Brussels Convention, the Law of War and Crimes Against Humanity

Advocate General Ruiz-Jarabo Colomer has given his Opinion in Case C-292/05 Lechouritou and Others.

The case is concerned with whether claims for compensation which are brought by a number of Greek citizens against a Contracting State (Germany) as being liable under civil law for acts or omissions of its armed forces fall within the scope *ratione materiae* of the Brussels Convention. The following questions were referred to the ECJ by order of the *Efetio Patron* (Court of Appeal, Patras):

> *1. Do actions for compensation which are brought by natural persons against a Contracting State as being liable under civil law for* ***acts or omissions of its armed forces*** *fall within the scope ratione materiae of the Brussels Convention in accordance with Article 1 thereof* ***where those acts or omissions occurred during a military occupation of the plaintiffs' State of domicile following a war of aggression on the part of the defendant, are manifestly contrary to the law of war and may also be considered to be crimes against humanity****?*
>
> *2. Is it compatible with the system of the Brussels Convention for the defendant State to put forward a plea of immunity, with the result, should the answer be in the affirmative, that the very application of the Convention is neutralised, in particular in respect of acts and omissions of the defendant's armed forces which occurred before the Convention entered into force, that is to say during the years 1941-44?*

The Advocate General's answer to the first question referred to the ECJ was that, even if the term “civil and commercial matters” is not defined in the Brussels Convention, it has been held that this term has to be interpreted autonomously and does not include acts *iure imperii*. The Advocate General establishes two criteria which decide whether an act *iure imperii* – which does not fall within the scope of the Brussels Convention – has to be identified as such: Firstly, the official role of the parties involved, and secondly the origin of the claim, i.e. whether the exercise of authority by the administration is exorbitant. In the present case, the

official character of one of the parties was beyond doubt because the action is directed as against a state. Concerning the second criteria, the exercise of exorbitant authority, it has been stated that martial acts constitute a typical example of a state´s authority. Thus, claims directed at the restitution of damages which have been caused by armed forces of one of the war conducting parties are not "civil matters" for the purposes of Art. 1 of the Brussels Convention.

As – according to the Advocate General´s opinion – the first question has to be answered negatively, the second question referred to the ECJ does not have to be dealt with. However, the Advocate General points out that immunity precedes the Brussels Convention since if it is – due to immunity – not possible to file a suit, it is irrelevant which court has jurisdiction. Further, the examination of immunity and its effects on human rights was beyond the Court´s competence.

In the Advocate General's words,

> *...a claim for compensation, which is raised by natural persons against a Contracting State of the Brussels Convention, in order to attain compensation for damage caused by armed forces of another Contracting State during a military occupation, does* ***not*** *fall within the material scope of the Brussels Convention, even if those actions can be regarded as crimes against the humanity (approximate translation from the German text of the judgment, para. 79. An English translation is not available.)*

This post has been written jointly by Martin George and Veronika Gaertner. There is more coverage of the case on the EU Law Blog.