JUDGMENT OF THE COURT (First Chamber)

7 May 2020 (*)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 1(1) — Concepts of ‘civil and commercial matters’ and ‘administrative matters’ — Scope — Activities of ship classification and certification societies — Acta iure imperii and acta iure gestionis — Public powers — Immunity from jurisdiction)

In Case C-641/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale di Genova (District Court, Genoa, Italy), made by decision of 28 September 2018, received at the Court on 12 October 2018, in the proceedings

LG and Others

v

Rina SpA,

Ente Registro Italiano Navale,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta, Vice-President of the Court, acting as Judge of the First Chamber, M. Safjan, L. Bay Larsen and C. Toader (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 18 September 2019,

after considering the observations submitted on behalf of:

– LG and Others, by R. Ambrosio, S. Commodo, S. Bertone, M. Bona, A. Novelli and F. Pocar, avvocati, C. Villacorta Salis, abogado, J.-P. Bellecave, avocat, and N. Taylor, Solicitor,

– Rina SpA and Ente Registro Italiano Navale, by G. Giacomini, F. Siccardi, R. Bassi, M. Campagna, T. Romanengo, F. Ronco, and M. Giacomini, avvocati,

– the French Government, by D. Colas, D. Dubois and E. de Moustier, acting as Agents,

– the European Commission, by M. Heller, S.L. Kalėda and L. Malferrari, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 January 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 1(1) and 2 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), read in the light of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and of recital 16 of 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).

2 The request has been made in proceedings between LG and Others, of the one part, and Rina SpA and Ente Registro Italiano Navale (together 'the Rina companies'), of the other part, concerning compensation by the Rina companies, by way of civil liability, of the pecuniary and non-pecuniary losses sustained by LG and Others as a result of the sinking of the *Al Salam Boccaccio'98* vessel, which occurred between 2 February and 3 February 2006 in the Red Sea.

Legal context

International law

3 The United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982 ('the Montego Bay Convention') came into force on 16 November 1994. It was approved on behalf of the European Community by Council Decision 98/392/EC of 23 March 1998 (OJ 1998 L 179, p. 1).

4 Under Article 90 of that convention, entitled 'Right of navigation', 'every State, … has the right to sail ships flying its flag on the high seas'.

5 Article 91 of that convention, entitled 'Nationality of ships', provides:

'1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly …

2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.'

6 Article 94(1) and (3) to (5) of the Montego Bay Convention provides:

'1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

…

3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:

(a) the construction, equipment and seaworthiness of ships;

…

4. Such measures shall include those necessary to ensure:

(a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;

…

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.'

7 In that context, the International Convention for the Safety of Life at Sea, concluded at London on 1 November 1974 ('the SOLAS Convention'), to which all the Member States are contracting parties, has as its main objective the specification of minimum standards for the construction, equipment and operation of ships, compatible with their safety.

8 Under Regulation 3-1 of Part A-1 of Chapter II-1 of the SOLAS Convention, ships are to be designed, constructed and maintained in compliance with the structural, mechanical and electrical requirements of a classification society which is recognised by the Administration — which, according to the convention, is the Government of the State whose flag the ship is entitled to fly — in accordance with the provisions of Regulation XI/1, or with applicable national standards of the Administration which provide an equivalent level of safety.

9 Regulation 6 of Chapter I the SOLAS Convention states:

'(a) The inspection and survey of ships, so far as regards the enforcement of the provisions of the present regulations and the granting of exemptions therefrom, shall be carried out by officers of the Administration. The Administration may, however, entrust the inspections and surveys either to surveyors nominated for the purpose or to organisations recognised by it.

(b) An Administration nominating surveyors or recognising organisations to conduct inspections and surveys as set forth in paragraph (a) shall as a minimum empower any nominated surveyor or recognised organisation to:

(i) require repairs to a ship;

(ii) carry out inspections and surveys if requested by the appropriate authorities of a port State.

The Administration shall notify the Organisation of the specific responsibilities and conditions of the authority delegated to nominated surveyors or recognised organisations.

