Press and Information

Court of Justice of the European Union

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Judgment in Case C-641/18
LG and Others v Rina SpA and Ente Registro Italiano Navale

The victims of the sinking of a vessel, which sailed under the flag of Panama, may bring an action for damages before the Italian courts against the Italian organisations which classified and certified that vessel

Those organisations could rely on immunity from jurisdiction only in so far as their activities constituted an expression of the public powers of the Panamanian State

In the judgment in Rina (C-641/18), delivered on 7 May 2020, the Court held, first, that an **action for damages, brought against private-law corporations engaged in the classification and certification of ships on behalf of and upon delegation from a third State, falls within the concept of 'civil and commercial matters', within the meaning** of Article 1(1) **of Regulation No 44/2001** ('the **Brussels I** Regulation')[1] and, therefore, within the scope of that regulation, **provided that that classification and certification activity is not exercised under public powers, within the meaning of EU law**. Secondly, the Court held that the principle of customary international law concerning immunity from jurisdiction does not preclude the national court seised from exercising the jurisdiction provided for by that regulation in a dispute relating to such an action, where that court finds that such corporations have not had recourse to public powers within the meaning of international law.

In 2006, the vessel *Al Salam Boccaccio '98*, sailing under the flag of the Republic of Panama, sank in the Red Sea, with more than 1 000 people losing their lives. Relatives of the victims and survivors of the sinking brought an action before the Tribunale di Genova (District Court, Genoa, Italy) against Rina SpA and Ente Registro Italiano Navale ('the Rina companies'), that is to say against the societies which carried out the classification and certification of the ship which sank and which have their seat in Genoa. The applicants claimed compensation for the pecuniary and non-pecuniary losses stemming from the Rina companies' civil liability, arguing that the classification and certification operations were the cause of the sinking. The Rina companies contended that the court seised lacks jurisdiction, relying on the principle of immunity from jurisdiction, since the classification and certification operations which they conducted were carried out upon delegation from the Republic of Panama and, therefore, are a manifestation of the sovereign powers of the delegating State. The court seised, raising the question of the jurisdiction of the Italian courts, referred a question for a preliminary ruling to the Court of Justice.

In the first place, the Court considered the interpretation of the concept of 'civil and commercial matters' within the meaning of Article 1(1) of the Brussels I Regulation, in the light of the ship classification and certification activities carried out by the Rina companies upon delegation from and on behalf of the Republic of Panama, in order to ascertain whether the Italian courts have jurisdiction under Article 2(1) of that regulation.[2] The Court, first, recalled that, although certain actions between a public authority and a person governed by private law may **come within the scope of the Brussels I Regulation where the legal proceedings relate to acts performed without exercising public powers (*iure gestionis*), the position is otherwise where the public**

[1] 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). That provision states, inter alia, that that regulation is to apply in civil and commercial matters.
[2] Under that provision, persons domiciled in a Member State are, whatever their nationality, as a rule to be sued in the courts of that Member State.

authority is acting in the exercise of its public powers (*iure imperii*). In that regard, the Court found that it is irrelevant that certain activities were carried out upon delegation from a State: the mere fact that certain powers are delegated by an act of a public authority does not imply that those powers are exercised *iure imperii*. The same is true of the fact that the operations at issue were carried out on behalf of and in the interest of the Republic of Panama, since the fact of acting on behalf of the State does not always imply the exercise of public powers. Furthermore, the fact that certain activities have a public purpose does not, in itself, constitute sufficient evidence to classify them as being carried out *iure imperii*. The Court emphasised therefore that, **in order to determine whether the operations at issue in the main proceedings were carried out in the exercise of public powers, the relevant criterion is the recourse to powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals.**

In that regard, the Court found that the classification and certification operations carried out by the Rina companies consisted solely in establishing whether the vessel examined met the requirements laid down by the applicable legislative provisions and, if so, in issuing the corresponding certificates. The interpretation and choice of the applicable technical requirements were for their part reserved to the authorities of the Republic of Panama. Admittedly, checks of the ship by a classification and certification society may, where appropriate, result in the certificate being withdrawn on the ground that the ship does not comply with those requirements. However, such a withdrawal does not stem from the decision-making power of those societies, which operate within a pre-defined regulatory framework. If, following the withdrawal of a certificate, a ship is no longer able to sail, that is because of the sanction which is imposed by law. Consequently, the Court concluded that, **subject to the checks to be carried out by the referring court, the classification and certification operations carried out by the Rina companies cannot be regarded as being carried out in the exercise of public powers within the meaning of EU law.**

In the second place, the Court examined the possible effect, for the purposes of the applicability of the Brussels I Regulation, of the plea based on the principle of customary international law concerning immunity from jurisdiction. The Court noted that it has already ruled that, in the present state of international law, **the immunity of States from jurisdiction is not absolute**, but is generally recognised where the dispute concerns sovereign acts performed *iure imperii*. By contrast, it **may be excluded if the legal proceedings relate to acts which do not fall within the exercise of public powers.** The immunity from jurisdiction of bodies governed by private law, such as the Rina companies, is not generally recognised as regards classification and certification operations for ships, where they have not been carried out *iure imperii* within the meaning of international law. Consequently, the Court concluded that that principle does not preclude the application of the Brussels I Regulation in a dispute such as that at issue in the main proceedings, where the court seised finds that the classification and certification organisations at issue have not had recourse to public powers, within the meaning of international law.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text of the judgment is published on the CURIA website on the day of delivery.

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