

All or nothing? The relation between the mosaic jurisdiction and the centre of interests connecting factor. Commentary on the decision of the Polish Supreme Court of 18 February 2025, ref. no. II CSKP 1586/22

Il rapporto tra l'approccio a mosaico nella determinazione della giurisdizione e il criterio di collegamento del centro degli interessi. Commento alla sentenza della Corte Suprema polacca del 18 febbraio 2025, n. rif. II CSKP 1586/22

ALEKSANDRA WASIELEWICZ

Assistant at the Department of Civil Procedure

Faculty of Law and Administration

Nicolaus Copernicus University in Torun

ORCID ID: 0000-0002-4614-3416

Recibido: 23.12.2025 / Aceptado: 18.01.2026

DOI: 10.20318/cdt.2026.10300

Abstract: The paper discusses the Polish Supreme Court's decision of 18 February 2025, ref. no. II CSKP 1586/22 – the continuation of the case in which the CJEU previously had the opportunity to adjudicate, i.e. *Mittelbayerischer Verlag KG v. SM* (judgment of 17 June 2021, C-800/19). The decision of the Polish Supreme Court addressed the issue of the scope of jurisdiction of national courts, namely, the relation between the principle of mosaic jurisdiction and the application of the centre of interests connecting factor. This case illustrates that the application of the mosaic jurisdiction alleviates the strictness of the requirements needed to establish the place of the centre of interests. The commented case concerns the violations of personality rights caused by statements that constitute a historical falsification published online. The broad protection afforded by Polish substantive law in such cases presents difficulties in relation to the jurisdictional rules of EU law. It is observed that, in the context of protecting personality rights, differences in the substantive law of Member States indirectly influence how the issue is perceived in the case law of the CJEU. Particular challenges emerge when applying infringement assessment mechanisms, used for defamation, to the protection of specific personality right ¹.

Keywords: jurisdiction, Brussels Ibis Regulation, personality rights, online defamation

Riassunto: Il contributo esamina la sentenza della Corte Suprema polacca del 18 febbraio 2025, n. rif. II CSKP 1586/22. Si tratta del seguito nazionale sul caso su cui la Corte di giustizia dell'Unione europea aveva già avuto modo di pronunciarsi, ovvero *Mittelbayerischer Verlag KG contro SM* (sentenza del 17 giugno 2021, C-800/19). La decisione della Corte Suprema polacca ha affrontato la questione dell'ambito di competenza dei tribunali nazionali, in particolare il rapporto tra l'approccio a mosaico

¹ The present contribution finds its roots in the lectures held during the 2025 IISS-EAPIL Winter School in European Private International Law, which the Author attended to.

nella determinazione della giurisdizione e l'applicazione del criterio di collegamento del centro degli interessi della persona danneggiata. Questo caso dimostra che l'applicazione del principio attenua la severità dei requisiti necessari per stabilire il luogo del centro degli interessi. Il caso commentato riguarda le violazioni dei diritti della personalità causate da dichiarazioni che costituiscono una falsificazione storica pubblicate online. L'ampia tutela offerta dal diritto sostanziale polacco in tali casi presenta difficoltà in relazione ai titoli di giurisdizione stabiliti dal diritto dell'Unione europea. Si osserva che, nel contesto della tutela dei diritti della personalità, le differenze nel diritto sostanziale degli Stati membri influenzano indirettamente il modo in cui la questione viene percepita nella giurisprudenza della Corte. Particolari difficoltà emergono nell'applicazione dei meccanismi di valutazione della violazione, utilizzati per la diffamazione, alla tutela di specifici diritti della personalità.

Parole chiave: giurisdizione, Regolamento Bruxelles Ibis, diritti della personalità, diffamazione online

Summary: I. Introduction. II. Facts of the case and proceedings to date. 1. Facts of the case. 2. Preliminary ruling and CJEU judgment. 3. Decision of the Polish Supreme Court. III. Commentary. 1. Jurisdiction in infringements of personality rights. 2. Coexistence of the mosaic approach and the centre of interests connecting factor. 3. Problems stemming from extending the mosaic approach to online publications. 4. Infringements of personality rights and the protection of fundamental rights. 5. Differences in the perception of personality rights across national legal systems. IV. The problem of non-recognition of Polish judgments in Germany – mention. V. Conclusion

I. Introduction

1. The development of communication technologies has caused the dissemination of information to take place through the mass media, most frequently via the internet. Its ubiquity contributes to an increase in the number of cross-border disputes concerning violations of rights relating to personality, including defamation. This requires establishing jurisdiction in cases involving compensation for damage suffered or injunctions to remove defamatory content or to issue an apology.

2. A particular form of infringement of personality rights is the dissemination of statements that constitute a historical falsification. It should be noted that the Polish legal system provides protection in such cases under certain conditions. As the case discussed in this commentary illustrates, the broad protection afforded by Polish substantive law presents difficulties in relation to the jurisdictional rules of the EU lawmaker. Furthermore, in the context of protecting personality rights, differences in the substantive law of Member States are noticeable, which indirectly influence the perception of this issue in the case law of the Court of Justice of the European Union (CJEU).

3. Against the backdrop of violations of personality rights caused by statements published online, challenges in the application of Article 7(2) of the Brussels Ibis Regulation¹ are particularly striking. The interpretation of this provision has been the subject of numerous CJEU's rulings. However, they have not resolved all ambiguities and, moreover, have introduced additional difficulties. Another challenge is the lack of unification of conflict of laws rules, indicating the law applicable to non-contractual obligations arising from violations of personality rights, which necessitates resorting to different national conflict of laws rules (art. Article 1(2)(g) of the Rome II Regulation²).

¹ Regulation (EU) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351, 20.12.2012, p. 1.

² Regulation (EC) No. 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199, 31.7.2007, p. 40.

4. The Polish Supreme Court's (*Sąd Najwyższy*) decision of 18 February 2025, issued in case ref. no. II CSKP 1586/22 calls for a further examination of this issue³. It is a continuation of the case in which the CJEU previously had the opportunity to adjudicate, i.e. *Mittelbayerischer Verlag KG v. SM*⁴, defining the criteria for applying the connecting factor of the centre of interests of the alleged victim. The case was viewed in a slightly altered light, as the recent decision of the Polish Supreme Court addresses the issue of the scope of jurisdiction of national courts, i.e., the relation between the principle of mosaic jurisdiction and the application of the centre of interests connecting factor.

II. Facts of the case and proceedings to date

1. Facts of the case

5. *Mittelbayerischer Verlag KG*, a company based in Germany, which manages a German-language regional online newspaper on its website, published an article about a Holocaust survivor whose sister, according to the publication, “was murdered in the Polish extermination camp in Treblinka”.

6. It is an indisputable historical fact that Treblinka was a German Nazi extermination camp that existed during World War II on the territory of occupied Poland. The term “Polish extermination camp” is perceived very negatively in Poland due to the tragic fate of the country and its citizens during World War II. The erroneous term cited above may give some readers the false impression that it was Poles who created the death camps and are responsible for the crimes committed there. Such a statement is certainly shocking to people who were themselves prisoners of these camps or whose relatives were killed by the German occupiers during World War II.

7. In view of the above, a Polish citizen (a former prisoner of the Auschwitz extermination camp), who was shocked by the phrase “Polish death camp”, filed a lawsuit against *Mittelbayerischer Verlag KG* in the Regional Court in Warsaw. The claimant demanded protection of his personality rights, in particular his national identity and national dignity, which he considered to have been violated by the use of the aforementioned term⁵. According to claimant, the jurisdiction of the court in Warsaw was justified by the location of his centre of interests. The defendant raised a plea of inadmissibility, arguing that the Polish courts lacked jurisdiction to hear the action. Although the Regional Court in Warsaw refused to dismiss the claim, the Court of Appeal in Warsaw had doubts on this issue, which prompted it to refer the matter to the CJEU for a preliminary ruling.

2. Preliminary ruling and CJEU judgment

8. The particularity of the case in question, compared to those previously examined by the CJEU, was that the disputed online publication did not contain information directly or indirectly referring to the person seeking protection, but contained information or statements suggesting reprehensible actions on the part of the community to which that person belongs. The Court of Appeal, therefore, had doubts as to the interpretation of Article 7(2) of the Brussels Ibis Regulation, specifically whether, in such circumstances, the court has jurisdiction to hear an action in respect of the entirety of the alleged damage based on the centre of interests connecting factor⁶.

³ Decision of the Polish Supreme Court of 18 February 2025, ref. no. II CSKP 1586/22.

⁴ CJEU 17 June 2021, *Mittelbayerischer Verlag KG v. SM*, C-800/19, ECLI:EU:C:2021:489.

⁵ The claimant's request included prohibiting the defendant from disseminating in any way the terms “Polish death camp” or “Polish concentration camp”, ordering the defendant to publish on its website a statement with the content specified in the application, apologising to the applicant for the infringement of his personality rights, ordering the defendant to pay the amount of 50 000 Polish zlotys (about 11 800 euros) to the *Polski Związek Byłych Więźniów Politycznych Hitlerowskich Więzień i Obozów Koncentracyjnych* (Polish Association of Former Political Prisoners of Nazi Prisons and Concentration Camps).

