



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

11 June 2015*

(References for a preliminary ruling — Judicial cooperation in civil matters — Service of judicial and extrajudicial documents — Regulation (EC) No 1393/2007 — Article 1(1) — Concept of civil or commercial matters — Liability of the State for ‘acta iure imperii’)

In Joined Cases C-226/13, C-245/13, C-247/13 and C-578/13,

REQUESTS for four preliminary rulings under Article 267 TFEU, three of which are from the Landgericht Wiesbaden (Germany), by decisions of 16 and 18 April 2013, received at the Court on 29 April 2013, 2 May 2013 and 3 May 2013 respectively, and one from the Landgericht Kiel (Germany), by decision of 25 October 2013, received at the Court on 15 November 2013, in the proceedings between

Stefan Fahnenbrock (C-226/13),

Holger Priestoph (C-245/13),

Matteo Antonio Priestoph (C-245/13),

Pia Antonia Priestoph (C-245/13),

Rudolf Reznicek (C-247/13),

Hans-Jürgen Kickler (C-578/13),

Walther Wöhlk (C-578/13),

Zahnärztekammer Schleswig-Holstein Versorgungswerk (C-578/13)

v

Hellenische Republic,

THE COURT (First Chamber),

composed of A. Tizzano (Rapporteur), President of the Chamber, S. Rodin, E. Levits, M. Berger and F. Biltgen, Judges,

Advocate General: Y. Bot,

Registrar: M. Aleksejev, Administrator,

* Language of the case: German.

having regard to the written procedure and further to the hearing on 15 October 2014,

after considering the observations submitted on behalf of:

- Mr Fahnenbrock, Messrs and Ms Priestoph and M. Reznicek, by F. Braun, Rechtsanwalt,
- Mr Kickler, Mr Wöhlk and the Zahnärztekammer Schleswig-Holstein Versorgungswerk, by O. Hoepner, Rechtsanwalt,
- the Greek Government, by D. Kalogiros, S. Charitaki, A. Karageorgou, S. Lekkou, M. Skorila and E. Panopoulou, acting as Agents,
- the European Commission, by B. Eggers and A.-M. Rouchaud-Joët, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 December 2014,

gives the following

Judgment

- 1 These requests for a preliminary ruling concern the interpretation of Article 1(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).
- 2 The requests have been made in four disputes between Mr Fahnenbrock (Case C-226/13), Messrs and Ms Priestoph (Case C-245/13), Mr Reznicek (Case C-247/13), and Mr Kickler, Mr Wöhlk and the Zahnärztekammer Schleswig-Holstein Versorgungswerk (Council of Dental Surgeons in Schleswig-Holstein) (Case C-578/13) and the Hellenische Republik (the Hellenic Republic) in proceedings seeking compensation for disturbance of ownership and property rights, contractual performance in respect of the original bonds which have reached maturity or damages.

Legal context

EU law

- 3 Recitals 2, 6, 7 and 10 in Regulation No 1393/2007 state:

‘(2) The proper functioning of the internal market entails the need to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States.

...

(6) Efficiency and speed in judicial procedures in civil matters require that judicial and extrajudicial documents be transmitted directly and by rapid means between local bodies designated by the Member States. ...

(7) Speed in transmission warrants the use of all appropriate means, provided that certain conditions as to the legibility and reliability of the document received are observed. ...

...

(10) To secure the effectiveness of this Regulation, the possibility of refusing service of documents should be confined to exceptional situations.’

4 Article 1(1) of that regulation defines its scope:

‘This Regulation shall apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there. It shall not extend in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).’

5 Article 3 of that regulation provides:

‘Each Member State shall designate a central body responsible for:

- (a) supplying information to the transmitting agencies;
- (b) seeking solutions to any difficulties which may arise during transmission of documents for service;
- (c) forwarding, in exceptional cases, at the request of a transmitting agency, a request for service to the competent receiving agency.

A federal State, a State in which several legal systems apply or a State with autonomous territorial units shall be free to designate more than one central body.’

6 Article 4(1) of Regulation No 1393/2007 provides:

‘Judicial documents shall be transmitted directly and as soon as possible between the agencies designated pursuant to Article 2.’

7 Article 6(3) of Regulation No 1393/2007 states:

‘If the request for service is manifestly outside the scope of this Regulation or if non-compliance with the formal conditions required makes service impossible, the request and the documents transmitted shall be returned, on receipt, to the transmitting agency, together with the notice of return using the standard form set out in Annex I.’