(c) When a nominated surveyor or recognised organisation determines that the condition of the ship or its equipment does not correspond substantially with the particulars of the certificate or is such that the ship is not fit to proceed to sea without danger to the ship, or persons on board, such surveyor or organisation shall immediately ensure that corrective action is taken and shall in due course notify the Administration. If such corrective action is not taken the relevant certificate should be withdrawn and the Administration shall be notified immediately; …

(d) In every case, the Administration shall fully guarantee the completeness and efficiency of the inspection and survey, and shall undertake to ensure the necessary arrangements to satisfy this obligation.'

EU law

Regulation No 44/2001

10 Under Article 1(1) of Regulation No 44/2001, 'this Regulation 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'.

11 Article 2(1) of that regulation provides:

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

Directive 2009/15

12 Recital 16 of Directive 2009/15 provides:

‘When a recognised organisation, its inspectors, or its technical staff issue the relevant certificates on behalf of the administration, Member States should consider enabling them, as regards these delegated activities, to be subject to proportionate legal safeguards and judicial protection, including the exercise of appropriate rights of defence, apart from immunity, which is a prerogative that can only be invoked by Member States as an inseparable right of sovereignty and therefore that cannot be delegated.’

13 Article 1 of that directive provides:

‘This Directive establishes measures to be followed by the Member States in their relationship with organisations entrusted with the inspection, survey and certification of ships for compliance with the international conventions on safety at sea and prevention of marine pollution, while furthering the objective of freedom to provide services. This includes the development and implementation of safety requirements for hull, machinery and electrical and control installations of ships falling under the scope of the international conventions.’

The dispute in the main proceedings and the question referred for a preliminary ruling

14 LG and Others — relatives of the victims and survivors of the sinking of the *Al Salam Boccaccio’98* vessel in the Red Sea on 2 and 3 February 2006, in which more than 1 000 people lost their lives — brought an action before the Tribunale di Genova (District Court, Genoa, Italy) against the Rina companies — ship classification and certification societies — whose seat is in Genoa.

15 LG and Others claim compensation for the pecuniary and non-pecuniary losses stemming from the Rina companies’ civil liability, arguing that the classification and certification operations for the *Al Salam Boccaccio’98* vessel, carried out by the Rina companies under a contract concluded with the Republic of Panama, for the purposes of obtaining that State’s flag for that vessel, were the cause of that sinking.

16 The Rina companies contend that the referring court lacks jurisdiction, relying on the international-law principle of immunity from jurisdiction of foreign States. In particular, according to those companies, 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.

17 According to LG and Others, by contrast, given that the Rina companies have their seat in Italy and the dispute at issue in the main proceedings is civil in nature, within the meaning of Article 1 of Regulation No 44/2001, the Italian courts have jurisdiction under Article 2(1) of that regulation. In addition, LG and Others submit that the plea of immunity from jurisdiction, relied on by the Rina companies, does not cover activities that are governed by non-discretionary technical rules which are, in any event, unrelated to the political decisions and prerogatives of a State.

18 The referring court raises the question of the jurisdiction of the Italian courts in so far as, while it is common ground that the Rina companies have their seat in Italy, it is claimed that they acted upon delegation from the Republic of Panama.

19 In that regard, the referring court refers, in its request for a preliminary ruling, to the case-law of the Corte costituzionale (Constitutional Court, Italy) and of the Corte Suprema di Cassazione

(Supreme Court of Cassation, Italy) concerning immunity from jurisdiction. In accordance with the case-law of those supreme courts, recognition of immunity from jurisdiction is precluded only in respect of the acts of foreign States consisting in war crimes and crimes against humanity or where such recognition undermines the principle of judicial protection.

20 In those circumstances the Tribunale di Genova (District Court, Genoa) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Are [Articles 1(1) and 2(1) of Regulation No 44/2001] to be interpreted — including in the light of Article 47 of the Charter, Article 6(1) of the [European Convention for the Protection of Fundamental Rights and Freedoms, signed in Rome on 4 November 1950 (‘ECHR’)] and recital 16 of Directive 2009/15 — as preventing a court of a Member State, in an action in tort, delict or quasi-delict in which compensation is sought for death and personal injury caused by the sinking of a passenger ferry, from holding that it has no jurisdiction and from recognising the jurisdictional immunity of private entities and legal persons established in that Member State which carry out classification and/or certification activities in so far as they carry out those activities on behalf of a [third] State?’