⁶ CJEU *Mittelbayerischer*, para. 24.

9. According to the CJEU's judgment, the provisions of the Regulation must be interpreted as meaning that the courts of the place in which the centre of interests of a claimant is situated have jurisdiction to hear, in respect of the entirety of the alleged damage, an action for damages brought by that person only if that content contains objective and verifiable elements which make it possible to identify, directly or indirectly, that person as an individual⁷.

10. The CJEU noted in particular that in the case in question, the content published online did not concern the claimant himself or identify him in any way. The CJEU's reasoning focused primarily on the objectives of the Regulation in terms of the need to ensure the predictability of the rules and the principle of legal certainty, as well as the requirement for a particularly close connection between the dispute and the court⁸. It was accepted that, in order to achieve those objectives, the connection cannot be based solely on subjective factors, relating to the individual sensitivity of that person, but on objective and verifiable elements which make it possible to identify, directly or indirectly, that person as an individual. The mere fact that a person belongs to a vast identifiable group does not allow those objectives to be achieved, since the centres of interests of the members of such a group may potentially be located in any EU Member State⁹. In such circumstances, there is no particularly close connection between the courts of the place where the centre of interests of the person relying on those personality rights is situated and the dispute concerned, therefore that court does not have jurisdiction to hear that dispute under Article 7(2) of the Brussels Ibis Regulation¹⁰.

11. Following the CJEU judgment, the Court of Appeal in Warsaw found that the defence of lack of jurisdiction was justified and dismissed the action in its entirety based on Article 1099 § 1 sentence 2 of the Polish Code of Civil Procedure¹¹. The Court of Appeal considered that the interpretation of Article 7(2) of the Brussels Ibis Regulation, as adopted in the CJEU ruling, effectively implies a lack of jurisdiction for Polish courts¹².

3. Decision of the Polish Supreme Court

12. The claimant brought a cassation appeal against the decision issued by the Court of Appeal to the Supreme Court. In its decision of 18 February 2025, ref. no. II CSKP 1586/22, the Supreme Court overturned the decision regarding the dismissal of the action and remanded the case to the Court of Appeal in Warsaw for reconsideration. In its ruling, the Supreme Court held that failure to meet the conditions specified by the CJEU regarding the requirement of a centre of interests does not mean that there is a lack of jurisdiction, but only affects its scope.

⁷ CJEU *Mittelbayerischer*, para. 47.

⁸ CJEU *Mittelbayerischer*, paras. 37-42.

⁹ CJEU *Mittelbayerischer*, para. 43.

¹⁰ CJEU *Mittelbayerischer*, para. 45. On the ruling see, further, for example: H. MUIR WATT, "Le for de l'atteinte à la dignité d'une nation : l'article 7-2° du règlement Bruxelles I bis n'accueillera pas l'actio popularis", *Revue critique de droit international privé*, 2021, p. 911; 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*" [Hitherto Practice and Case Law Regarding Jurisdiction in Matters Relating to Infringement of Personality Rights and CJEU Judgment of 17 June 2021, C-800/19, *Mittelbayerischer Verlag KG v. SM*], *Europejski Przegląd Sądowy*, no. 7, 2022, pp. 35-43.

¹¹ The Code of Civil Procedure of 17 November 1964, unified text, Journal of Laws of the Republic of Poland of 2024, item 1568 as amended. The full text of the provision reads as follows: Art. 1099 § 1. The court shall ex officio take into consideration the lack of domestic jurisdiction at any stage of the case. If the lack of domestic jurisdiction is determined, the court shall reject a statement of claim or petition, subject to Article 1104 § 2 or Article 1105 § 6.

^{§ 2.} Lack of domestic jurisdiction constitutes the basis for the proceedings to be declared invalid.

¹² Decision of the Court of Appeal in Warsaw of 16 July 2021, I ACz 605/19.

13. The Supreme Court had no doubt that the interpretation adopted in the CJEU judgment in *Mittelbayerischer* precludes the possibility of granting the Polish court jurisdiction in respect of the entirety of the alleged damage. The Supreme Court shared the CJEU's view that the requirement of predictability of rules and legal certainty necessitates that content published online that infringes someone's personality rights must contain elements allowing for the direct or indirect individual identification of that person. In the Supreme Court's opinion, any additional objective details concerning the claimant's personal history and activities, distinguishing him from other persons of Polish nationality, were not reflected in the disputed online publication and did not allow for his individual identification and for the defendant to predict where his centre of interests is located.

14. What is particularly important is that the Supreme Court pointed out that the Court of Appeal did not address at all the question of whether, in the present case, the Polish courts have jurisdiction based on the so-called mosaic rule, i.e. limited to damage caused in Poland. The Supreme Court rightly emphasised that the referring court had drawn an incorrect conclusion from the CJEU's statement that it was inadmissible to establish, in the circumstances of the case, the alternative jurisdiction of the court of the place where the damage occurred based on Article 7(2) of the Brussels Ibis Regulation.

15. In justifying its position, the Supreme Court referred to the existing case law of the CJEU, which indicates that, despite the inability to bring an action before Polish courts for liability for all the damage suffered, the claimant is also entitled to bring an action before the courts of any Member State in whose territory the online content is or was available. However, such jurisdiction is limited to the damage caused in the *forum* State. According to the mosaic rule, the jurisdiction of Polish courts in the case in question is therefore possible, and the dismissal of the claim in its entirety was unjustified. However, the jurisdiction of Polish courts is limited and may only concern damage suffered in Poland.

16. Furthermore, it was pointed out that the claim for the rectification or removal of the allegedly harmful online content is indivisible, so it can only be brought before a court with jurisdiction to rule on the entirety of an application. However, it is possible to bring a claim for monetary compensation for damage caused in the territory of the Member State where the court to which the action was brought is located, even if those courts do not have jurisdiction to hear the claim for the rectification or removal of the allegedly harmful content posted on the internet.

17. The Supreme Court also recalled that in its judgment in *Mittelbayerischer*, the CJEU did not refer explicitly to the concept of jurisdiction based on the mosaic rule, but (as suggested by Advocate General M. Bobek)¹³ indicated several times that its ruling concerned the jurisdiction of the court to hear an action for damages in respect of all the damage suffered, which leaves no doubt that its statement concerned only full jurisdiction based on the centre of interests connecting factor. At the same time, neither in the grounds for the preliminary ruling nor in the grounds for its decision did the Court of Appeal refer in any way to whether Polish courts may have jurisdiction in relation to liability for damage caused to the claimant in Poland. It was therefore unclear whether the Court of Appeal had overlooked this issue or had dismissed such a possibility regarding both non-pecuniary and pecuniary claims.

18. In the view of the Supreme Court, it was therefore necessary to overturn the contested decision and send the case back to the Court of Appeal for reconsideration. When re-examining the case, the Court of Appeal will therefore need to address the issue of jurisdiction based on the mosaic rule and the question of the divisibility of the claimant's claims, which may also depend on technical factors (e.g., the technical possibility of restricting access to certain content published on the internet to readers from a specific country). The action included both non-pecuniary claims (for an injunction prohibiting the dissemination of the specified terms and an order to publish an apology) and pecuniary claims (an award

¹³ Opinion of Advocate General M. BOBEK of 23 February 2021, *Mittelbayerischer Verlag KG v SM*, C-800/19, ECLI:EU:C:2021:124, paras. 39-40, 44.

of 50 000 Polish zlotys, which is about 11 800 euros). When reconsidering the case, the court must determine whether these claims pertain to infringements within Poland or outside its borders.

III. Commentary

1. Jurisdiction in infringements of personality rights

19. A special basis for jurisdiction in matters relating to tort, delict or quasi-delict is provided for in Article 7(2) of the Brussels Ibis Regulation. The scope of this provision covers cases concerning violations of personality rights¹⁴. Against the background of the regulations preceding the current Brussels Ibis Regulation, certain principles related to the interpretation of the general rule on torts have developed in the case law of the CJEU, which remain valid¹⁵.

20. The 1976 *Bier* judgment indicated that this provision refers both to the place where the event causing the damage occurred and to the place where the damage occurred¹⁶. It is the interpretation of the concept of the place where the damage materialises that constitutes the main starting point for the application of this provision in cases concerning violations of personality rights committed through the mass media, including online. The issue of localisation of the place of the event, causing the infringement of personality rights, raises far fewer doubts¹⁷.

21. With regard to cases concerning defamation in printed publications, the interpretation was offered in the 1995 *Fiona Shevill* judgment, which resulted in the adoption of the principle of so-called mosaic jurisdiction. According to the *Shevill* doctrine, an action for damages brought by the alleged victim against a publisher may be brought before the courts of each Member State in which the publication was distributed and where the victim claims to have suffered injury to his reputation. However, the courts of each State have limited jurisdiction, being able to rule solely in respect of the damage caused in the State of the court seised¹⁸. The interpretation of the place of the damage based on the mosaic principle, therefore, involves the fragmentation of jurisdiction among the courts of the individual States of distribution of the press material.

