

CJEU on the Brussels I bis Regulation and immunity from execution in Supreme Site and Others, C-186/19

On 3 September 2020, the Court of Justice delivered its Judgment in the case that had sparked considerable scholarly interest in recent months, namely in the case Supreme Site and Others, C-186/19.

Back in June, due to the courtesy of María Barral Martínez, we presented an analysis of the case itself and of the Opinion issued by AG Saugmandsgaard Øe.

Preliminary questions and their context

As a reminder, in the background of this case is a contractual dispute over the payment of fuels supplied by companies to an international organisation, in the context of a military operation carried out by the latter.

The legal question at stake concerns, primarily, the applicability and/or the scope of application of the Brussels I bis Regulation in the context of a case where the international organisation brings an action to, firstly, lift an interim garnishee executed in another Member State by the opposing parties, and, secondly, prohibit the opposing parties from levying, on the same grounds, an interim garnishee in the future and all that on the basis of an immunity of execution that this international organisation allegedly enjoys.

Subsequently, the referring court asks, in essence, whether Article 24(5) of the Brussels I bis Regulation is to be interpreted as meaning that the action for interim relief falls within the exclusive jurisdiction of the courts of the Member State in which the interim garnishee order was executed.

Judgment of the Court and its consideration of the questions referred

In relation to the question of the applicability/scope of application of the Brussels I bis Regulation, the Court begins its analysis by affirming, at paragraph 54 of the Judgment, that the interim measures in question should be considered as the 'provisional measures' within the meaning of the Article 35 of the Regulation. The inclusion of these measures in the scope of the Regulation is determined by the nature of the rights that they serve to protect.

Next, at point 55, the Court acknowledges the two sets of criteria used in its case-law in order to characterize whether or not an action is covered by the concept of 'civil or commercial matter' within the meaning of Article 1(1) of the Brussels I bis Regulation. These are 'the elements which characterise the nature of the legal relationships between the parties to the dispute or the subject matter thereof' and - as the Court puts it - 'alternatively', 'the basis and the detailed rules governing the bringing of the action'. Both sets of criteria are afterwards applied in relation to the case at hand, at paragraphs 65 to 67. It may seem that the first set of criteria is used in order to determine the nature of rights that the provisional measure serves to protect, while the check of the basis and the detailed rules governing the bringing of the action (second set of criteria) is done in order to ensure that the request for the measure does not consist on exercise of public powers and as such could potentially exclude the measure from the scope of the Regulation (Cf. paragraph 62 of the Court's Judgment in case C-73/19, *Movic and Others*).

Interestingly, in relation to 'the elements which characterise the nature of the legal relationships between the parties to the dispute or the subject matter thereof' (first set of criteria), the Court seems to be taking the view that the purpose of the contract on the supply of fuel is not of a decisive importance. As under public international law the purpose of a transaction may arguably have some significance in determining whether that transaction was performed *iure gestionis* and is therefore not covered by the immunity, it is worth noticing that the Court indicates that the criteria for the determination of a 'civil and commercial' character are established for the purpose of the application of EU law (see paragraph 68: 'neither the legal relationship between the parties to an action such as that in the main proceedings nor the basis and the detailed rules governing the bringing of that action can regarded as showing **the exercise of public powers for the purposes of EU law**'; see also paragraph 69 as well as in the operative part 1 of the Judgment: 'action in question is not pursued under

public powers, **within the meaning of EU law**').

Finally, at paragraph 74, the Court indicates that the fact that an international organisation relied on the immunity from execution in support of its action for interim relief does not preclude examination by the court of its international jurisdiction under the Brussels I bis Regulation. For the Court, **the issue of whether that immunity is a bar to the court seised having jurisdiction to hear and determine such an action arises at a later stage, after the international jurisdiction of that court has been determined.**

On these grounds, the Court considers that:

Article 1(1) of [the Brussels I bis Regulation] is to be interpreted as meaning that an action for interim relief brought before a court of a Member State in which an international organisation invokes its immunity from execution in order to obtain both the lifting of an interim garnishee order executed in a Member State other than that of the forum and a prohibition on levying such an order in the future on the same grounds, brought in parallel with substantive proceedings concerning a claim arising from alleged non-payment for fuel supplied for the purposes of a peacekeeping operation carried out by that organisation, is covered by the concept of 'civil and commercial matters', in so far as that action is not pursued under public powers, within the meaning of EU law, which is a matter for the assessment of the referring court.

In relation to the question on the interpretation of Article 24(5) of the Regulation, the Court takes, as observed by one commentator, a restrictive view: it seems that only proceedings that concern per se the enforcement of judgments fall within the scope of that provision.

The Judgment itself can be consulted [here](#).