Advocate General: Opinion on jurisdiction in Internet defamation proceedings

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Ronan Ó Fathaigh
Institute for Information Law (IViR), University of Amsterdam

On 13 July 2017, Advocate General Bobek delivered an opinion in Bolagsupplysningen OÜ and Ingrid Ilsjan v. Svensk Handel AB (Case C-194/16) concerning jurisdiction in internet defamation proceedings. The case involved a company, Bolagsupplysningen OÜ, which was established in Estonia, but which did most of its business in Sweden. A Swedish trade federation placed the company on a blacklist published on its website, stating that the company "deals in lies and deceit". A forum on the website had over 1,000 comments in response to the blacklisting, with some comments including "calls for acts of violence" against the company and its employees. In September 2015, the company and one of its employees brought an action in an Estonian court, seeking an order for the Swedish trade federation to rectify the information on its website about the company, remove the comments from its website, and pay damages of around EUR 56,000 for loss of profit. The company claimed that the trade federation's publication had "crippled" the company's business in Sweden.

However, in October 2015, an Estonian district court dismissed the application, holding that the harm had not been proven to have been sustained in Estonia, and applied EU Regulation No. 1215/2012, Article 7(2), which provides that a person domiciled in a Member State may be sued in another Member State in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur. The court noted that the publication and comments were written in Swedish, which would be "incomprehensible" to Estonian readers, and that the fall in turnover was in Swedish krona, which indicated that the harm was sustained in Sweden. The Tallinn Court of Appeal also dismissed the action. On further appeal, the Estonia Supreme Court decided to stay the proceedings, and referred a number of questions to the Court of Justice of the European Union (CJEU) concerning EU Regulation No. 1215/2012, mainly on whether a legal person can bring proceedings over the publication of incorrect information on the internet before the courts of the Member States in which it had its "centre of interests". This was a special ground of jurisdiction which had been applied by the CJEU to “natural persons” in its Date judgment (see IRIS 2012/1: Extra).

In the Opinion, AG Bobek considers that a legal person alleging that its personality rights have been infringed by a publication on the internet can bring proceedings

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"in respect of the entirety of the harm sustained" before the courts of the Member States in which its "centre of interests" is located. AG Bobek was of the view 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.

In this regard, AG Bobek stated that a legal person's centre of interests is located where it conducts its main professional activities, provided that the allegedly harmful information is capable of affecting its professional activities in that Member State. In order to determine the centre of interest of a legal person, the relevant factors are likely to be the main commercial or other professional activities, which in turn will be most accurately determined by reference to turnover or number of customers or other professional contacts. The seat may be taken into account as one of the factual elements, but not in isolation. Finally, the relevant national court has full jurisdiction for both the determination and award of damages, as well as for any other remedies available to it under national law, including injunctions.

Court of Justice of the European Union, Opinion of the Advocate General Michal Bobek, Case C-194/16 Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB, 13 July 2017

http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d0f130d5402a8e6be88646cfacbe9eea3497bc61.e34KaxiLc3eQc40LaxqMbN4PaN0Qe0?text=&docid=192713&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=739247

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