



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-641/18  
LG/ RINA Rina SpA v Ente Registro Italiano Navale

**Advocate General Szpunar proposes that the Court should rule that the victims of the sinking of a ship flying the Panamanian flag can bring an action for damages before the Italian courts against the Italian bodies which classified and certified that ship.**

On 3 February 2006, in the international waters of the Red Sea, more than a thousand people were victims of the sinking of the Panamanian-flagged ship *Al Salam Boccaccio 98*.

In 2013, the survivors and relatives of the deceased victims applied to the Tribunale di Genova (Court of Genoa, Italy), asking it to order Rina SpA and Ente Registro Italiano Navale - bodies based in Genoa (Italy) - to pay compensation for their material and non-material loss. They argue, in particular, that the certification and classification of the ship<sup>1</sup> carried out by those organisations was the cause of the shipwreck.

Rina SpA and Ente Registro Italiano Navale claim to have acted as delegates of the Republic of Panama, a sovereign State, and invoke jurisdictional immunity.

In that context, the Tribunale di Genova asks the Court of Justice whether it must decline to hear the case because of that plea of immunity or whether it must apply the 'Brussels I' regulation<sup>2</sup> and exercise jurisdiction in respect of the place where the body against which the claim is brought has its domicile or principal place of business.

In today's Opinion, Advocate General Maciej Szpunar considers, first of all, that the questions referred for a preliminary ruling are admissible, even if one of the parties pleads immunity, since **the Court is called upon, inter alia, to interpret the 'Brussels I' regulation**<sup>3</sup>.

The Advocate General goes on to recall the case-law of the Court<sup>4</sup> according to which the jurisdictional immunity of States, recognised by international law, is not absolute. That immunity is generally recognised when the dispute concerns acts performed in the exercise of public authority. It is, however, excluded if the case concerns acts which do not fall within the competence of the public authorities. The Advocate General states that **international law does not prevent legislatures from adopting rules of jurisdiction which may be applied to disputes in which**

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<sup>1</sup> **Classification** activities consist of the issue of a class certificate attesting that a ship is built in accordance with the regulations for their class and is maintained in accordance with those regulations. Obtaining such a certificate is a prerequisite for obtaining **statutory certification**, issued by or on behalf of the flag State by an approved organisation. Statutory certification attests that the ship meets the requirements of international conventions on maritime safety and the prevention of marine pollution.

<sup>2</sup> Council Regulation 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 regulation was repealed by the 'Brussels Ia Regulation', that is Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1). However, the Brussels I Regulation continues to apply in the present case.

<sup>3</sup> Case [C-292/05](#), Lechouritou see Press Release No. [15/07](#) and Case [C-154/11](#), Mahamdia see Press Release No. [103/12](#)).

<sup>4</sup> Mahamdia judgment referred to in footnote 3 above.

**one of the parties can rely on jurisdictional immunity. What international law requires is that no jurisdiction should be exercised against such a party against its will.**

The Advocate General notes that the scope of the 'Brussels I' regulation concerns disputes in civil and commercial matters. This excludes, in particular, revenue, customs or administrative matters or the responsibility of a State for acts carried out in the exercise of public powers<sup>5</sup>. Consequently, in principle, actions to obtain compensation for damage fall under the 'Brussels I' regulation. However, **where an act for which liability is invoked constitutes a manifestation of public authority by reason of the exercise of powers that are outside the scope of the rules applicable to relations between private individuals, that act falls outside 'civil and commercial matters' and, therefore, outside the scope of the 'Brussels I' regulation.**

The Advocate General then examines whether the classification and certification of a ship constitutes such a manifestation of public authority. The fact that those operations have been delegated by a State, carried out on behalf and in the interest of a State or carried out in performance of a State's international obligations does not necessarily imply the existence of a manifestation of public authority and therefore does not exclude the application of the 'Brussels I' regulation. The Advocate General notes in particular that the Panamanian administration has delegated activities of a technical nature to the Italian bodies concerned. Consequently, **the classification and certification operations in question cannot be regarded as proceeding from the exercise of public powers**<sup>6</sup>. Consequently, an action for damages against bodies which have carried out such operations falls within the scope of the 'Brussels I' regulation.

Finally, the Advocate General analyses the effect of jurisdictional immunity, within the meaning of international law, on the exercise of that jurisdiction by national courts. **The Advocate General states that the Court has jurisdiction to interpret international law in so far as it may have a bearing on the interpretation of EU law.** Thus, the Advocate General notes that **there is not unequivocally a rule of customary international law** - that is to say, **an actual practice accepted as if it were a binding rule**<sup>7</sup> - which would enable classification and certification bodies such as those in question to rely on the jurisdictional immunity of States in circumstances such as those in the present case.

In the event that the Court does not share his analysis, the Advocate General observes that the provisions of the 'Brussels I' regulation must be interpreted as guaranteeing access to justice<sup>8</sup>, while respecting international law. Jurisdictional immunity constitutes a restriction on access to justice. In general, such a restriction, justified by the objective of promoting good relations between States, is not disproportionate when it reflects generally recognised principles of international law. Since there is no doubt that there is effective access to the Panamanian courts, the right of access to the courts would not, therefore, preclude the Tribunale di Genova from recognising the jurisdictional immunity of Rina SpA and Ente Registro Italiano Navale.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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<sup>5</sup> The latter case, explicitly provided for in the 'Brussels Ia' regulation (footnote 2), was already recognised by the case-law of the Court of Justice when the 'Brussels I' regulation was in force.

<sup>6</sup> The interpretation proposed by the Advocate General is consistent with Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ 2009 L 131, p. 47). That directive, which entered into force after the facts in question and is therefore not applicable in the present case, states in its recital 16 that immunity *'is a prerogative that can only be invoked by Member States as an inseparable right of sovereignty and therefore that cannot be delegated'*.

<sup>7</sup> A rule of customary international law will only exist where a given practice actually exists that is supported by a firm legal view (*opinio juris*), that is to say, where a rule is accepted as law. Directives of European Union, including their 'recitals', contribute to the formation or expression of customary international law.

<sup>8</sup> This right is guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms.

**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 Opinion is published on the CURIA website on the day of delivery.

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