Consideration of the question referred

Admissibility

21 In their written observations, the Rina companies submit that the request for a preliminary ruling is inadmissible. In that regard, they submit, in essence, that the interpretation of the provisions of Regulation No 44/2001 is irrelevant for the purposes of the decision on the plea of immunity from jurisdiction, raised in the dispute in the main proceedings, on which the referring court ought, it is claimed, to have ruled before making a reference to the Court for a preliminary ruling, in order to determine whether it had jurisdiction. Furthermore, according to the Rina companies, Regulation No 44/2001 is not applicable *ratione materiae* to the dispute in the main proceedings, since the present case concerns a claim based on an act of public authority, which is sufficient for the action to be excluded from the scope of that regulation.

22 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 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 (judgment of 19 December 2019, *Airbnb Ireland*, C-390/18, EU:C:2019:1112, paragraph 29).

23 In the present case, it is apparent from the request for a preliminary ruling that there is a genuine and direct link between Article 1(1) of Regulation No 44/2001, the interpretation of which is sought by the referring court, and the dispute in the main proceedings. That interpretation is necessary in order to establish, in accordance with Article 2(1) of that regulation, the jurisdiction of that court to rule on that dispute.

24 The objection alleging the inapplicability of that regulation to the case in the main action does not relate to the admissibility of the request for a preliminary ruling, but concerns the substance of the question raised (see, to that effect, judgment of 4 July 2019, *Kirschstein*, C-393/17, EU:C:2019:563, paragraph 28).

25 In addition, it must be borne in mind that Regulation No 44/2001 is applicable not only where the dispute concerns several Member States, but also where it concerns a single Member State if there

is an international element because of the involvement of a third State. That situation is such as to raise questions relating to the determination of international jurisdiction (see, to that effect, judgments of 1 March 2005, *Owusu*, C-281/02, EU:C:2005:120, paragraphs 24 to 27, and of 17 March 2016, *Taser International*, C-175/15, EU:C:2016:176, paragraph 20).

26 It follows that the question referred for a preliminary ruling is admissible.

Substance

27 By the question, the referring court asks, in essence, whether Article 1(1) of Regulation No 44/2001 must be interpreted as meaning 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 that provision, and, therefore, within the scope of that regulation and, in such a case, whether the principle of customary international law concerning immunity from jurisdiction precludes the national court seised from exercising the jurisdiction provided for by that regulation.

28 In that regard, in order to provide a useful answer to the referring court, it is necessary, first, to establish the interpretation of the concepts of 'civil and commercial matters' and 'administrative matters', within the meaning of Article 1(1) of Regulation No 44/2001, in the light of the classification and certification activities carried out by the Rina companies, in order to ascertain whether the Italian courts have jurisdiction under Article 2(1) of that regulation and, secondly, to examine the consequences of any recognition of immunity from jurisdiction to bodies governed by private law, such as the Rina companies, for the implementation of that regulation and in particular for the exercise of any jurisdiction of the referring court pursuant to Article 2(1) of Regulation No 44/2001.

29 Under Article 1(1) of Regulation No 44/2001, the scope of that regulation is limited to the concept of 'civil and commercial matters'. It does not extend, in particular, to revenue, customs or administrative matters.

30 It must be recalled, first, that, according to settled case-law, in order to ensure, as far as possible, that the rights and obligations which derive from Regulation No 44/2001 for the Member States and the persons to whom it applies are equal and uniform, 'civil and commercial matters' should not be interpreted as a mere reference to the internal law of one or other of the States concerned. That concept must be regarded as being an independent concept to be interpreted by referring, first, to the objectives and scheme of that regulation and, secondly, to the general principles which stem from the corpus of the national legal systems (judgment of 23 October 2014 *flyLAL-Lithuanian Airlines*, C-302/13, EU:C:2014:2319, paragraph 24).

