

Request for a preliminary ruling from the Trgovački sud u Zagrebu (Croatia) lodged on 28 March 2019 — PARKING d.o.o. v SAWAL d.o.o.

(Case C-267/19)

(2019/C 263/30)

Language of the case: Croatian

Referring court

Trgovački sud u Zagrebu

Parties to the main proceedings

Applicant: PARKING d.o.o.

Defendant: SAWAL d.o.o.

Questions referred

1. Is a provision of national law, namely Article 1 of the Ovršni zakon (Law on enforcement) (published in the Narodne novine No 112/12, 25/13, 93/14, 55/16 and 73/17), which gives notaries the power to enforce the recovery of debts based on an authentic document by issuing a writ of execution, as an enforcement order, without the express agreement of the debtor who is a legal person established in the Republic of Croatia, compatible with Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 18 of the Treaty on the Functioning of the European Union, in the light of the judgments of the Court of Justice of the European Union in Cases C-484/15 and C-551/15?
2. Can the interpretation given in the Court's judgments of 9 March 2017, *Zulfikarpašić* (C-484/15, EU:C:2017:199) and *Pula Parking* (C-551/15, EU:C:2017:193), be applied to Case Povrv-1614/2018, described above, brought before the referring court, and, specifically, is Regulation No 1215/2012 to be interpreted as meaning that, in Croatia, notaries, acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an 'authentic document', in which the parties against whom enforcement is sought are legal persons established in other EU Member States, do not fall within the concept of 'court' within the meaning of that regulation?

Request for a preliminary ruling from the Visoki trgovački sud Republike Hrvatske (Croatia) lodged on 11 April 2019 — Obala i lučice d.o.o. v NLB Leasing d.o.o.

(Case C-307/19)

(2019/C 263/31)

Language of the case: Croatian

Referring court

Visoki trgovački sud Republike Hrvatske

Parties to the main proceedings

Appellant: Obala i lučice d.o.o.

Respondent: NLB Leasing d.o.o.

Questions referred

1. Are notaries authorised to effect service of documents under Regulation (EC) No 1393/2007 ⁽¹⁾ of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters when they serve notice of their decisions in cases in which Regulation No 1215/2012 ⁽²⁾ does not apply, bearing in mind that, in Croatia, notaries acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an 'authentic document' do not fall within the concept of 'court' within the meaning of Regulation No 1215/2012? In other words, given that notaries do not fall within the concept of 'court' for the purposes of Regulation No 1215/2012, are they able, when acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an 'authentic document', to apply the rules governing service of documents established in Regulation (EC) No 1393/2007?
2. Can parking in the street and on the public highway, where the right to collect payment is conferred by the *Zakon o sigurnosti prometa na cestama* (Law on Road Safety) and the legislation governing the performance of municipal activities as public authority activities, be considered a civil matter within the meaning of 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 (recast), which governs the question of the jurisdiction of the courts and the recognition and enforcement of judgments in civil and commercial matters, especially having regard to the fact that, where a vehicle is found without a parking ticket or with an invalid ticket, it is immediately subject to a requirement to pay for a daily ticket, as though it had been parked for the whole day, regardless of the precise length of time for which it was parked, meaning that this daily parking charge has a punitive effect, and that in some Member States this type of parking constitutes a traffic offence?
3. In court proceedings of the type referred to above concerning parking in the street and on the public highway, where the right to collect payment is conferred by the Law on Road Safety and the legislation governing the performance of municipal activities as public authority activities, can the courts effect service of a document on the defendants in another Member State under Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters?

If, based on the above questions, this type of parking is ruled to be a civil matter, the following further questions are referred:

