

JUDGMENT OF THE COURT (Second Chamber)

15 February 2007^{*}

In Case C-292/05,

REFERENCE for a preliminary ruling under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, from the Efetio Patron (Greece), made by decision of 8 June 2005, received at the Court on 20 July 2005, in the proceedings

Irini Lechouritou,

Vasilios Karkoulas,

Georgios Pavlopoulos,

Panagiotis Brátsikas,

Dimitrios Sotiropoulos,

Georgios Dimopoulos

v

Dimosio tis Omospondiakis Dimokratias tis Germanias,

^{*} Language of the case: Greek.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, R. Schintgen (Rapporteur), J. Klučka, R. Silva de Lapuerta and J. Makarczyk, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 28 September 2006,

after considering the observations submitted on behalf of:

- Ms Lechouritou, Mr Karkoulis, Mr Pavlopoulos, Mr Brátsikas, Mr Sotiropoulos and Mr Dimopoulos, by I. Stamoulis, dikigoros, and J. Lau, Rechtsanwalt,
- the German Government, by R. Wagner, acting as Agent, assisted by Professor B. Heß,
- the Italian Government, by I.M. Braguglia, acting as Agent, assisted by G. Aiello, avvocato dello Stato,

- the Netherlands Government, by H.G. Sevenster and M. de Grave, acting as Agents,
- the Polish Government, by T. Nowakowski, acting as Agent,
- the Commission of the European Communities, by M. Condou-Durande and A.-M. Rouchaud-Joët, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 November 2006,

gives the following

Judgment

- ¹ This reference for a preliminary ruling relates to the interpretation of Article 1 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), 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 (OJ 1978 L 304, p. 1, and — amended version — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) ('the Brussels Convention').

- 2 The reference was made in proceedings between Ms Lechouritou, Mr Karkoulas, Mr Pavlopoulos, Mr Brátsikas, Mr Sotiropoulos and Mr Dimopoulos, Greek nationals resident in Greece who are the plaintiffs in those proceedings, and the Federal Republic of Germany concerning compensation for the financial loss and non-material damage which the plaintiffs have suffered on account of acts perpetrated by the German armed forces and of which their parents were victims at the time of the occupation of Greece during the Second World War.

Legal context

- 3 Article 1 of the Brussels Convention, which constitutes Title I thereof, headed ‘Scope’, provides:

‘This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

The Convention shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
2. bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

3. social security;

4. arbitration.’

4 The rules on jurisdiction laid down by the Brussels Convention are set out in Articles 2 to 24, which constitute Title II of the Convention.

5 Article 2, which forms part of Section 1 (‘General provisions’) of Title II, sets out in its first paragraph the basic rule of the Brussels Convention in the following terms:

‘Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.’

6 The first paragraph of Article 3 of the Brussels Convention, which appears in the same section, is worded as follows:

‘Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.’

- 7 Articles 5 to 18 of the Brussels Convention, which form Sections 2 to 6 of Title II, lay down rules governing special, mandatory or exclusive jurisdiction.
- 8 Article 5, which appears in Section 2 ('Special jurisdiction') of Title II, provides:

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

...

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;
4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

...'

The main proceedings and the questions referred for a preliminary ruling

- 9 It is apparent from the documents sent to the Court by the referring court that the main proceedings have their origins in the massacre of civilians by soldiers in the German armed forces which was perpetrated on 13 December 1943 and of which 676 inhabitants of the municipality of Kalavrita (Greece) were victims.
- 10 In 1995 the plaintiffs in the main proceedings brought an action before the Polimeles Protodikio Kalavriton (Court of First Instance, Kalavrita) for compensation from the Federal Republic of Germany in respect of the financial loss, non-material damage and mental anguish caused to them by the acts perpetrated by the German armed forces.
- 11 In 1998 the Polimeles Protodikio Kalavriton, before which the Federal Republic of Germany did not enter an appearance, dismissed the action on the ground that the Greek courts lacked jurisdiction to hear it because the defendant State, which was a sovereign State, enjoyed the privilege of immunity in accordance with Article 3(2) of the Greek Code of Civil Procedure.
- 12 In January 1999 the plaintiffs in the main proceedings appealed against that judgment to the Efetio Patron (Court of Appeal, Patras) (Greece) which, after holding in 2001 that the appeal was formally admissible, stayed proceedings until the Anotato Idiko Dikastirio (Superior Special Court) (Greece) had ruled, in a parallel case, on the interpretation of the rules of international law concerning immunity of sovereign States from legal proceedings and on their categorisation as rules generally recognised by the international community. More specifically, that case concerned, first, whether Article 11 of the European Convention on State Immunity — signed at Basle on 16 May 1972, but to which the Hellenic Republic is not a party — according to which 'a Contracting State cannot claim immunity from the jurisdiction of a court

