# Special Jurisdiction Based on the Place Where Damage Occurred in Cases Related to the Dissemination of Disparaging Comments on the Internet

Judgment of the Court (Grand Chamber) of 21 December 2021, C-251/20, Gtflix Tv v DR[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 person who, considering that his or her rights have been infringed by the dissemination of disparaging comments concerning him or her on the internet, seeks not only the rectification of the information and the removal of the content placed online concerning him or her but also compensation for the damage resulting from that placement may claim, before the courts of each Member State in which those comments are or were accessible, compensation for the damage suffered in the Member State of the court seised, even though those courts do not have jurisdiction to rule on the application for rectification and removal.**

**Kinga Konieczna**
University of Gdańsk, Poland
kinga.konieczna@ug.edu.pl
ORCID: 0000-0003-1886-2963

https://doi.org/10.26881/gsp.2024.3.14

## Commentary

## Introduction

In the judgment commented on here, the Court dealt with the interpretation of 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 judg-

[1] ECLI:EU:C:2021:1036.

ments in civil and commercial matters[2] (hereinafter: the Brussels I bis regulation) in the context of torts committed on the internet. Infringement of personality rights committed in online publications falls within the scope of a notion of *cyber torts*, defined as any harmful conduct that is either committed via or affects the use of the internet or a harmful act performed by a computer in the broadest sense (including mobile computer devices, such as smartphones and tablets).[3] The use of the internet has expanded to nearly all areas of everyday life and the feeling of anonymity of its users triggers a temptation to engage in spontaneous posting. Subsequently, tortious acts aimed at personality rights, particularly reputation and privacy, have increased in frequency and intensity. As digitalisation is cross-border by nature, the scope of defamatory content published on a webpage or on social media platforms is not limited by national borders and such harmful acts might be followed by harm in numerous jurisdictions. Due to challenges related to the omnipresence of internet publications, jurisprudence needs to adapt traditional connecting factors in conflict of laws to torts committed in a digital environment. The judgment in the Gtflix Tv case adds a new element to a series of judgments on jurisdiction in cross-border defamation cases related to mass media rendered by the Court over the past years.[4] The topic of jurisdiction in cross-border defamation conflicts raises vivid debates in legal doctrine. According to the global status report published in 2019 by the Secretariat of the Internet & Jurisdiction Policy Network, the problems related to cross-border defamation cases are becoming increasingly acute.[5] For this reason, both the judgment and arguments presented in this judgment by the Court deserve further consideration.

## 1. The facts of the case, preliminary questions and the judgment

In the case decided by the Court on 21 December 2021, the claimant was Gtflix Tv, a company with its center of interests in the Czech Republic. Its areas of professional

---

2 Official Journal of the European Union L 351/1.

3 B. Koch, *Cyber Torts: Something Virtually New?*, "Journal of European Tort Law" 2014, Vol. 5, No. 2, pp. 133–164.

4 Previously, the issues were the subject of e.g. Judgment of the Court of 7 March 1995 – Fiona Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd v Presse Alliance SA, ECLI:EU:C:1995:61; Judgment of the Court (Grand Chamber) of 25 October 2011 in joined cases C-509/09 and C-161/10 eDate Advertising GmbH and Others v X and Société MGN LIMITED, ECLI:EU:C:2011:685; Judgment of the Court (Grand Chamber) of 17 October 2017 in case C-194/16, Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB, ECLI:EU:C:2017:766; Judgment of the Court (First Chamber) of 17 June 2021 in case C-800/19, Mittelbayerischer Verlag AG v SM, ECLI:EU:C:2021:489. As to the interpretation of "the place where a harmful event occurred" of great value is also: Judgment of the Court of 30 November 1976. Handelskwekerij G.J. Bier BV v Mines de potasse d'Alsace SA, ECLI:EU:C:1976:166, although the case itself was not related to cross-border defamation.

