JUDGMENT OF THE COURT (Grand Chamber)

25 October 2010 (*)

(Regulation (EC) No 44/2001 – Jurisdiction and the enforcement of judgments in civil and commercial matters – Jurisdiction 'in matters relating to tort, delict or quasi-delict' – Directive 2000/31/EC – Publication of information on the internet – Adverse effect on personality rights – Place where the harmful event occurred or may occur – Law applicable to information society services)

In Joined Cases C-509/09 and C-161/10,

REFERENCES for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Germany) (C-509/09) and the Tribunal de grande instance de Paris (France) (C-161/10), made by decisions of 10 November 2009 and 29 March 2010, received at the Court, respectively, on 9 December 2009 and 6 April 2010, in the proceedings

eDate Advertising GmbH

v

X

and

Olivier Martinez,

Robert Martinez

v

MGN Limited,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, U. Lõhmus and M. Safjan (Rapporteur), Presidents of Chambers, E. Levits, A. Ó Caoimh, L. Bay Larsen, and T. von Danwitz, Judges,

Advocate General: P. Cruz Villalón,

Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 14 December 2010,

after considering the observations submitted on behalf of:

- eDate Advertising GmbH, by H. Graupner and M. Dörre, Rechtsanwälte,
- X, by A. Stopp, Rechtsanwalt,
- MGN Limited, by C. Bigot, avocat,
- the German Government, by J. Möller and J. Kemper, acting as Agents,
- the French Government, by G. de Bergues and B. Beaupère-Manokha, acting as Agents,
- the Danish Government, by C. Vang, acting as Agent,
- the Greek Government, by S. Chala, acting as Agent,
- the Italian Government, by W. Ferrante, acting as Agent,

- the Luxembourg Government, by C. Schiltz, acting as Agent,

- the Austrian Government, by C. Pesendorfer and E. Riedl, acting as Agents,

- the United Kingdom Government, by F. Penlington, acting as Agent, and by J. Stratford, QC,

- the European Commission, by M. Wilderspin, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 29 March 2011,

gives the following

Judgment

1 The present references for a preliminary ruling concern the interpretation of Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1; 'the Regulation') and Article 3(1) and (2) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1; 'the Directive').

2 The references have been made in two sets of proceedings, between, firstly, X and eDate Advertising GmbH ('eDate Advertising') and, secondly, Olivier and Robert Martinez, on the one hand, and MGN Limited ('MGN'), on the other hand, concerning the civil liability of those defendants in respect of information and photographs published on the internet.

Legal context

The Regulation

3 Recital 11 in the preamble to the Regulation states:

'The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.'

4 Article 2(1) of the Regulation, which appears in Section 1 ('General provisions') of Chapter II ('Jurisdiction') thereof, provides as follows:

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

5 Article 3(1) of the Regulation provides:

'Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.'

6 In Section 2, entitled 'Special jurisdiction', of Chapter II, Article 5(3) is worded as follows:

'A person domiciled in a Member State may, in another Member State, be sued:

...

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur.'

The Directive

7 The fourth clause in recital 22 in the preamble to the Directive reads as follows:

'[M]oreover, in order to effectively guarantee freedom to provide services and legal certainty for suppliers and

recipients of services, such information society services should in principle be subject to the law of the Member State in which the service provider is established.'

8 Recital 23 in the preamble to the Directive states:

'This Directive neither aims to establish additional rules on private international law relating to conflicts of law nor does it deal with the jurisdiction of Courts; provisions of the applicable law designated by rules of private international law must not restrict the freedom to provide information society services as established in this Directive.'

9 Recital 25 in the preamble to the Directive states:

'National courts, including civil courts, dealing with private law disputes can take measures to derogate from the freedom to provide information society services in conformity with conditions established in this Directive.'

10 In accordance with Article 1(1) thereof, the Directive has as its objective to 'contribute to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States.'

11 Article 1(4) of the Directive is worded as follows:

'This Directive does not establish additional rules on private international law nor does it deal with the jurisdiction of Courts.'

