German Casenote on ECJ Lechouritou Judgment

A very interesting article commenting the recent ECJ *Lechouritou* case (C-292/05, judgment of 15 February 2007) has been published in the latest issue of the German Law Journal, an online review in English devoted to developments in German, European and international jurisprudence.

The casenote has been written by *Veronika Gaertner* (University of Heidelberg), editor of conflictoflaws.net for Germany, who has extensively reported on the case for our site (see her posts on the opinion of AG Ruiz-Jarabo Colomer and on the judgment of the Court).

An abstract of the article (**"The Brussels Convention and Reparations – Remarks on the Judgment of the European Court of Justice in Lechouritou and others v. the State of the Federal Republic of Germany"**) has been kindly provided by the author:

> *The article analyses the judgment of the European Court of Justice in the case Lechouritou and others v. the State of the Federal Republic of Germany. In this judgment the Court had held that an action aimed at the payment of compensation for acts perpetrated by armed forces in the course of warfare does not constitute a civil matter in terms of the Brussels Convention.*
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> *The case note first classifies the judgment in the previous case law of the Court on the concept of civil matters in terms of the Brussels Regime. Hereby, the relevant rulings are examined in view of the criteria developed by the Court for defining the term of "civil and commercial matters" – in particular in distinction to public matters. In this regard, it is argued that the Court followed its previous rulings by basing its argumentation on the question whether the acts*

> *constituting the origin of the action for damages result from the exercise of public powers.*
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> *In the second part the case note addresses – in reference to objections raised by the plaintiffs – the question whether the qualification of the acts perpetrated by German armed forces as acta iure imperii excluded from the scope of the Brussels Convention can be agreed with. Here, the focus is on the question whether the term of act iure imperii could be regarded as limited to lawful acts, as partly argued with regard to the law of State immunity. This restriction of acta iure imperii to lawful acts is, however, rejected and consequently the assessment of the Court to regard the action of the plaintiffs as excluded from the scope of the Convention is agreed with.*

In addition to a thorough analysis of previous ECJ rulings on the matter, the article contains numerous references to national and international Courts' case law regarding the classification of military acts as the emanation of State authority and the restriction of State immunity in relation to wrongful acts, even if the author points out the different rationales underlying these restrictions in the field of State immunity (with the goal of an improved protection of human rights) and the exclusion of *acta iure imperii* from the scope of the European procedural law instruments.

The distinction between the two levels (public international law on one side, European uniform rules on jurisdiction on the other) is clearly underlined in the final remarks of the casenote:

> *[A]s the Court of Justice has explained in its ruling, the Brussels Convention, as a measure facilitating the internal market by the mutual recognition and enforcement of judgments in civil and commercial matters, is not the right instrument for the assertion of compensation claims based on acts*

> *perpetrated by armed forces in the course of warfare. The consequences of war and occupation can […] only be dealt with at a public law level.*

The article is available here (also in downloadable .pdf version). Highly recommended.