31 Secondly, according to settled case-law, as stated inter alia in recital 7 of Regulation No 44/2001, the intention of the EU legislature was to provide for a broad definition of the concept of 'civil and commercial matters' in Article 1(1) of that regulation, and consequently to provide that the regulation should be broad in its scope (judgment of 6 February 2019, *NK*, C-535/17, EU:C:2019:96, paragraph 25 and the case-law cited).

32 Thirdly, it should be noted that, in order to determine whether a matter falls within the scope of Regulation No 44/2001, the elements which characterise the nature of the legal relationships between the parties to the dispute or the subject matter thereof must be examined (judgment of 23 October 2014, *flyLAL-Lithuanian Airlines*, C-302/13, EU:C:2014:2319, paragraph 26).

33 The Court has thus held that, although certain actions between a public authority and a person governed by private law may come within the scope of Regulation No 44/2001 where the legal proceedings relate to acts performed *iure gestionis*, the position is otherwise where the public authority is acting in the exercise of its public powers (see, to that effect, judgment of 23 October 2014, *flyLAL-Lithuanian Airlines*, C-302/13, EU:C:2014:2319, paragraph 30 and the case-law

cited).

34 The exercise of public powers by one of the parties to the case, because it exercises powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals, excludes such a case from 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 44/2001 (judgment of 28 April 2009, *Apostolides*, C-420/07, EU:C:2009:271, paragraph 44 and the case-law cited).

35 In order to determine whether a dispute concerns acts committed in the exercise of public powers, it is necessary to examine the basis and the detailed rules governing the bringing of the action (see, to that effect, judgments of 11 April 2013, *Sapir and Others*, C-645/11, EU:C:2013:228, paragraph 34 and the case-law cited, and of 12 September 2013, *Sunico and Others*, C-49/12, EU:C:2013:545, paragraph 35 and the case-law cited).

36 In that regard, as is apparent from the documents before the Court, the action brought by LG and Others is based on Articles 2043, 2049, 2050 and 2055 of the Italian Civil Code which govern non-contractual liability and Articles 1218 and 1228 of that code relating to contractual liability for breach of security obligations.

37 In addition, it must be determined whether the ship classification and certification operations in question, carried out by the Rina companies upon delegation from and on behalf of the Republic of Panama, fall, in the light of their content, within the exercise of public powers.

38 In the context of the procedure provided for in Article 267 TFEU, it is for the referring court, not the Court of Justice, to assign a legal classification to those operations in that regard. However, in order to provide a useful answer to the referring court, the following points must be noted.

39 In that regard, as the Advocate General observed, in essence, in points 67 to 70 of his Opinion, in circumstances such as those at issue in the main proceedings, it is irrelevant that certain activities were carried out upon delegation from a State, since the Court has held, in that regard, that 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* (see, to that effect, judgment of 9 March 2017, *Pula Parking*, C-551/15, EU:C:2017:193, paragraph 35).

40 Such a conclusion is not disproved by the fact that those classification and certification operations were carried out by the Rina companies on behalf of and in the interest of the Republic of Panama. The Court has already ruled that the fact of acting on behalf of the State does not always imply the exercise of public powers (see, to that effect, judgment of 21 April 1993, *Sonntag*, C-172/91, EU:C:1993:144, paragraph 21).

41 As LG and Others note in their observations, 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*, in so far 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 (see, to that effect, judgment of 21 April 1993, *Sonntag*, C-172/91, EU:C:1993:144, paragraph 22). Although the Rina companies' activity is intended to ensure the safety of a ship's passengers, that does not mean that their activity stems from the exercise of public powers.

42 Similarly, the fact that, having regard to their objective, some acts are carried out in the interest of a State does not, in itself, result in the operations at issue in the main proceedings being carried out in the exercise of public powers, within the meaning of the case-law cited in paragraph 34 above, since the relevant criterion is the recourse to powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals.

