

AG Opinion on Brussels II bis (“Hadadi”)

Yesterday, Advocate General *Kokott* delivered her opinion in case C-168/08 (*Hadadi*).

The case concerns the interpretation of the Brussels II *bis* Regulation and raises the question whether a Hungarian or a French court has jurisdiction over a divorce decree where both spouses are habitually resident in France and have both Hungarian and French nationality.

The French Cour de Cassation had referred the following questions to the ECJ for a preliminary ruling:

Is Article 3(1)(b) [of Regulation No 2201/2003] to be interpreted as meaning that, in a situation where the spouses hold both the nationality of the State of the court seised and the nationality of another Member State of the European Union, the nationality of the State of the court seised must prevail?

If the answer to Question 1 is in the negative, is that provision to be interpreted as referring, in a situation where the spouses each hold dual nationality of the same two Member States, to the more dominant of the two nationalities?

If the answer to Question 2 is in the negative, should it therefore be considered that that provision offers the spouses an additional option, allowing those spouses the choice of seising the courts of either of the two States of which they both hold the nationality?

In her opinion, the AG proposes that the ECJ should answer these questions as follows:

- 1. Where the court of a Member State has to examine whether, under Article 64(4) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, the court of the Member State in which a judgment was originally given would have had jurisdiction under Article 3(1)(b) of that regulation, it may not regard spouses who both possess the nationality of the Member State of the court seised and of the Member State of origin as being exclusively of its own nationality. Rather, it must take into account the fact that the spouses also possess the nationality of the Member State of origin*

and that the courts of the latter State accordingly would have had jurisdiction in respect of the judgment.

2. For the purposes of determining jurisdiction under Article 3(1)(b) of Regulation No 2201/2003 in the case of spouses who hold more than nationality, not only the more effective nationality is to be taken into account. The courts of all Member States whose nationality is held by both spouses have jurisdiction under that provision.