

Opinion of AG Bobek in the case Obala i lucice, C-307/19: unpaid public parking ticket revisited

In today's Opinion delivered in the case *Obala i lucice*, C-307/19, Advocate General Bobek revisits the line of case law built upon the judgment in *Pula Parking*, C-551/15, pertaining to the enforcement of unpaid public parking tickets by means of a writ of execution issued by a Croatian notary. This time both the Brussels I bis Regulation and the Service Regulation are at stake.

Factual context

A car is leased from NLB Leasing d.o.o., a company that provides financing for the use of vehicles, equipment and real estate in Slovenia and is – as it may be inferred from point 1 of the Opinion – based in that Member State.

On 30 June 2012, the car is parked on a public street in Zadar (Croatia). The street is defined parking zone with designated parking spaces. *Obala i lucice* d.o.o., entity based in Croatia, is charged with the management and maintenance of public areas for parking of motor vehicles. As the car does not have a parking ticket on display, that entity issues a daily parking ticket.

On 1 July 2013, Croatia joins the EU. Four years later, in 2017, the parking management entity commences enforcement proceedings for recovery of the parking ticket debt with a notary, by making an application for enforcement on the basis of an 'authentic document'. That document is an extract from the accounts of *Obala i lucice* d.o.o., which recorded the debt relating to the unpaid ticket.

The notary issues a writ of execution on the basis of the 'authentic document', which is subsequently served to NLB Leasing d.o.o. in Slovenia. The latter challenges the writ before Croatian courts.

A commercial court in Pazin rules that it lacks jurisdiction and refers the case to the commercial court in Zadar. The latter also considers that it lacks jurisdiction

and refers the case to the high commercial court, which decides to seize the Court of Justice with a series of preliminary questions.

Opinion of AG

It has to be mentioned at the outset that the Opinion is not addressing all the questions referred to the Court of Justice for a preliminary ruling. As the Opinion clarifies at its point 25, the Court asked its AG to elaborate only on some of the questions. The Opinion constitutes therefore the so-called 'conclusions ciblées'.

At point 34, AG establishes the need to rearrange these questions and lists the legal inquiries analyzed in the Opinion, namely, firstly, **whether the enforcement of a debt relating to the unpaid public parking ticket is a dispute relating to 'civil and commercial matters'** within the meaning of the Brussels I bis and Service Regulations; secondly, **whether the notaries in Croatia may themselves effect service (under the Service Regulation) of writs of execution drawn up on the basis of an 'authentic document'** and thirdly, **whether any of the special grounds of jurisdiction of the Brussels I bis Regulation confer jurisdiction on the courts of a Member State other than the domicile of the defendant.**

As a consequence, the Opinion is not addressing the questions concerning, in particular, the law applicable under the Rome I and Rome II Regulations (Questions 8 and 9). It is yet to be seen how they will be answered in the judgment of the Court. It is worth noticing, however, that the facts underlying the case pending before the national courts predate the accession of Croatia to the EU.

Notion of 'civil and commercial matters'

At points 39 to 54, a reminder of the case law leads AG Bobek to distinguishing two approaches adopted by the Court in order to establish whether the Regulations on 'civil and commercial matters' are applicable. He defines them as 'subject matter' and 'legal relationship' approaches ('perspectives').

Pronouncing himself in favour of 'legal relationship' approach at point 59, AG Bobek concludes that:

‘The concept of “civil and commercial matters”, as laid down in Article 1(1) of [the Brussels I bis Regulation] and Article 1(1) of [the Service Regulation], must be interpreted as requiring the legal relationship which characterises the underlying dispute, assessed against the framework generally applicable to private parties in such situations, not to be characterised by a unilateral exercise of public powers by one of the parties to the dispute.

While it falls to the national court to determine whether those conditions are satisfied, the circumstances of the present case do not appear subject to such an exercise of public powers.’

Service of writs of execution

At points 88 et seq., the Opinion addresses the question whether, under the Service Regulation, the notaries in Croatia may themselves effect service of writs of execution drawn up on the basis of an ‘authentic document’. At point 105, AG concludes:

‘[The Service Regulation] must be interpreted as meaning that, in order for a writ of execution based on an “authentic document” to qualify as a “judicial document” within the meaning of Article 1(1) of that regulation, the issuing entity must be a judicial body of a Member State forming part of its judicial system.

Articles 2 and 16 of [the Service Regulation] must be interpreted as meaning that, where a Member State has failed to designate notaries as “transmitting agencies” within the meaning of Article 2(1) of that regulation, those notaries cannot transmit “extrajudicial documents” for service to another Member State under the provisions of that regulation.’

Special grounds of jurisdiction

At points 106 et seq., the Opinion goes on to establish whether special grounds of jurisdiction of the Brussels I bis Regulation confer jurisdiction on the courts of a

Member State other than the domicile of the defendant. Three possibilities are addressed within this part of the Opinion.

Firstly, at point 109, AG Bobek excludes the applicability of Article 7(2) of the Brussels I bis Regulation. He seems to argue, in essence, that the dispute pertaining to the unpaid public parking ticket is contractual in nature.

Next, at point 111, the applicability of the ground of exclusive jurisdiction provided for in Article 24(1) of the Regulation is excluded. Here, it is argued that '[o]n the basis of the facts present in the court file, there is no indication that either possession or other rights 'in rem' in the parking space were transferred to the defendant upon parking there (or that they are, in fact, at issue). Moreover, the article's *raison d'être* militates against such an interpretation.'

Finally, at point 112, the Opinion comes to the conclusion that Article 7(1) of the Brussels I bis Regulation is applicable and contends:

'Article 7(1) of Regulation No 1215/2012 must be interpreted as meaning that parking a car in a designated parking space on a public road can, under the legal system of a Member State in which the issuing of parking tickets and the collection of parking fees is entrusted to a private entity, constitute a "matter relating to a contract", as referred to in that provision.'

The Opinion can be consulted [here](#). The request for a preliminary ruling is accessible [here](#).