

Anonymised version

Translation

C-251/20 — 1

Case C-251/20

Request for a preliminary ruling

Date lodged:

10 June 2020

Referring court:

Cour de cassation (France)

Date of the decision to refer:

13 May 2020

Appellant:

Gtflix Tv

Respondent:

DR

[...]

JUDGMENT OF THE COUR DE CASSATION (COURT OF CASSATION),
FIRST CHAMBER, CIVIL DIVISION,

OF 13 MAY 2020

The company Gtflix Tv, which has its registered office [...] [in] Prague (Czech Republic), has brought [an] appeal [...] against the judgment of the cour d'appel de Lyon (Lyon Court of Appeal) [...] of 24 July 2018 in proceedings between it and DR, domiciled [...] [in] Budapest (Hungary), the respondent in the appeal in cassation ('the respondent').

The appellant in cassation ('the appellant') relies, in support of its appeal, on the sole ground of appeal which is annexed to the present judgment.

[...]

[...] [**Or. 2**] [...] [non-relevant procedural matters]

The First Chamber (Civil Division) of the Court of Cassation [...] [composition of the chamber hearing the case] has delivered the present judgment.

Facts and procedure

1. According to the judgment under appeal (the Lyon [Court of Appeal], 24 July 2018), the Czech company Gtflix Tv, engaged in the production and broadcasting of adult content, in particular via its website, complained that DR — a director, producer and distributor of pornographic films offered on websites hosted in Hungary, where he carries on his business and is domiciled — had disseminated derogatory comments on a number of websites and forums. After giving DR formal notice to remove those comments, Gtflix Tv brought proceedings for interim measures before the President of the tribunal de grande instance de Lyon (Lyon Regional Court) seeking an order requiring DR, on pain of a penalty, to cease all derogatory acts towards Gtflix Tv and the website ‘legalporno’ and to publish a legal statement in French and English on each of the forums concerned. Gtflix Tv also sought permission to post its own comments on the forums in question and, lastly, a symbolic award of compensation in the amount of EUR 1 for material damage and EUR 1 for non-material damage.
2. DR argued that the French courts lacked jurisdiction.
3. On appeal, Gtflix Tv restated its requests for removal and rectification and raised its application for damages to the provisional sum of EUR 10 000 in respect of material and non-material damage sustained in France.

Analysis of the ground of appeal [in cassation]

Wording of the ground of appeal

4. Gtflix Tv criticises the judgment [under appeal] for having found that the Czech courts, rather than the French courts, have jurisdiction, and does so on the basis of the following arguments:

‘(1) The courts of a Member State have jurisdiction to rule on damage caused in the territory of that Member State by content published on the internet where that content is accessible there. By holding, [**Or 3.**] in order to exclude the jurisdiction of the French courts, that the comments found to be derogatory which were posted on the internet must be not only accessible in the judicial district of the court hearing the case, but also capable of being of interest to internet users residing in that district and liable to cause damage there, the Court of Appeal infringed Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012.

(2) Damage, even in the form of non-material damage, is necessarily to be inferred from any derogatory act adversely affecting the reputation of the victim. It follows that such damage occurs at the place where the derogatory comments are disseminated. By holding, in order to exclude the jurisdiction of the French courts, that Gtflix had not established that the comments it complained of actually had harmful consequences in France, even though the existence of damage sustained in France is necessarily to be inferred from the dissemination in that Member State of the derogatory comments published online by DR, the Court of Appeal infringed Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012.

(3) The court adjudicating on the substance cannot grant or dismiss applications brought before it without examining and analysing all the evidence submitted to it by the parties in support of their claims. In support of its appeal, Gtflix adduced a new item of evidence consisting in a document setting out the traffic statistics for the website ‘woodmanforum’, owned by DR, in order to show that the French public ranked first in visits to that site. By holding that Gtflix had failed to demonstrate that French internet users were the top-ranked visitors to DR’s sites and forums without even a brief examination or reference to that new item of evidence, the Court of Appeal infringed Article 455 of the code de procédure civile (Code of Civil Procedure).

(4) The courts of a Member State have jurisdiction to rule on damage caused in the territory of that Member State by content published on the internet where that content is aimed at that Member State’s public and is likely to be of interest to it. For that condition to be satisfied, it is not necessary for internet users residing in that Member State to be the top-ranked visitors to DR’s sites and forums, without inquiring, as the Court of Appeal was asked to do, whether the content at issue, which concerned Gtflix’s dealings with its French actors and actresses, might not be of interest to the French public for that reason. In so ruling, the Court of Appeal deprived its decision of a legal basis in the light of Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012.