Greek law

8 Law No 4050/2012 of 23 February 2012, entitled ‘Rules relating to the adjustment of securities, their issue or guarantee by the Greek State with the agreement of the bond holders’ (FEK A 36/23.2.2012), lays down the detailed rules for restructuring the Greek State’s bonds. According to the orders for reference, that law provides essentially for the submission of a restructuring offer to some of the Greek State’s bondholders and the introduction of a restructuring clause, also known as a ‘CAC’ (collective action clause), which allows for the adjustment of the initial conditions of issue of the securities by means of decisions adopted by the qualified majority of those holding the outstanding capital, which is also binding on the minority.

9 Under Article 1(4) of that law, the adjustment of the securities referred to requires the constitution of a quorum representing 50% of the total of the outstanding bonds concerned, and a qualified majority corresponding to two thirds of the participating capital.

- 10 Article 1(9) of that law provides for a restructuring clause, according to which the decision adopted by the bondholders to accept or refuse the restructuring offer made by the Greek State is to apply *erga omnes*, is binding on all the bondholders concerned, and overrides any general or specific law, any administrative decisions, and any contracts which conflict with it.

The actions in the main proceedings and the questions referred for a preliminary ruling

- 11 The applicants in the main proceedings, all domiciled in Germany, purchased bonds from the Hellenische Republik, which were deposited in their securities accounts managed by banks.
- 12 Following the adoption of Law No 4050/2012, in February 2012, the Hellenische Republik made an offer to the applicants in the main proceedings providing, in particular, for an exchange of the Greek State's bonds for new bonds with a considerably reduced nominal value. Express acceptance by the private creditors was required in order to make that exchange effective.
- 13 Although none of the applicants in the main proceedings accepted the offer, in March 2012, the Hellenische Republik none the less carried out the proposed exchange and, in spite of complaints by those applicants, has not returned to them possession of the securities deposited on the securities accounts. In the meantime, the bonds at issue in Case C-578/13 reached maturity.
- 14 In those circumstances, the applicants in the main proceedings brought before the referring courts actions against the Hellenische Republik claiming compensation for disturbance of ownership and property rights, contractual performance of the original bonds which have reached maturity or damages.
- 15 In the course of the procedure to serve the documents instituting proceedings on the Hellenische Republik, as defendant, the question has arisen as to whether, for the purpose of Article 1(1) of Regulation No 1393/2009, those actions concern civil or commercial matters or actions or omissions in the exercise of State authority.
- 16 In particular, in the disputes at issue in Cases C-226/13 and C-247/13, the Landgericht Wiesbaden requested the Bundesamt für Justiz (Federal Justice Office) to serve the actions in question on the defendant in accordance with the procedure laid down by Regulation No 1393/2007. In connection with that request, the Bundesamt für Justiz expressed doubts as to whether it was possible to classify those actions as concerning civil or commercial matters within the meaning of that regulation. Consequently, it refused to serve those actions and requested the Landgericht Wiesbaden to determine beforehand whether or not those disputes concern such matters.
- 17 In the dispute at issue in Case C-245/13, the Landgericht Wiesbaden also expressed doubts as to the assessment of the Bundesamt für Justiz in similar cases.
- 18 As regards the dispute in Case C-578/13, the Landgericht Kiel, considering that Regulation No 1393/2007 was not applicable in that case, ordered the Bundesministerium der Justiz (Federal Ministry of Justice) to serve the documents instituting proceedings through diplomatic channels. The Ministry none the less returned the order for service without transmitting it, referring to the requests for a preliminary ruling in Cases C-226/13, C-245/13 and C-247/13.
- 19 Therefore, both referring courts ask whether the disputes at issue in the main proceedings are civil or commercial matters within the meaning of Article 1(1) of Regulation No 1393/2007. They take the view that the answer to that question depends on the classification of the disputes before them. In the present case, first, the applicants in the main proceedings have brought actions, based on civil law, seeking essentially compensation for disturbance of ownership and property rights, contractual

performance in respect of original bonds which have reached maturity or damages. Second, the contractual conditions for the issue of bonds by the Greek State have been adjusted by the adoption of Law No 4050/2012, which might suggest that that State acted in the exercise of State authority.