5 D. Jerker, B. Svantesson, *Internet & Jurisdiction. Global Status Report (2019)*, Paris 2019, p. 15, https://www.internetjurisdiction.net/uploads/pdfs/Internet-Jurisdiction-Global-Status-Report-2019-Key-Findings_web.pdf [accessed: 2024.01.30].

activity covered the production and distribution of audiovisual content. It accused DR, domiciled in Hungary, of publishing disparaging comments about it on several websites and forums. Then it brought an action against the defendant before the Regional Court in Lyon, seeking an order to cease all acts of disparagement against Gtflix Tv and to publish legal notice in French and in English on all the forums in question. Additionally, Gtflix Tv pursued claims for compensation for pecuniary and non-pecuniary harms related to the violation. DR raised an objection about the lack of jurisdiction of French courts, which was upheld both by the court of first instance and the court of appeal. Gtflix Tv criticised the judgments issued by the courts of lower instances before the Supreme Court for excluding the jurisdiction of French courts and for having found that the company should pursue the claims before a court in the Czech Republic. The Supreme Court submitted a preliminary question whether a person who, considering that his or her rights have been infringed by the dissemination of disparaging comments on the internet, seeks not only the rectification of the information and the removal of the content, but also compensation for the resulting non-material and economic damage, may claim before the courts of each Member State in which content published online is or was accessible, compensation for the damage caused in that Member State, or whether that person must make that application for compensation before the court with jurisdiction to order rectification of the information and removal of the disparaging comments. The main problem in the judgment commented on here pertained to the question of whether, on the basis of the rule of special jurisdiction laid down in Article 7(2) of Regulation No 1215/2012, it was possible to pursue a claim in France, where damage allegedly materialised. In a judgment rendered on 21 December 2021, the Court decided that the court in the Member State where comments were accessible (in the facts of the case commented on here, that is France) has jurisdiction to award damages, hence only for harm suffered in that state. This court does not have jurisdiction to rule on the application for rectification and removal, as these claims can be decided only by the court that has jurisdiction on the entirety of an application for compensation for damage, which in the case would be the court in the Czech Republic.

## 2. Assessment of the Court of Justice's ruling

The facts in the case discussed here highlight problems with adapting traditional jurisdictional bases in disputes relating to online defamatory publications that users can easily access or distribute in other countries. The challenges related to cross-border jurisdictional tensions had already appeared in the Shevill case, decided by the CJEU in 1995.[6] The Court held that the claimant can either bring an action before a court of the state where the defamatory publication is established and apply there for damages for all the harm caused by the defamation, or before a court in the state where the

[6] Judgment of the Court of 7 March 1995 – Fiona Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd v Presse Alliance SA, ECLI:EU:C:1995:61.

publication was distributed and the claimant suffered injury to his/her reputation. The latter court can decide only upon damages for harm caused in the state where court is sited. Although the judgment referred to press publications, the adopted interpretation of Article 5 point 3 of the Brussels I regulation[7] (currently Article 7 point 2 of the Brussels I bis regulation[8]), called by legal scholars a "mosaic approach,"[9] was applied by the Court in judgment in the Gtflix Tv case. Originally, the mosaic solution was conceived by the Court in its well-known judgment in joined cases C-509/09 and C-161/10 eDate Advertising GmbH,[10] in which the Court related to "the place where the harmful event occurred or may occur" in the context of virtual reality and pointed out that the alleged victim of violation may bring an action for liability before the courts of the Member State in which the center of his/her interests is based.[11] Of course, it shall not be perceived as a separate jurisdictional base, but a specific place where damage occurred[12] in the sense of (current) Article 7(2) of the Brussels I bis regulation.

Contrary to an action for compensation of pecuniary and non-pecuniary harms, an action for rectifying information and removing harmful content is, by its nature, indivisible. Therefore, as the Court decided in ase C-194/16 Bolagsupplysningen OÜ, a victim of harmful defamation (both a natural person and a legal person) may bring an action for this indivisible claim only to the court that is capable of deciding upon all claims, which is the court of the state where the claimant's center of interests is based.[13] It also determined that the approach in cases related to violations of personality rights applies both to natural persons and legal entities.[14] However, it should be emphasized that the the case C-251/20 Gtflix Tv was the first case related to the mosaic approach, where the harm suffered by the claimant occurred in another state than the one where the center of his/her interests was located.

---

[7] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Official Journal of the European Union L 012.

[8] 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, Official Journal of the European Union L 351/1.

[9] See P. de Miguel Asensio, *Conflict of laws and the Internet*, Cheltenham 2020, p. 176 and Opinion of Advocate General M. Bobek delivered on 13 July 2017 in case C-194/16, Bolagsupplysningen OÜ Ingrid Ilsjan v Svensk Handel AB, ECLI:EU:C:2017:554, para 28.