(5) Derogatory acts are likely to cause damage in a Member State where the derogatory comments relate to the commercial activities which the target of those comments carries on in that Member State. **[Or 4.]** By holding, in order to exclude the jurisdiction of the French courts, that Gtflix had not established that the comments it complained of actually had harmful consequences in France, without inquiring, as it was asked to do, whether the derogatory comments might not concern Gtflix’s business in France, particularly its dealings with its actors, actresses and agents in the industry established in France, the Court of Appeal deprived its decision of a legal basis in the light of Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012.’

The Court's reply

5. The Court of Justice of the European Union (in its Grand Chamber judgment of 17 October 2017, *Bolagsupplysningen and Ilsjan* (C-194/16, EU:C:2017:766; ‘the *Svensk Handel* case’) ruled as follows:

(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.

6. Referring to the ubiquitous nature of the information and content published on a website and the fact that the scope of their distribution is, in principle, universal, the Court made clear that an application for the rectification of information and the removal of content published on a website 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 [Or. 5] 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 (paragraph 48).
7. That case-law concerning the alleged infringement of personality rights by means of content published on a website can be applied to acts of unfair competition resulting from the dissemination on internet forums of allegedly derogatory comments.
8. The judgment states that Gtflix Tv's centre of interests is in the Czech Republic and that DR is domiciled in Hungary.

9. It follows that only the courts of the Czech Republic, which have jurisdiction to rule on the entirety of an application for compensation for damage pursuant to the case-law resulting from the judgments in *Shevill* and *eDate Advertising*, cited above, or those of Hungary, where the respondent is domiciled, had jurisdiction to order the removal of the allegedly derogatory comments attributed to DR and their rectification by publication of a statement.
10. On that purely legal ground, which replaces the contested grounds [...], the judgment under appeal here is legally justified in so far as it finds that the French courts have no jurisdiction to rule on those heads of claim.
11. In that respect, there is no need to refer the questions submitted by Gtflix Tv to the Court of Justice for a preliminary ruling. Those questions are not well-founded, as the appellant applied to the Court of Appeal for rectification of the information and removal of the derogatory comments, not to have access to them blocked in French territory or to have the publication measures limited to France, so that the use of geoblocking was irrelevant. Furthermore, there are no serious doubts as to the interpretation of the EU legal provision at issue as it stood in the judgment cited above, delivered by the Court of Justice on [1]7 October 2017, which was not called into question by its judgment of 24 September 2019 (*Google (Territorial scope of de-referencing)*, C-507/17, EU:C:2019:772).
12. As regards the court with jurisdiction to rule on the application for damages in respect of the non-material and material damage resulting from the derogatory comments attributed to DR, Gtflix Tv submits that the *Svensk Handel* case-law may be applied only to applications for the removal of comments or web pages by means of a court-issued injunction, that that course of action [Or. 6] does not in any way affect the application for compensation seeking an award of damages, even if the application is made on a provisional basis before the judge hearing the interim proceedings, and that, in consequence, such an application continues to be governed by the principles identified in the *Shevill* and *eDate Advertising* judgments.
13. This is, therefore, a matter of determining whether the approach taken by the Court of Justice in the abovementioned judgment of [1]7 October 2017, on the basis of Article 7(2) of Regulation (EU) 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 derogatory comments on the internet, brings proceedings not only for the rectification of information and the removal of content but also for compensation for the resulting non-material and material 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 in *eDate Advertising* (paragraphs 51 and 52), or whether, pursuant to the judgment in *Svensk Handel* (paragraph 48), that person must make the application for compensation before the court with jurisdiction to order rectification of the information and removal of the derogatory comments.

14. That question, which is decisive for the outcome of the case upon which the Court of Cassation must give judgment, presents a serious difficulty of interpretation of EU law, since the interest in the proper administration of justice could give grounds for conferring on the court with jurisdiction to rule on the application for rectification of information and removal of comments exclusive jurisdiction to rule on the application for damages, which is necessarily dependent on the first application.
15. It follows that it is appropriate to refer the question to the Court of Justice under Article 267 of the Treaty on the Functioning of the European Union and therefore, pending a ruling by the Court of Justice, to stay the proceedings in that respect.

ON THOSE GROUNDS, the Court:

DISMISSES the appeal in so far as it is directed against that part of the judgment holding that the French courts lack jurisdiction to rule on the application for removal of the derogatory comments and rectification of the information by means of the publication of a statement;

REFERS, as to the remainder, the following question to the Court of Justice for a preliminary ruling:

‘Must Article 7(2) of Regulation (EU) No 1215/2012 be interpreted as meaning that a person who, considering [Or. 7] that his or her rights have been infringed by the dissemination of derogatory comments on the internet, brings proceedings not only for the rectification of information and the removal of content but also for compensation for the resulting non-material and material 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 in *eDate Advertising* (paragraphs 51 and 52), or whether, pursuant to the judgment in *Svensk Handel* (paragraph 48), that person must make the application for compensation before the court with jurisdiction to order rectification of the information and removal of the derogatory comments?’