20 In those circumstances, the Landgericht Wiesbaden, in Cases C-226/13, C-245/13 and C-247/13, decided to stay the proceedings and to refer the following question, drafted in identical terms in each case, to the Court for a preliminary ruling:

‘Is Article 1 of [Regulation No 1393/2007] to be interpreted as meaning that an action — in which purchasers of bonds issued by the defendant that were in the safe-keeping of [their bank], in the securities account of the applicants, and in respect of which the applicants had not accepted the defendant’s exchange offer made at the end of February 2012, demand compensation for damages in the amount of the difference in value relative to an exchange of the bonds that was nonetheless effected in March 2012 and which was economically disadvantageous for the applicants — is to be regarded as a ‘civil or commercial matter’ within the meaning of that regulation?’

21 In Case C-578/13, the Landgericht Kiel also decided to stay its proceedings and to refer to the Court the following questions for a preliminary ruling:

‘(1) Is Article 1 of [Regulation No 1393/2007] to be interpreted as meaning that an action by which purchasers of government bonds issued by the defendant make claims against the defendant in the form of claims for performance and damages is to be regarded as a ‘civil or commercial matter’, within the meaning of the first sentence of Article 1(1) thereof, in the case where the purchaser did not accept the exchange offer made by the defendant at the end of February 2012, which was made possible by [Law No 4050/2012]?’

(2) Does an action which is essentially based on the ineffectiveness or invalidity of [Law 4050/2012] concern the liability of a State for actions or omissions in the exercise of State authority, within the meaning of the second sentence of Article 1(1) of [Regulation 1393/2007]?’

22 By order of the President of the Court of 5 June 2013, Cases C-226/13, C-245/13 and C-247/13 were joined for the purposes of the written and oral procedure and the judgment. By order of 10 December 2013, Case C-578/13 was joined to those cases for the purposes of the oral procedure and the judgment.

Consideration of the questions referred for a preliminary ruling

Admissibility

23 According to the European Commission, the requests for a preliminary ruling in Cases C-226/13, C-245/13 and C-247/13 are inadmissible. Since those cases do not describe the alleged exercise of State authority and contain inaccuracies with regard to the exchange offer concerned, they do not set out the legal and factual background to the dispute in the main proceedings in an adequate and proper manner.

24 Furthermore, in the present case, even if the referring court may be regarded as hearing a case for the purposes of Article 267 TFEU, that court has made a request to the Court of Justice only because the Bundesamt für Justiz, as the ‘central authority’ within the meaning of Article 3 of Regulation No 1393/2007, refused to transmit the claims of the applicants in the main proceedings to the Greek authorities and requested that court to give a definitive ruling beforehand on the nature of the actions

concerned. Given that such a central body is not authorised to oppose a request to transmit documents from the competent national court, the question raised is irrelevant to settlement of the disputes at issue in those cases.

- 25 In that regard, it should be noted that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see judgment in *Rohm Semiconductor*, Case C-666/13, EU:C:2014:2388, paragraph 38).
- 26 In the present case, it suffices to state, first of all, that it is apparent from the orders for reference that the exercise of State authority alleged in the cases in the main proceedings is constituted by a unilateral and retroactive adjustment to the conditions applicable to bonds issued by the Hellenische Republik which was made possible by Law No 4050/2012.
- 27 Next, as regards the inaccuracies alleged in the description of the content of the exchange offer made by the Hellenische Republik, it is sufficient to note that it is not for the Court of Justice but for the national court to ascertain the facts which have given rise to the dispute and to establish the consequences which they have for the judgment which it is required to deliver (judgment in *Traum*, C-492/13, EU:C:2014:2267, paragraph 19 and the case-law cited).
- 28 Moreover, it is not obvious that the doubts raised by the referring court in Cases C-226/13, C-245/13 and C-247/13, as to whether or not the disputes pending before it fall within the scope of civil or commercial matters, are irrelevant for the settlement of those disputes. The applicability of Regulation No 1393/2007 and the pursuit of the proceedings before that court, with regard to the service of documents which is its responsibility to ensure, depend specifically on the removal of those doubts.
- 29 The fact that such doubts have been expressed by the referring court on account of actions of the Bundesamt für Justiz which are regarded by the Commission as incompatible with that regulation, is not, in itself, such as to call into question the presumption that the questions raised by that court are relevant.
- 30 Finally, in so far as the Commission appears to allege that there is no dispute pending before the national court ruling in the performance of its judicial functions, it should be noted that the concept 'give judgment', within the meaning of the second paragraph of Article 267 TFEU, must be interpreted broadly in order to prevent many procedural questions from being regarded as inadmissible and from being unable to be the subject of interpretation by the Court. That concept must therefore be understood as encompassing the whole of the procedure leading to the judgment of the referring court so that the Court of Justice is able to interpret all procedural provisions of EU law that the referring court is required to apply in order to give judgment (see, by analogy, judgment in *Weryński*, C-283/09, EU:C:2011:85, paragraphs 41 and 42).
- 31 In the present case, the requests in question in the main proceedings concern the detailed rules for service on the defendant of acts instituting proceedings. The fact that those requests have been made even before the commencement of the adversarial proceedings is inherent in the questions which those requests seek to have answered.
- 32 It follows from the foregoing considerations that the questions referred for a preliminary ruling are admissible.

