



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

7 May 2020*

(Reference for a preliminary ruling – Regulation (EU) No 1215/2012 – Judicial cooperation in civil matters – Notaries acting in enforcement proceedings based on an authentic document – Non-adversarial proceedings – Principle of non-discrimination – Article 18 TFEU – Right to a fair trial – Article 47 of the Charter of Fundamental Rights of the European Union)

In Joined Cases C-267/19 and C-323/19,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Trgovački sud u Zagrebu (Commercial Court, Zagreb, Croatia), made by decisions of 20 March 2019 (C-267/19) and of 8 April 2019 (C-323/19), received at the Court on 28 March and 18 April 2019 respectively, in the proceedings

Parking d.o.o.

v

Sawal d.o.o. (C-267/19),

and

Interplastics s.r.o.

v

Letifico d.o.o. (C-323/19),

THE COURT (Sixth Chamber),

composed of M. Safjan, President of the Chamber, C. Toader (Rapporteur) and N. Jääskinen, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- PARKING d.o.o., by M. Kuzmanović, odvjetnik,
- Interplastics s.r.o., by M. Praljak, odvjetnik,

* Language of the cases: Croatian.

- the Croatian Government, by G. Vidović Mesarek, acting as Agent,
 - the European Commission, by M. Wilderspin and M. Mataija, acting as Agents,
- having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 The present requests for a preliminary ruling concern the interpretation of Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), of Article 18 TFEU, 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 (OJ 2012 L 351, p. 1), and of the judgments of 9 March 2017, *Zulfikarpašić* (C-484/15, EU:C:2017:199), and *Pula Parking* (C-551/15, EU:C:2017:193).
- 2 The requests have been made in the course of two sets of proceedings between, first, Parking d.o.o. and Sawal d.o.o. and, secondly, Interplastics s.r.o. and Letifico d.o.o., concerning applications for the recovery of unpaid debts.

Legal context

The ECHR

- 3 Article 6 ECHR, entitled 'Right to a fair trial', provides, in its paragraph 1:

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...'

EU law

Regulation (EC) No 805/2004

- 4 Article 3(1) of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ 2004 L 143, p. 15) provides:

'This Regulation shall apply to judgments, court settlements and authentic instruments on uncontested claims.

A claim shall be regarded as uncontested if:

- (a) the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or
- (b) the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings; or

- (c) the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin; or
- (d) the debtor has expressly agreed to it in an authentic instrument.’

Regulation (EU) No 1215/2012

5 Recitals 4 and 10 of Regulation No 1215/2012 state:

‘(4) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters, and to ensure rapid and simple recognition and enforcement of judgments given in a Member State, are essential.

...

(10) The scope of this Regulation should cover all the main civil and commercial matters apart from certain well-defined matters ...’

6 Under Article 1(1) of that regulation:

‘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 or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).’

7 In Article 2(a) of that regulation, the term ‘judgment’ is defined as ‘any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court’.

8 Article 3 of that regulation provides:

‘For the purposes of this Regulation, “court” includes the following authorities to the extent that they have jurisdiction in matters falling within the scope of this Regulation:

- (a) in Hungary, in summary proceedings concerning orders to pay (*fizetési meghagyásos eljárás*), the notary (*közjegyző*);
- (b) in Sweden, in summary proceedings concerning orders to pay (*betalningsföreläggande*) and assistance (*handräckning*), the Enforcement Authority (*Kronofogdemyndigheten*).’

Croatian law

The Law on enforcement

9 Article 1 of the Ovršni zakon (Law on Enforcement, *Narodne novine*, br. 112/12, 25/13, 93/14, 55/16 and 73/17) confers on 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 party against whom enforcement is sought.

10 Under Article 57(1) of the Law on Enforcement, the party against whom enforcement is sought may lodge objections against writs of execution based on an authentic document within a period of eight days and, in disputes concerning bills of exchange and cheques, within a period of three days, unless the decision on the costs of the proceedings alone is contested.

11 Article 58(3) of that law provides:

‘Where the writ of execution is contested in its entirety or only in respect of the part ordering the party against whom enforcement is sought to pay the debt, the court hearing the objection shall set aside the writ of execution in so far as it orders enforcement and shall annul the measures taken, the procedure continuing according to the rules applicable to cases of opposition to an order to pay, and if it did not have jurisdiction *ratione loci* to do so, it shall bring proceedings before the court having jurisdiction for the matter.’