[10] Judgment of the Court (Grand Chamber) of 25 October 2011 in joined cases C-509/09 and C-161/10 eDate Advertising GmbH and Others v X and Société MGN LIMITED, ECLI:EU:C:2011:685.

[11] A person may also have the center of his/her interests in a Member State, with which he/she has particularly close links established by factors such as professional activity, even though he/she does not habitually reside in that State; see Judgment of the Court (Grand Chamber) of 25 October 2011 in joined cases C-509/09 and C-161/10 eDate Advertising GmbH and Others v X and Société MGN LIMITED, ECLI:EU:C:2011:685, para 49.

[12] This has also been noted by Ł. Dyrda, *Dotychczasowa praktyka i orzecznictwo dotyczące jurysdykcji krajowej w sprawach o ochronę dóbr osobistych a wyrok Trybunału Sprawiedliwości z 17.06.2021 r., C-800/19, Mittelbayerischer Verlag KG przeciwko SM*, "Europejski Przegląd Sądowy" 2022, No. 7, p. 38.

[13] Judgment of the Court (Grand Chamber) of 17 October 2017 in case C-194/16, Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB, ECLI:EU:C:2017:766, para 44.

[14] *Ibid.*, para 38.

According to an equally consistent line of the Court's case-law, the concept of the "place where the harmful event occurred or may occur" envisages two distinct places: the one where the damage materialised, and the one where the event giving rise to it took place. In the event that these places were located in separate countries, the defendant may be sued, at the applicant's option, in the courts sited in either of those places.[15] It merits approval that the Court utilises the argument of reasons relating to the sound administration of justice and the efficacious conduct of proceedings to explain the use of this special jurisdiction rule in cases related to tort, delict or quasi-delict.[16] The injured party shall have a right to bring his/her action before a court that is close to the case, which is economically justified and makes the claims more approachable. In this regard, jurisdiction based on the special rule of Article 7(2) of the Brussels I bis regulation prevails over the general rule of Article 4, which affiliates jurisdiction with the "home state" of the defendant.

Unlike an application for rectification of information and removal of content, which is indivisible, an application for compensation may seek either full or partial compensation. For this reason – as the Court stated in the Gtflix case – there is no justification for excluding a claim for partial compensation before any other court within whose jurisdiction the victim considers that he/she has allegedly suffered damage.[17] In other words, a victim of a violation of personality rights should not be deprived or limited in his/her right to seek damages in the court that is closest to the place where damage materialized. Such an interpretation of "the place where the harmful event occurred" adapts the existing regulations to challenges related to online violations, places emphasis on the accessibility of the court and is in accord with the previous case law regarding online defamation disputes. Due to the immaterial and dispersed nature of harm related to the violation of personality rights, it is hard to accept that narrowing down the jurisdictional bases would adequately meet the challenges of virtual reality. Further, it would also call into question the practical utility of special jurisdiction based on Article 7(2) of Brussels I bis, as a departure from the mosaic approach would lead, in fact, to loss of the relevance of this jurisdictional base and backtrack to jurisdiction focused in one place, namely the place of the center of interest of the victim or the place of residence of the defendant. The claimant is still free to rely on the interpretation of Article 7(2) that he/she finds more adequate in his/her case and choose special jurisdiction based on his/her center of interests or rely on general jurisdiction based on the place of habitual residence of the tortfeasor. Yet, as Advocate General Gerard Hogan rightly points out in his opinion,[18] since each national court is only competent

[15] Judgment of the Court (Sixth Chamber) of 29 July 2019 in case C-451/18, Tibor-Trans Fuvarozó és Kereskedelmi Kft. v DAF Trucks NV, ECLI:EU:C:2019:635, para 25; Judgment of the Court (Second Chamber) of 16 June 2016 in case C-12/15, Universal Music International Holding BV v Michael Tétreault Schilling and others, ECLI:EU:C:2016:449, para 28 and the case-law cited.

[16] Judgment of the Court (Grand Chamber) of 21 December 2021 in Case C-251/20, Gtflix Tv v DR, ECLI:EU:C:2021:1036, para 24 and the case-law cited.

[17] *Ibid.*, para 35.