22. The development of digital technologies has required the interpretation of the concept of the materialisation of the place of the damage concerning infringements committed online, which occurred in the 2011 *eDate* judgment. It was acknowledged that a person who has suffered an infringement of personality rights online may bring an action before a single court in respect of all the damage suffered. The CJEU established a new basis for jurisdiction, namely the centre of interests of the alleged victim¹⁹. It will usually coincide with the location of the alleged victim's habitual residence, although this is not always the case²⁰.

¹⁴ P. MANKOWSKI, Art. 7, in U. MAGNUS/P. MANKOWSKI (eds.), *European Commentaries on Private International Law, Vol. I, Brussels Ibis Regulation*, Otto Schmidt, Köln 2023, p. 256, para. 248.

¹⁵ This refers to Article 5(3) of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ L 299, 31.12.1972, p. 32) and 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 Brussels I (OJ L 12, 16.1.2001, p. 1).

¹⁶ CJEU 30 November 1976, *Bier v. Mines de Potasse d'Alsace*, C-21/76, ECLI:EU:C:1976:166.

¹⁷ E. LEIN, *Jurisdiction in Matters Relating to Tort, Delict, or Quasi-Delict (Art 7(2))*, in A. DICKINSON/E. LEIN (eds.), *The Brussels I Regulation Recast*, Oxford University Press, Oxford, 2015, p. 164, para. 4.95; K. WEITZ, "Forum delicti commissi w sprawach o naruszenie dóbr osobistych w Internecie w świetle art. 5 pkt 3 rozporządzenia nr 44/2001" [Forum delicti commissi in matters for the breach of personality rights on the Internet under article 5 (3) of the Regulation no. 44/2001], *Polski Proces Cywilny*, vol. 3, 2013, pp. 320-321.

¹⁸ CJEU 7 March 1995, *Fiona Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd v. Presse Alliance SA*, C-68/93, ECLI:EU:C:1995:61.

¹⁹ CJEU 25 October 2011, joined cases *eDate Advertising GmbH v. X and Olivier Martinez, Robert Martinez v. MGN Limited*, C-509/09 and C-161/10, ECLI:EU:C:2011:685.

²⁰ Hence, legal doctrine states that, as a result of the adopted interpretation, a *de facto forum actoris* has been created for

23. Next, the rules of jurisdiction regarding remedies available to the injured party also needed to be clarified. These can be divided into “divisible” claims, such as monetary compensation, and “indivisible” claims, including a claim for the rectification or removal of allegedly harmful online content, a public apology, etc. It may be difficult to make this distinction precisely. However, it is generally accepted that the former should be considered as measures that are capable of being split between the jurisdictions of the adjudicating courts, while the latter should be considered as measures that can only be awarded and executed once²¹. These issues were considered by the CJEU in its judgments in *Bolagsupplysningen*²² and *Gtflix Tv*²³. In the first case, it was pointed out that an action for rectification or removal of harmful information, as well as compensation for all the damage sustained is only possible before a court with jurisdiction to hear over the entire claim, i.e. before the courts of the Member State in which the alleged victim centre of interests is located or the place where the defendant is domiciled. Courts with limited, mosaic jurisdiction may only grant “divisible” measures. However, in the *Gtflix Tv* judgment, it was pointed out that the claimant who seeks not only the rectification of the information and the removal of the content placed online 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. What is important, in both rulings, the CJEU confirmed the application of the mosaic approach²⁴.

24. The judgments analysed above provide the background for an analysis of the CJEU’s statement in the *Mittelbayerischer* case. This ruling clarifies the conditions necessary for the existence of a *forum* of the centre of interests of the alleged victim, considering this issue from the perspective of identifying that person. It should therefore be recognised that this judgment concerns the scope of jurisdiction of the place where the damage occurred in online infringements of personality rights.

2. Coexistence of the mosaic approach and the centre of interests connecting factor

25. Considering the CJEU’s case law to date, the Supreme Court’s ruling in case ref. no. II CSKP 1586/22 is deserving of approval. It corrected the ruling of the Court of Appeal, which erroneously assumed that, in the circumstances of the case, Polish courts not only lacked jurisdiction based on the centre of interests but also lacked jurisdiction altogether. The inability of the court to exercise jurisdiction based on the centre of interests connecting factor does not affect the jurisdiction of that court as the court of the place where the damage occurred. It should be emphasised that the centre of interests connecting factor did not replace the mosaic approach but was added in parallel as an alternative²⁵.

26. In other words, if it is not possible to identify the claimant, even indirectly, the court of the place where the centre of the claimant’s interests is located cannot rule on the entirety of the alleged damage. Nevertheless, the court of that Member State retains jurisdiction as the court of the place where the damage occurred, on the grounds that the content online is or was accessible in its territory. However, the scope of jurisdiction remains limited to the damage caused in this Member State²⁶.

infringements committed online, see T. LUTZI, “Shevill is dead, long live Shevill!”, *The Law Quarterly Review*, vol. 134, 2018, p. 212.

²¹ AG BOBEK, *Mittelbayerischer*, para. 35.

²² CJEU 17 October 2017, *Bolagsupplysningen OÜ, Ingrid Ilsjan v. Svensk Handel AB*, C-194/16, ECLI:EU:C:2017:766.

²³ CJEU 21 December 2021, *Gtflix Tv v. DR*, C-251/20, ECLI:EU:C:2021:1036.

²⁴ CJEU *Bolagsupplysningen*, paras. 31-32; CJEU *GtflixTv*, para. 30.

²⁵ AG BOBEK, *Mittelbayerischer*, paras. 31, 40; P. MANKOWSKI, *Art. 7*, in U. MAGNUS/P. MANKOWSKI (eds.), *op. cit.*, p. 312, para. 364.

²⁶ K. WEITZ, *op. cit.*, p. 328; L. GILLES, “Jurisdiction for Cross-Border Breach of Personality and Defamation: eDate Advertising and Martinez”, *International and Comparative Law Quarterly*, vol. 61, 2012, pp. 1015-1016.

27. Therefore, regardless of whether it would be possible to establish jurisdiction on the basis of the centre of interests connecting factor, the mosaic rule still allows each national court to consider itself competent in relation to the divisible measures within its jurisdiction²⁷. Applying these considerations to the case in question, the position of the Supreme Court becomes clear, according to which Polish courts, as the courts of the place where the damage occurred, may rule on that part of the damage which was caused in Poland.

28. It is argued in the doctrine that by making the jurisdiction of the court of the place where the centre of interests is located subject to certain conditions – such as the requirement of the identification of the claimant as an individual – the CJEU has introduced a specific predictability clause which affects the scope of the jurisdiction²⁸. Given that Article 7(2) of the Brussels Ibis Regulation refers only to the place of the event and the place where the damage occurred, the fulfilment of an additional condition in the form of proving the place of the centre of interests, and consequently the need to identify the injured party individually, raises legitimate doubts²⁹.

29. The parallel coexistence of the mosaic principle and the centre of interests connecting factor causes several problems, particularly those arising from the incompatibility of the *Shevill* doctrine with infringements committed online. However, as the facts of the case demonstrate, the application of the mosaic jurisdiction undoubtedly alleviates the strictness of the requirements needed to establish the place of the centre of interests, enabling the claimant to bring the case before the court despite not meeting these requirements.

3. Problems stemming from extending the mosaic approach to online publications

30. The principle of mosaic jurisdiction was based on the distribution of printed copies of a specific magazine in a specific Member State, which was limited by definition. The idea of territorial distribution, therefore, seems to fit in with the territorially limited jurisdiction. This rule yielded reasonable results in cases involving defamation before the advent of the internet, as it was possible to predict and control where, for example, a press article, radio or television broadcast would be disseminated. In the case of information published on the internet, this is only possible to a limited extent, if at all. Applying this rule in such cases means that an internet publisher no longer has the option of choosing in which jurisdiction to distribute its publications³⁰.

31. The automatic extension of the mosaic approach to claims arising from online publications raises doubts³¹. This is because such an approach does not fully consider the key features of this medium. Content made available online is accessible immediately and almost everywhere in the world. Generally, it has no geographical limits³².

32. The unsuitability of the *Shevill* doctrine for internet torts was already raised in the *eDate* case, in which justification was sought for the introduction of a new jurisdictional rule³³. However, the

²⁷ AG BOBEK, *Mittelbayerischer*, para. 41.

²⁸ Ł. DYRDA, *op. cit.*, p. 42.

²⁹ M. ŚWIERCZYŃSKI/R. JOKUBAUSKAS, “Special Jurisdiction in Infringements of Personality Rights”, *Polish Yearbook of International Law*, vol. XLI, 2021, p. 247.

³⁰ J. OSTER, “Rethinking Shevill. Conceptualising the EU private international law of Internet torts against personality rights”, *International Review of Law, Computers & Technology*, vol. 26, nos. 2–3, 2012, p. 116.