of another Contracting State in proceedings which relate to redress for injury to the person or damage to tangible property, if the facts which occasioned the injury or damage occurred in the territory of the State of the forum, and if the author of the injury or damage was present in that territory at the time when those facts occurred', is to be regarded as a generally recognised rule of international law. Second, the further question was raised as to whether this exception to the immunity of the Contracting States covers, in accordance with international custom, claims for compensation in respect of wrongful acts which, while committed at the time of an armed conflict, adversely affected persons in a specific group or a particular place who had no connection with the armed clashes and did not participate in the military operations.

- ¹³ In 2002 the Anotato Idiko Dikastirio held in the case brought before it that, 'as international law currently stands, a generally recognised rule of international law continues to exist, according to which it is not permitted that a State be sued in a court of another State for compensation in respect of a tort or delict of any kind which took place in the territory of the forum and in which armed forces of the State being sued are involved in any way, whether in wartime or peacetime', so that the State being sued enjoys immunity in that instance.

- ¹⁴ In accordance with Article 100(4) of the Greek Constitution, decisions of the Anotato Idiko Dikastirio are 'irrevocable'. Also, under Article 54(1) of the Code on the Anotato Idiko Dikastirio, a decision by it determining whether a rule of international law is to be regarded as generally recognised 'applies erga omnes', so that a decision of the Anotato Idiko Dikastirio which has removed doubt as to whether a particular rule of international law is to be regarded as generally

recognised, and the assessment in that regard set out in the decision, bind not only the court which referred the matter to it or the litigants who made the application which is at the origin of the decision, but also every court and body of the Hellenic Republic before which the same legal issue is raised.

- 15 After the plaintiffs in the main proceedings had pleaded the Brussels Convention, in particular Article 5(3) and (4) which, in their submission, abolished States' right of immunity in all cases of torts and delicts committed in the State of the court seised, the Efetio Patron had doubts, however, as to whether the proceedings brought before it fell within the scope of that Convention, observing in this regard that the question whether the defendant State enjoyed immunity and, consequently, the Greek courts lacked jurisdiction to hear the case before it turned on the answer to disputed questions of law.

- 16 It was in those circumstances that the Efetio Patron decided to stay proceedings and to refer to the Court the following questions for a preliminary ruling:

'(1) 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?

- (2) 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 1941-1944?

Procedure before the Court

- ¹⁷ By letter lodged at the Court Registry on 28 November 2006, the plaintiffs in the main proceedings made observations on the Opinion of the Advocate General and requested the Court to 'decide that the present case "is of exceptional importance" and refer it to the full Court or a Grand Chamber, in accordance with Article 16 of the Statute of the Court of Justice'.
- ¹⁸ It must be pointed out at the outset that neither the Statute of the Court of Justice nor its Rules of Procedure make provision for the parties to submit observations in response to the Advocate General's Opinion. The Court has therefore held that applications to that effect must be rejected (see, in particular, the order in Case C-17/98 *Emesa Sugar* [2000] ECR I-665, paragraphs 2 and 19).
- ¹⁹ Also, under the third paragraph of Article 16 of the Statute of the Court of Justice, 'the Court shall sit in a Grand Chamber when a Member State or an institution of the Communities that is party to the proceedings so requests'.

20 It is apparent from the very wording of the third paragraph of Article 16 that individuals do not have standing to make such a request, and in the present instance the request that the case be referred to a Grand Chamber was not made by a Member State or an institution of the Communities that is party to the proceedings.

21 In addition, apart from the cases listed in the fourth paragraph of Article 16, it is the Court alone which, pursuant to the fifth paragraph thereof, has the power to decide, after hearing the Advocate General, to refer a case to the full Court, where it considers that case to be of exceptional importance.