Code of Civil Procedure

12 Article 446 of the Zakon o parničnom postupku (Code of Civil Procedure, *Narodne novine*, br. 53/91, 91/92, 112/99, 117/03, 84/08, 123/08, 57/11, 148/11, 25/13, 70/19), concerning orders for payment, is worded as follows:

‘Where the request set out in the application concerns a claim for sums of money that have fallen due and that claim is established by an authentic document attached to the original of the application or a certified copy of that application, the court shall issue the defendant with an order to satisfy that request [order for payment].

In the application requesting that an order for payment be issued, the applicant must set out the reasons which prompted it to request that this be issued rather than an enforcement order based on an authentic document. If the court considers that the reasons given by the applicant do not justify its interest in obtaining an order for payment, it shall dismiss the action as inadmissible.

The applicant shall be deemed to have an interest in an order for payment being issued where the defendant is established outside Croatia or where it has previously contested the claim contained in the authentic document.

The court shall issue an order for payment where, although the applicant has not requested such an order in the application, it satisfies all of the conditions for an order for payment to be issued.’

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-267/19

13 On 25 April 2016, Parking, a company established in Croatia, brought enforcement proceedings against Sawal, a company incorporated under Slovenian law, before a notary practising in Croatia. Those proceedings were based on an ‘authentic document’, namely a certified statement of account attesting to the existence of a debt.

14 On 23 May 2016, the notary issued a writ of execution by which he ordered Sawal to settle the debt claimed in the amount of Croatian kuna (HRK) 100 (approximately EUR 15), plus default interest and the costs of the proceedings in the amount of HRK 1 741.25 (approximately EUR 260), within a period of eight days. The application for enforcement and the writ of execution were notified to Sawal on 9 February 2017.

- 15 Sawal lodged an opposition to that writ within the period prescribed before the Trgovački sud u Zagrebu (Commercial Court, Zagreb, Croatia).
- 16 According to the referring court, it is clear from the judgments of 9 March 2017, *Zulfikarpašić* (C-484/15, EU:C:2017:199), and *Pula Parking* (C-551/15, EU:C:2017:193), 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 come within the concept of a ‘court’ within the meaning of Regulations No 805/2004 and No 1215/2012.
- 17 The referring court notes that the procedure prior to the issue of the writ of execution was not a procedure giving effect to the *audi alteram partem* principle and, in accordance with the case-law cited in the preceding paragraph, that writ was issued by a notary and not by a court or tribunal. It takes the view, therefore, that it is not possible to continue the opposition proceedings brought before it on the ground that the writ of execution was issued by a body that clearly lacked jurisdiction, in the course of enforcement proceedings which infringe fundamental principles of EU law.
- 18 Accordingly, that court takes the view, first, that, following the judgments cited above, natural or legal persons from Croatia are at a disadvantage in comparison with natural or legal persons from other EU Member States, to the extent that writs of execution issued by notaries in Croatia are not recognised in the other Member States of the European Union as either European enforcement orders, by reference to Regulation No 805/2004, or as judicial decisions, by reference to Regulation No 1215/2012. A difference in treatment of that kind between natural or legal persons from Croatia and those from other Member States constitutes, in the view of the referring court, discrimination which is prohibited under Article 18 TFEU.
- 19 Secondly, the referring court states that the fact that enforcement proceedings based on an authentic document brought before a notary do not give effect to the *audi alteram partem* principle may also constitute an infringement of the right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’).
- 20 Moreover, that court notes that the practices of Croatian courts differ in respect of the jurisdiction of notaries in enforcement proceedings based on an ‘authentic document’ depending on whether the parties against whom enforcement is sought are natural or legal persons established in Croatia or in another Member State.
- 21 In those circumstances, the Trgovački sud u Zagrebu (Commercial Court, Zagreb) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Is a provision of national law, [such as] Article 1 of the [Law on Enforcement], 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 ... Croatia, compatible with Article 6(1) [ECHR] and Article 18 TFEU, in the light of the judgments [of 9 March 2017, *Zulfikarpašić* (C-484/15, EU:C:2017:199), and of 9 March 2017, *Pula Parking* (C-551/15, EU:C:2017:193)]?’
- (2) Can the interpretation given in the ... judgments of 9 March 2017, *Zulfikarpašić* (C-484/15, EU:C:2017:199) and [of 9 March 2017,] *Pula Parking* (C-551/15, EU:C:2017:193), be applied to [the present case], ..., 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 come within the concept of “court” within the meaning of that regulation?’