43 In order to determine whether that is the case, it must be pointed out that the classification and certification activities are governed by international conventions on maritime safety and the

prevention of marine pollution, such as the Montego Bay Convention and the SOLAS Convention. More specifically, the classification of ships consists in the issuance of a certificate from a classification society chosen by the shipowner. That certificate certifies that the ship is designed and built in accordance with the class rules laid down by that society in accordance with the principles provided for by the International Maritime Organisation (IMO). Obtaining a class certificate is a prerequisite for statutory certification, which takes place after the shipowner has chosen the flag State.

44 Certification consists in the issuance of a statutory certificate by or on behalf of the flag State by one of the organisations recognised by that State to carry out inspections and in the issuance of certain documents and certificates, in accordance with the SOLAS Convention. Classification and certification activities are often carried out by the same company.

45 According to the documents before the Court, the classification and certification operations were carried out by the Rina companies for remuneration under a commercial contract governed by private law, concluded directly with the shipowner of the *Al Salam Boccaccio'98*, according to which the services provided by the Rina companies consisted solely in establishing whether the vessel examined met the requirements laid down by the applicable measures and, if so, in issuing the corresponding certificates. In addition, it is apparent from the information before the Court that the interpretation and choice of the applicable technical requirements were reserved to the authorities of the Republic of Panama.

46 In that regard, it follows from Articles 91 and 94(3) and (5) of the Montego Bay Convention, which the Court has jurisdiction to interpret (see, to that effect, judgments of 24 June 2008, *Commune de Mesquer*, C-188/07, EU:C:2008:359, paragraph 85, and of 11 July 2018, *Bosphorus Queen Shipping*, C-15/17, EU:C:2018:557, paragraph 44), that it is for States to fix the conditions to which ships are subject for the purposes of obtaining a flag and to take the measures necessary to ensure safety at sea, in particular as regards the construction and equipment of the ship and its seaworthiness.

47 Accordingly, the role of recognised organisations, such as the Rina companies, consists in conducting checks of the ship in accordance with the requirements laid down by the applicable legislative provisions, which may, where appropriate, result in the certificate being withdrawn on the ground that the ship does not comply with those requirements. However, as the Advocate General stated in point 95 of his Opinion, such a withdrawal does not stem from the decision-making power of those recognised organisations, 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, as the Rina companies admitted at the hearing, is imposed by law.

48 Furthermore, it follows from Regulation 6(c) and (d) of Chapter I of the SOLAS Convention, that where the ship does not comply with the requirements, the recognised organisation is to notify the authorities of the State concerned, which remain responsible and must fully guarantee the completeness and efficiency of the inspection and survey, and must undertake to ensure the necessary arrangements.

49 It follows from the foregoing that, subject to the checks to be carried out by the referring court, the classification and certification operations, such as those carried out on the vessel *Al Salam Boccaccio'98* by the Rina companies, upon delegation from and on behalf of the Republic of Panama, cannot be regarded as being carried out in the exercise of public powers within the meaning of EU law, with the result that an action for damages in respect of those operations falls within the concept of 'civil matters and commercial matters', within the meaning of Article 1(1) of Regulation No 44/2001, and falls within the scope of that regulation.

50 Moreover, in the context of a broader systematic interpretation, it must be borne in mind that, according to the case-law of the Court on freedom of establishment and the freedom to provide

services, certification activities carried out by companies classified as certification bodies do not fall within the exception provided for in Article 51 TFEU, because those companies are commercial undertakings performing their activities in conditions of competition and do not have any power to make decisions connected with the exercise of public powers (see, to that effect, judgment of 16 June 2015, *Rina Services and Others*, C-593/13, EU:C:2015:399, paragraphs 16 to 21).

51 The Court has excluded from the exception relating to the exercise of official authority, within the meaning of Article 51 TFEU, the activities of bodies governed by private law tasked with checking and certifying that undertakings carrying out public works have complied with the conditions required by the law (see to that effect, judgment of 12 December 2013, *SOA Nazionale Costruttori*, C-327/12, EU:C:2013:827, paragraph 50).

