

Publications

DEFAMATION OF YOUR COMPANY - where to sue?

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Imagine the situation: a competitor or a disappointed customer publishes defamatory messages about your company via the internet.

Where is the appropriate forum to bring an action for rectification of that wrong and damaging information, removal of those comments and compensation?

Is it the seat of your opponent? Is it a court in any member country of the EU in which your interests have been harmed by the publication? Is it a court only in that member state in which the main damage has occurred? Is it the court where the registered office of your company is located? Does it matter if the main part of your activities are located in a state other than that where your registered office is situated?

According to basic principles and earlier decisions one might think that the legal person concerned could sue in any member state where the defamatory content was published, which would be the case automatically if such defamatory content is published via the internet and therefore could be read worldwide - could that really be? If the legal person wants compensation for damage, would claims be restricted to the damage which occurred in that specific jurisdiction where legal action is taken - if so, where could such a legal person sue for the whole damage?

In the specific case C-194/16, an Estonian company was blacklisted (including accusations of fraud and deceit) by a Swedish company via the internet and went to court in Estonia, though the main damage (loss of turnover) did not occur in Estonia (but presumably in Sweden) and though the defamatory content had been published in the Swedish language and therefore was not understandable to Estonian people without translation, furthermore the plaintiff did not specify that

damage occurred in Estonia itself.

The European Court had already decided in 2011 (C-509/09, C-161/10) concerning a physical person that, in case of infringement of personality rights by a website, legal action could be brought either to the courts of the state where the person responsible for the website has its residence or to the court where the plaintiff's center of interests is located, in order to claim the full damage occurred wherever. Alternatively, the physical person can seek compensation in the courts of other member states, but limited to the specific damage having been caused by the defendant in that state.

The conclusion of the court concerning legal persons, in brief, is as follows:

A legal person claiming that its personality rights have been infringed by the publication of incorrect information concerning it on the internet, and by failure to remove comments relating to that person, can bring an action for rectification of that information, removal of those comments and compensation in respect of all the damage sustained (only) before the courts of the member state in which its center of interests (not necessarily the place of the registered office!) is located.

If the relevant legal person carries out the main part of its activities in a different member state from the one in which its registered office is located, that person may sue the alleged perpetrator for the damage sustained in the courts of that other member state!

Notwithstanding the right to demand compensation for *damages* caused specifically in another member state, a person who alleges that his personality rights have been infringed by the publication of incorrect information concerning him on the internet or by the failure to remove comments relating to him **cannot bring an action for rectification of that information and removal of those comments before the courts of each member state in which the information published on the internet is or was accessible.**

So, if you would like to sue for all the damage caused by infringement of personality rights sustained in the EU and for EU-wide rectification of defamatory information published on the internet and removal of such comments, one has to meticulously check where the company has its center of interests - especially if different from the member state in which the registered office of the company is located - including the legal preconditions and how reliable the evidence for such a center of interest in another member state might be - or in other words:

No forum-picking just because the defamatory content can be read everywhere! The forum for actions for EU-wide rectification of defamatory content is linked to the one where the perpetrator may be sued for all the damage sustained by such content published on the internet.

This article is not a legal advice, for full information please contact one of our LIBRALEX members and refer to the full wording of the European Court's decision C-194/16, C-509/09, C-161/10.

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