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Judgment of the Court in Case C-77/24 | [Wunner]¹

Online games of chance: a player may, as a general rule, rely on the law of his or her country of residence when bringing an action to establish liability in tort or delict on the part of the directors of a foreign provider that does not hold the required licence

The damage sustained by the player is deemed to have occurred in the country in which that player resides

A client, residing in Austria, of the Maltese provider of games of chance Titanium Brace Marketing,² currently in liquidation, initiated proceedings against the two directors of that provider before the Austrian courts in order to recover his losses incurred when he participated in online gambling.³

Titanium held a gambling licence in Malta, but did not hold any licence in Austria. The client therefore submits that the gambling contract⁴ was null and void. According to him, the two directors are, under Austrian law, personally as well as jointly and severally liable for the fact that Titanium offered illegal games of chance in Austria.

The two directors dispute the international jurisdiction of the Austrian courts. According to them, both the place where the event that gave rise to the damage occurred and the place where the damage occurred were in Malta. They further claim that the substantive law applicable is not Austrian law but Maltese law, which does not provide for liability on the part of company's officers vis-à-vis the company's creditors.

The Austrian Supreme Court has put questions to the Court of Justice in that regard.

The Court of Justice observes that, according to the Rome II Regulation,⁵ **the law applicable to a non-contractual obligation arising out of a tort or delict is, as a general rule, the law of the country in which the damage occurs.**⁶

That regulation applies to an action seeking to establish tortious liability, such as that at issue, aimed at the directors of a company, for infringement of a prohibition imposed by national legislation on offering games of chance to the public without holding a licence for that purpose. Such an action is not covered by the exclusion provided in respect of non-contractual obligations arising out of the law of companies.⁷

According to the Court, in the context of an action for damages for losses incurred when participating in online games of chance offered by a company in a Member State where that company did not hold the licence required by law, **the damage sustained by a player must be deemed to have occurred in the Member State in which that player is habitually resident**⁸ (in the present case Austria, with the result that, according to the general rule, Austrian law would be applicable).

That said, where it is clear from all the circumstances of the case that the tort or delict is manifestly more closely connected with another country, the Rome II Regulation allows the court seised to depart from the general rule and to apply the law of that other country.

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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text, and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

² Titanium Brace Marketing Limited ('Titanium').

³ Titanium's offer of games was available to the entire European market.

⁴ In order to be able to play on Titanium's website, the client opened a 'player account'. In order to fund that player account, he made a transfer from his Austrian bank account to a bank account opened with a Maltese bank. That bank account was a real account belonging to Titanium, opened for the client and separate from Titanium's assets. When the player participated in a game of chance, the sum at stake was debited from the player account and, in the event of a win, was credited to that player account.

⁵ [Regulation \(EC\) No 864/2007](#) of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

⁶ Irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.

⁷ That exclusion does not cover the liability of a director of a company arising out of an obligation that is external to the company's affairs.

⁸ The place where the damage occurred is the place where the alleged damage actually manifests itself. In the present case, first, the alleged tort consists in interference with the client's interests, which are protected in law by the prohibition, applicable in the Member State in which he has his habitual residence, on offering the public, without holding a licence for that purpose, the possibility of participating in online games of chance. Second, the damage alleged by the client actually manifested itself when he participated, from Austria, in online games of chance offered in breach of a prohibition applicable in that Member State. In those circumstances, the damage must be regarded as having occurred in Austria. Furthermore, in the light of the very nature of online games of chance, which does not make it easy to situate them in a specific physical location, it must be stated that those games took place where the player is habitually resident.