52 In particular, the checks, by those companies, of the technical and financial capacity of the undertakings subject to certification and of the contents of the declarations, certificates and documents presented by the persons to whom the certification is issued cannot be considered as an activity within the scope of the decision-making independence inherent in the exercise of public authority powers, since those checks, carried out under direct State supervision, are regulated entirely by national legislation (see, to that effect, judgment of 12 December 2013, *SOA Nazionale Costruttori*, C-327/12, EU:C:2013:827, paragraph 54, and, by analogy, judgments of 22 October 2009, *Commissio*n v *Portugal*, C-438/08, EU:C:2009:651, paragraph 41, and of 15 October 2015, *Grupo Itevelesa and Others*, C-168/14, EU:C:2015:685, paragraph 56).

53 The referring court has expressed uncertainty regarding the effect, for the purposes of the applicability of Regulation No 44/2001 in the dispute in the main proceedings, of the plea based on the principle of customary international law concerning immunity from jurisdiction, relied on by the Rina companies, in order to determine whether, in recognising that immunity on account of the exercise of classification and certification activities by those companies, the national court seised may decline jurisdiction in the case.

54 In that regard, it must be borne in mind that the rules which constitute an expression of customary international law are binding, as such, upon the EU institutions and form part of the EU legal order (see, to that effect, judgments of 16 June 1998, *Racke*, C-162/96, EU:C:1998:293, paragraph 46; of 25 February 2010, *Brita*, C-386/08, EU:C:2010:91, paragraph 42; and of 23 January 2014, *Manzi and Compagnia Naviera Orchestra*, C-537/11, EU:C:2014:19, paragraph 39).

55 However, a national court implementing EU law in applying Regulation No 44/2001 must comply with the requirements flowing from Article 47 of the Charter (judgment of 25 May 2016, *Meroni*, C-559/14, EU:C:2016:349, paragraph 44). Consequently, in the present case, the referring court must satisfy itself that, if it upheld the plea relating to immunity from jurisdiction, LG and Others would not be deprived of their right of access to the courts, which is one of the elements of the right to effective judicial protection in Article 47 of the Charter.

56 It must be pointed out that the Court has held that the immunity of States from jurisdiction is enshrined in international law and is based on the principle *par in parem non habet imperium*, as a State cannot be subjected to the jurisdiction of another State. However, in the present state of international law, that immunity 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 (see, to that effect, judgment of 19 July 2012, *Mahamdia*, C-154/11, EU:C:2012:491, paragraphs 54 and 55).

57 In the present case, as the Advocate General stated in points 108 to 128 of his Opinion, 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.

58 Accordingly, it must be held that the principle of customary international law concerning immunity

from jurisdiction does not preclude the application of Regulation No 44/2001 in a dispute relating to an action for damages against bodies governed by private law, such as the Rina companies, on account of the classification and certification activities carried out by them, upon delegation from and on behalf of a third State, where the court seised finds that such bodies have not had recourse to public powers, within the meaning of international law.

59 Furthermore, although it is common ground that Directive 2009/15 is not applicable to the dispute in the main proceedings, since it concerns exclusively the Member States, recital 16 thereof — which appears in the question referred for a preliminary ruling by the referring court — bears out the EU legislature's intention to give a limited scope to its interpretation of the customary international law principle of immunity from jurisdiction with regard to classification and certification of ships. That recital states that when a recognised organisation, its inspectors, or its technical staff issue the relevant certificates on behalf of the administration, Member States should consider enabling them, as regards those delegated activities, to be subject to proportionate legal safeguards and judicial protection, including the exercise of appropriate rights of defence, apart from immunity, which is a prerogative that can only be invoked by Member States as an inseparable right of sovereignty and therefore that cannot be delegated.

60 It follows from all the foregoing considerations that the answer to the question referred is that Article 1(1) of Regulation No 44/2001 must be interpreted as meaning 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 that provision, 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, which it is for the referring court to determine. 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.

Costs

61 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (First Chamber) hereby rules:

Article 1(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 must be interpreted as meaning 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 that provision, 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, which it is for the referring court to determine. 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.

[Signatures]

* Language of the case: Italian.