12 Under Article 2(h)(i) of the Directive:

'The coordinated field concerns requirements with which the service provider has to comply in respect of:

- the taking-up of the activity of an information society service, such as requirements concerning qualifications, authorisation or notification,

- the pursuit of the activity of an information society service, such as requirements concerning the behaviour of the service provider, requirements regarding the quality or content of the service, including those applicable to advertising and contracts, or requirements concerning the liability of the service provider'.

13 Article 3(1) and (2) of the Directive provides:

'1. Each Member State shall ensure that the information society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within the coordinated field.

2. Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State.'

14 Article 3(4) of the Directive sets out the conditions under which Member States may take, in respect of a given information society service, measures that derogate from Article 3(2).

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-509/09

15 In 1993, X, who is domiciled in Germany, was sentenced by a German court, together with his brother, to life imprisonment for the murder of a well-known actor. He was released on parole in January 2008.

16 eDate Advertising, which is established in Austria, operates an internet portal under the address 'www.rainbow.at'. In the section 'Info-News', on the pages dedicated to old news, the defendant made access to a report, dated 23 August 1999, available for purposes of consultation until 18 June 2007. That report, which named X and his brother, stated that they had both lodged appeals against their conviction with the Bundesverfassungsgericht (Federal Constitutional Court) in Karlsruhe (Germany). In addition to a brief description of the crime committed in 1990, the lawyer instructed by the convicted men is quoted as saying that they intended to prove that several of the principal witnesses for the prosecution had not told the truth at the trial.

17 X called upon eDate Advertising to desist from reporting that matter and to give an undertaking that it would refrain from future publication. eDate Advertising did not reply to that letter but, on 18 June 2007, removed the disputed information from its website.

18 By his action before the German courts, X calls upon eDate Advertising to refrain from using his full name when

reporting about him in connection with the crime committed. The main contention of eDate Advertising is that the German courts have no international jurisdiction in the matter. As the action was successful in both lower courts, eDate Advertising continues, before the Bundesgerichtshof (German Federal Court of Justice), to seek to have the action dismissed.

19 The Bundesgerichtshof notes that the outcome of the action is dependent on whether the lower courts were correct in holding that they have international jurisdiction to rule on the dispute pursuant to Article 5(3) of the Regulation.

20 If the international jurisdiction of the German courts is established, the Bundesgerichtshof states that the question then arises as to whether German or Austrian law applies. That depends on the interpretation of Article 3(1) and (2) of the Directive.

21 On the one hand, the country-of-origin principle may have a corrective effect on a substantive law level. The substantive law outcome under the law declared to be applicable pursuant to the conflict-of-laws rules of the State in which the court seised is situated is, in individual cases, altered in its content, where appropriate, and reduced to the less stringent requirements of the law of the country of origin. According to this interpretation, the country-of-origin principle does not affect the national conflict-of-laws rules of the State in which the court seised is situated and applies – in the same way as the fundamental freedoms set out in the EC Treaty – only in the context of an individual cost/benefit comparison at a national law level.

22 On the other hand, Article 3 of the Directive may establish a general principle with regard to conflict-of-laws rules that leads to the exclusive application of the law in force in the country of origin and the ousting of the national conflict-of-laws rules.

23 The Bundesgerichtshof states that if the country-of-origin principle were to be considered to be an obstacle to the application of law on a substantive level, German private international law would be applicable and the decision under challenge would then have to be set aside and the action ultimately dismissed, since the applicant's claim seeking an injunction under German law would have to be refused. By contrast, if the country-of-origin principle were to be treated as a conflict-of-laws rule, X's claim for an injunction would then have to be assessed according to Austrian law.

24 In those circumstances, the Bundesgerichtshof decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is the phrase "the place where the harmful event ... may occur" in Article 5(3) of [the Regulation] to be interpreted as meaning, in the event of (possible) infringements of the right to protection of personality by means of content on an internet website,

that the person concerned may also bring an action for an injunction against the operator of the website, irrespective of the Member State in which the operator is established, in the courts of any Member State in which the website may be accessed,

or

does the jurisdiction of the courts of a Member State in which the operator of the website is not established require that there be a special connection between the contested content or the website and the State of the court seised (domestic connecting factor) going beyond technically possible accessibility?