³¹ See, for example, T. LUTZI, “Internet Cases in EU Private International Law— Developing A Coherent Approach”, *International and Comparative Law Quarterly*, vol. 66, 2017, pp. 691-695; T. KYSELOVSKA, “Critical Analysis of the ‘Mosaic Principle’ Under Art. 7 Para 2 Brussels Ibis Regulation for Disputes Arising out of Non-Contractual Obligations on the Internet”, *Prawo Mediów Elektronicznych*, no. 1, 2019, pp. 41-44.

³² J. CARRASCOA GONZÁLEZ, “The Internet – Privacy and Rights Relating to Personality”, *Hague Collected Courses*, vol. 378, 2016, pp. 294–302.

³³ Opinion of Advocate General P. CRUZ VILLALÓN of 29 March 2011, joined cases *eDate Advertising GmbH v. X and Ol-*

CJEU did not decide to completely replace the *Shevill* doctrine with a single special *forum* and put an end to the mosaic in internet cases as well³⁴. It should be added that Advocate General M. Bobek argued for a change in the existing case law by abandoning the dualistic approach in his opinions in the *Bolagsupplysningen*³⁵ and *Mittlebayerichter*³⁶ cases.

33. First of all, the mosaic approach, when applied to online infringements, creates a multiplication of places where damage occurs, which results in jurisdiction being granted in many jurisdictions at the same time. On this basis, jurisdiction would theoretically have to be assigned to each of the courts of the Member State where the online content can be seen. In light of the distribution criterion as defined in the *Shevill* judgment, even a single view leads to the conclusion that distribution has occurred, making jurisdiction available to the claimant³⁷.

34. It is therefore noted that in the *eDate* case, the application of the mosaic principle to online defamation was not only confirmed, but its conditions were relaxed. Whereas, according to the judgment in the *Shevill* case, active dissemination of content in a specific country was required, now, with regard to online defamation, the mere availability of the website is sufficient³⁸. This certainly leads to situations where the jurisdiction of a State in which the publisher does not operate applies, which has been criticised³⁹.

35. The parallel application of the *Shevill* doctrine alongside the centre of interests' rule raises doubts from the perspective of the objectives of the Brussels Ibis Regulation, which are to ensure a high degree of predictability of jurisdictional rules, the proper administration of justice and the efficient organisation of proceedings⁴⁰.

36. The effect of fragmentation of claims also raises concerns, as each State will potentially have jurisdiction in a compensation claim whose scope is limited to the territory of the country concerned. Doubts also arise as to the interplay between proceedings brought before the court of the State where the victim's centre of interests is located and proceedings brought in countries where the content infringing personality rights is or was available. This has highly impractical consequences, resulting in complications with claims coordination. Furthermore, this also creates a high risk of inconsistent judgments being issued in different Member States⁴¹. Additionally, it is worth noting that the application of the mosaic theory raises serious concerns from the perspective of the local jurisdiction of courts of Member States⁴².

37. It was stated in the legal doctrine that maintaining the *Shevill* doctrine in cases of online infringements favours the position of the alleged victim⁴³. However, as Advocate General M. Bobek

ivier Martinez, Robert Martinez v. MGN Limited, C-509/09 and C-161/10, ECLI:EU:C:2011:192, paras. 49-56; CJEU *eDate*, paras. 45-48.

³⁴ CJEU *eDate*, paras. 51-52.

³⁵ AG BOBEK, *Bolagsupplysningen*, paras. 72-90.

³⁶ AG BOBEK, *Mittelbayerischer*, para. 32.

³⁷ M. REYMOND, "The ECJ eDate Decision: A Case Comment", *Yearbook of Private International Law*, vol. 13, 2011, p. 502; CJEU *eDate*, para. 51.

³⁸ J.-J. KUIPERS, "Joined Cases C-509/09 & 161/10, eDate Advertising v. X and Olivier Martinez and Robert Martinez v. MGN Limited, Judgment of the Court of Justice (Grand Chamber) of 25 October 2011", *Common Market Law Review*, vol. 49, 2012, p. 1222.

³⁹ M. REYMOND, *op. cit.*, p. 502.

⁴⁰ AG BOBEK, *Bolagsupplysningen*, paras. 78-79; M. ŚWIERCZYŃSKI/R. JOKUBAUSKAS, *op. cit.*, p. 239; T. LUTZI, *op. cit.*, pp. 693-694.

⁴¹ AG BOBEK, *Bolagsupplysningen*, paras. 80-82; K. WEITZ, *op. cit.*, pp. 334-335; T. KYSELOVSKA, *op. cit.*, p. 43;

⁴² ŻYREK, *Jurysdykcja krajowa w sprawach zobowiązań elektronicznych w prawie Unii, Europejskiej* [Jurisdiction in matters of electronic obligations in European Union law], C.H. Beck, Warszawa, 2019, pp. 192-194.

⁴³ A. JOHANSON/A. RAPP/A. VATTER, "Mosaiktheorie ad absurdum - Örtliche Zuständigkeit im Rahmen des Art. 7 Nr. 2 EuGVVO bei Persönlichkeitsrechtsverletzungen", *Zeitschrift für Vergleichende Rechtswissenschaft*, vol. 121, 2022, pp. 176-192.

⁴³ J.-J. KUIPERS, *op. cit.*, pp. 1230-1231.

rightly argues, it is difficult to consider that the possibility of choosing multiple partial jurisdictions effectively protects the interests of the claimant⁴⁴. The claimant is forced to bring multiple actions in multiple countries, which appears highly impractical and costly. However, such an arrangement almost completely excludes the defendant's ability to foresee where the action will be initiated. Additionally, this may lead to the defendant being harassed with oppressive claims brought in multiple jurisdictions⁴⁵. Although only a limited amount of damages can be claimed in such circumstances, the mere threat and potential costs of litigation will already have a negative impact on freedom of expression⁴⁶. Certainly, the mosaic principle increases forum shopping and libel tourism⁴⁷. It must therefore be concluded that multiple jurisdictions do not really serve the legitimate interests of either party, as they entail procedural difficulties for both of the ⁴⁸.

38. It is important to highlight the inconsistency in the CJEU's reasoning. The CJEU, on the one hand, correctly considers the challenges in quantifying the damage caused by online infringements of personality rights as a reason to modify the *Shevill* doctrine and permits the alleged victim to claim the full extent of damages before one court. On the other hand, it was also permitted for the alleged victim to claim, in each Member State where the disputed content is or was available online, only part of the damage suffered in that country⁴⁹.

39. In the light of the above, legal doctrine suggests that the most appropriate approach would be not to maintain the *Shevill* doctrine, but to reject it entirely and to adequately define the connecting factor in the place where the effects of the infringement of personality rights occur. The authors propose various solutions in this regard⁵⁰.

40. However, the coexistence of the *Shevill* doctrine and the centre of interests connecting factor also has its supporters. Advocate General G. Hogan, in his opinion in the *Gtflix Tv* case, pointed out that the problematic features of the mosaic approach are not so fundamental as to justify its abandonment⁵¹. In particular, in his view, the mosaic principle does not generate any problem of coordination in case of concomitant proceedings. Since each national court is only competent to rule on the damages occurring on the territory of the Member State to which it belongs, each will apply a different law, most often the law applicable in each of these territories. Those proceedings will not have the same subject matter, which corresponds to the claims of the person concerned, and cause of action, which refers to the legal and factual basis of those claims⁵².

41. In this context, it should be noted that the question of *lis pendens* and *res judicata* concerning actions brought for part of the damages in different Member States, various positions can be identified ⁵³. Contrary to the view that seems to be shared by Advocate General G. Hogan, some authors take the position that proceedings brought under the mosaic rule have the same subject matter and therefore should not be conducted in parallel. The subject matter of the claim should be understood as a request to

⁴⁴ AG BOBEK, *Bolagsupplysningen*, paras. 87-89.

⁴⁵ AG BOBEK, *Bolagsupplysningen*, paras. 87-89; J.-J. KUIPERS, *op. cit.*, p. 1223.

⁴⁶ J.-J. KUIPERS, *op. cit.*, p. 1222.

⁴⁷ M. REYMOND, *op. cit.*, pp. 502-503; J. OSTER, *op. cit.*, pp. 116-117.

⁴⁸ AG BOBEK, *Bolagsupplysningen*, paras. 87-89.

⁴⁹ K. WEITZ, *op. cit.*, pp. 334-335; CJEU, *eDate*, paras. 46, 48.

⁵⁰ However, a detailed presentation of the proposals concerning modifications to the rules for determining jurisdiction in cases involving infringements of personality rights committed online is beyond the scope of this study. On this issue, see, for example, M. ŚWIERCZYŃSKI/R. JOKUBAUSKAS, *op. cit.*, p. 237; J.-J. KUIPERS, *op. cit.*, p. 1222; J. OSTER, *op. cit.*, pp. 121-123; Opinion in *Bolagsupplysningen*, paras. 85, 91-98; T. KYSELOVSKA, *op. cit.*, p. 44; S. ŻYREK, *Jurysdykcja krajowa w sprawach zobowiązań*, *cit.*, p. 213.