[18] Opinion of Advocate General G. Hogan delivered on 16 September 2021 in Case C-251/20, Gtflix Tv v DR, ECLI:EU:C:2021:745, para 85.

to rule on the damages occurring in its state in the absence of harmonisation of the rules relating to defamation, each court will logically apply a different law.

In cases decided by the Court within the past few years additional limits of jurisdictional mosaic dissociation have been set. The first is to exclude the possibility of bringing an action for rectification or removal of information in every state where information has been available.[19] The second is to make conditional the jurisdictional base for the defamatory publication on the possibility of identifying the alleged victim based on its content.[20] Another unwritten condition that is also included in the judgment in the Gtflix case is that a claim for compensation based on the mosaic principle has to be based on the fact that the victim allegedly suffered damage in that particular place, not on the fact that the information was accessible to the public in that country. Jurisdiction based on the fact of the damage, rather than on accessibility of the content, removes most risks related to the mosaic approach, because, as Sylvian Bollée and Bernard Haftel rightly point out, the assessment of the existence of "targeting" the public of this or that country is also often very delicate and exposes the tortfeasor to the potential jurisdiction of all the courts in the world.[21] Admitting jurisdiction in defamatory cases based on the accessibility of the content would not contribute to ensuring legal certainty and predictability, which are among the fundamental objectives of the Brussels I bis regulation.[22]

Indeed, nothing in the text of the judgment explicitly states a requirement that a natural or legal person should allegedly have to suffer damage in the place where the comments were accessible to pursue claims in that state. It seems that such an unwritten condition, however, might be drawn from several aspects of the judgment, where the Court directly stated that a person who considers his/her rights to have been infringed may bring an action before the courts of each Member State in which content placed online is or has been accessible, yet those courts have jurisdiction only in respect of the damage caused in the Member State of the Court seised.[23] Moreover, the Court held that there is no justification (such as the fact that an application for rectification of information and removal of content is of a single and indivisible character) for excluding the possibility for the applicant to claim partial compensation before any other court within whose jurisdiction he or she considers that he or she has suffered

---

19 Judgment of the Court (Grand Chamber) of 17 October 2017 in Case C-194/16, Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB, ECLI:EU:C:2017:766.

20 On the basis of such a criterion, The Court refused to give the Polish court jurisdiction in a case brought by a citizen who claimed that the use of the phrase "Polish death camps" in an online publication violated his national identity and dignity, see: Judgment of the Court (First Chamber) of 17 June 2021 in Case C-800/19, Mittelbayerischer Verlag AG v SM, ECLI:EU:C:2021:489.

21 S. Bollée, B. Haftel, *Les nouveaux (dés)équilibres de la compétence internationale en matière de cyberdélits après l'arrêt eDate Advertising et Martinez*, "Recueil Dalloz" 2012, Nº 20, p.1285, para 16.

22 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, para 16.

23 For example, paragraphs 30, 39 and 40 [in:] Judgment of the Court (Grand Chamber) of 21 December 2021 in Case C-251/20, Gtflix Tv v DR, ECLI:EU:C:2021:1036.

damage.[24] Making jurisdiction in online defamation cases conditional on the fact that the victim has to allegedly suffer harm in the state of the forum seems to be a natural consequence of interpreting "the place where the harmful event occurred" as the place where damage materialised. As the claimant might sue merely in those states where the alleged harm can be identified, the appropriate forum might be determined more predictably. Subsequently, this contributes to providing certainty of law in the context of Article 7(2) of the Brussels I bis regulation.

When jurisdiction is exercised on the basis of the mosaic approach, a legal maxim *actor sequitur forum rei* gives its way to *forum damni*. To decide upon its jurisdiction in a case, the court will not only have to precisely indicate harms but also settle the blurred boundaries between territories. Obstacles in this area may be set by modern-day technology that easily enables users from one state to find out the results of web searches in other states using the settings of their Internet search engine, through geo-blocking or through access to a VPN. As such actions may lead to difficulties in locating damages, this means additional duties for national courts, as entities safeguarding the effectiveness of the rights granted to individuals by the norms of EU law. On the defendant's side, difficulties in reasonably predicting future jurisdiction and the risk of involvement in a complex and costly dispute may lead to increased self-censorship and fear of freely expressing one's views. Moreover, recognizing harm related to the violation of a legal person's personality rights may differ in the countries where the damage occurred. Significant differences can also be seen in the way in which the damage suffered by a legal person is defined (in particular those of a non-pecuniary nature) and the scope and permissible means of compensating for them, such as compensation for the harm suffered.[25] Such discrepancies may create a temptation for claimants to pursue their claims in states where they can obtain the most favourable outcome (forum shopping)[26] or to increase the phenomenon of strategic actions against public participation (SLAPP). These ever-new challenges foster posing the question of a need to introduce regulation on a choice of court agreements, which would allow the parties of the dispute to choose (obviously, under certain conditions) the court that would have exclusive jurisdiction in the case.[27]