2. If such a special domestic connecting factor is necessary:

What are the criteria which determine that connection?

Does it depend on whether the intention of the operator is that the contested website is specifically (also) targeted at the internet users in the State of the court seised or is it sufficient for the information which may be accessed on the website to have an objective connection to the State of the court seised, in the sense that in the circumstances of the individual case, in particular on the basis of the content of the website to which the applicant objects, a collision of conflicting interests – the applicant's interest in respect for his right to protection of personality and the operator's interest in the design of his website and in news reporting – may actually have occurred or may occur in the State of the court seised?

Does the determination of the special domestic connecting factor depend upon the number of times the website to which the applicant objects has been accessed from the State of the court seised?

3. If no special domestic connecting factor is required in order to make a positive finding on jurisdiction, or if it is sufficient for the presumption of such a special domestic connecting factor that the information to which the applicant objects has an objective connection to the State of the court seised, in the sense that in the circumstances of the individual case, in particular on the basis of the content of the website to which the applicant objects, a collision of conflicting interests may actually have occurred or may occur in the State of the

court seised and the existence of a special domestic connecting factor may be presumed without requiring a finding as to a minimum number of times the website to which the applicant objects has been accessed from the State of the court seised:

Must Article 3(1) and (2) of [the Directive] be interpreted as meaning:

that those provisions should be attributed with a conflict-of-laws character in the sense that for the field of private law they also require the exclusive application of the law applicable in the country of origin, to the exclusion of national conflict-of-laws rules,

or

do those provisions operate as a corrective at a substantive law level, by means of which the substantive law outcome under the law declared to be applicable pursuant to the national conflict-of-laws rules is altered and reduced to the requirements of the country of origin?

In the event that Article 3(1) and (2) of [the Directive] has a conflict-of-laws character:

Do those provisions merely require the exclusive application of the substantive law applicable in the country of origin or also the application of the conflict-of-laws rules applicable there, with the consequence that a renvoi under the law of the country of origin to the law of the target State remains possible?'

Case C-161/10

25 Before the Tribunal de grande instance de Paris (Paris Regional Court), the French actor Olivier Martinez and his father, Robert Martinez, complain of interference with their private lives and infringement of the right of Olivier Martinez to his image by reason of the posting, on the website accessible at the internet address 'www.sundaymirror.co.uk', of a text in English, dated 3 February 2008, entitled 'Kylie Minogue is back with Olivier Martinez', with details of their meeting.

26 On the basis of Article 9 of the French Civil Code, which provides that 'everyone has the right to respect for his private life', the present action has been brought against MGN, a company governed by English law, which publishes the website of the British newspaper the *Sunday Mirror*. That company raises the objection that the Tribunal de grande instance de Paris lacks jurisdiction as there is no sufficient connecting link between the act of placing the text and images at issue online and the alleged damage in French territory, whereas the applicants, by contrast, take the view that such a connecting link is unnecessary and that, in any event, there is such a link.

27 The national court states that, where the internet is the medium for a harmful event, that harmful event can be deemed to have occurred in the territory of a Member State only if there is a sufficient, substantial or significant link connecting it with that territory.

28 The national court takes the view that the answer to the question whether a court of a Member State has jurisdiction to deal with an action alleging infringement of personality rights committed via the internet, from a website published by a person domiciled in another Member State and essentially intended for the public in that other Member State, does not follow clearly from the terms of Articles 2 and 5(3) of the Regulation.