⁵¹ Opinion of Advocate General G. HOGAN of 16 September 2021, *Gtflix Tv v. DR*, C-251/20, ECLI:EU:C:2021:745, paras. 58-66, 84-95.

⁵² AG HOGAN, *Gtflix Tv*, para. 60.

⁵³ S. ŻYREK, *Jurysdykcja krajowa w sprawach zobowiązań*, *cit.*, pp. 192-193.

establish that the defendant committed a tortious act and that his conduct was unlawful. This means that the subject matter of each of the proceedings brought for part of the damages in accordance with the mosaic rule is always a finding that the defendant is liable for the same act that caused the original damage in several countries. The mosaic rule applies to jurisdiction over part of the damage, not over part of the event that caused it. It is therefore pointed out that differences in the evidentiary proceedings will only concern the determination of the extent of damage suffered as a result of the unlawful act in individual countries and the causal link between the unlawful conduct and the damage suffered to a specific extent. Allowing each court adjudicating under the mosaic rule to determine independently whether an act was committed and whether it was unlawful creates the risk of conflicting judgment⁵⁴.

42. Advocate General G. Hogan, on the other hand, takes the view that the cases have a completely different subject matter precisely because they concern damage in different Member States⁵⁵. It should be noted that the case law of the CJEU also seems to be moving in this direction. In its judgment in *Merck KGaA v. Merck & Co Inc*, it was stated that actions initiated before different courts must be found to have the same subject matter only in so far as the alleged infringements relate to the same territory⁵⁶. The doctrine therefore indicates that, in the context of mosaic jurisdiction, a court of a Member State could stay proceedings only under Article 30(1) of the Brussels Ibis Regulation, i.e. based on the premise of “related actions”. The decision to stay proceedings under this provision is left to the discretion of the court. Furthermore, pursuant to Article 30(2) of the Brussels Ibis Regulation, where the action in the court first seised is pending, any other court may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over both actions together. However, this configuration will not arise in the case of a territorially limited jurisdiction based on the mosaic approach⁵⁷.

43. Furthermore, in the opinion of Advocate General G. Hogan in *the Gtflix Tv* case, the lack of harmonisation of the rules for determining the applicable law to defamation means that courts with exclusive jurisdiction to decide on the whole of the damage will have to apply the law of each of the Member States in which the alleged damage is likely to have occurred to rule on any claim for compensation. In his view, the existence of a plurality of competent *fora* is the consequence of the right of claimants to have their dispute decided by the courts that are, because of their proximity to the territory of each of the Member States, the best able to make all the factual assessments. He concludes that the CJEU’s choice to endorse the mosaic approach is an attempt to balance the objective of predictability with that of the sound administration of justice⁵⁸.

44. Respectfully, the Advocate General’s argument could only be considered justifiable if the national conflict of laws rules designating the applicable law used the connecting factor of the place where the damage occurred, interpreted in the same way as the jurisdictional rules, i.e. in accordance with the mosaic rule. By claiming compensation in respect of the entirety of the alleged damage, the alleged victim could therefore theoretically seek to designate the laws of the individual countries of distribution

⁵⁴ It is pointed out that in the event of several cases concerning part of the compensation being pending, in accordance with the mosaic rule, the court before which the claim was first brought should issue a preliminary judgment in which it will decide whether the claim is justified in principle, and therefore whether the defendant committed the alleged act and whether his conduct was unlawful. The other courts should, for the time being, and if no preliminary ruling is issued, then until the final conclusion of the first case, suspend the proceedings under Article 29(1) of the Brussels Ibis Regulation, awaiting a preliminary ruling. S. ŻYREK, *Jurysdykcja krajowa w sprawach zobowiązań*, cit., pp. 193-194.

⁵⁵ See also, for example, T. LUTZI, *op. cit.*, p. 695.

⁵⁶ CJEU 19 October 2017, *Merck KGaA v. Merck & Co Inc.*, C-231/16, ECLI:EU:C:2017:771, paras. 42-44. Although the case concerned the interpretation of the concept of ‘the same cause of action’ in the context of Article 109(1) of Regulation No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1), the judgment clearly states that the condition relating to the existence of ‘the same cause of action’ within this provision must be given the same interpretation as that given by the Court to the condition relating to the existence of proceedings involving the ‘same cause of action’ within the meaning of Article 27(1) of Regulation No 44/2001 (see paragraph 33 of that judgment).

⁵⁷ T. LUTZI, *op. cit.*, p. 695.

⁵⁸ AG HOGAN, *Gtflix Tv*, paras. 83-86.

of the content as applicable to the individual elements of the infringement, which together constitute a single damage. Such an interpretation would cause difficulties due to the necessity of applying multiple applicable laws at once. If the damage occurred in the territory of several countries, this would result in the need to assess liability simultaneously on the basis of several applicable laws, which raises serious doubts from the perspective of the principle of predictability⁵⁹.

45. Legal doctrine highlights practical difficulties caused by adopting such an interpretation of the place of the damage and advocates for an interpretation of the provisions that indicate the law applicable to violations of personality rights, according to which damage is situated in one place⁶⁰. An interpretation leading to the localisation of damage in one place is also widespread in national legal systems⁶¹. For example, Article 16(2) of the Polish Act on Private International Law is a provision that indicates the law applicable to the protection of personality rights. This provision employs the connecting factor of the place of “the state where the consequences of the infringement occurred”⁶². Polish legal doctrine holds the view that the aforementioned connecting factor points to a single location which, due to the nature of personality rights, is regarded as the habitual residence of the individual whose personality rights have been threatened or violated⁶³. This view is also shared by Polish case law⁶⁴.

46. Certainly, from a practical perspective, the option of bringing the case before the courts of the Member State where the alleged victim’s centre of interests is located will, as a general rule, be more attractive to the claimant. However, this does not mean that granting this possibility will prevent cases from being brought before the courts of the Member State in which the content infringing personality rights is or was available. As indicated, using the mosaic approach in cases of online infringements may result in abuse. However, it should be recognised, as it was in the case in question, that the possibility of bringing an action before the court of the place where the damage occurred can sometimes alleviate the consequences of the incorrect determination of the location of the centre of interests. When the alleged victim brings an action before the court of a Member State on the incorrect assumption that the centre of interests is located in that Member State, the claim can still be examined by the court, but only regarding the damage incurred in the territory of this Member State. The claimant thus avoids having the action dismissed in its entirety on the grounds of lack of jurisdiction. Replacing the *Shevill* doctrine with the doctrine of the centre of interests of the alleged victim and the location of the effects of the infringement in a single place would, in such a case, lead to the adoption of an “all or nothing” principle and, consequently, to the dismissal of the action⁶⁵.

⁵⁹ J. BALCARCZYK, *Prawo właściwe dla dobrego imienia osoby fizycznej i jego ochrony* [Law applicable to the reputation of a natural person and its protection], Wolters Kluwer, Warszawa, 2014, p. 127; J. CARRASCOSA GONZÁLEZ, *op. cit.*, pp. 414-422.

⁶⁰ L. PAILLER, “Locating damage in matters of invasion of privacy”, *International Business Law Journal*, no. 6, 2022, pp. 664-667.

⁶¹ O. BOSKOVIC, “La Localisation du Dommage en Droit International Privé. Rapport Général”, in O. BOSKOVIC (ed.), *Localisation of Damage in Private International Law*, Brill-Nijhoff, Leiden-Boston, 2025, pp. 56-57.

⁶² The Act on Private International Law of 4 February 2011, unified text, Journal of Laws of the Republic of Poland of 2023, item 503 as amended. The full text of the article reads as follows: Art. 16. 1. The personal rights of a natural person are governed by the law of his or her nationality. 2. A natural person whose personal rights were threatened or infringed may claim protection under the law of the State where the event giving rise to a threat or infringement has occurred, or under the law of the State where the consequences of the infringement occurred. 3. If the infringement of a natural person’s personal rights occurs in the media, the law of the State in which the broadcaster or publisher has its seat or habitual residence determines the right to reply, rectify and similar protective measures. For the complete translation see: P. Twardoch/M. Zachariasiewicz, “Loi du 4 février 2011 — Droit international privé. The Act on Private International Law dated 4 February 2011”, *Problemy Prawa Prywatnego Międzynarodowego*, vol. 8, 2011, pp. 109-138.

⁶³ M. PILICH, *Art. 16*, in J. Poczobut (ed.), *Prawo Prywatne Międzynarodowe. Komentarz* [Private International Law. Commentary], Wolters Kluwer, Warszawa, 2017, para. 8; M. WALACHOWSKA, “Kolizyjnoprawne aspekty naruszenia dóbr osobistych” [Infringement of Personality Rights in Private International Law], in J. BALCARCZYK (ed.), *Rights of personality in the 21st century. New values, rules, technologies*, Wolters Kluwer, Warszawa, 2012, pp. 260-262.

