Case C-292/05

Irini Lechouritou and Others

v

Dimosio tis Omospondiakis Dimokratias tis Germanias

(Reference for a preliminary ruling from the Efetio Patron)

(Brussels Convention — First sentence of the first paragraph of Article 1 — Scope — Civil and commercial matters — Meaning — Action for compensation brought in a Contracting State, by the successors of the victims of war massacres, against another Contracting State on account of acts perpetrated by its armed forces)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 8 November 2006 . . . . . I - 1521

Judgment of the Court (Second Chamber), 15 February 2007 . . . . . I - 1540

Summary of the Judgment

Convention on Jurisdiction and the Enforcement of Judgments — Scope — Civil and commercial matters — Meaning of 'civil and commercial matters'

(Convention of 27 September 1968, Art. 1, first para., first sentence)

On a proper construction of the first sentence of the first paragraph of Article 1 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the 1978, 1982 and 1989 Accession Conventions, 'civil matters' within the meaning of that provision does not cover a legal action brought by natural persons in a Contracting State against another Contracting State for compensation in respect of the loss or damage suffered by the successors of the victims of acts perpetrated by armed forces in the course of warfare in the territory of the first State.

The term 'Civil and commercial matters' does not cover disputes resulting from the exercise of public powers by one of the parties to the case, as it exercises powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals and there is all the more reason for such an assessment as regards a legal action for compensation deriving from operations conducted by armed forces, as such operations are one of the characteristic emanations of State sovereignty, in particular inasmuch as they are decided upon in a unilateral and binding manner by the competent public authorities and appear as inextricably linked to States' foreign and defence policy.

The question as to whether or not the acts carried out in the exercise of public powers that constitute the basis for such proceedings are lawful concerns the nature of those acts, but not the field within which they fall. Since that field as such must be regarded as not falling within the scope of the Convention, the unlawfulness of such acts cannot justify a different interpretation.

(see paras 34-37, 41-44, operative part)