

ECJ: Legal Actions for Compensation for Acts perpetrated by Armed Forces in the Course of Warfare are no “Civil Matters” in Terms of the Brussels Convention

Today, the European Court of Justice has delivered the judgment in case C-292/05 (*Lechouritou and Others v. Federal Republic of Germany*).

The case concerned an action for compensation based on the Brussels Convention brought by Greek descendants of victims of a massacre perpetrated by German armed forces in 1943 in Greece against the Federal Republic of Germany with regard to financial loss, non-material damage and mental anguish.

The Court of Appeal Patras had referred the following questions to the ECJ:

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?

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?

With regard to the first question, the Court first states that Art. 1 Brussels Convention did not define the meaning or the scope of the concept of "civil and

commercial matters" (para. 28) before it is pointed out that this term had to be regarded as "an independent concept" which had to be interpreted by referring "first, to the objectives and scheme of the Brussels Convention and, second to the general principles which stem from the corpus of the national legal systems [...]" (para. 29). Further the Court refers to its case law where it has been held that actions between a public authority and a person governed by private law did not fall within the scope of the Brussels Convention if the public authority is acting in the exercise of its public powers.

The Court agrees with the Advocate General's Opinion that " [...] there is no doubt that operations conducted by armed forces are one of the characteristic emanations of State sovereignty [...]" (para. 37) and concludes that the present action "[...] does not fall within the scope *ratione materiae* of the Brussels Convention [...]" (para. 39).

Thus, the Court ruled as follows:

On a proper construction of the first sentence of the first paragraph of Article 1 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, 'civil matters' within the meaning of that provision does not cover a legal action brought by natural persons in a Contracting State against another Contracting State for compensation in respect of the loss or damage suffered by the successors of the victims of acts perpetrated by armed forces in the course of warfare in the territory of the first State.

Compare also our lengthy post on the AG Opinion which can be found here as well as the very comprehensive post at the EU Law Blog which can be viewed here.