Even though the acceptance of the mosaic principle is evident both in the Opinion and in the Court's final decision, the remarkable interplay between the two documents seems to reflect the fact that maintaining the mosaic principle was not a foregone con-

---

[24] *Ibid.*, para 35.

[25] *Personality rights in European Tort Law*, eds. G. Brüggemeier, A. Colombi Ciacchi, P. O'Callaghan, Cambridge 2010, pp. 562–563.

[26] E. Prévost, *Étude sur les formes de responsabilité et questions de compétence juridictionnelle relatives à l'application du droit civil et administratif en matière de diffamation dans les États membres du Conseil de l'Europe*, Conseil de l'Europe 2019, p. 8, https://rm.coe.int/liability-and-jurisdictional-issues-in-online-defamation-cases-fr/168097d9c4 [accessed: 2024.01.09].

[27] Article 6 [in:] *Injuries to Rights of Personality Through the Use of the Internet: Jurisdiction, Applicable Law and Recognition of Foreign Judgments, Institute of International Law. Eight Commission: Internet and the Infringement of Privacy: Issues of Jurisdiction, Applicable Law and Enforcement of Foreign Judgments*, The Hague 2019, https://www.idi-iil.org/app/uploads/2019/09/8-RES-EN.pdf [accessed: 2024.01.30].

clusion. In the Opinion delivered in the Gtflix case, Advocate General Hogan insightfully grasps challenges related to the mosaic approach and touches upon the problem in question in a broader sense. Thus, the approach adapted in the Opinion varies from the final decision in a few significant points. First of all, divergence comes from the fact that, while Advocate General Hogan approached the case from the perspective that the company based its claims on French unfair competition law (and not on defamation law, as would be so in a typical defamation case),[28] interestingly, the Court of Justice did not share this approach in its decision, which was noticed and assessed rather critically by representatives of legal doctrine.[29] Secondly, the Opinion turns the spotlight on the fact that the multiplication of potential forums is not solely related to the jurisdiction of the courts of each State in which the publication was distributed and where the victim claims to have suffered an injury to his/her reputation, as such a possibility also appears when the jurisdiction is based on the center of the victim's interests.[30] It is noteworthy that the Advocate General comes up with a proposal to modify the mosaic approach by combining it with the focalisation criterion applied by the Court in other cases.[31] Moreover, the Opinion presents an accurate review of the Court's case law on the place where the harmful event occurred or may occur[32] and analyzes the mosaic principle in the light of the main objectives of the Brussels I bis regulation, with the emphasis placed on the principle of legal certainty. Advocate General Hogan rightly points out that, since the principles of proportionality and legal certainty also apply to the Court, the mosaic approach shall not be abandoned.[33] A versatile analysis to the problem in question is followed by a definite statement: "Not only am I unconvinced that the mosaic approach is contrary to the objectives of Regulation No 1215/2012, but I am equally unconvinced that the use of one of the other connecting factors justifying a 'single-jurisdiction rule' (such as the place of residence of the defendant, the place of occurrence of the causal event, or the center of interests) will lead to the designation of courts that are necessarily in a better position to assess the defamatory or non-defamatory nature of a content, as well as the extent of the resulting damage."[34] In essence, the Opinion of the Advocate General in case C-251/20 seems to call for a more far-reaching application of the mosaic principle. In contrast, in

---

28 Opinion of Advocate General G. Hogan delivered on 16 September 2021 in Case C-251/20, Gtflix Tv v DR, ECLI:EU:C:2021:745, para 107.