29 In those circumstances, the Tribunal de grande instance de Paris decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'Must Articles 2 and 5(3) of [the Regulation] be interpreted to mean that a court or tribunal of a Member State has jurisdiction to hear an action brought in respect of an infringement of personality rights allegedly committed by the placing online of information and/or photographs on an internet site published in another Member State by a company domiciled in that second State – or in a third Member State, but in any event a State other than the first Member State:

- on the sole condition that the internet site can be accessed from the first Member State,

- on the sole condition that there is, between the harmful act and the territory of the first Member State, a link which is sufficient, substantial or significant and, in that case, whether that link can be created by:

- the number of hits on the page at issue made from the first Member State, as an absolute figure or as a proportion of all hits on that page,

- the residence, or nationality, of the person who complains of the infringement of his or her personal rights or, more generally, of the persons concerned,

- the language in which the information at issue is broadcast or any other factor which may demonstrate the site

publisher's intention to address specifically the public of the first Member State,

– the place where the events described occurred and/or where the photographic images put on line were taken,

– other criteria?'

30 By order of 29 October 2010, the President of the Court of Justice, in accordance with Article 43 of the Rules of Procedure of the Court, decided to join Cases C-509/09 and C-161/10 for the purposes of the oral hearing and the judgment.

Admissibility

31 The Italian Government expresses the view that the questions submitted in Case C-509/09 should be declared inadmissible for lack of relevance to the dispute in the main proceedings. An injunction, it argues, is an emergency judicial instrument and therefore presupposes current harmful behaviour. It is, however, evident from the presentation of the facts in this case that the behaviour regarded as harmful was no longer current at the time when the application for an injunction was made, given that the operator of the website had already removed the information in dispute prior to the commencement of proceedings.

32 It should be recalled in this regard that, according to settled case-law, in proceedings under Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions referred concern the interpretation of European Union law, the Court of Justice is, in principle, bound to give a ruling (see Case C-52/09 *TeliaSonera Sverige* [2011] ECR I-0000, paragraph 15 and the case-law cited).

33 The Court may refuse to rule on a question referred for a preliminary ruling from a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, inter alia where the problem is hypothetical (see *TeliaSonera Sverige*, paragraph 16).

34 It does not, however, appear that, in the case in the main proceedings, the application for an injunction became devoid of purpose by reason of the fact that the website operator had already removed the information in dispute before proceedings were commenced. Indeed, as is set out at paragraph 18 of this judgment, the injunction application was successful in the two lower courts.

35 In any event, the Court has already noted that, in the light of its wording, Article 5(3) of the Regulation does not require the current existence of damage (see, to that effect, Case C-167/00 *Henkel* [2002] ECR I-8111, paragraphs 48 and 49). It follows that an action seeking to prevent a repetition of behaviour regarded as wrongful comes within the scope of that provision.

36 In those circumstances, the reference for a preliminary ruling must be held to be admissible.

Consideration of the questions referred

Interpretation of Article 5(3) of the Regulation

37 By the first two questions in Case C-509/09 and the single question in Case C-161/10, which it is appropriate to examine together, the national courts ask the Court, in essence, how the expression 'the place where the harmful event occurred or may occur', used in Article 5(3) of the Regulation, is to be interpreted in the case of an alleged infringement of personality rights by means of content placed online on an internet website.

38 In order to answer those questions, it should be borne in mind, first, that, according to settled case-law, the provisions of the Regulation must be interpreted independently, by reference to its scheme and purpose (see, inter alia, Case C-189/08 *Zuid-Chemie* [2009] ECR I-6917, paragraph 17 and the case-law cited).

39 Second, in so far as the Regulation now replaces, in the relations between Member States, the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), as amended by the successive conventions relating to the accession of new Member States to that convention ('the Brussels Convention'), the interpretation provided by the Court in respect of the provisions of the Brussels Convention is also valid for those of the Regulation whenever the provisions of those Community instruments may be regarded as equivalent (*Zuid-Chemie*, paragraph 18).

40 It is settled case-law that the rule of special jurisdiction laid down, by way of derogation from the principle of

jurisdiction of the courts of the place of domicile of the defendant, in Article 5(3) of the Regulation is based on the existence of a particularly close connecting factor between the dispute and the courts of the place where the harmful event occurred, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (*Zuid-Chemie*, paragraph 24 and the case-law cited).