22 Here, the Court holds that there is no good reason for it to make such a reference.

23 Accordingly, the request as set out in paragraph 17 of this judgment must necessarily be refused.

24 It must be added that the same conclusion would be necessary if the request by the plaintiffs in the main proceedings should be regarded as seeking the reopening of the procedure.

- 25 The Court may, of its own motion, on a proposal from the Advocate General or at the request of the parties order the reopening of the oral procedure under Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information or that the case must be dealt with on the basis of an argument which has not been debated between the parties (see, *inter alia* Case C-309/99 *Wouters and Others* [2002] ECR I-1577, paragraph 42; Case C-309/02 *Radlberger Getränkegesellschaft and S. Spitz* [2004] ECR I-11763, paragraph 22; and Case C-308/04 P *SGL Carbon v Commission* [2006] ECR I-5977, paragraph 15).
- 26 However, the Court, after hearing the Advocate General, finds that in the present case it has before it all the information and arguments necessary to reply to the questions referred by the national court and that that material has been debated before it.

Consideration of the questions

Question 1

- 27 By its first question, the referring court essentially asks whether, on a proper construction of the first sentence of the first paragraph of Article 1 of the Brussels Convention, 'civil matters' within the meaning of that provision covers 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.

28 It must be stated at the outset that while the Brussels Convention, in accordance with the first sentence of the first paragraph of Article 1, lays down the principle that its scope is limited to ‘civil and commercial matters’, it does not define the meaning or the scope of that concept.

29 It is to be remembered that, in order to ensure, as far as possible, that the rights and obligations which derive from the Brussels Convention for the Contracting States and the persons to whom it applies are equal and uniform, the terms of that provision should not be interpreted as a mere reference to the internal law of one or other of the States concerned. It is thus clear from the Court’s settled case-law that ‘civil and commercial matters’ must be regarded as an independent concept 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 (see, *inter alia*, Case 29/76 *LTU* [1976] ECR 1541, paragraphs 3 and 5; Case 814/79 *Rüffer* [1980] ECR 3807, paragraph 7; Case C-271/00 *Baten* [2002] ECR I-10489, paragraph 28; Case C-266/01 *Préservatrice foncière TIARD* [2003] ECR I-4867, paragraph 20; and Case C-343/04 *ČEZ* [2006] ECR I-4557, paragraph 22).

30 According to the Court, that interpretation results in the exclusion of certain legal actions and judicial decisions from the scope of the Brussels Convention, by reason either of the legal relationships between the parties to the action or of the subject-matter of the action (see *LTU*, paragraph 4; *Rüffer*, paragraph 14; *Baten*, paragraph 29; *Préservatrice foncière TIARD*, paragraph 21; *ČEZ*, paragraph 22; and Case C-167/00 *Henkel* [2002] ECR I-8111, paragraph 29).

- 31 Thus, the Court has held that, although certain actions between a public authority and a person governed by private law may come within the scope of the Brussels Convention, it is otherwise where the public authority is acting in the exercise of its public powers (see *LTU*, paragraph 4; *Rüffer*, paragraph 8; *Henkel*, paragraph 26; *Baten*, paragraph 30; *Préservatrice foncière TIARD*, paragraph 22; and Case C-172/91 *Sonntag* [1993] ECR I-1963, paragraph 20).
- 32 It is pursuant to this principle that the Court has held that a national or international body governed by public law which pursues the recovery of charges payable by a person governed by private law for the use of its equipment and services acts in the exercise of its public powers, in particular where that use is obligatory and exclusive and the rate of charges, the methods of calculation and the procedures for collection are fixed unilaterally in relation to the users (*LTU*, paragraph 4).
- 33 Similarly, the Court has held that the concept of ‘civil and commercial matters’ within the meaning of the first sentence of the first paragraph of the Brussels Convention does not include an action brought by the State as agent responsible for administering public waterways against a person having liability in law in order to recover the costs incurred in the removal of a wreck, in performance of an international obligation, carried out by or at the instigation of that administering agent in the exercise of its public authority (*Rüffer*, paragraphs 9 and 16).