⁶⁴ For example: judgment of the Court of Appeal in Białystok of 30 September 2015, I ACa 403/15; judgment of the Regional Court in Olsztyn of 24 February 2015, I C 726/13.

⁶⁵ K. WEITZ, *op. cit.*, pp. 333-334; M. Slonina, „Erfolgserichtsstand nach Art. 5 Nr 3 EuGVVO bei Persönlichkeitsrechtsverletzungen im Internet (auch) am Mittelpunkt der Interessen des Opfers“, *Österreichische Juristen-Zeitung*, no. 2, 2012, p. 63.

4. Infringements of personality rights and the protection of fundamental rights

47. Private international law is increasingly pursuing the objectives of the human rights protection system⁶⁶. This trend is also reflected in the 2021 Resolution of the Institute of International Law (*Institut de droit international*), which emphasises the need to respect and ensure human rights in cross-border relations⁶⁷.

48. The issue of jurisdiction in cases involving infringement of personality rights can therefore also be viewed through the lens of the fundamental rights protection system. In this context, special reference should be made to the right to a fair trial and the right of access to a court, which are protected under Article 6 of the ECHR. The case law of the ECtHR has already emphasised the impact of this provision on the rules governing the determination of jurisdiction. In this context, the statement of the ECtHR expressed in the case of *Arlewin v. Sweden* should be noted⁶⁸. The judgment found a violation of Article 6(1) of the ECHR resulting from the fact that the Swedish courts refused to hear a case in which the claimant sought compensation for defamation in a television programme received in Sweden via a satellite that was uplinked from United Kingdom. The circumstances of the case revealed a strong connection to Sweden. At the same time, the British courts also had jurisdiction to hear the case. In the *Arlewin* case, the refusal of the Swedish courts to hear the case did not therefore mean a complete denial of legal protection, as it was still possible to avail oneself of the jurisdiction of the British courts. Nevertheless, according to the ECtHR, there was no justification for the applicant to pursue his claims in the United Kingdom. It was therefore concluded that the Swedish courts should have ensured that the applicant was able to pursue his rights there⁶⁹.

49. The facts of the *Mittelbayerischer* case differ from those of the *Arlewin* case, in particular in that in the latter case the claimant was named in the programme whose content was defamatory. Nevertheless, in this context, the considerations of the ECtHR on the connection between a case concerning the violation of personality rights in the form of defamation and a specific territory are noteworthy. According to its position, particular importance should be attached to the content of the publication, the language in which it was published, as well as whether the publication is addressed to a specific audience and the place where the alleged injury to the applicant's reputation and privacy manifested. It was also significant that the publication's content concerned the alleged criminal activity conducted by the claimant in Sweden⁷⁰.

50. There is no doubt that the *Mittelbayerischer* case had connections with Poland. Advocate General M. Bobek also pointed out in his opinion that it would be difficult to suggest that it would have been wholly unforeseeable to a publisher in Germany, posting online the phrase 'the Polish extermination camp of Treblinka', that somebody in Poland could take issues with such a statement. In view of the above, he stated that it was not inconceivable that the place where the damage occurred as a result of that statement could be located within that territory, especially in view of the fact that that statement was published in a language that is widely understood beyond its national territory⁷¹. In this regard, it was argued in legal doctrine that the circumstances of the *Mittelbayerischer* case indicate that the requi-

⁶⁶ On this issue, see for example, P. Kinsch, "Private international law and human rights", in X. Kramer/L. Carballo Piñeiro (eds.), *Research methods in private international law: a handbook on regulation, research and teaching*, Edward Elgar Publishing, Cheltenham-Northampton, 2024, pp. 37-54; P. Kinsch, "Human rights, fundamental rights and private international law", *Hague Collected Courses*, vol. 318, 2005; S. Marino, "The Protection of Human Rights in the Theory of Private International Law", *Revista Mexicana de Derecho Internacional Privado y Comparado*, vol. 39, 2018, pp. 57-86.

⁶⁷ Institute of International Law, Resolution of 4 September 2021, Human Rights and Private International Law Article 2(1).

⁶⁸ ECtHR 1 March 2016, *Arlewin v. Sweden*, 22302/10.

⁶⁹ S. Marino, *op. cit.*, p. 66.

⁷⁰ ECtHR *Arlewin v. Sweden*, para. 72.

⁷¹ AG BOBEK, *Mittelbayerischer*, para. 74.

rement of foreseeability was met. Furthermore, it was observed that the mention of a specific place and a historical event that took place in a given territory also seems to create a connection with it⁷².

51. Another illustration of the link between the *Mittelbayerischer* case and the human rights protection system is that it follows from the case law of the ECtHR to date that personality rights in the form of national identity are protected because they stem from human dignity. What is particularly important is that the case law of the ECtHR indicates that in cases concerning infringement of the right to national identity, every member of a given community has *locus standi* to bring a claim. It does not matter whether the potential claimant is mentioned in the text or shown in a photograph, nor does it matter whether that person personally experienced the effects of World War II. What matters is that this person is a member of a community based on shared experiences, values and heritage⁷³.

5. Differences in the perception of personality rights across national legal systems

52. The case in question also invites reflection on the differences in the protection of personality rights within the substantive law of Member States. Those particularities, as it turns out, have an impact on the CJEU's case law on jurisdiction.

53. Differences in the protection of personality rights are evident between continental European countries and common law countries. To simplify somewhat, they can be reduced to the fact that in continental European countries, there are extensive catalogues of personality rights, which include values such as health, personal integrity, name, good reputation, privacy, etc. The purpose of the legal protection is to compensate for non-pecuniary damage suffered in the mental sphere as a result of the unlawful behaviour. In contrast, common law systems do not have an extensive catalogue of protected values, and legal protection is limited primarily to cases of defamation. In this approach, the subject of protection is a person's reputation in the eyes of others, rather than phenomena occurring in their own mental sphere. The existing differences translate into the understanding of the concept of the place of the infringement of personality rights, specifically linking it to the mental sphere of the victim or associating it with the area in which the victim enjoys a reputation. Personality rights protected in legal systems can be divided into those whose violation will have negative effects only in the mental sphere of the person concerned, and those whose violation may also distort the image of that person in the minds of others⁷⁴.

54. In the case in question, the action was initiated by a Polish citizen who argued that his personality rights had been infringed by content posted online, due to what he believed was an attack on the truth about Polish history. According to the Polish conflict of laws rules (Article 16 of the Polish Private International Law Act of 2011), Polish substantive law was applicable to assessing the defendant's liability. From the perspective of the applicable law, the legal basis for the claim was therefore Articles 23 and 24 of the Polish Civil Code, which protect personality rights⁷⁵. Although these provisions do not

⁷² M. ŚWIERCZYŃSKI/R. JOKUBAUSKAS, *op. cit.*, pp. 245-246.

⁷³ M. BRZOZOWSKA-PASIEKA, "Legitymacja czynna osób fizycznych i prawnych w sprawach o naruszenie prawa do tożsamości narodowej. Przegląd orzecznictwa polskiego z uwzględnieniem orzecznictwa Europejskiego Trybunału Praw Człowieka" [Locus standi of natural and legal persons in cases concerning infringement of the right to national identity. Review of the judgments of Polish courts and the European Court of Human Rights], *Monitor Prawniczy*, no. 22, 2019, pp. 1239-1241. See, in particular, the judgments of the ECtHR: 16 July 1982, *X v. Germany*, 9235/81; 8 November 2012, *PETA v. Germany*, 43481/09; 15 October 2015, *Pernicek v. Switzerland*, 27510/08.

⁷⁴ S. ŻYREK, "Jurysdykcja krajowa w sprawach naruszeń dóbr osobistych w internecie – wprowadzenie i wyrok Trybunału Sprawiedliwości z 17.10.2017 r., C-194/16, Bolagsupplysningen OÜ i Ingrid Ilsjan przeciwko Svensk Handel AB" [National Jurisdiction in Cases Concerning Violations of Personal Rights on the Internet. Introduction and Judgment of the Court of Justice dated 17 October 2017, Case C-194/16, Bolagsupplysningen OÜ, Ingrid Ilsjan v. Svensk Handel AB], *Europejski Przegląd Sądowy*, no. 12, 2019, p. 51; J. OSTER, *op. cit.*, p. 114; S. ŻYREK, *Jurysdykcja krajowa w sprawach zobowiązań*, *cit.*, pp. 196-201.

⁷⁵ The Civil Code of 23 April 1964, unified text, Journal of Laws of the Republic of Poland of 2025, item 1071 as amended. The full text of the provisions reads as follows: Art. 23. Personality rights of a human being, such as in particular health,

explicitly mention national identity, national dignity or the right to respect for the truth about the history, there is no doubt in the case law of Polish courts that these values are also covered by the scope of personality rights subject to protection.

