Reports of Cases

OPINION OF ADVOCATE GENERAL
BOBEK
delivered on 27 October 2016[1]

Case C-551/15

Pula Parking d.o.o.
v
Sven Klaus Tederahn

(Request for a preliminary ruling from the Općinski sud u Puli-Pola (Pula Municipal Court, Croatia))

(Temporal application of EU law — Contract for services — Contract between a publicly owned entity and a private party — Acta iure imperii — Scope of Regulation (EU) No 1215/2012 — Notarial and judicial functions — Notion of 'court or tribunal')

I – Introduction

1. Mr Tederahn ('the Defendant') resides in Germany. In 2010, he parked his car in a parking space in the town of Pula, Croatia. He did not pay for the parking ticket. Five years later, the publicly owned company, Pula Parking d.o.o. ('Pula Parking' or 'the Applicant'), entrusted with the administration of the parking space, requested a public notary in Croatia to issue a writ of enforcement against the Defendant. The Defendant challenged the writ. According to standard national procedure, the case was then transferred before the competent national court, the Općinski sud u Puli-Pola (Pula Municipal Court, Croatia), which is the referring court in this case.

2. The referring court seeks to ascertain whether the case falls within the scope of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the Regulation').[2] It asks two questions specifically. First, given that the Applicant is publicly owned and mandated, does the case fall within the notion of civil and commercial matters? Second, are Croatian notaries issuing writs of enforcement covered by the Regulation, which concerns 'judgments' issued by 'courts or tribunals'?

1 — Original language: English.

2 — Regulation of the European Parliament and of the Council of 12 December 2012 (OJ 2012 L 351, p. 1).

II – Legal framework

A – *EU law*

1. Regulation No 1215/2012

3. The recitals to the Regulation provide as follows:

‘10. The scope of this Regulation should cover all the main civil and commercial matters apart from certain well-defined matters, …

…

15. The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant’s domicile. …

16. In addition to the defendant’s domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. …’

4. Article 1(1) of the Regulation reads:

‘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*).’

5. Article 1(2) excludes a number of areas from the scope of the Regulation including bankruptcy, social security, arbitration, maintenance and wills and succession.

6. Article 2 sets out a list of definitions including the following:

‘(a) “judgment” means 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.

For the purposes of Chapter III, “judgment” includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement.’

7. Article 3 specifies that:

‘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).’

8. Article 4 sets out the general rule that the courts of the Member State in which the defendant is domiciled have jurisdiction.

9. Article 7(1)(a) provides that, in matters relating to a contract, the defendant may also be sued in the courts for the place of performance of the obligation in question. Article 7(1)(b) specifies that the place of performance in the case of the sale of goods is the place where the goods were or should have been delivered under the contract. In the case of the provision of services, it is the place where the services were or should have been provided. Article 7(1)(c) provides that in all other cases, the general rule in Article 7(1)(a) applies.

10. Article 24(1), second paragraph, states that in the case of proceedings which have as their object a tenancy of immovable property of up to six months, the courts of the Member State in which the property is situated also have jurisdiction.

11. Article 66 provides that the Regulation applies to legal proceedings instituted on or after 10 January 2015.

B – *National law*

1. Law on Enforcement

12. Under Article 278 of the Ovršni zakon (Law on Enforcement)[3] notaries decide on applications for enforcement that are based on authentic instruments in accordance with the provisions of that law.

13. In accordance with Article 279(1) and (3) of the Law on Enforcement, so far as enforceable instruments are concerned, the notary with an office in the territorial area (region) of the residence or registered office of the debtor against whom enforcement is sought is to have territorial jurisdiction. If the application for enforcement was made before a notary who does not have territorial jurisdiction, the court must dismiss it.

14. According to the order for reference, pursuant to Article 282(3) of the Law on Enforcement, the notary before whom an admissible and well-founded opposition to a writ issued by that notary is raised in a timely fashion, is to transfer the file to the court with jurisdiction for its consideration. The court must take a decision on that opposition in accordance with Articles 57 and 58 of that law.

2. Parking Regulations

15. According to the order for reference, parking in Pula is regulated by the Regulation governing the collection of charges for and the control of parking in public parking places of 16 December 2009[4] and 11 February 2015 ('Parking Regulation').[5]

16. Article 1(2) of the Parking Regulation provides that technical and organisational operations, collection of charges, supervision of the parking of vehicles, maintenance and cleaning, as well as other operations in paying public parking places, are to be carried out by the company Pula Parking. That company is a public company owned by the city of Pula.

3 — 'Narodne novine' (Official Journal) No 112/12, 25/13, 93/14.