29 M. Requejo Isidro, *Update – December at the Court of Justice of the European Union*, 2021, https://eapil.org/2021/12/20/update-december-at-the-court-of-justice-of-the-european-union/ [accessed: 2024.01.30]; D.J.B. Svantesson, I. Revolidis, *From eDate to Gtflix: Reflections on CJEU case law on digital torts under Art. 7(2) of the Brussels Ia Regulation, and how to move forward* [in:] *National and International Legal Space – The Contribution of Prof. Konstantinos Kerameus in International Civil Procedure*, ed. P. Arvanitakis, Athens 2022, pp. 319–371.

30 *Ibid.*, paragraphs 65, 71.

31 *Ibid.*, paragraphs 88–92.

32 Opinion of Advocate General G. Hogan delivered on 16 September 2021 in Case C-251/20, Gtflix Tv v DR, ECLI:EU:C:2021:745, paragraphs 33–42.

33 *Ibid.*, paragraphs 57–58.

34 *Ibid.*, para 80.

the judgment the Court seems to opt for approval for the mosaic principle in a more balanced manner, remaining focused more strictly on the circumstances of the case.

The obstacles that clearly arise in cases related to online defamation incline one to reconsider the role of territoriality as the foundation of jurisdiction. Therefore, a search to establish new legal solutions in the area of jurisdiction in online defamation disputes is apparent. Among many noteworthy initiatives,[35] particularly interesting in the context of the issues discussed here is the resolution presented by the Institute of International Law.[36] Its provisions seek simplicity and efficiency by rejecting the mosaic principle and replacing it with a holistic principle.[37] Applying them to the Gtflix case, the French court would not have the power to decide on any harm allegedly suffered in France, as the possible jurisdiction could only be based on the defendant's home state, the state of the defendant's critical conduct, the state of the most extensive injurious effects, or the plaintiff's home state and injury.[38] Although there is no doubt that the authors' call for coordination and cooperation efforts in the area of the internet and jurisdiction deserves approval, it does not seem appropriate to fully obliviate the mosaic principle. At a glance, settling the dispute only by one court would simplify the proceedings. Nevertheless, the court in power would have to decide upon harms in other states, which, in fact, would lead to long or highly intricate proceedings involving the risk that the court in one state would not be able to adequately decide upon the entire loss caused in multiple legal orders. As the Court aptly stated in the Gtflix case, a person who considers that he/she has been injured must always be able to bring proceedings before the courts of the place where the damage occurred, and setting limits to this ability could lead, in some cases, to the *de facto* exclusion of the option to claim compensation.[39]

As a follow-up problem associated with potential fragmentation of jurisdiction, non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation, are excluded from the scope of the Rome II regulation.[40] As

---

35 Inter alia E. Prévost, *Study on forms of liability and jurisdictional issues in the application of civil and administrative defamation laws in Council of Europe member states. Prepared by the Expert Committee on human rights dimensions of automated data processing and different forms of artificial intelligence (MSI-AUT)*, Council of Europe 2019, https://rm.coe.int/liability-and-jurisdictional-issues-in-online-defamation-cases-en/168097d9c3 [accessed: 2024.01.09] and D.J.B. Svantesson, *Proposed Defamation Convention Model* [in:] *idem*, *Private International Law and the Internet*, Alphen an den Rijn 2021.

36 *Injuries to Rights of Personality Through the Use of the Internet: Jurisdiction, Applicable Law and Recognition of Foreign Judgments, Institute of International Law. Eight Commission: Internet and the Infringement of Privacy: Issues of Jurisdiction, Applicable Law and Enforcement of Foreign Judgments*, The Hague 2019, https://www.idi-iil.org/app/uploads/2019/09/8-RES-EN.pdf [accessed: 2024.01.30].

37 See an analysis presented by D.J.B. Svantesson, S.C. Symeonides, *Cross-border internet defamation conflicts and what to do about them: Two proposals*, "Journal of Private International Law" 2023, Vol. 19, Issue 2, pp. 138–177.

38 Article 5 [in:] *Injuries to Rights of Personality Through the Use of the Internet*…

39 Judgment of the Court (Grand Chamber) of 21 December 2021 in Case C-251/20, Gtflix Tv v DR, ECLI:EU:C:2021:1036, para 40.

