

CJEU on the implications of its Judgment in Pula Parking: Joined cases C-267/19 and C-323/19, Parking / Interplastics

Preliminary question and its context

In its Judgment of 7 May 2020, delivered in the joined cases C-267/19 and C-323/19 without Advocate General's Opinion, the Court of Justice provides some further guidance on the implications of its previous case law and most notably of the Judgment in the case C-551/15, Pula Parking ('Judgment in Pula Parking').

Just as in the case that led to Judgment in Pula Parking, the requests for a preliminary ruling in the cases in question were lodged in the context of the proceedings on the oppositions to the writs of execution. Put succinctly: under the Croatian law, a notary issues a writ of execution based on an 'authentic document'. The party against whom enforcement is sought may lodge an opposition to that writ. The court to which the opposition is transferred has jurisdiction to set aside the writ and to annul the measures taken so far. The procedure continues according to the rules applicable to cases of opposition to a payment order.

By way of background, in Judgment in Pula Parking, the Court held, *inter alia*, that '[the Brussels I bis Regulation] must 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", do not fall within the concept of "court" within the meaning of that [Regulation]'.

The referring court in the present cases indicates that Judgment in Pula Parking receives various interpretation on the national level. It seems that the reading of this Judgment according to which it relates exclusively to enforcement proceedings conducted against a party being a natural person and national of another EU Member State prevails in the Croatian case law.

However, for the referring court, that reading of Judgment in Pula Parking establishes a discriminatory difference in the way in which the Brussels I bis Regulation is applied in Croatia. The referring court seems to understand that Judgment as implying that, in its Member State, notaries are not entitled to issue writs of execution based on an 'authentic document' and therefore, the fact that they continue to do so, is at odds with the Regulation.

In view of those explanations, at paragraph 42 the Court clarifies that it understands the request for a preliminary ruling as concerning the question **whether Article 18 of the Treaty on the Functioning of the European Union and Article 47 of the Charter preclude national legislation entitling the Croatian notaries to issue the writs of execution on the basis of the 'authentic documents', which, in light of Judgment in Pula Parking, will not be recognized and/or enforced in other Member States under the scheme of the Brussels I bis Regulation.**

Consideration of the question referred and what can be learned from it

At paragraph 43 the Court reaffirms that the writs of execution issued by the Croatian notaries would not benefit from the scheme of the Regulation when it comes to their recognition and/or enforcement. At paragraph 44, the Court reminds that Judgment in Pula Parking does not imply, however, that the Brussels I bis Regulation prevents the notaries from issuing the writs of execution. The references to Judgment in Pula Parking pave the way for the conclusion that **neither Article 18 of the TFUE (paragraph 45), nor Article 47 of the Charter (paragraph 53) preclude national legislation entitling the notaries to issue the writs of execution which do not benefit from the recognition/enforcement scheme of the Regulation.**

Incidentally, given that according to Judgment in Pula Parking the notaries do not fall within the concept of 'court' within the meaning of the Brussels I bis Regulation, paragraph 43 seems **to imply that a writ of execution based on a 'authentic document' would not be recognized and/or enforced as 'judgment' within the meaning of Article 2(a) of the Regulation.**

Neither the joined cases in question, nor the case that led to Judgment in Pula Parking offered an opportunity to address the question **whether a writ of execution issued by a notary could be enforced under the scheme of the Brussels I bis Regulation as an ‘authentic instrument’ in the sense of Article 2(c) of the Regulation.** In any case, an ‘authentic document’ on which a writ of execution is based cannot, in my view, be automatically placed on the same footing as such ‘authentic instrument’. Therefore, a writ of execution would not necessarily have to be an ‘authentic instrument’ based on an ‘authentic instrument’.

For the sake of completeness, AG Bot touched upon a somehow similar question in the context of the Regulation No 805/2004 (Regulation on European Enforcement Order for uncontested claims) in his Opinion in the case C-484/15, Zulfikarpašić. At points 45 to 49, he considered that a writ of execution is not an ‘authentic instrument’ within the meaning of Article 3(1) of that Regulation because the writ does not concern an uncontested claim. That argumentation is in line with the interpretation that the Court presented in its Judgment in that case and in particular at its paragraph 55. However, such argumentation could most probably not be directly transposed to the Brussels I bis Regulation as this Regulation does not confine its scope solely to uncontested claims.

It is also worth noticing that the Judgment of 7 May 2020 makes a point that exceeds the scope of the inquiry on the implications of Judgment in Pula Parking for the Croatian legal system. At paragraphs 33 et seq., in the part of the Judgment of 7 May 2020 relating to the jurisdiction of the Court, **the criteria set in Article 3(1) of the Regulation no 1896/2006 (Regulation on European Order for Payment) in order to define a ‘cross-border case’ within the meaning of that Regulation are referred to in order to establish the existence of an international element that is necessary for the Brussels I bis Regulation to become applicable to a specific case.**

The requests for a preliminary ruling in the cases in question can be consulted [here](#) and [here](#). For numerous linguistic versions of the Judgment see [here](#) (no English version yet).