CJEU Rules on Interplay between State Immunity and Brussels I Regulation

On 7 May 2020, the Court of Justice of the European Union (the ***CJEU***) issued [its judgment in *LG and others v. Rina SPA and another* (Case C-641/18)] in which it recalled that the customary international law principle of immunity from jurisdiction did not preclude the application 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 (the ***Brussels I Regulation***)[1] if the defendant, who invokes that principle, does not exercise sovereign public powers.

The case relates to the sinking, in February 2006, of a passenger's ship (under the flag of the Republic of Panama) in the Red Sea. Following that event, the victims of the sinking brought an action for damages, before an Italian court, against the Italian companies that carried out the ship classification and certification operations on behalf of the Republic of Panama. The victims essentially alleged that the sinking of the ship had been caused by these operations.

The Italian companies, however, asserted that the Italian

courts lacked jurisdiction to rule on the matter since the classification and certification operations which they conducted on behalf of Panama were a manifestation of the sovereign powers of that State.

The plaintiffs contested that view and alleged that since the defendants had their seat in Italy and the dispute at issue was of civil nature (within the meaning of Article 1 of the Brussels I Regulation), the Italian courts had jurisdiction pursuant to Article 2(1) of that same Regulation.

Uncertain as to the exact interaction and interplay between the principle of States' immunity from jurisdiction and the Brussels I Regulation, the Italian court referred the matter to the CJEU for a preliminary ruling.

As a general rule (and as also recalled by the CJEU in its judgment (para. 56)), the principle of immunity of States from jurisdiction is not absolute, but is generally recognised where the dispute concerns underlying sovereign acts performed *iure imperii* (*i.e.*, acts that only a sovereign power can take). By contrast, it may be excluded if the legal proceedings relate to acts which do not fall within the exercise of public powers (so-called *iure gestionis*).

In the case at hand, relying on its former case-law, the CJEU first recalled that unless legal proceedings relate to acts performed *iure gestionis*, legal proceedings brought against a State and relating to acts committed in the exercise of public powers fall outside the scope of the Brussels I Regulation (paras 33 and 34).

Although it considered that it was for the Italian domestic court to determine whether the vessel's classification and certification operations carried out by the defendant companies fell within the exercise of the Republic of Panama's public powers, the CJEU, nevertheless, invited the Italian courts to take the following elements into consideration:

– a mere delegation of powers by means of an act of public authority does not imply that those powers are exercised *iure imperii* (para. 39);

– acting on behalf of the State does not always imply the exercise of public powers (para. 40);

– 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*, insofar as they do not entail the exercise of any powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals (para. 41);

– It could be derived from the Montego Bay Convention and the SOLAS Convention (*i.e.*, the UN Convention on the Law of the Sea and the International Convention for the Safety of Life at Sea) that States party to those conventions are the ones responsible for determining the conditions required for ship classification and certification. Accordingly, the role of the Italian companies was limited by the requirements imposed by the Republic of Panama, which retained an important responsibility in the classification and certification process (paras 43 to 48).

In light of those elements, the CJEU concluded that, subject to particular assessments that still had to be made by the Italian courts, the operations carried out by the defendant companies did not normally entail the exercise of public powers and that, therefore, the claim brought against them fell within the scope of the Brussels I Regulation and the Italian Courts had jurisdiction to hear the matter.

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As discussed a couple of weeks ago, another case (*Supreme v.*

SHAPE), currently pending before the CJEU, raises interesting issues relating to the interplay between the Brussels I*bis* Regulation (the successor of the Brussels I Regulation) and the immunity enjoyed by international organisations. It will be very interesting to see how the present case will affect the upcoming CJEU's ruling in *Supreme v. SHAPE*.

[1] Despite the fact that the Brussels I Regulation is no longer in force, the findings of the CJEU in the present case are relevant regarding the application of the currently applicable Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I*bis* Regulation).