40 Article 1 g) of 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), Official Journal of the European Union L 199/40.

a result, in the specific context of online publications and infringements of personality rights, jurisdiction based on the mosaic approach will, in all likelihood, also determine the applicable law, as the court would apply its domestic rules on conflict of laws. In effect, outside the scope of the regulation is an area in which increasing predictability and legal certainty would be highly desirable. Lack of harmonisation implies that, for example, when a harmful act causes harm in many states and, according to the mosaic principle, courts in these states will have the power to decide upon compensation of harm suffered in these states, the content may be identified as defamatory in one state, whereas in another state, it may be considered acceptable. After entry into force of the Rome II regulation, the above-mentioned legislative imperfection has been noted in proposals on regulating the law applicable to non-contractual obligations arising from violations of personality rights.[41] It remains to be hoped that the EU legislator will consider the postulates made in this regard.[42]

## Conclusions

The judgment in the Gtflix Tv case and arguments presented in it certainly deserve approval, yet it does not dispel many doubts related to the mosaic approach. Therefore, its application in legal practice might be problematic. Nowadays, the essential question whether the defendant can foreseeably define where he/she might be sued is left open; this cannot be evaluated positively. Hopefully, the conditions of exercising jurisdiction on the basis of Article 7(2) of the Brussels I bis regulation will be further defined in future case law. Notwithstanding, the importance of the mosaic principle lies in the possibility for the plaintiff to bring an action for compensation and redress in the territory of each Member State in which the damage occurred. Conducting the case by the court that is "closest" to the case makes possible the quick, precise and more effective conduct of the proceedings and, thus, makes possible fuller protection of the rights of the injured entity. The jurisdiction in a case shall not be exclusively limited to the places that the defendant would have subjectively foreseen.[43] The argument that the existing regulations on jurisdiction in digital tort cases cannot fulfil all reasonable expectations cannot be abandoned. However, it seems to me that in the up-to date state of affairs, rather than drastically changing the existing regulations in search of new legal solutions, emphasis should be placed on adapting the existing ones to the needs of an ever-changing reality.

---

41 European Parliament resolution of 10 May 2012 with recommendations to the Commission on the amendment of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II), para O, https://www.europarl.europa.eu/doceo/document/TA-7-2012-0200_PL.html [accessed: 2024.01.30].

42 Some scholars express doubts that these attempts will succeed; see M. Pilich, *Prawo właściwe dla dóbr osobistych i ich ochrony*, "Kwartalnik Prawa Prywatnego" 2012, Issue 3, p. 608.

43 Advocate General M. Bobek also stated this [in:] Opinion of Advocate General M. Bobek delivered on 23 February 2021 in Case C-800/19, Mittelbayerischer Verlag AG v SM, ECLI:EU:C:2021:489, para 47.

## Literature


Bollée S., Haftel B., *Les nouveaux (dés)équilibres de la compétence internationale en matière de cyberdélits après l'arrêt eDate Advertising et Martinez*, "Recueil Dalloz" 2012, Nº 20.

Dyrda Ł., *Dotychczasowa praktyka i orzecznictwo dotyczące jurysdykcji krajowej w sprawach o ochronę dóbr osobistych a wyrok Trybunału Sprawiedliwości z 17.06.2021 r., C-800/19, Mittelbayerischer Verlag KG przeciwko SM*, "Europejski Przegląd Sądowy" 2022, No. 7.

Jerker D., Svantesson B., *Internet & Jurisdiction. Global Status Report 2019*, Paris 2019, https://www.internetjurisdiction.net/uploads/pdfs/Internet-Jurisdiction-Global-Status-Report-2019-Key-Findings_web.pdf.

Koch B., *Cyber Torts: Something Virtually New?*, "Journal of European Tort Law" 2014, Vol. 5, No. 2.

Miąsik D., *Zasada efektywności prawa wspólnotowego* [in:] *Stosowanie prawa Unii Europejskiej przez sądy*, ed. A. Wróbel, Kraków 2005.

de Miguel Asensio P., *Conflict of laws and the Internet*, Cheltenham 2020.

*Personality rights in European Tort Law*, eds. G. Brüggemeier, A. Colombi Ciacchi, P. O'Callaghan, Cambridge 2010.

Pilich M., *Prawo właściwe dla dóbr osobistych i ich ochrony*, "Kwartalnik Prawa Prywatnego" 2012, Issue 3.