4 — Službene novine Grada Pule (Official Bulletin of the City of Pula No 21/09).

5 — Službene novine Grada Pule (Official Bulletin of the City of Pula No 03/15).

17. The Parking Regulation goes on to provide that users of the parking spaces enter into a contract with Pula Parking, are issued with a ticket valid for 24 hours and accept the applicable general conditions. Users have eight days to pay the ticket, after which legal interest and costs accumulate.

III – Facts, procedure and questions referred

18. On 8 September 2010, the Defendant parked his car in a public parking space in the town of Pula on the Croatian coast. Upon departing, the Defendant omitted to pay the HRK 100 (approximately EUR 13) he owed for the daily parking ticket. Nor did he pay the money within the eight days allowed for that purpose, before legal interest began accruing on the amount.

19. On 1 July 2013, Croatia joined the European Union.

20. On 27 February 2015, the Applicant, Pula Parking, a company owned by the town of Pula and entrusted by way of a decision of the public authority with the administration of the parking space concerned, initiated a procedure to call in the debt. On that date, the Applicant requested a public notary based in Pula to issue a writ of execution for the HRK 100 against the Defendant, on the basis of an 'authentic act'. That act was an extract of the Applicant's accounts, which recorded the debt owed by the Defendant.

21. The writ was issued on 25 March 2015. On 21 April 2015, the Defendant challenged the writ and, in accordance with Article 282(3) of the Law on Enforcement, the case was transferred before the Općinski sud u Puli-Pola (Pula Municipal Court), which is the referring court. The Defendant argued before that court that the notary was not competent *ratione materiae* or *ratione loci* to issue the writ of execution on the basis of an authentic act against nationals from other EU Member States.

22. In those circumstances, the Općinski sud u Puli-Pola (Pula Municipal Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Taking into account the legal nature of the relationship between the parties to the proceedings, is Regulation (EU) No 1215/2012 applicable in the present case?

(2). Does Regulation … No 1215/2012 relate also to the jurisdiction of notaries in the Republic of Croatia?'

23. Written observations have been submitted by the Applicant, the Defendant, the Croatian, German and Swiss Governments, and the European Commission. The interested parties participating in the written stage, with the exception of the German and Swiss Governments, also presented oral arguments at the hearing held on 14 July 2016.

IV – Assessment

A – *Admissibility*

1. Conformity of the request for a preliminary ruling with Croatian law

24. The Defendant argues that the request for a preliminary ruling must be rejected on the basis that the reference does not respect the requirements of Croatian law. In this regard, the Defendant notes in particular that the request comes in the form of a letter and not a court order. The Defendant adds that he has appealed the request before the national courts.

25. According to established case-law, the Court does not examine 'whether the decision whereby a matter is brought before it was taken in accordance with the rules of national law governing the organisation of the courts and their procedure. The Court must therefore abide by the decision from a court of a Member State requesting a preliminary ruling in so far as it has not been overturned in any appeal procedures provided for by national law'. [6]

26. Thus, as far as the specific form of the request is concerned, the case-law cited above confirms that these are matters exclusively for the national courts to examine. Furthermore, with regard to a potential appeal against a request for reference on the national level, the Court has not been informed that the request for a preliminary ruling in this case has been overturned. Nor, indeed, has the Court received any formal notification of an appeal. Thus, until and unless the Court is informed by the referring court that it wishes to withdraw its reference, [7] the Court remains validly seised.

27. For these reasons, none of the Defendant's arguments above bring into question the admissibility of the national court's request.

2. Applicability of EU law *ratione temporis*

28. The contractual obligation under discussion dates from 8 September 2010. Croatia acceded to the European Union only on 1 July 2013. Regulation No 1215/2012 came into force on 10 January 2015. In these circumstances, the question arises as to whether the Regulation applies *ratione temporis*.

29. According to Article 2 of the Croatian Act of Accession ('Act of Accession'), [8] EU law became immediately binding in Croatia on 1 July 2013. [9]

30. Article 66 of the Regulation provides that it applies 'to legal proceedings instituted … on or after 10 January 2015'.

31. In this case, the procedure for execution was started on 27 February 2015. Opposition to that procedure was introduced on 21 April 2015.

32. It follows from the above that the rules on jurisdiction and enforcement contained in the Regulation were fully applicable in Croatia at the relevant time, that is, the time proceedings were instituted, regardless of whether that date is considered to be 27 February 2015 or 21 April 2015.