Case C-323/19

- 22 On 4 February 2019, Interplastics, established in Slovakia, brought enforcement proceedings against Letifico, a company incorporated under Croatian law, before a notary practising in Croatia, based on an ‘authentic document’, namely a list of invoices issued on 11 December 2018, attesting to the existence of a debt claimed by Interplastics against Letifico in the amount of EUR 17 700 in its equivalent in Croatian kuna, plus statutory interest, and the costs of the proceedings in the amount of HRK 7 210.80 (approximately EUR 968).
- 23 On the same day, the notary issued a writ of execution by which he ordered Letifico to settle the amount of that debt within a period of eight days. The application for enforcement and the writ of execution were notified to Letifico on 13 February 2019.
- 24 Letifico lodged an opposition to that writ within the period prescribed, challenging both the basis and the amount of the debt.
- 25 As it had the same doubts as those raised in Case C-267/19, the Trgovački sud u Zagrebu (Commercial Court, Zagreb) decided to stay the proceedings and to refer to the Court for a preliminary ruling the same questions as those raised in that case.
- 26 By decision of the President of the Court of 27 May 2019, Cases C-267/19 and C-323/19 were joined for the purposes of the written procedure and the judgment.

The questions referred for a preliminary ruling

The jurisdiction of the Court

- 27 In order to establish whether the Court has jurisdiction to answer the questions referred for a preliminary ruling, it is necessary to verify that the cases in the main proceedings have a connection with EU law. In that regard, it must be observed that, like the case that gave rise to the judgment of 9 March 2017, *Pula Parking* (C-551/15, EU:C:2017:193), two oppositions have been lodged before the referring court against enforcement orders issued by notaries for the purposes of recovering debts.
- 28 Where Regulation No 1215/2012 is applied, following such oppositions, judicial decisions which are capable of being recognised and enforced in another Member State will, in principle, be adopted. The factor that connects them with EU law, which justifies the Court’s jurisdiction to answer the questions raised by the referring court, may therefore be derived from the applicability, in the present cases, of that regulation (see, to that effect, judgment of 25 May 2016, *Meroni*, C-559/14, EU:C:2016:349, paragraph 44).
- 29 In that regard, it must be noted, first, that debt-recovery proceedings, such as those in the main proceedings, in essence come within the scope of ‘civil and commercial matters’, within the meaning of Article 1(1) of Regulation No 1215/2012.
- 30 As regards, secondly, the external element which must exist in order for that regulation to apply (see, to that effect, judgment of 14 November 2013, *Maletic*, C-478/12, EU:C:2013:735, paragraph 26), it must be stated that, in Case C-267/19, the party against which enforcement is sought has its registered office in Slovenia. By contrast, in Case C-323/19, it is the company seeking enforcement which has its registered office in a Member State other than the Republic of Croatia, in that case Slovakia, the other circumstances of the case, at first sight, being confined to within Croatia.