Substance

- 33 By their questions, which it is appropriate to examine together, the referring courts ask essentially whether Article 1(1) of Regulation No 1393/2007 must be interpreted as meaning that the concept of ‘civil or commercial matters within the meaning of that provision, covers judicial proceedings for compensation for disturbance of ownership and property rights, contractual performance and damages, such as those at issue in the main proceedings, brought by private persons who are holders of State bonds against the issuing State.
- 34 In order to answer those questions, the Court notes, first of all, that, as regards 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 successive conventions on the accession of new Member States thereto (‘the Brussels Convention’), the Court, after finding that Article 1 of the Brussels Convention limited the scope of that convention to ‘civil and commercial matters’, without, however, defining its content and scope, held that it 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 (judgment in *Lechouritou and Others*, C-292/05, EU:C:2007:102, paragraphs 28 and 29 and the case-law cited).
- 35 Next, the Court also held that Article 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 (OJ 2001 L 12, p. 1), which limits the scope of that regulation to ‘civil and commercial matters’, without, however, defining its content and scope, must be regarded as an independent concept to be interpreted by referring, first, to the objectives and scheme of that regulation and, second, to the general principles which stem from the corpus of the national legal systems (judgment in *flyLAL-Lithuanian Airlines*, C-302/13, EU:C:2014:2319, paragraph 24).
- 36 Finally, once again, based on the fact that Article 1(1) 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 (OJ 2000 L 338, p. 1), as amended by Council Regulation (EC) No 2116/2004 of 2 December 2004 (OJ 2004 L 367, p. 1), sets out the principle that the scope of that regulation is confined to ‘civil matters’ without, however, defining its content and scope, the Court held that it must be interpreted autonomously (see judgment in *C*, C-435/06, EU:C:2007:714, paragraphs 38 and 46).
- 37 As regards Regulation No 1393/2007, at issue in the main proceedings, it must be held that Article 1(1) thereof also provides that that regulation is applicable to civil and commercial matters, adding that it does not extend to liability of the State for actions or omissions in the exercise of state authority (‘acta iure imperii’).
- 38 Moreover, that regulation does not define the content and scope or the concept of ‘civil and commercial matters’ or that of ‘acta iure imperii’.
- 39 In those circumstances, it must be held that the concept of ‘civil and commercial matters’ within the meaning of Article 1(1) of Regulation No 1393/2007 must also be regarded as an independent concept and that it must be interpreted by referring, in particular, to the objectives and scheme of that regulation.
- 40 As far as concerns the objectives pursued by Regulation No 1393/2007, it follows from recital 2 thereto that that regulation aims to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States in order to ensure the proper functioning of the internal market. That objective is also set out in recitals 6 and 7 thereto,

which refer to efficiency and speed in judicial procedures and speed in transmission of those documents. Furthermore, Article 4(1) of that regulation provides that judicial documents are to be transmitted as soon as possible.

