CJEU on the scope of the Brussels I bis Regulation in the context of a dispute between an employee and a consulate in the case ZN, C-280/20

This Thursday, the Court of Justice delivered its judgment in the case ZN, C-280/20, which heavily relies and confirms the judgment in Mahamdia, C-154/11.

The request for a preliminary ruling arouse out of proceedings in which ZN, a Bulgarian national residing in Sofia, brought an action in Bulgaria against the Consulate General of the Republic of Bulgaria in Valencia, submitting that, in Spain, she has been providing services concerning the receipt of documents in files opened at the consulate and the handling of those files.

In these circumstances, the Bulgarian court referred a following question to the Court:

> *'Is Article 5(1) of [the Brussels I bis Regulation], in conjunction with recital 3 thereof, to be interpreted as meaning that the regulation applies for the purpose of determining the international jurisdiction of the courts of a Member State to adjudicate in a dispute between a worker from that Member State and the consular service of that Member State in the sovereign territory of another Member State? Or should those provisions be interpreted as meaning that the national jurisdictional rules of the Member State of which both parties are nationals apply to such a dispute?'*

In its judgment delivered without Advocate General's Opinion, the Court interpreted the question as limited solely to the application of the Brussels I bis Regulation as such and not concerning the determination of the jurisdiction (international/territorial, I suppose given the wording of the national jurisdictional rules at hand) of the Bulgarian or Spanish courts (paragraph 40).

In this regard, the Court held, in the first place, that a dispute involving a Consulate General and a person who provides services which do not fall within the exercise of public powers and which do not risk interfering with the security interests of the Republic of Bulgaria, falls within the notion of "civil and commercial matters" within the meaning of Article 1 of the Brussels I bis Regulation (paragraph 28).

In the second place, echoing the doubts of the referring court (see point 50 of the request for a preliminary ruling), the Cour examined whether the dispute at hand has cross-border implications and as such does indeed fully fall within the scope of the Brussels I bis Regulation. Considering that this is indeed the case, it held that a consulate is an 'establishment' of one Member State in another Member State and therefore one of the parties to the dispute must be considered to be domiciled or habitually resident in a Member State other than that of the court seised (paragraph 37). Moreover, the Court added that the contracts for the provision of services at issue in the main proceedings have been concluded in Spain and it was in that Member State that the obligations imposed by those contracts have been performed (paragraph 38).

Interestingly, admitting that the international aspect whose existence is a condition for the applicability of the Brussels I bis Regulation, the Court referred itself to its recitals 3 and 26, where the term 'cross-border disputes' is employed with no further guidance as to its definition (paragraph 30). In the present judgment the Court did not rely on the legal basis of the Regulation in order to substantiate the requirement of the international aspect, while it may be argued that such approach would also be possible in the light of the considerations pertaining to the Brussels II bis Regulation in the judgment in UD, C-393/18 PPU, paragraphs 38 to 40.

Ultimately, the Court considered that:

> *"Article 5(1) of the [Brussels I bis Regulation], read in conjunction with recital 3 of that regulation, must be interpreted as meaning that it applies for the purposes of determining the international jurisdiction of the courts of a Member State to hear and rule on a dispute between an employee from a Member State who does not carry out duties involving the exercise of public powers and a consular authority of that Member State situated in the territory of another Member State".*

The judgment can be consulted here.