- 31 Therefore, and without formally raising a plea that the Court lacks jurisdiction by reason of the fact that there is no international element in that latter case, the European Commission expresses uncertainty as to whether Regulation No 1215/2012 is applicable where only the party seeking enforcement is established in a Member State other than that in which the court is situated.
- 32 In that regard, it must be observed that, in its case-law, in examining the international nature of the legal relationship at issue, the Court has repeatedly referred to the ‘respective domiciles of the parties’ irrespective of their status in the proceedings (see, to that effect, judgment of 1 March 2005, *Owusu*, C-281/02, EU:C:2005:120, paragraphs 25 and 26).
- 33 Although Regulation No 1215/2012 uses the concept of ‘cross-border litigation’ in recitals 3 and 26, but does not define that concept, it should be noted that Article 3(1) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ 2006 L 399, p. 1) defines the equivalent concept of ‘cross-border case’ as a case in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised.
- 34 On the basis of that provision, the Court has held that, since the applicant in an order for payment procedure has its registered office in a Member State other than that in which the court is situated, the dispute is cross-border in nature and therefore comes within the scope of Regulation No 1896/2006 (see, to that effect, judgment of 19 December 2019, *Bondora*, C-453/18 and C-494/18, EU:C:2019:1118, paragraph 35).
- 35 Such an interpretation of Article 3(1) of Regulation No 1896/2006 is also, in principle, used to establish the cross-border nature, and, accordingly, the international element, of a dispute for the purposes of applying Regulation No 1215/2012. Since both of those regulations come within the field of judicial cooperation in civil matters having cross-border implications, the interpretation of equivalent concepts used by the EU legislature in them should be harmonised.
- 36 It follows from the foregoing that Regulation No 1215/2012 is applicable in the two cases in the main proceedings and is therefore the factor which connects those cases with EU law.
- 37 It must also be held that, although the questions raised by the referring court partly concern Article 6(1) ECHR, that latter provision corresponds, in essence, to Article 47 of the Charter, which the Court has jurisdiction to examine subject to Article 51(1) thereof where Member States are implementing EU law (see, to that effect, order of 11 April 2019, *Hrvatska radiotelevizija*, C-657/18, not published, EU:C:2019:304, paragraph 28).
- 38 In the present case, the referring court, before which actions coming within the scope of Regulation No 1215/2012 have been brought, is unsure whether national legislation which confers on notaries the power to issue writs of execution in enforcement proceedings based on an authentic document – proceedings that take place prior to those actions being brought before it – infringes fundamental principles of EU law, in particular the principle of non-discrimination provided for in Article 18 TFEU and the right to an effective remedy provided for in Article 47 of the Charter.
- 39 Inasmuch as the compatibility of that national legislation with the fundamental principles of EU law is, in the referring court’s view, capable of having an impact, even though indirect, on the recognition and enforcement in other Member States of judgments delivered by that court in opposition proceedings brought against a writ issued by a notary, the Court has jurisdiction to examine the questions referred for a preliminary ruling in the light of Article 47 of the Charter and Article 18 TFEU.

Substance

- 40 According to settled case-law, in the context of the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it (see judgments of 4 September 2014, *eco cosmetics and Raiffeisenbank St. Georgen*, C-119/13 and C-120/13, EU:C:2014:2144, paragraph 32, and of 12 December 2019, *Instituto Nacional de la Seguridad Social (Pension supplement for mothers)*, C-450/18, EU:C:2019:1075, paragraph 25).
- 41 In order to provide an answer which will be of use to the referring court, it should be observed, with regard to the reference made by that court to the judgment of 9 March 2017, *Zulfikarpašić* (C-484/15, EU:C:2017:199), that the case giving rise to that judgment concerned Regulation No 805/2004. In the present cases, the two debts concerned are not ‘uncontested’ claims within the meaning of Article 3 of that regulation, since they have been contested in proceedings brought before that court. Accordingly, Regulation No 805/2004 is not applicable *ratione materiae*.
- 42 By its two questions, which it is appropriate to examine together, the referring court must therefore be understood to be asking, in essence, whether, where the judgments that it will deliver come within the scope of Regulation No 1215/2012, Article 18 TFEU and Article 47 of the Charter must be interpreted as precluding national legislation which gives notaries, acting within the framework of the powers conferred on them in enforcement proceedings based on an authentic document, the power to issue writs of execution which, as is clear from the judgment of 9 March 2017, *Pula Parking* (C-551/15, EU:C:2017:193), cannot be recognised and enforced in another Member State.
- 43 With regard to the scope of that latter judgment, it must be stated, at the outset, that the Court ruled only on whether notaries acting within the framework of the powers conferred on them in enforcement proceedings based on an authentic document have the status of a ‘court’ and, therefore, on the recognition and enforcement, on the basis of Regulation No 1215/2012, of writs issued in such proceedings, without challenging the specific nature of the Croatian legal system in that regard.
- 44 In that same judgment, however, the Court did not give a ruling on whether those notaries had jurisdiction to issue writs of execution in enforcement proceedings and did not in any way hold that Regulation No 1215/2012 precludes recourse to proceedings of that kind.
- 45 As regards, in the first place, the interpretation of Article 18 TFEU, which is applicable in the present case in the absence of other specific provisions on non-discrimination in the context of Regulation No 1215/2012, it should be noted, first, that the Law on Enforcement does not prescribe different treatment depending on the criterion of nationality.
- 46 As is apparent from the information in the documents before the Court, an applicant seeking enforcement, be that person a resident or a non-resident, a legal or a natural person, must contact a notary in order to obtain a writ of execution based on an authentic document. The writs issued following those proceedings are liable not to be recognised and enforced in another Member State on the basis of Regulation No 1215/2012, irrespective of the criterion regarding the nationality of the parties.
- 47 Moreover, that conclusion cannot be called into question by the fact that writs issued by notaries in other Member States who expressly have the status of ‘court’ in Article 3 of Regulation No 1215/2012 are covered by the rules on recognition and enforcement laid down in that regulation.
- 48 The classification of notaries in different Member States remains linked to particular features of their respective legal systems, since, as the Commission also submitted in its written observations, Regulation No 1215/2012 is not intended to impose a specific organisation of justice. As is clear from