55. The protection of personality rights sought by the claimant is therefore well established in Polish case law. What is more, Polish law, under certain conditions, also grants protection in cases where the infringement may also occur in a non-individualised manner, such as through the use of the term “Polish death camps”. It is assumed that the claim can be brought against an entity using this term without indicating the name and surname, and even without the possibility of identifying the claimant who claims to have suffered damage to their honour or dignity⁷⁶, i.e. in so-called “invisible claims”⁷⁷. Admittedly, this concerns substantive law, but it clearly bears certain jurisdictional implications. It should be noted that Polish courts have established their jurisdiction in similar cases based on the connecting factor of the centre of interests⁷⁸. It was only in the *Mittelbayerischer* case that the matter was referred to the CJEU for a ruling.

56. Legal doctrine indicates that the CJEU’s ruling in the *Mittelbayerischer* case leads to the conclusion that the CJEU adopts a narrow interpretation of personality rights, focusing primarily on defamation, in a sense similar to that used in common law countries⁷⁹. Therefore, applying the centre of interests connecting factor, initially developed for cases involving online defamation, necessitates an explicit identification of a claimant in a publication. However, the *Mittelbayerischer* case does not concern defamation, but rather the violation of other personality rights, therefore, it is considered that applying the defamation mechanism in this case was incorrect. This requirement also seems not well justified from the perspective of Article 7(2) of the Brussels Ibis Regulation, which operates the *locus delicti* connecting factor⁸⁰.

57. The interpretation of the place of the damage adopted by the CJEU for cases involving infringement of personality rights has its origins in the *Shevill* judgment. However, it is rightly pointed out in the doctrine that the ruling in this case is difficult to apply to the assessment of infringements of personality rights other than the tort of libel. The judgment in *Shevill* case was based on the assumption that each publication of the defamatory content creates a separate harm to the person experiencing it (the so-called multiple publication rule). Relying on this concept, although convincing in the *Shevill* case, which was decided by the referring court on the basis of English law, is not adequate for adjudicating on compensation in cases of infringement of personality rights in accordance with the understanding adopted in continental countries⁸¹.

58. It is also emphasised that many European legal systems accept that harm, like the person

freedom, dignity, freedom of conscience, surname or pseudonym, image, confidentiality of correspondence, inviolability of home as well as scientific, artistic, inventive and reasoning activities shall be protected by the civil law regardless of the protection provided for by other provisions Art. 24. § 1. A person whose personality rights are jeopardized by another person’s action may demand that the action be abandoned, unless it is not illegal. In the case of actual violation, he may also demand that the person who committed the violation perform acts necessary to remove its consequences, in particular that the latter make a statement of a relevant content and in a relevant form. Under the rules provided in the Code, he may also demand pecuniary compensation or the payment of an appropriate pecuniary amount for an indicated community purpose. § 2. If, as a result of an infringement of a personality right, a damage to property has occurred, the injured person may demand that it be redressed in accordance with general principles. § 3. The above provisions shall not prejudice the entitlements provided for by other provisions, in particular by copyright law and by patent law.

⁷⁶ For an overview of case law, see, for example, M. BRZOZOWSKA-PASIEKA, *op. cit.*, pp. 1239-1244.

⁷⁷ P. MOSTOWIK/E. FIGURA-GÓRALCZYK, “Jurisdiction and Costs in Recent Inter-EU Cases of Démenti and Apology for Falsifying History”, *Law, Identity and Values*, no. 1, 2022, p. 107.

⁷⁸ See, for example, judgment of the Regional Court in Olsztyn of 24 February 2015, I C 726/13; judgment of the Court of Appeal in Białystok of 30 September 2015, I ACa 403/15; judgment of the Court of Appeal in Warsaw of 31 March 2016, I ACa 971/15; judgment of the Court of Appeal in Kraków of 23 March 2021, I ACa 808/19.

⁷⁹ M. ŚWIERCZYŃSKI/R. JOKUBAUSKAS, *op. cit.*, p. 247.

⁸⁰ M. ŚWIERCZYŃSKI/R. JOKUBAUSKAS, *op. cit.*, p. 247.

⁸¹ S. ŻYREK, *Jurysdykcja krajowa w sprawach zobowiązań*, cit., p. 204.

experiencing it, is indivisible. In such a case, it seems inappropriate to analyse the possibility of experiencing it in space and to prove its multi-locality. If it is assumed that a person can experience harm in their mental sphere, they cannot feel it partially in several countries, depending on the number of publications distributed there. Furthermore, the legal protection of personality rights does not necessarily depend on one's reputation, which means that the personality rights of an unknown person can be violated, as well as those of a person with a bad reputation. Finally, not every violation of personality rights will be defamatory. There are also a number of personality rights that do not have connotations with the perception of a person in society, including, in particular, the protection of the confidentiality of correspondence or personal data⁸².

59. The above demonstrates the inadequacy of the CJEU's case law to date to address the specific nature of cases concerning violations of personality rights, the protection of which was sought by the claimant in the *Mittelbayerischer* case. The case law of the CJEU should have taken greater account of the different perceptions of personality rights in the legal systems of Member States. Going a step further, it can be said that the solution to these inconsistencies would be to develop a common concept of personality rights that also encompasses the characteristics specific to the continental legal systems of Member States and would not be focused solely on cases of defamation.

60. In this context, importance should be given to the principle that the legal notions of the EU law should be interpreted autonomously, taking into account their uniform application throughout the EU⁸³. The principle of autonomous interpretation, understood literally, seems to completely exclude any argument taken from comparative law. Nevertheless, it is rightly pointed out that EU regulations were not "created in a vacuum" but are based on certain preconceptions that have been clearly influenced by the national laws of Member States. Autonomous interpretation only excludes the possibility of relying on arguments derived from the law of a particular Member State, as this would be contrary to the need for a uniform application of the rules throughout the EU. However, arguments based on a comparative analysis of multiple national laws are not entirely excluded, especially where the EU law does not provide any guidance⁸⁴. Furthermore, the interpretation of legal concepts must comply with the provisions of the EU Charter of Fundamental Rights and the European Convention on Human Rights⁸⁵.

61. An issue that is undoubtedly separate but closely related to the autonomous interpretation of EU law, is the autonomous method of characterisation of private international law norms. Characterisation refers to the interpretation of conflict of laws and jurisdiction rules, and one of its aspects is clarifying the concepts that define the scope of a conflict of laws rule, thereby determining the conditions for its application⁸⁶. In the EU private international law, the autonomous method of characterisation is adopted⁸⁷.

⁸² S. ŻYREK, *Jurysdykcja krajowa w sprawach zobowiązań*, cit., pp. 204, 212; M. PILICH/M. ORECKI, "Jurysdykcja i prawo właściwe w sprawach o ochronę dóbr osobistych przed naruszeniem w Internecie. Głosa do wyroku TSUE (wielka izba) z 25 października 2011 r. w sprawach połączonych C-509/09 i C-161/10 eDate Advertising v. X oraz Oliver Martinez, Robert Martinez v. MGN Limited" [Jurisdiction and Applicable Law in Matters Arising under the Protection of Personal Rights Law against Infringement on the Internet. A Gloss to the Judgment of the Court of Justice of the European Union (Grand Chamber) of 25 October 2011 in joined cases no. C-509/09 and no. C-161/10 eDate Advertising versus X, and Oliver Martinez, Robert Martinez versus MGN Limited], *Polski Proces Cywilny*, vol. 1, 2015, p. 117.

⁸³ U. MAGNUS, *Introduction*, in U. MAGNUS/P. MANKOWSKI (eds.), *op. cit.*, p. 38, para. 93.

⁸⁴ M. LEHMANN, *Special jurisdiction*, in A. DICKINSON/E. LEIN (eds.), *op. cit.*, p. 138, para. 4.21.

⁸⁵ H. RÖSLER, "Interpretation, autonomous", in J. BASEDOW/G. RÜHL/F. FERRARI/P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, Edward Elgar Publishing, Cheltenham, 2017, p. 1014.

⁸⁶ M. SZPUNAR, "Wykładnia autonomiczna europejskiego prawa prywatnego międzynarodowego" [Autonomous interpretation of European private international law], in M. JAGIELSKA/E. ROTT-PIETRZYK/M. SZPUNAR (eds.), *Rozprawy z prawa prywatnego. Księga jubileuszowa dedykowana Profesorowi Wojciechowi Popiołkowi*, Wolters Kluwer, Warszawa, 2017, pp. 187-189.

⁸⁷ However, it should be noted that the concept of autonomous characterisation of concepts in European private international law has undergone certain changes over the years, see K. PACUŁA, "Kwalifikacja w prawie prywatnym międzynarodowym Unii Europejskiej Od kwalifikacji autonomicznej ku ... kwalifikacji według kolizyjnej legis fori?" [Characterization in EU private international law. From autonomous characterization to.... specific functional characterization?], *Problemy Prawa Prywatnego Międzynarodowego*, vol. 25, 2019, pp. 111-122.