41 It must also be borne in mind that the expression 'place where the harmful event occurred' is intended to cover both the place where the damage occurred and the place of the event giving rise to it. Those two places could constitute a significant connecting factor from the point of view of jurisdiction, since each of them could, depending on the circumstances, be particularly helpful in relation to the evidence and the conduct of the proceedings (see Case C-68/93 *Shevill and Others* [1995] ECR I-415, paragraphs 20 and 21).

42 In relation to the application of those two connecting criteria to actions seeking reparation for non-material damage allegedly caused by a defamatory publication, the Court has held that, in the case of defamation by means of a newspaper article distributed in several Contracting States, the victim may bring an action for damages against the publisher either before the courts of the Contracting State of the place where the publisher of the defamatory publication is established, which have jurisdiction to award damages for all of the harm caused by the defamation, or before the courts of each Contracting State in which the publication was distributed and where the victim claims to have suffered injury to his reputation, which have jurisdiction to rule solely in respect of the harm caused in the State of the court seised (*Shevill and Others*, paragraph 33).

43 In that regard, the Court has also stated that, while it is true that the limitation of the jurisdiction of the courts in the State of distribution solely to damage caused in that State presents disadvantages, the plaintiff always has the option of bringing his entire claim before the courts either of the defendant's domicile or of the place where the publisher of the defamatory publication is established (*Shevill and Others*, paragraph 32).

44 Those considerations may, as was noted by the Advocate General at point 39 of his Opinion, also be applied to other media and means of communication and may cover a wide range of infringements of personality rights recognised in various legal systems, such as those alleged by the applicants in the main proceedings.

45 However, as has been submitted both by the referring courts and by the majority of the parties and interested parties which have submitted observations to the Court, the placing online of content on a website is to be distinguished from the regional distribution of media such as printed matter in that it is intended, in principle, to ensure the ubiquity of that content. That content may be consulted instantly by an unlimited number of internet users throughout the world, irrespective of any intention on the part of the person who placed it in regard to its consultation beyond that person's Member State of establishment and outside of that person's control.

46 It thus appears that the internet reduces the usefulness of the criterion relating to distribution, in so far as the scope of the distribution of content placed online is in principle universal. Moreover, it is not always possible, on a technical level, to quantify that distribution with certainty and accuracy in relation to a particular Member State or, therefore, to assess the damage caused exclusively within that Member State.

47 The difficulties in giving effect, within the context of the internet, to the criterion relating to the occurrence of damage which is derived from *Shevill and Others* contrasts, as the Advocate General noted at point 56 of his Opinion, with the serious nature of the harm which may be suffered by the holder of a personality right who establishes that information injurious to that right is available on a world-wide basis.

48 The connecting criteria referred to in paragraph 42 of the present judgment must therefore be adapted in such a way that a person who has suffered an infringement of a personality right by means of the internet may bring an action in one forum in respect of all of the damage caused, depending on the place in which the damage caused in the European Union by that infringement occurred. Given that the impact which material placed online is liable to have on an individual's personality rights might best be assessed by the court of the place where the alleged victim has his centre of interests, the attribution of jurisdiction to that court corresponds to the objective of the sound administration of justice, referred to in paragraph 40 above.

49 The place where a person has the centre of his interests corresponds in general to his habitual residence. However, a person may also have the centre of his interests in a Member State in which he does not habitually reside, in so far as other factors, such as the pursuit of a professional activity, may establish the existence of a particularly close link with that State.

50 The jurisdiction of the court of the place where the alleged victim has the centre of his interests is in accordance with the aim of predictability of the rules governing jurisdiction (see Case C-144/10 *BVG* [2011] ECR I-0000, paragraph 33) also with regard to the defendant, given that the publisher of harmful content is, at the time at which that content is placed online, in a position to know the centres of interests of the persons who are the subject of that content. The view must therefore be taken that the centre-of-interests criterion allows both the applicant easily to identify the court in which he may sue and the defendant reasonably to foresee before which court he may be sued (see Case C-533/07 *Falco Privatstiftung and Rabitsch* [2009] ECR I-3327, paragraph 22 and the case-law cited).