33. That the present enforcement proceedings concern facts that predate Croatia's accession is immaterial. As I sought to explain elsewhere, the principle of immediate application of EU law to ongoing legal relationships allows prospective modification of those relationships. [10] More importantly in the context of the present reference, the consequence that new EU rules will also be applicable to some facts predating the accession is natural in cases of enforcement and procedural rules. It is indeed common that the enforcement of due claims is subject to the rules valid at the moment the enforcement action is initiated, not to the procedural rules in force when the original contract was signed.

6 — Judgment of 11 July 1996, *SFEI and Others* (C-39/94, EU:C:1996:285, paragraph 24); see also judgments of 14 January 1982, *Reina* (C-65/81, EU:C:1982:6, paragraph 7), and of 11 April 2000, *Deliège* (C-51/96 and C-191/97, EU:C:2000:199, paragraph 29).

7 — With the stress being put indeed on the decision of the *referring* court, not necessarily the *appellate* court. In line with the Court's case-law, it is for the referring court to draw conclusions from a potential appellate decision against its request for a reference — see judgment of 16 December 2008, *Cartesio* (C-210/06, EU:C:2008:723, in particular paragraphs 93 and 97).

8 — Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community (OJ 2012 L 112, p. 21).

9 — Unless another time limit were provided for in the Act of Accession or its Annexes. No such exceptions are applicable in this case.

10 — See my Opinion in *Nemec* (C-256/15, EU:C:2016:619, points 25 to 44).

34. This conclusion is confirmed by the Court's case-law on the temporal application of EU rules on jurisdiction and enforcement. Thus, for example, in the *Collin* case [11] the Court was faced with a situation involving an employment contract signed and terminated before the entry into force of the Brussels Convention, the predecessor of the Regulation. [12] Proceedings were instituted after its entry into force. The Court confirmed that, in order for the rules on jurisdiction and enforcement to apply, 'the only essential … is that the judicial proceedings should have been instituted subsequently to [the date of coming into force of the Regulation]'. [13]

35. Contesting the applicability of EU law *ratione temporis* in the present case, the Defendant invokes the order of the Court in *VG Vodoopskrba*. [14] In that case, the Court declined jurisdiction, but for the reason that the referring court sought the interpretation of EU law that related to the substantive provisions of a contract, concluded and apparently partially executed prior to Croatia's accession to the European Union. That could have potentially led to the reassessment of past, pre-accession events. By contrast, the present case concerns solely the (ongoing, and by its nature, prospective) enforcement of a sum apparently due, with the enforcement procedure clearly initiated after the accession.

36. For these reasons, I suggest that the Court is competent *ratione temporis* to answer the questions posed by the referring court relating to the interpretation of Regulation No 1215/2012.

3. Hypothetical nature of the second question

37. An issue arises as to the potentially hypothetical nature of the national court's second question. This is addressed below as part of the overall assessment of that question, at points 56 to 61 of this Opinion.

B – *Substance*

1. The first question

38. The national court asks whether the case falls within the scope of the Regulation. It refers in this regard to the 'legal nature of the relationship between the parties'. By this, I understand that the national court seeks to determine whether the case falls within the notion of 'civil and commercial matters', taking into account the fact that the Applicant is publicly owned and mandated and the type of contract involved.

39. For the reasons set out below, I consider that it clearly does.

11 — Judgment of 13 November 1979, *Sanicentral* v *René Collin*(C–25/79, EU:C:1979:255, paragraph 6). The case-law developed under Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) and the Brussels Convention of Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), the predecessors of Regulation No 1215/2012, applies equally to Regulation No 1215/2012 where the relevant provisions 'may be treated as equivalent'. The need to ensure continuity of interpretation of these instruments is, moreover, recalled in recital 34 of Regulation No 1215/2012. See, for example, judgment of 11 April 2013, *Sapir and Others* (C-645/11, EU:C:2013:228, paragraph 31 and the case-law cited).

12 — The *Collin* case concerned the Brussels Convention, but the case-law is transposable. Article 54 of that convention also explicitly foresaw its application to proceedings instituted after its entry into force (see footnote 11 above). See, more recently, specifically in relation to the temporal application of Regulation No 1215/2012 and the accession of new Member States, Opinion of Advocate General Kokott in *Kostanjevec* (C–185/15, EU:C:2016:397, point 24 et seq.).

13 — By broader analogy, the same approach has also been embraced in the context of the post-accession enforcement of (administrative) duties imposed pre-accession — see judgment of 14 January 2010, *Kyrian* (C-233/08, EU:C:2010:11).

14 — Order of 5 November 2014, C-254/14, EU:C:2014:2354.

