AG Saugmandsgaard Øe on action for unjust enrichment and contract/tort distinction under Brussels I Regulation in the case HRVATSKE ŠUME, C-242/20

AG Saugmandsgaard Øe observes in his Opinion presented today in the case HRVATSKE ŠUME, C-242/20, the Court of Justice has already faced requests for a preliminary ruling where arose a question on qualification of an action for unjust enrichment for the purposes of the Brussels I Regulation. He notes that no conclusive finding has been made so far as to its qualification as a "matter relating to tort, delict or quasi-delict" in the sense of Article 5(3) of the Regulation (point 4). By contrast, the present case is supposed to create an opportunity to provide a definitive conclusion to the jurisprudential saga in question.

It is noteworthy that the case itself presents a nuance: the unjust enrichment is said to have occurred in enforcement proceedings which were carried out, although they should not have been, and now reimbursement of the amount which was unjustly levied in enforcement proceeding is being sought before the Croatian courts. The nuance is addressed in the second preliminary question.

At the request of the Court, the Opinion does, however, elaborate only on the first preliminary question that reads as follows:

> *Do actions for recovery of sums unduly paid by way of unjust enrichment fall within the basic jurisdiction established in the [Brussels I Regulation] in respect of "quasi-delicts" since Article 5(3) thereof provides inter alia: "A person domiciled in a Member State may, in another Member State, be sued … in matters relating to … quasi-delict, in the courts for the place where the harmful event occurred or may occur"?*

In his Opinion, AG Saugmandsgaard Øe proposes to take a step back and view the

preliminary question in a broader perspective. For him, it is necessary to determine, in the first place, whether an action for unjust enrichment falls within the scope of Article 5(1) of the Brussels I Regulation and, only in the negative, in the second place, whether it fall within the scope of Article 5(3) of the Regulation (point 26). He established therefore an order of preference when it comes to the contract/tort distinction under the Regulation.

Having adopted that approach, he concludes that an action for unjust enrichment is not a "matter relating to a contract" in the sense of Article 5(1) of the Brussels I Regulation, save where it is closely connected with a preexisting (or alleged to exist) contractual relationship (points 44-52). Nor it is a "matter relating to tort, delict or quasi-delict" within the meaning of Article 5(3) of the Regulation (point 79).

The Opinion contains an in-depth discussion on the parallels with the Rome I/Rome II Regulations and, in this regard, the outcome of the reasoning followed by AG Saugmandsgaard Øe may bring to mind the one that AG Bobek proposed in the context of actio pauliana in his Opinion delivered in the case Feniks, C-337/17.

The Opinion of AG Saugmandsgaard Øe is available here (no English version so far).