- 34 Disputes of that nature do result from the exercise of public powers by one of the parties to the case, as it exercises powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals (see, to this effect, *Sonntag*, paragraph 22; *Henkel*, paragraph 30; *Préservatrice foncière TIARD*, paragraph 30; and Case C-265/02 *Frahuil* [2004] ECR I-1543, paragraph 21).
- 35 There is all the more reason for such an assessment in a case such as the main proceedings.
- 36 The legal action for compensation brought by the plaintiffs in the main proceedings against the Federal Republic of Germany derives from operations conducted by armed forces during the Second World War.
- 37 As the Advocate General has observed in points 54 to 56 of his Opinion, there is no doubt that operations conducted by armed forces are one of the characteristic emanations of State sovereignty, in particular inasmuch as they are decided upon in a unilateral and binding manner by the competent public authorities and appear as inextricably linked to States' foreign and defence policy.

- 38 It follows that acts such as those which are at the origin of the loss and damage pleaded by the plaintiffs in the main proceedings and, therefore, of the action for damages brought by them before the Greek courts must be regarded as resulting from the exercise of public powers on the part of the State concerned on the date when those acts were perpetrated.
- 39 Having regard to the case-law recalled in paragraph 30 of this judgment, a legal action such as that brought before the referring court therefore does not fall within the scope *ratione materiae* of the Brussels Convention as defined in the first sentence of the first paragraph of Article 1 thereof.
- 40 Such an interpretation cannot be affected by the line of argument, set out in greater detail by the plaintiffs in the main proceedings, that, first, the action brought by them before the Greek courts against the Federal Republic of Germany is to be regarded as constituting proceedings to establish liability that are of a civil nature and, moreover, covered by Article 5(3) and (4) of the Brussels Convention, and second, that acts carried out *iure imperii* do not include illegal or wrongful actions.
- 41 First of all, the Court has already held that the fact that the plaintiff acts on the basis of a claim which arises from an act in the exercise of public powers is sufficient for his action, whatever the nature of the proceedings afforded by national law for that purpose, to be treated as being outside the scope of the Brussels Convention (see *Rüffer*, paragraphs 13 and 15). The fact that the proceedings brought before the referring court are presented as being of a civil nature in so far as they seek financial compensation for the material loss and non-material damage caused to the plaintiffs in the main proceedings is consequently entirely irrelevant.

- 42 Second, the reference made to the rules governing jurisdiction which are specifically set out in Article 5(3) and (4) of the Brussels Convention is immaterial, because the issue as to whether the Convention falls to apply to the main proceedings logically constitutes a prior question which, if answered in the negative as here, entirely relieves the court before which the case has been brought of the need to examine the substantive rules laid down by the Convention.
- 43 Finally, the question as to whether or not the acts carried out in the exercise of public powers that constitute the basis for the main proceedings are lawful concerns the nature of those acts, but not the field within which they fall. Since that field as such must be regarded as not falling within the scope of the Brussels Convention, the unlawfulness of such acts cannot justify a different interpretation.
- 44 In addition, the proposition put forward in this regard by the plaintiffs in the main proceedings, if accepted, would be such as to raise preliminary questions of substance even before the scope of the Brussels Convention can be determined with certainty. Such difficulties would without doubt be incompatible with the broad logic and the objective of that Convention, which — as is apparent from its preamble and from the Jenard Report on the Brussels Convention (OJ 1979 C 59, p. 1) — is founded on the mutual trust of the Contracting States in their legal systems and judicial institutions, and seeks to ensure legal certainty by laying down uniform rules concerning conflict of jurisdiction in the civil and commercial field and to simplify formalities with a view to the rapid recognition and enforcement of judicial decisions made in the Contracting States.
- 45 Furthermore, in the same field of judicial cooperation in civil matters, Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ 2004 L 143, p. 15), which likewise provides, in Article 2(1), that it applies in ‘civil and commercial matters’, specifies in that provision that ‘it shall not extend ... to ... the liability of the State for acts and omissions in the exercise of State authority (“*acta iure imperii*”)

without drawing a distinction in that regard according to whether or not the acts or omissions are lawful. The same is true of Article 2(1) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ 2006 L 399, p. 1).

- ⁴⁶ Having regard to all of the foregoing considerations, the answer to the first question must be that, on a proper construction of the first sentence of the first paragraph of Article 1 of the Brussels Convention, ‘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.

Question 2

- ⁴⁷ In view of the reply given to the first question, there is no need to answer the second question.

Costs

- ⁴⁸ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

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.

[Signatures]