51 Moreover, instead of an action for liability in respect of all of the damage, the criterion of the place where the damage occurred, derived from *Shevill and Others*, confers jurisdiction on courts in each Member State in the territory of which content placed online is or has been accessible. Those courts have jurisdiction only in respect of the damage caused in the territory of the Member State of the court seised.

52 Consequently, the answer to the first two questions in Case C-509/09 and the single question in Case C-161/10 is that Article 5(3) of the Regulation must be interpreted as meaning that, in the event of an alleged infringement of personality rights by means of content placed online on an internet website, the person who considers that his rights have been infringed has the option of bringing an action for liability, in respect of all the damage caused, either before the courts of the Member State in which the publisher of that content is established or before the courts of the Member State in which the centre of his interests is based. That person may also, instead of an action for liability in respect of all the damage caused, bring his action before the courts of each Member State in the territory of which content placed online is or has been accessible. Those courts have jurisdiction only in respect of the damage caused in the territory of the Member State of the court seised.

Interpretation of Article 3 of the Directive

53 By its third question in Case C-509/09, the Bundesgerichtshof asks whether the provisions of Article 3(1) and (2) of the Directive have the character of a conflict-of-laws rule in the sense that, for the field of private law, they also require the exclusive application, for information society services, of the law in force in the country of origin, to the exclusion of national conflict-of-laws rules, or whether they operate as a corrective to the law declared to be applicable pursuant to the national conflict-of-laws rules in order to adjust it in accordance with the requirements of the country of origin.

54 Those provisions must be analysed by taking account not only of their wording, but also of the context in which they occur and the objectives pursued by the rules of which they are part (see Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 50, Case C-306/05 *SGAE* [2006] ECR I-11519, paragraph 34, and Case C-162/09 *Lassal* [2010] ECR I-0000, paragraph 49).

55 In that sense, the enacting terms of a European Union act are indissociably linked to the reasons given for it, so that, when it has to be interpreted, account must be taken of the reasons which led to its adoption (Case C-298/00 P *Italy* v *Commission* [2004] ECR I-4087, paragraph 97 and the case-law cited, and *Lassal*, paragraph 50).

56 The Directive, which was adopted on the basis of Articles 47(2) EC, 55 EC and 95 EC, has the objective, as set out in Article 1(1) thereof, of contributing to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States. Recital 5 in the preamble lists, as legal obstacles to the proper functioning of the internal market in that field, divergences in legislation and legal uncertainty as regards which national rules apply to such services.

57 For the majority of the aspects of electronic commerce, however, the Directive is not intended to achieve harmonisation of substantive rules, but defines a 'coordinated field' in the context of which the mechanism in Article 3 must allow, according to recital 22 in the preamble to the Directive, information society services to be, in principle, subject to the law of the Member State in which the service provider is established.

58 In that regard, it must be noted, firstly, that the law of the Member State in which the service provider is established includes the private law field, which is apparent from, inter alia, recital 25 in the preamble to the Directive and from the fact that the annex thereto sets out the private-law rights and obligations to which the Article 3 mechanism does not apply. Secondly, the application thereof to the liability of service providers is expressly provided for by the second indent of Article 2(h)(i) of the Directive.

59 A reading of Article 3(1) and (2) of the Directive in the light of the abovementioned provisions and objectives shows that the mechanism provided for by the Directive prescribes, also in private law, respect for the substantive law requirements in force in the country in which the service provider is established. In the absence of binding harmonisation provisions adopted at European Union level, only the acknowledgement of the binding nature of the national law to which the legislature has decided to make the service providers and their services subject can guarantee the full effect of the free provision of those services. Article 3(4) of the Directive confirms such a reading in that it sets out the conditions under which Member States may derogate from Article 3(2), which must be regarded as being exhaustive.