62. The legal systems of the Member States approach the issue of the protection of personality rights in different ways. Both the scope of protection granted and the legal remedies available vary. However, it should be highlighted that despite this diversity, certain common features are shared⁸⁸. These could certainly form the basis for developing the autonomous concept of personality rights in the EU private international law.

63. The lack of unification in conflict of laws rules regarding the applicable law to violations of personality rights, caused by the exclusion of this issue from the scope of the Rome II Regulation, certainly does not promote a uniform and consistent understanding of the concept of personality rights across the EU. As a result, the courts of each Member State apply their own national conflict of laws rules in this area, which contributes to deepening differences in interpretation.

64. An opportunity to resolve the problems arising from CJEU case law concerning violations of personality rights would be to introduce a new and separate jurisdictional rule for cases concerning non-contractual obligations arising from violations of personality rights, which would take into account the specific nature of such violations, without prejudice to the need to ensure the predictability of jurisdictional rules. At the same time, the EU legislator should aim at developing a conflict of laws rule indicating the law applicable to this type of infringement. In this context, it is particularly important that EU regulations on jurisdiction and applicable law are founded on common principles, are complementary to one another, and form an integrated system. Therefore, the interpretation of the concepts used in the regulations should be consistent, while recognising the different functions of conflict of laws and jurisdiction rules⁸⁹. The introduction of new provisions would lead to the development of an autonomous concept of personality rights, reflecting the common European concept. The proposed amendments to the Rome II Regulation and the Brussels Ibis Regulation present an opportunity for change in this area⁹⁰. Particular attention should be given to the 2019 Resolution of the Institute of International Law on this issue⁹¹, as well as the work carried out by the International Law Association, which resulted in the adoption of the Lisbon Guidelines on Privacy in 2022⁹².

IV. The problem of non-recognition of Polish judgments in Germany – mention

65. The case in question also touches upon the third pillar of private international law, namely the recognition and enforcement of judgments. In principle, a judgment issued by a court having jurisdiction under Article 7(2) of the Brussels Ibis Regulation, in which the defendant is not domiciled, would have to be recognised and enforced in another Member State in order to take effect with regard to the defendant.

⁸⁸ G. BRÜGGEMEIER/A. COLOMBI CIACCHI/P. O'CALLAGHAN, "A common core of personality protection", in G. BRÜGGEMEIER/A. COLOMBI CIACCHI/P. O'CALLAGHAN (eds.), *Personality Rights in European Tort Law*, Cambridge University Press, Cambridge, 2010, p. 567.

⁸⁹ M. SZPUNAR, "Droit international privé de l'Union: cohérence des champs d'application et/ou des solutions ?", *Revue critique de droit international privé*, 2018, p. 573; H. RÖSLER, *op. cit.*, pp. 1012-1013.

⁹⁰ Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II Regulation), COM(2025)20 final, 31.01.2025, Brussels, (available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=cel-ex:52025DC0020>); Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application 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 (recast), COM(2025) 268 final, 2.6.2025, Brussels, (available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025DC0268>).

⁹¹ Institute of International Law, Resolution of 31 August 2019, Session of The Hague, Eighth Commission, Injuries to Rights of Personality Through the Use of the Internet: Jurisdiction, Applicable Law and Recognition of Foreign Judgments (available at: <https://www.idi-iil.org/app/uploads/2019/09/8-RES-EN.pdf>).

⁹² International Law Association, Lisbon Conference - 2022, Protection of Privacy in Private International and Procedural Law, Committees (available at: <https://www.ila-hq.org/en/documents/prottec-1>).

66. In such a case, it cannot be excluded that the defendant could argue that such recognition would be manifestly contrary to the public policy of that Member State within the meaning of Article 45(1)(a) of Brussels Ibis Regulation. A situation may therefore arise in which a court of a Member State refuses to recognise such a judgment. The reason may be that the relevant provisions of national law on which such a judgment is based differ significantly from what could be considered part of a common European concept of personality rights. In addition, other objections could arise, such as the appropriate balance between freedom of expression and the protection of personality rights, or the proportionality of the measures awarded to remedy damage or harm⁹³.

67. Legal doctrine indicates that broad standing to bring an action under Polish law in cases concerning violations of personality rights may raise doubts from the perspective of procedural public policy. The right to bring an action, under certain conditions, is also granted in cases where the infringement was non-individualised, such as through the use of the term “Polish death camps”. Therefore, an action may also be brought by a claimant who has not been identified by name, and even if it is not possible to identify the claimant in any other way. It was pointed out that in such a case, the interference of the public policy exception would not be directed against the substance of the judgment but against the manner in which the legal standing was determined under the national law of the State of origin of the judgment⁹⁴.

68. In this context, it is worth mentioning a case that also involved a violation of personality rights through the use of the phrase “Polish concentration camps”, which concluded with a ruling by the Court of Appeal in Kraków in 2016⁹⁵. The judgment included, among others, an order to apologise to the injured party for the use of the phrase. The order was then the subject of proceedings aimed at its enforcement in Germany. However, in its judgment of 19 July 2018⁹⁶, the German Federal Supreme Court (*Bundesgerichtshof*) dismissed the application for a declaration of enforceability, pointing out that the enforcement of the Polish judgment would constitute a clear violation of German public policy⁹⁷.

69. The ruling was criticised in Polish legal doctrine as questionable, including from the perspective of the protection of fundamental rights⁹⁸. In this context, it should be noted that a complaint was lodged with the ECtHR regarding the 2018 BGH ruling refusing to enforce the Polish judgment in Germany. However, no decision in this case has yet been made to date⁹⁹.

V. Conclusion

70. The localisation of the place of the damage within the meaning of Article 7(2) of the Brussels Ibis Regulation in a situation in which an online publication results in a violation of personality rights is highly complex. There are justified doubts about the interpretation of the rules on special jurisdiction, which have been developed over the years in the case law of the CJEU.

71. Based on the established case law of the CJEU, alongside jurisdiction based on the centre

⁹³ AG BOBEK, *Mittelbayerischer*, paras. 82-85.

⁹⁴ H. MUIR WATT, *op. cit.*, p. 911.

⁹⁵ Judgment of the Court of Appeal in Kraków of 22 December 2016, I ACa 1080/16.

⁹⁶ Judgment of the Bundesgerichtshof (Federal Supreme Court, Germany) of 19 July 2018, IX ZB 10/18, DE:BGH:2018:190718BIXZB10.18.0.

⁹⁷ On the ruling and BGH’s argumentation, see P. MOSTOWIK/E. FIGURA-GÓRALCZYK, “Odmowa wykonania polskiego orzeczenia z powodu obcego ordre public. Głosa do wyroku niemieckiego Federalnego Sądu Najwyższego (Bundesgerichtshof) z 19 lipca 2018 r. (IX ZB 10/18)” [The refusal to declare the enforcement of the judgment and the public policy (ordre public) – comments on the judgment of the German Supreme Court (Bundesgerichtshof) of 19 July 2018 (IX ZB 10/18)], *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego*, vol. 17, 2019, pp. 298-302; see also P. MOSTOWIK/E. FIGURA-GÓRALCZYK, *Jurisdiction and Costs*, cit., pp. 110-113.

⁹⁸ P. MOSTOWIK/E. FIGURA-GÓRALCZYK, *Refusal to enforce*, cit., pp. 304-305.

⁹⁹ P. MOSTOWIK/E. FIGURA-GÓRALCZYK, *Jurisdiction and Costs*, cit., p. 110.

of interests, the mosaic jurisdiction rule can still be invoked. The example of the *Mittelbayerischer* case demonstrates that the mosaic approach alleviates the erroneous determination of the centre of interests, allowing the alleged victim, despite the lack of individual identification, to have the claim considered. However, it should be noted that the mosaic principle, in relation to online infringements, appears to be a controversial solution that is not well-suited to their particular nature.

72. The interpretation of the place of the damage connecting factor in cases of violations of personality rights, as presented so far in the case law of the CJEU, does not seem to be adequate for adjudicating cases of personality rights within the understanding of this notion accepted in continental countries. In particular, doubts arise regarding the attempt to apply the mechanisms used to assess infringements in the form of defamation to the protection of other personality rights, which subsequently led the CJEU to develop the centre of interests connecting factor. According to the CJEU ruling in the *Mittelbayerischer* case, this connecting factor requires the unambiguous identification of the claimant in the disputed publication. The requirement to fulfil this extra condition appears to contradict the understanding of personality rights adopted in certain Member States. Therefore, it should first be recognised that the case law of the CJEU needs to be more receptive to the various perceptions of personality rights within the legal systems of the Member States.

73. A further step could be to develop the autonomous concept of personality rights in the EU private international law. The planned amendment of the Brussels Ibis and Rome II Regulations offers an opportunity to regulate this issue from both a jurisdictional and a conflict of laws perspective. This concept should be founded on the common ground of substantive laws of the Member States and take into account the developments in human rights protection, including the case law of the ECtHR. Future rules should also use appropriate connecting factors, which, on the one hand, are tailored to the specific nature of online infringements and, on the other hand, satisfy the criteria of predictability and the sound administration of justice.