Court of Justice of the European Union: Jurisdiction in cases involving breaches of personality rights

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In a judgment of 25 October 2011, the European Court of Justice (ECJ) ruled that claims arising from breaches of personality rights on the internet can also be brought before courts of a member state in which the person concerned has his or her “centre of interests”. It also held that the nature of Article 3 of the E-Commerce Directive (2000/31/EG) was not such that it required transposition in the form of a specific conflict-of-laws rule.

Both the Tribunal de grande instance de Paris (Paris Regional Court) (Case C-161/10) and the Bundesgerichtshof (German Federal Court of Justice) (Case C-509/09) had referred several questions on jurisdiction and the applicable law to the ECJ for a preliminary ruling.

A French actor had filed a claim for damages with a French court because of the publication on an English-language internet portal of photographs of him and of a text in English on his alleged relationship with a female singer. The defendant responded that the French court had no jurisdiction as there was no connection between the publication on the internet and the damages claimed in France. The Paris Regional Court stayed the proceedings and referred to the ECJ for a preliminary ruling the question of whether Articles 2 and 5 of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters should be interpreted as meaning that a court’s jurisdiction with regard to claims for defamation could be inferred merely from the fact that the internet site on which the defamation is published can be accessed in the sovereign territory of another member state although the site is operated by a company that has its head office in another member state and targets the public of that member state.

The Federal Court of Justice had to rule on a case in which the plaintiff, a convicted murderer, objected to an Austrian internet portal’s retention in its online archive of a newspaper article about his crime mentioning him by name. The plaintiff called on the portal operators in out-of-court proceedings to remove the article and issue a cease-and-desist declaration. Although the article was removed in response to this request, no cease-and-desist declaration was issued. After the plaintiff had won both at trial and on appeal, the defendants lodged an appeal on points of law with the Federal Court of Justice, claiming that the

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German courts had no international jurisdiction. The court also stayed the proceedings and referred to the ECJ the question of whether German courts had jurisdiction on the dispute under the Regulation on jurisdiction in civil and commercial matters and whether according to Article 3(1) and (2) of the E-Commerce Directive (2000/31/EC) German or Austrian law was applicable to the case.

The ECJ ruled that its established case law on jurisdiction over claims arising from defamation through printed press articles distributed in several Contracting States can be applied to other media and means of communication. According to that case law, such claims can be made either before the courts of the member state in which the publisher responsible is established or in all member states in which the publication has been disseminated and damage has been done to the reputation of the person concerned. However, the court pointed out, the publication of content on a website differs in particular from the regional distribution of printed matter because the content can be consulted worldwide. As the impact of content published on the internet is best assessed by the court of the place where the alleged victim has his or her centre of interests, the attribution of jurisdiction to that court corresponds, according to the ECJ, to the objective of the sound administration of justice.

The ECJ also held that Article 3(1) and (2) of the E-Commerce Directive does not constitute a conflict-of-laws rule and accordingly does not order the exclusive application of the law applying in the country of origin. Therefore, the decision as to whether German or Austrian law must be applied to a case to be decided by the Federal Court of Justice must be made according to the relevant rules of German international private law.

The ECJ judgment in the joined cases C-509/09 and C-161/10, 25 October 2011

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