

ABS '98 Shipwreck and Case C-641/18: the Advocate General's Denial of Jurisdictional Immunity to Private Entities Performing Classification and/or Certification Activities on Behalf of a State

A team of lawyers, including the PEOPIL members Marco Bona, Jean-Pierre Bellecave and Carlos Villacorta-Salis, brought a multi-party action, involving hundreds of claimants, before the Tribunale of Genoa against Rina S.p.A and Ente Registro Italiano Navale, as companies that carried out classification and certification activities for Al Salam Boccaccio '98, a ship sailing under the flag of the Republic of Panama, that sank in 2006 on the Red Sea causing the loss of more than a thousand lives.



Both Rina S.p.A and Ente Registro Italiano Navale challenged Italian jurisdiction on the ground of jurisdictional immunity, this by alleging that certification activities had been performed as “registered organization” on behalf of the State of Panama. This defence was opposed by the above lawyers on several grounds including the breach of customary international law and the interpretation of Article 1 and 2 of Regulation No. 44/2001.

The Italian Court, following a motion by the victims’ lawyers, lodged a request for a preliminary ruling with reference to the interpretation of the Articles 1(1) and 2(1) of Regulation No 44/2001 — particularly in the light of Article 47 of the Charter of Fundamental Rights of the European Union, Article 6(1) of the European Convention on Human Rights and recital 16 of Directive 2009/15/EC — therefore the acknowledgement of jurisdictional immunity to private entities and legal persons that perform classification and/or certification

activities on behalf of a non-EU State, in a dispute about liability for negligent conduct and compensation for damages caused by the shipwreck (Case C-641/18).

Prof. Fausto Pocar assisted the claimants' lawyers in the proceedings before the Court of Justice.

The Advocate General Maciej Szpunar delivered his opinion on the 14th January 2020 recognizing the right of the relatives of the victims and the survivors of the sinking of the Al Salam Boccaccio '98, to have their claims ascertained before the Italian jurisdiction. In his view, the principle of customary international law concerning the jurisdictional immunity of States does not preclude the application of Regulation No. 44/2001 in proceedings relating to “*action[s] for damages brought against private-law bodies in respect of classification and certification activities carried out by those bodies as delegates of a third State, on behalf of that State and in its interests¹*”, in reason that such activities fall within the concept of “*civil and commercial matters*”.

Moreover, the Advocate General concluded that there is not any customary international law supporting jurisdictional immunity of classification and certification companies.

¹ Case C-641/2018, Opinion Advocate General, in *Eur-Lex: EU Law*.