

# **CJEU judgment on jurisdiction for unpaid public parking ticket in Obala i lucice, C-307/19**

Back in November 2020, we reported about the Opinion delivered by Advocate General Bobek in the case *Obala i lucice*, C-307/19, in which he revisited the case law built upon the judgment of the Court of Justice in *Pula Parking*, C-551/15. This Thursday, the Court rendered its judgment in the case in question.

## **Legal and factual context**

In brief summary, a daily parking ticket is issued for a car left in an on-street parking. A Croatian parking management entity commences enforcement proceedings for recovery of the parking ticket debt with a notary. The notarial writ of execution issued against a Slovenian company is challenged by the latter and two Croatian courts consider themselves lacking jurisdiction to hear the case. The case is then transferred to the referring court in order for it to deal with the negative conflict of competence.

A more extensive presentation of the legal and factual context of the case can be consulted in the previous post.

## **Questions/issues addressed**

In his Opinion, at the request of the Court, AG Bobek did not address all the questions referred for a preliminary ruling. Opinion is confined to Questions 1 to 3 and 5 to 7. Not all the Questions addressed in the judgment either, yet for a different reason.

On the one hand, the Court considered that the questions pertaining to the Service Regulation (Questions 1 and 3) were inadmissible (paragraph 51). The referring court is facing a negative conflict of competence and the request for a preliminary ruling does not specify why this court takes the view that the resolution of the case in the main proceedings depends on the interpretation of the Service Regulation. It is worth noticing that this Regulation has been interpreted by AG Bobek in his Opinion, at points 88 to 105.

On similar grounds, the Court considered inadmissible the questions on to compatibility with Article 56 TFEU of the presumption that a contract is concluded by the act of parking in a designated space (on-street parking) (Questions 4 and, partially, 9). The referring court failed to expose the reasons that prompted it to inquire about the compatibility of that presumption with EU law (paragraph 52).

On the other hand, as mentioned in the previous post, the facts underlying the case pending before the national courts predate the accession of Croatia to the EU. Therefore, the Court considered itself not competent to answer the question on the interpretation of the Rome I and Rome II Regulations (Questions 8 and, partially, 9), these Regulation being not applicable *ratione temporis* to the facts in question (paragraph 58).

Thus, the Court was left with the remaining issues, namely, **whether an action for payment 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 Regulation (Question 2), **whether the special ground of jurisdiction for rights in rem is applicable to that action** (Question 6) and, if it is not the case, **whether the grounds of jurisdiction for contract/tort may be relied on by the applicant** (Questions 5 and 7).

## **Notion of ‘civil and commercial matters’**

According to the Court’s answer, an action for payment of a daily parking ticket, issued for parking in a designated space, in an on-street parking, imposed by a parking management entity falls within the scope of the notion of ‘civil and commercial matters’ (paragraph 73). This answer is preceded by a fine-grained analysis, accompanied by multiple references to the case law (paragraphs 59 et seq.).

The analysis carried out by the Court should be of a particular interest as it cannot be excluded that much can be inferred from it as to the qualification of a ‘civil and commercial matter’. To that effect, it could potentially be read against the background of the Opinion presented by AG Bobek. In fact, at its points 39 to 54, he distinguished two approaches adopted by the Court in its case law in order to establish whether the Regulations on ‘civil and commercial matters’ are applicable in a specific case. He defined them as ‘subject matter’ and ‘legal

relationship' approaches, and it was the latter that he favoured in the case at hand. Such parallel reading could be also supplemented by the lecture of remarks on that very issue made by one of the commentators.

## **Special ground of jurisdiction for rights in rem**

Reiterating the autonomous nature of qualification that needs to be exercised in relation to Article 24(1) of the Brussels I bis Regulation, regardless of the qualification that the legal relationship receives under national law (paragraph 79), the Court held, in essence, that an action for payment of a daily parking ticket, issued for parking in a designated space, in an on-street parking, cannot be considered as an action brought in proceedings which have as their object 'tenancies of immovable property' (paragraph 80).

## **Contract/tort**

Addressing ultimately the contract/tort distinction, the Court held that the action in question falls within the scope of Article 7(1) of the Brussels I bis Regulation (paragraph 89).

Next, referring to the Opinion, it considered that the 'parking contract in question in the main proceedings' can be qualified as a 'contract for the provision of services' in the sense of Article 7(1)(b) of the Regulation (paragraph 97).

The judgment itself can be consulted here (so far in French), with the request for a preliminary ruling being available here.