60 The interpretation of Article 3 of the Directive must, however, also take account of Article 1(4) thereof, according to which the Directive does not establish additional rules on private international law relating to conflicts of laws.

61 In that regard, it must be noted, firstly, that an interpretation of the internal market rule enshrined in Article 3(1) of the Directive as meaning that it leads to the application of the substantive law in force in the Member State of establishment does not determine its classification as a rule of private international law. That paragraph principally imposes on Member States the obligation to ensure that the information society services provided by a service provider established on their territory comply with the national provisions applicable in the Member States in question which fall within the coordinated field. The imposition of such an obligation is not in the nature of a conflict-of-laws

rule designed to resolve a specific conflict between several laws which may be applicable.

62 Secondly, Article 3(2) of the Directive prohibits Member States from restricting, for reasons falling within the coordinated field, the freedom to provide information society services from another Member State. By contrast, it is apparent from Article 1(4) of the Directive, read in the light of recital 23 in the preamble thereto, that host Member States are in principle free to designate, pursuant to their private international law, the substantive rules which are applicable so long as this does not result in a restriction of the freedom to provide electronic commerce services.

63 It follows that Article 3(2) of the Directive does not require transposition in the form of a specific conflict-of-laws rule.

64 The provisions of Article 3(1) and (2) of the Directive must, however, be interpreted in such a way as to guarantee that the coordinated approach chosen by the European Union legislature will effectively allow the free movement of information society services between the Member States.

65 In this regard, it must be recalled that the Court has already ruled that it must be possible to apply mandatory provisions of a directive that are necessary to achieve the objectives of the internal market notwithstanding a choice of different law (see, to that effect, Case C-381/98 *Ingmar* [2000] ECR I-9305, paragraph 25, and Case C-465/04 *Honyvem Informazioni Commerciali* [2006] ECR I-2879, paragraph 23).

66 In relation to the mechanism provided for by Article 3 of the Directive, it must be held that the fact of making electronic commerce services subject to the legal system of the Member State in which their providers are established pursuant to Article 3(1) does not allow the free movement of services to be fully guaranteed if the service providers must ultimately comply, in the host Member State, with stricter requirements than those applicable to them in the Member State in which they are established.

67 It follows that Article 3 of the Directive precludes, subject to derogations authorised in accordance with the conditions set out in Article 3(4), a provider of an electronic commerce service from being made subject to stricter requirements than those provided for by the substantive law in force in the Member State in which that service provider is established.

68 In light of the foregoing, the answer to the third question in Case C-509/09 is that Article 3 of the Directive must be interpreted as not requiring transposition in the form of a specific conflict-of-laws rule. Nevertheless, in relation to the coordinated field, Member States must ensure that, subject to the derogations authorised in accordance with the conditions set out in Article 3(4) of the Directive, the provider of an electronic commerce service is not made subject to stricter requirements than those provided for by the substantive law applicable in the Member State in which that service provider is established.

Costs

69 Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national courts, the decisions on costs are a matter for those courts. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the event of an alleged infringement of personality rights by means of content placed online on an internet website, the person who considers that his rights have been infringed has the option of bringing an action for liability, in respect of all the damage caused, either before the courts of the Member State in which the publisher of that content is established or before the courts of the Member State in which the centre of his interests is based. That person may also, instead of an action for liability in respect of all the damage caused, bring his action before the courts of each Member State in the territory of which content placed online is or has been accessible. Those courts have jurisdiction only in respect of the damage caused in the territory of the Member State of the court seised.**

2. **Article 3 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), must be interpreted as not requiring transposition in the form of a specific conflict-of-laws rule. Nevertheless, in relation to the coordinated field, Member States must ensure that, subject to the derogations authorised in accordance with the conditions set out in Article 3(4) of Directive 2000/31, the provider of an electronic commerce service is not made subject to stricter requirements than those provided for by**

the substantive law applicable in the Member State in which that service provider is established.

[Signatures]

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* Languages of the cases: German and French.