



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-194/16
Bolagsupplysningen OÜ and Ingrid Iisjan v Svensk Handel AB

Advocate General Bobek considers that a company alleging that its personality rights have been infringed by the publication of information on the internet can take legal action in the Member State where it has its centre of interests for the entirety of the harm claimed

For internet defamation claims, where a company has its centre of interests is likely to be the place where its reputation was most strongly hit by the defamation

Bolagsupplysningen OÜ is a company established in Tallinn, Estonia, which does most of its business in Sweden. It was placed on a blacklist on the website of Svensk Handel AB, a Swedish Trade Federation, for dealing in 'lies and deceit'. Over 1000 comments were posted in response. The company started legal proceedings against the Swedish Trade Federation in Estonia. It asked the Estonian court to order the removal of the blacklisting and comments published on the website. They also sought damages of €56,634.99 for the harm caused to their business.

In the context of an appeal to the Riigikohus (Supreme Court, Estonia), the question is whether the Estonian courts have jurisdiction to hear the case under EU law.¹ More broadly, the case invites the Court to articulate jurisdictional rules relating to reputational harm done by internet publication.

The general rule governing international jurisdiction under EU law is to take legal action against the defendant in the defendant's domicile, which in this case would be Sweden.² However, Bolagsupplysningen OÜ is relying on an exception to that general rule, which enables a claim to be brought in the Member State where the harmful event occurred or may occur.³ This is a special jurisdiction rule.

The Court of Justice has previously held that, in cases brought by natural persons, the place where the harmful event occurred or may occur is the State where that person has his or her "centre of interests".⁴ The special jurisdiction rule based on centre of interests allows a claimant to sue for the harm suffered in all other EU Member States before a single Member State's courts. Otherwise, it would have to go to the courts of each relevant Member State separately.

Bolagsupplysningen OÜ asks the Estonian court to apply the special jurisdiction rule based on centre of interests to a *legal* person. Bolagsupplysningen OÜ argues that its centre of interests is located in Estonia, even though it does business in Sweden. It bases this on the fact that its management, economic activity, accounting, business development and personnel departments are located in that Member State and its income is transferred there from Sweden.

In today's Opinion, Advocate General Michal Bobek considers that a legal person alleging that its personality rights have been infringed by internet content can bring proceedings before the court of the Member State where it has its centre of interests, and do so for the entirety of the harm claimed.

¹ 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 (recast) (OJ 2012 L 351, p.1).

² Article 4(1) *ibid.*

³ Article 7(2) Section 2 of Chapter II, *ibid.*

⁴ Case [C-509/09](#) eDate Advertising and Others see also Press Release No [115/11](#)

The Advocate General's view is that legal persons may enjoy the protection of their personality rights. More importantly, however, good name and reputation of legal persons in the Member States is protected not only as a fundamental right, but more commonly on a statutory basis. For "simple" extra-contractual claims, there must be equivalent jurisdictional rules under EU law that allow for the determination of a competent court to hear a claim such as the one in the main proceedings.

The Advocate General goes on to suggest that there is no good reason why the jurisdictional rules should be applied differently depending on whether the claimant is a natural or legal person. He considers that doing so would be based on an assumption that a natural person is the "weaker party" in the proceedings compared to a defendant that is a legal person. In the Advocate General's view the internet has completely changed such an assumption, given the ease with which natural persons may publish information online.

Next, the Advocate General suggests that for the special jurisdiction rule for internet defamation claims, **the place where the harm occurred is likely to be where the reputation of the person was most strongly hit.** In cases of defamation, such a place is the true centre of the dispute, which, in turn, is likely to be the place where that person (natural or legal) has his or its **centre of interests.**

In order **to determine the centre of interests of legal persons,** the Advocate General suggests that **relevant factors** are likely to be the **main commercial or other professional activities,** which will most accurately be determined by reference to **turnover** or **number of customers** or other **professional contacts.** The Advocate General considers that the seat of the legal person may be taken into account but if no professional activities are conducted in that Member State and the legal person does not produce turnover there, then it cannot lead to the determination of the centre of interests being there. The Advocate General acknowledges that for natural and legal persons there might be **more than one centre of interests,** but it will be for the **claimant to choose** the Member State in which he decides to bring an action. Once he has made that choice, and while the case is pending, he cannot sue elsewhere.

Finally, the Advocate General considers that the relevant jurisdiction would have full competence, adjudicating on the entirety of the alleged harm and deciding what remedies to allow – including, as in this case, an injunction to correct and remove the contentious information.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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