

Opinion of Advocate General Szpunar in the case C-641/18 - Rina

Advocate General Szpunar proposes that the Court should rule that the victims of the sinking of a ship flying the Panamanian flag can bring an action for damages under the Brussels I Regulation as a “civil and commercial matter” in the sense of Article 1 before the Italian courts against the Italian bodies which classified and certified that ship.

At para. 47, the Opinion deals with the effect of customary international law on the scope *ratione materiae* of the Brussels I Regulation and holds:

*[t]he EU legislature might have drawn inspiration from customary international law and taken general guidance from it in so far as concerns the distinction between *acta iure imperii* and *acta iure gestionis*. However, I am of the opinion that it did not have recourse to the concept of immunity from jurisdiction in order to define precisely the reach of EU rules in the area of judicial cooperation in civil matters having cross-border implications or, in particular, the material scope of Regulation No 44/2001.*

At para. 59, the Opinion explains the concept of “civil and commercial matters” abstractly with a view to previous case law and holds:

[t]he Court has repeatedly held that it is the exercise of public powers by one of the parties to the case, inasmuch as it exercises powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals, that excludes such a case from civil and commercial matters within the meaning of Article 1(1) of that regulation. On that basis the Court has already held that an action whereby a tax authority of one Member State claims damages for loss caused by a tortious conspiracy to commit value added tax (VAT) fraud in that Member State falls within the concept of ‘civil and commercial matters’, provided that the tax authority is in the same position as a person governed by private law in the action in question. I infer from this that, in order to determine whether or not Regulation No 44/2001 is applicable in a

case, it is not necessary to focus upon the field or area to which belongs the act in respect of which liability is alleged; it is necessary to consider whether that act proceeds from the exercise of public powers

As an interim conclusion, the Opinion states, at paras. 99 et seq.:

99. ...[t]he mere fact that the defendants carried out the acts at issue upon delegation from a State does not in itself mean that the dispute in which liability for those acts is alleged falls outside the scope ratione materiae of Regulation No 44/2001. Secondly, the fact that those acts were carried out on behalf of, and in the interests of the delegating State does not have that effect either. Thirdly and last, the fact that those operations were carried out in performance of international obligations of the delegating State in no way calls the foregoing conclusions into question.

100. Nevertheless, whenever recourse is had to public powers when carrying out acts, Regulation No 44/2001 will not as a result apply ratione materiae in a dispute in which liability for those acts is alleged. Given the range of powers exercised by the defendants in carrying out the classification and certification of the Al Salam Boccaccio '98, those operations cannot be regarded as proceeding from the exercise of public powers.

101. In light of the foregoing, it should be held that Article 1(1) of Regulation No 44/2001 is to be interpreted as meaning that an action for damages brought against private-law bodies concerning classification and certification activities carried out by those bodies upon delegation from a third State, on behalf of and in the interests of that State, falls within the concept of 'civil and commercial matters' within the meaning of that provision.

After rejecting jurisdictional immunity for the defendants, the Advocate General concluded, at para. 155:

Article 1(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is to be interpreted as meaning that an action for damages brought against private-law bodies in respect of classification and certification activities carried out by those bodies as delegates of a third State, on behalf of

that State and in its interests, falls within the concept of 'civil and commercial matters' within the meaning of that provision.

The principle of customary international law concerning the jurisdictional immunity of States does not preclude the application of Regulation No 44/2001 in proceedings relating to such an action.

The Opinion can be found [here](#).