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The European Court of Justice weighs if a legal person can take legal action in the member state where it has its centre of interests

As of autumn of 2015, the courts of Estonia and the European Court of Justice have been trying to solve the question in which Member State can a legal person take action, if its personality rights have been violated by the publication of information on the internet.

Bolagsupplysning OÜ, a company registered in Estonia but doing business on the Swedish market submitted a claim with the Estonian court against a Swedish company (Svensk Handel AB). The Swedish company had blacklisted the Estonian company, stating that the Estonian company was dealing in lies and deceit. The Estonian company asked the court to order the removal of the blacklisting and the comments published on the website and to remedy the damages.

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. The Estonian company, however, brought the claim with the Estonian court based on a special jurisdiction rule. The special jurisdiction rule stems from the practice of the European Court of Justice, whereby a natural person whose rights have been violated by publication of information on the internet can bring a claim in the member state, where the harm occurs (where the person has its centre of interests). The European Court of Justice has noted that in general the centre of interests of a natural person is its domicile.

The Estonian company wanted the courts to apply the special jurisdiction rule to a legal person, stating that in this case the centre of interests of the Estonian company is in Estonia.

The Estonian courts claimed that a company could not take legal action in the Member State where it has its centre of interests and the Supreme Court of Estonia decided to apply for a preliminary ruling from the European Court of Justice.

In July 2017 the advocate general of the European Court of Justice published an opinion that a legal person can apply the special jurisdiction rule (take legal action where it has its centre of interests) when its personality rights have been violated by the publication of information on the internet. 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. The centre of interests of a company is in the Member State where the company does most of its business if the defamatory information can influence its commercial activities in that Member State.

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.

The opinion of the advocate general is not binding for the European Court of Justice but it can be considered as a strong argument. The court will give its judgement at a later time