Prévost E., *Étude sur les formes de responsabilité et questions de compétence juridictionnelle relatives à l'application du droit civil et administratif en matière de diffamation dans les États membres du Conseil de l'Europe*, Conseil de l'Europe 2019, https://rm.coe.int/liability-and-jurisdictional-issues-in-online-defamation-cases-fr/168097d9c4.

Prévost E., *Study on forms of liability and jurisdictional issues in the application of civil and administrative defamation laws in Council of Europe member states. Prepared by the Expert Committee on human rights dimensions of automated data processing and different forms of artificial intelligence (MSI-AUT)*, Council of Europe 2019, https://rm.coe.int/liability-and-jurisdictional-issues-in-online-defamation-cases-en/168097d9c3.

Racine J.-B., *Le forum actoris en droit international privé* [in:] *Travaux du Comité français de droit international privé. Années 2016–2018*, ed. D. Foussard [*et al.*], Paris 2019.

Requejo Isidro M., *Update – December at the Court of Justice of the European Union*, 2021, https://eapil.org/2021/12/20/update-december-at-the-court-of-justice-of-the-european-union/.

Svantesson D.J.B., *Proposed Defamation Convention Model* [in:] *idem*, *Private International Law and the Internet*, Alphen an den Rijn 2021.

Svantesson D.J.B., Revolidis I., *From eDate to Gtflix: Reflections on CJEU case law on digital torts under Art. 7(2) of the Brussels Ia Regulation, and how to move forward* [in:] *National and International Legal Space – The Contribution of Prof. Konstantinos Kerameus in International Civil Procedure*, ed. P. Arvanitakis, Athens 2022.

Svantesson D.J.B., Symeonides S.C., *Cross-border internet defamation conflicts and what to do about them: Two proposals*, "Journal of Private International Law" 2023, Vol. 19, Issue 2.

## Summary

*Kinga Konieczna*

**Special Jurisdiction Based on the Place Where Damage Occurred in Cases Related to the Dissemination of Disparaging Comments on the Internet**

An approving commentary on the judgment of the Court (Grand Chamber) of 21 December 2021 in Case C-251/20 Gtflix Tv v DR. In the judgment commented on, the Court held that that a legal entity who, considering that its rights have been infringed by the dissemination of disparaging comments on the internet, can seek not only the rectification of the information and the removal of the harmful content placed online, but also compensation for the damage resulting from that placement, and it may claim before the courts of each Member State in which those comments are or were accessible compensation for the damage suffered in the Member State of the court seised, even though those courts do not have jurisdiction to rule on the application for rectification and removal.


**Keywords:** conflict of laws, jurisdiction in civil matters, mosaic approach, personality rights, tort law, Brussels I bis regulation.


## Streszczenie

*Kinga Konieczna*

**Miejsce powstania szkody jako podstawa jurysdykcji szczególnej dla roszczeń o naprawienie szkody doznanej w związku z rozpowszechnianiem w Internecie dyskredytujących wypowiedzi**

Glosa aprobująca do wyroku Trybunału (wielka izba) z dnia 21 grudnia 2021 r. w sprawie C-251/20 Gtflix Tv przeciwko DR. W glosowanym orzeczeniu Trybunał rozstrzygnął, że osoba, która uznając, iż doszło do naruszenia jej praw poprzez rozpowszechnianie w Internecie dyskredytujących ją wypowiedzi, podejmuje jednocześnie działania z jednej strony w celu doprowadzenia do sprostowania dotyczących jej informacji i usunięcia dotyczących jej treści umieszczonych w sieci, a z drugiej strony w celu uzyskania naprawienia wynikających z tego umieszczenia w sieci szkód i krzywd, może żądać przed sądami każdego państwa członkowskiego, na terytorium którego wypowiedzi te są lub były dostępne, naprawienia szkody i krzywdy wyrządzonych na terytorium państwa członkowskiego siedziby sądu, do którego wniesiono powództwo, nawet jeśli sądy te nie są właściwe do rozpoznania żądania sprostowania i usunięcia.


**Słowa kluczowe:** delikt, dobra osobiste, jurysdykcja w sprawach cywilnych, prawo prywatne międzynarodowe, rozporządzenie Bruksela I bis.