STAYS the proceedings in that respect pending a ruling from the Court of Justice;

[...]

[...] [non-relevant procedural matters]

Done [...] by the Court of Cassation (First Chamber, Civil Division) and delivered by the President at the public hearing of 13 May 2020.

[Or. 8]

GROUND OF APPEAL [in cassation] appended to this judgment

Ground of appeal [in cassation] submitted [...] on behalf of GTFLIX TV

The appellant complains that the [...] judgment under appeal upheld the contested interim order in so far as it found that the Czech courts, rather than the judge hearing the interim proceedings at the Lyon Regional Court, had jurisdiction to rule on the instant case [...].

The Court of Appeal reasoned as follows: ‘Article 4 of Regulation (EU) No 1215/2012 provides that, subject to that regulation, persons domiciled in a Member State are to be sued in the courts of that Member State, whatever their nationality.

Article 7 of that regulation adds that, in matters relating to tort or 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.

In cases such as this one involving comments found to be derogatory which were posted on the internet, it is not sufficient that those comments are accessible in the judicial district of the court hearing the case in order to establish that court’s territorial jurisdiction; they must also be of interest to internet users residing in that district and be liable to cause damage there.

It is common ground that DR resides and carries on his business in Budapest, Hungary, so that there is no connection between the original defendant’s domicile and the French courts.

Moreover, it does not appear from the documents submitted to the court that the offending messages, which were published on the internet mainly in English and to a lesser degree in French, are aimed at the French public, since GTFLIX TV has not shown that French internet users rank first in visits to DR’s sites and forums.

It must also be held that although GTFLIX TV may, as a result of the comments complained of, have suffered damage in the Czech Republic where its centre of activities is located, it did not establish actual harmful consequences in the judicial district of the court hearing the case [**Or. 9**].

In the light of those considerations and pursuant to the abovementioned provisions of EU law, the judge hearing the interim proceedings at the Lyon Regional Court was right to find that he lacked territorial jurisdiction to rule on the case, which fell within the jurisdiction of the Czech courts.[’]

The Court of Appeal endorsed the lower court’s reasoning as follows: ‘[...] [determination that DR is not domiciled in France]

[...] [citation of the provisions of Articles 4(1) and 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]. The harmful event in the present case essentially occurred in the Czech Republic, where GTFLIX is domiciled and therefore has its centre of interests, and in Hungary, from where the offending messages were sent, but it is not apparent from any of the documents that the messages published on the internet, mainly in English and to a lesser degree in French, were aimed at and concerned the French public. According to the case-law of the Court of Justice, the courts of each Member State have jurisdiction with regard to the content of a website only in respect of the damage caused in the territory of the Member State of the court seised. It is not sufficient that the messages are accessible on the internet in order to find that damage was caused there; they must also be of interest to internet users in the State in question and there must have been a knock-on effect, which has not been established here, as the offending messages relate to the terms on which Legal Porno in Prague recruits actresses for pornographic videos, to the medical treatment they may or may not receive, to their drug addictions and to the considerable profits generated by that activity for that undertaking.'

[Thus:]

(1) [...] **[Or. 10]** [...] [first part of the ground of appeal [in cassation]], reproduced verbatim in the body of the order for reference (paragraph 4(1))

(2) [...] [second part of the ground of appeal [in cassation]], reproduced verbatim in the body of the order for reference (paragraph 4(2))

(3) [...] [third part of the ground of appeal [in cassation]], reproduced verbatim in the body of the order for reference (paragraph 4(3))

(4) [...] The courts of a Member State have jurisdiction to rule on damage caused in the territory of that Member State by content published on the internet where that content is aimed at that Member State's public and is likely to be of interest to it. For that condition to be satisfied, it is not necessary for internet users residing in that Member State to rank first in visits to the website at issue. In order to exclude the jurisdiction of the French courts, the Court of Appeal simply found that it had not been established that the websites at issue were aimed at the French public, since GTFLIX did not show that French internet users rank first in visits to DR's websites and forums, without inquiring, as it was asked to do, whether the content at issue, which concerned GTFLIX's dealings with its French **[Or. 11]** actors and actresses, might not be of interest to the French public for that reason. In so ruling, the Court of Appeal deprived its decision of a legal basis in the light of Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012.

(5) [...] [fifth part of the ground of appeal in cassation]], reproduced verbatim in the body of the order for reference (paragraph 4(5))