been infringed by content placed online, be based not on exclusively subjective factors, relating solely to the individual sensitivity of that person, but on objective and verifiable elements which make it possible to identify, directly or indirectly, that person as an individual.
- 43 The mere fact that a person belongs to a vast identifiable group, such as that referred to by the referring court in its first question, is also not such as to enable those objectives of foreseeability of the rules of jurisdiction and legal certainty to be achieved, since the centres of interests of the members of such a group may potentially be located in any Member State of the European Union.
- 44 In the present case, SM is clearly not identified as an individual, either directly or indirectly, in the content placed online on the Mittelbayerischer Verlag website, but he submits that the use, in that content, of the expression which he disputes constitutes, in the light of his being a member of the Polish people, an infringement of his personality rights.
- 45 In such circumstances, there is no particularly close connection between the courts of the place where the centre of interests of the person relying on those personality rights is situated and the dispute concerned, with the result that that court does not have jurisdiction to hear that dispute under Article 7(2) of Regulation No 1215/2012.

- 46 Having regard to all the foregoing considerations, the answer to the questions referred is that Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that the courts of the place in which the centre of interests of a person claiming that his or her personality rights have been infringed by content published online on a website is situated have jurisdiction to hear, in respect of the entirety of the alleged damage, an action for damages brought by that person only if that content contains objective and verifiable elements which make it possible to identify, directly or indirectly, that person as an individual.

Costs

- 47 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 (First 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 the courts of the place in which the centre of interests of a person claiming that his or her personality rights have been infringed by content published online on a website is situated have jurisdiction to hear, in respect of the entirety of the alleged damage, an action for damages brought by that person only if that content contains objective and verifiable elements which make it possible to identify, directly or indirectly, that person as an individual.

[Signatures]