40. The notion of 'civil and commercial matters' is an autonomous concept of EU law.[15] It is 'defined essentially by the elements which characterise the nature of the legal relationships between the parties to the dispute or the subject matter thereof'.[16]

41. In the present case, the Applicant rented a parking space to the Defendant.

42. In his pleadings the Defendant argues that the contract between the parties to the main proceedings is a tenancy agreement and not a contract for services. This classification would, according to the Defendant, also shorten the prescription period applying to actions based on the contract. On this basis, he questions the jurisdiction of Croatian notaries under national law, arguing that under Croatian law, it is the courts that have jurisdiction over tenancy agreements.

43. Whatever the merits of those arguments may be, that is a question for the national court. It does not impact on the question this Court is faced with, that is, whether the contract falls within the scope of 'civil and commercial matters' under the Regulation.[17]

44. In principle, both tenancy agreements and contracts for services are capable of falling within the notion of 'civil and commercial matters', which should 'cover all the main civil and commercial matters apart from certain well-defined matters'.[18] Exceptions should be interpreted strictly.[19]

45. A contract between two private parties for the provision of a parking place would, under normal circumstances, fall within the notion of civil and commercial matters. However, this has been questioned because the Applicant is a publicly owned entity and was granted its power by an act of the public authority.[20]

46. The question therefore arises as to whether this brings the arrangement between the parties outside the scope of the Regulation.

47. In my opinion it does not, for the following reasons.

48. Article 1(1) of the Regulation explicitly excludes from its scope 'revenue, customs or administrative matters or … the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*)'. That exception has been confirmed and circumscribed by case-law, which states that 'actions between a public authority and a person governed by private law fall outside the scope of the [Regulation] only in so far as that authority is acting in the exercise of public powers'.[21]

49. Nothing in this case suggests that the parking contract in this case amounted to an '*acta iure imperii*', i.e. an act carried out in the exercise of State power. True, the Applicant carries out an activity entrusted to it by an act of public authority. However, that activity, the rental of a parking space, is a standard commercial activity. The mere fact that the mandate to exercise that activity is granted by an act of the public authorities does not transform it automatically into an '*acta iure*

15 — Judgment of 15 February 2007, *Lechouritou and Others* (C-292/05, EU:C:2007:102, paragraph 29 and the case-law cited).

16 — Judgment of 11 April 2013, *Sapir and Others* (C-645/11, EU:C:2013:228, paragraph 32 and the case-law cited).

17 — It could impact on the specific basis for jurisdiction in the Regulation (Article 7 relates to service contracts and Article 24 to tenancies of immovable property), however, that does not affect the analysis set out hereafter.

18 — See recital 10 of the Regulation.

19 — See, for example, judgment of 23 October 2014, *flyLAL-Lithuanian Airlines* (C-302/13, EU:C:2014:2319, paragraph 27).

20 — See above, point 15 et seq.

21 — Judgment of 1 October 2002, *Henkel* (C-167/00, EU:C:2002:555, paragraph 26 and the case-law cited).

imperii'. Nothing in the file suggests that, in carrying out its mission, the Applicant exercises powers derogating from the rules of law applicable to relations between private individuals.[22] Indeed, according to the order for reference, that absence of derogation in relation to this type of contract has been confirmed by a ruling by the Ustavni sud (Constitutional Court of Croatia).

50. Furthermore, the sum that the Applicant seeks to recover from the Defendant appears to constitute consideration for the service provided by the Applicant. Nothing in the file suggests that it constitutes a penalty or sanction.

51. This conclusion is not brought into question by the fact that the Applicant is a company wholly owned by a public authority. Such ownership does not in itself constitute a situation equivalent to that in which that Member State exercises public powers. This is all the more so where a state-owned entity behaves like any economic operator operating on a given market.[23]

52. For the above reasons, I propose that the Court reply to the national court's first question as follows: Regulation No 1215/2012 is applicable in circumstances such as those in the present case where a contract for use of a parking space is concluded between, on the one hand, a private individual and, on the other, an entity owned by a public authority, if the latter is not exercising its public powers.

2. The second question

53. In its second question the referring court asks whether the Regulation also relates to the 'jurisdiction of notaries in the Republic of Croatia'.

54. The national court does not explicitly identify the specific provisions of the Regulation that it had in mind when raising this question. However, the issue ultimately being raised is whether Croatian notaries issuing writs of execution qualify as 'courts or tribunals' giving 'judgments' within the meaning of the Regulation.