recital 4 of that regulation, its objective is to unify the rules of conflict of jurisdiction in civil and commercial matters, in order to ensure rapid and simple recognition and enforcement of judgments given in a Member State (judgment of 9 March 2017, *Pula Parking*, C-551/15, EU:C:2017:193, paragraph 50).

- 49 Finally, as regards the reverse discrimination about which the referring court is seeking guidance, it is clear from the system established by that regulation that Member States are required to recognise and enforce judgments delivered by the courts of other Member States in civil or commercial matters, subject to compliance with the requirements imposed by that regulation. However, in so far as, in the judgment of 9 March 2017, *Pula Parking* (C-551/15, EU:C:2017:193), the Court has held that writs issued by notaries acting in enforcement proceedings have not been given by a court, within the meaning of that regulation, such a writ cannot be classified as a ‘judicial decision’ in the light of Article 2(a) of that regulation and is not capable of being circulated on the basis of that regulation without that situation constituting reverse discrimination (see, to that effect, order of 6 November 2019, *EOS Matrix*, C-234/19, not published, EU:C:2019:986, paragraph 26 and the case-law cited).
- 50 Moreover, as is apparent from the observations submitted by the Croatian Government, alternative remedies exist in the Croatian legal system, namely enforcement proceedings brought before a court, which are capable of mitigating any disadvantages caused by conferring on notaries the power to issue writs of execution in enforcement proceedings. In that regard, the Croatian Government submits that, while the admissibility of such a remedy is, in accordance with the second paragraph of Article 446 of the Code of Civil Procedure, subject to the existence of an interest in bringing proceedings under that procedure, the third paragraph of that article establishes a presumption that such an interest exists where the defendant resides outside Croatia. This is a matter which it is for the referring court to verify.
- 51 With regard, in the second place, to the interpretation of Article 47 of the Charter, according to the referring court, the fact that enforcement proceedings based on an authentic document brought before notaries do not give effect to the *audi alteram partem* principle constitutes an infringement of the right to an effective remedy.
- 52 In that regard, it should be recalled that, although the Court found, in paragraph 58 of the judgment of 9 March 2017, *Pula Parking* (C-551/15, EU:C:2017:193), that the examination, by notaries, in Croatia, of an application for a writ of execution based on an authentic document is not conducted on an *inter partes* basis, it also found that access to a court is guaranteed since notaries exercise the responsibilities conferred on them in the context of enforcement proceedings subject to review by the courts, before which debtors have the opportunity to lodge oppositions against writs of execution issued by notaries.
- 53 Therefore, it cannot be inferred from the fact that the enforcement proceedings based on an authentic document are not conducted on an *inter partes* basis, and in the absence of other evidence provided by the referring court, that those proceedings are conducted in breach of Article 47 of the Charter.
- 54 In the light of all of the foregoing considerations, the answer to the questions referred is that Article 18 TFEU and Article 47 of the Charter must be interpreted as not precluding national legislation which gives notaries, acting within the framework of the powers conferred on them in enforcement proceedings based on an authentic document, the power to issue writs of execution which, as is clear from the judgment of 9 March 2017, *Pula Parking* (C-551/15, EU:C:2017:193), cannot be recognised and enforced in another Member State.

Costs

55 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 (Sixth Chamber) hereby rules:

Article 18 TFEU and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding national legislation which gives notaries, acting within the framework of the powers conferred on them in enforcement proceedings based on an authentic document, the power to issue writs of execution which, as is clear from the judgment of 9 March 2017, *Pula Parking* (C-551/15, EU:C:2017:193), cannot be recognised and enforced in another Member State.

[Signatures]