- 41 In that context, recital 10 in Regulation No 1393/2007 states that ‘the possibility of refusing service of documents should be confined to exceptional situations.’ Thus, in accordance with Article 6(3) thereof, the request for service and the documents transmitted are to be returned to the transmitting agency if that request for service is ‘manifestly outside the scope’ of the regulation.
- 42 As the Commission rightly observed, distinguishing disputes which are ‘civil or commercial matters’ from those which are not in that they concern, for example, State liability for acts or omissions in the exercise of State authority, may prove to be a complex operation.
- 43 In such cases, the answer to that question, for the purpose of applying other regulations or conventions, such as those mentioned in paragraphs 34 to 36 of the present judgment, is normally decided only after having given all the parties to the proceedings the opportunity to express their views on the matter, so that the court dealing with the dispute has all the information necessary to give its decision.
- 44 However, that is not the case as regards the question whether a document instituting proceedings concerns civil and commercial matters within the meaning of Regulation No 1393/2007.
- 45 That issue must be resolved even before the parties to the proceedings other than the applicant have been served with that document, since the methods of service of that document depend specifically on the answer to that question.
- 46 In those circumstances, taking account of the objective of speedy service of judicial documents pursued by Regulation No 1393/2007, the court concerned must limit itself to a preliminary review of the available evidence, which is inevitably incomplete, in order to decide whether the action brought before it is a civil or commercial matter or a matter not covered by that regulation in accordance with Article 1(1) thereof, the result of that review being, of course, without prejudice to subsequent decisions that the court hearing the case will be required to make as regards, in particular, its own jurisdiction and the substance of the case concerned.
- 47 Such an interpretation of that provision not only ensures the effectiveness of Regulation No 1393/2007, but is also confirmed by its general scheme.
- 48 Apart from the case where it is impossible to effect service of a judicial document by reason of a failure to comply with the formal requirements imposed by Regulation No 1393/2007, it is only when the request for service of that document manifestly falls outside the scope of that regulation that the receiving agency is obliged, in accordance with Article 6(3) thereof, to return that request to the transmitting agency.
- 49 Therefore, in order to determine whether Regulation No 1393/2007 is applicable, it suffices that the court hearing the case concludes that it is not manifest that the action brought before it falls outside the scope definition of civil and commercial matters.
- 50 As regards whether Regulation No 1393/2007 applies to actions such as those at issue in the main proceedings, it must be observed that it follows from the wording of Article 1(1) thereof that, although certain disputes between a public authority and a person governed by private law may fall within the scope of the regulation, that is not the case where that public authority acts in the exercise of State authority.

- 51 In order to answer that question, it must therefore be determined whether the legal relationship between the applicants in the main proceedings and the Hellenische Republik is manifestly characterised by an exercise of public powers on the part of the debtor State, in that it entails the exercise of powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals (judgments in *Préservatrice foncière TIARD SA*, C-266/01, EU:C:2003:282, paragraph 30, and *Lechouritou and Others*, C-292/05, EU:C:2007:102, paragraph 34).
- 52 In that connection, 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 (judgments in *LTU*, 29/76, EU:C:1976:137, paragraph 4, and *Lechouritou and Others*, C-292/05, EU:C:2007:102, paragraph 32).
- 53 However, the issue of bonds does not necessarily presuppose the exercise of powers falling outside the scope of the ordinary legal rules applicable to relationships between individuals. It is conceivable that a legal person governed by private law may have recourse to the market to finance its activities, in particular by issuing bonds.
- 54 Moreover, as regards the cases in the main proceedings, it is not obvious from the documents that the financial conditions of the securities concerned were fixed unilaterally by the Greek State and not on the basis of market conditions which govern the exchange and profitability of those financial instruments.
- 55 It is true that Law No 4050/2012 falls within the framework of the management of public finances and, more specifically, the restructuring of the public debt, in order to deal with a severe financial crisis, and it is for those purposes that it introduced the possibility of exchanging the securities in the contracts concerned.
- 56 However, it must be observed in that regard, first, that the fact that that possibility was introduced by a law is not, in itself, decisive in order to conclude that the State acted in the exercise of State authority.
- 57 Second, it is not obvious that the adoption of Law No 4050/2012 led directly and immediately to changes to the financial conditions of the securities in question and therefore caused the damage alleged by the applicants. Those changes were to give effect to a decision of a majority of the bondholders on the basis of the exchange clause incorporated by that law into the contract of issue, which, furthermore, confirms the intention of the Greek State to keep the management of the bonds within a regulatory framework of a civil nature.
- 58 Having regard to those considerations, it cannot be concluded that the cases in the main proceedings are manifestly not ‘civil or commercial matters’, within the meaning of Regulation No 1393/2007; that regulation is therefore applicable to those cases.
- 59 In the light of the foregoing, the answer to the questions is that Article 1(1) of Regulation No 1393/2007 must be interpreted as meaning that legal proceedings for compensation for disturbance of ownership and property rights, contractual performance and damages, such as those at issue in the main proceedings, brought by private persons who are holders of government bonds against the issuing State, fall within the scope of that regulation in so far as it does not appear that they are manifestly outside the concept of civil or commercial matters.

Costs

- ⁶⁰ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring courts, the decision on costs is a matter for those courts. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

Article 1(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000. must be interpreted as meaning that legal actions for compensation for disturbance of ownership and property rights, contractual performance and damages, such as those at issue in the main proceedings, brought by private persons who are holders of government bonds against the issuing State, fall within the scope of that regulation in so far as it does not appear that they are manifestly outside the concept of civil or commercial matters.

[Signatures]