4. In the present case, there is a presumption that a contract is concluded in respect of the aforesaid on-street parking in a space designated by horizontal and/or vertical markings; in other words, by parking there one is deemed to enter into a contract, and if one fails to pay the correct hourly parking charge one has to pay for a daily ticket. The question is therefore raised as to whether that presumption, that parking gives rise to a contract and entails consent to pay for a daily ticket if one does not buy a ticket in accordance with the hourly parking tariff or if the parking period on the ticket has expired, is contrary to the basic stipulations on the provision of services in Article 56 of the Treaty on the Functioning of the European Union and to the other provisions in the *EU acquis*.
5. In the present case the parking took place in Zadar, Croatia, and there is therefore a connection between that contract and the Croatian courts. But does this parking constitute a 'service' within the meaning of Article 7(1) of Regulation (EU) No 1215/2012, bearing in mind that the concept of service implies that the party who provides the service carries out a particular activity, that is, that the said party carries out that particular activity in return for remuneration. The question is therefore whether the activity carried out by the appellant is sufficient for it to be considered a service. If the Croatian courts do not have special jurisdiction under Article 7(1) of Regulation (EU) No 1215/2012, jurisdiction to hear the case would lie with the court of the respondent's domicile.
6. Can parking in the street and on the public highway, where the right to collect payment is conferred by the Law on Road Safety and the legislation governing the performance of municipal activities as public authority activities, and charges are levied only during a specified period during the day, be considered a tenancy agreement for immovable property under Article 24(1) of Regulation (EU) No 1215/2012?

7. If the aforementioned presumption that the parking entails the conclusion of a contract (fourth question referred) cannot be applied in this case, can this type of parking, where authority to collect parking charges is conferred by the Law on Road Safety and a daily ticket must be purchased if a ticket for the parking period is not purchased in advance or if the parking ticket has expired, be deemed to constitute a matter relating to tort, delict or quasi-delict within the meaning of Article 7(2) of Regulation (EU) No 1215/2012?
8. In the present case, the parking took place before Croatia joined the European Union, specifically at 13.02 on 30 June 2012. Therefore, the question is asked whether the regulations governing applicable law, namely Regulation No 593/2008 ⁽³⁾ or Regulation No 864/2007, ⁽⁴⁾ apply in the present case, having regard to their temporal validity.

If the Court of Justice of the European Union has jurisdiction to provide a response on the application of the material law, the following question is referred:

9. Is the presumption that this type of parking gives rise to a contract and entails consent to pay for a daily ticket if one does not pay the hourly parking charges or if the ticket expires, contrary to the basic stipulations on the provision of services in Article 56 TFEU and to the other provisions of the *acquis*, irrespective of whether the owner of the vehicle is a natural or a legal person? In other words, for the purposes of determining the material law, can the provisions of Article 4 of Regulation No 593/2008 apply in this case (given that there is no evidence in the proceedings to show that the parties came to an agreement on the applicable law)?
 - If a contract is held to exist, would it be a contract for the provision of services in the present case, that is to say, can the parking contract be considered a service within the meaning of Article 4(1)(b) of Regulation No 593/2008?
 - In the alternative, could the parking be considered to constitute a tenancy agreement in accordance with Article 4(1)(c) of Regulation No 593/2008?
 - In the alternative, if the parking comes under the provisions of Article 4(2) of Regulation No 593/2008, the question arises as to what constitutes the characteristic performance in the present case, bearing in mind that, in essence, the appellant merely marks the parking area on the roadway and collects parking charges, while the respondent parks and pays for the parking. In practice, if the characteristic performance is considered to be that of the appellant, Croatian law would apply, whereas if the characteristic performance is that of the respondent, Slovenian law would apply. However, given that in this case the right to collect parking charges is regulated by Croatian law, with which, therefore, the contract is more closely connected, can the provisions of Article 4([3]) of Regulation No 593/2008 nevertheless also apply?
 - If the case is considered to involve a non-contractual obligation within the terms of Regulation No 864/2007, could this non-contractual obligation be considered to constitute damage, meaning that the applicable law would be determined in accordance with Article 4(1) of Regulation No 864/2007?
 - In the alternative, could this type of parking be considered to constitute unjust enrichment, meaning that the applicable law would be determined in accordance with Article 10(1) of Regulation No 864/2007?
 - In the alternative, could this type of parking be considered to constitute *negotiorum gestio*, in which case the applicable law would be determined in accordance with Article 11(1) of Regulation No 864/2007?
 - In the alternative, could this type of parking be considered to constitute liability on the part of the respondent for *culpa in contrahendo*, in which case the applicable law would be determined in accordance with Article 12(1) of Regulation No 864/2007?

⁽¹⁾ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).

⁽²⁾ 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).

⁽³⁾ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6).

⁽⁴⁾ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40).