55. For the reasons set out below, I consider that notaries are not 'courts or tribunals' in this sense.

a) Admissibility

56. Before addressing the substance, a preliminary issue of admissibility must be dealt with.

57. In this case the Defendant opposed the notary's writ of execution. As a result, jurisdiction was transferred to the Croatian courts. Since the notary no longer has jurisdiction over the dispute, does that render the national court's second question purely hypothetical, and therefore inadmissible?

58. In my view, it does not.

59. According to established case-law, questions referred by national courts enjoy a presumption of relevance.[24] The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law sought bears no relation to the actual facts or the purpose of the main action, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.

22 — Judgment of 1 October 2002, *Henkel* (C-167/00, EU:C:2002:555, paragraph 30).

23 — Judgment of 23 October 2014, *flyLAL-Lithuanian Airlines* (C-302/13, EU:C:2014:2319, paragraph 37).

24 — See, recently, judgment of 11 November 2015 *Pujante Rivera* (C-422/14, EU:C:2015:743, paragraph 20 and the case-law cited).

60. In the present case, I do not see that presumption of relevance unequivocally rebutted. It is unclear what consequences a negative reply by the Court to the second question would have for the national procedure. On the one hand, it is possible that such a reply might ultimately have no effect, since the case is now pending before the national court, and no longer before the notary. On the other hand, the answer to the second question might, certainly if in the negative, equally be capable of tainting the entire national procedure. Those are issues of national law. They are for the national court to consider, not for this Court.

61. I would therefore suggest that the second question is admissible.

b) Substance

i) Observations concerning the adaptation of Regulation No 1215/2012 in the light of the accession of Croatia

62. The notion of 'court or tribunal' is not defined in the Regulation. However, Article 3 of the Regulation states that the notion of 'court' specifically includes Hungarian notaries when handling summary proceedings concerning orders to pay and the Swedish Enforcement Authority when handling summary proceedings concerning orders to pay and assistance. No similar provision is included referring to Croatian notaries issuing writs of execution.

63. The Regulation was adopted on 12 December 2012, a few months before the accession of Croatia to the European Union on 1 July 2013, but after publication of the Act of Accession on 24 April 2012, containing a list of technical adaptations to secondary legislation. [25]

64. It may be argued that the Regulation falls between two stools: too late to be subject to technical adaptations as part of the accession process, and too early for Croatia to influence its content as a Member State of the European Union.

65. On that basis, the Croatian Government contends that it was simply unable to have notaries included in Article 3 of the Regulation.

66. Whilst I understand the practical points raised on the timing of the Regulation, I do not think that such considerations should be allowed to affect the interpretation of the scope of the Regulation. The principle of legal certainty requires that interpretations of provisions of EU law be based on the text of those provisions. If the text is ambiguous, those ambiguities must be settled by recourse to the context and purpose of the provision.

67. However, unusual circumstances do not justify setting aside those general rules of legislative interpretation. Odd cases produce bad general rules. Alleged intentions of a Member State, said to be frustrated due to an issue of timing, should not be allowed to twist the interpretation of EU law, which, after all, must be uniform in all Member States. [26]

25 — See Annex III to the Act of Accession.

26 — It ought to be recalled that nothing prevents a Member State from seeking to transform such intentions into binding legislation, through the usual legislative procedures at the Union level.

ii) Are Croatian notaries issuing writs of execution 'courts or tribunals' giving 'judgments'?

– Absence of an established definition of 'court or tribunal'

68. The Regulation defines 'judgments' in a very broad way. The definition is clearly detached from any national categorisations of what constitutes a 'judgment' by using the phrase: 'whatever the judgment may be called'.[27] In addition, other language versions tend to use a more generic term closer to the broader English term 'decision' (for example, 'décision' (French), 'Entscheidung' (German), 'beslissing' (Dutch), 'rozhodnutí' (Czech)). Examples of such 'decisions' given in the Regulation are diverse: 'decree, order, decision or writ of execution … determination of costs or expenses'. Thus, 'writs of execution' are explicitly included.

69. However, decisions are only 'judgments' within the meaning of the Regulation if they are given by 'courts or tribunals'.[28] The term 'court [or tribunal]'[29] is not defined in the Regulation.

70. From a more *institutional* perspective, the natural meaning of 'court or tribunal' would not include notaries, who are not a 'judicial body',[30] that is, they do not form part of the judicial architecture.[31] From a more *functional* perspective, EU law itself recognises 'fundamental differences' between notarial and judicial functions within legal systems.[32] Whilst notaries may sometimes carry out judicial functions in specific cases, that is not their typical and/or main role. As a result, even from a more functional perspective, notaries are not courts 'in the true [everyday] sense of the word'.[33]

71. Nonetheless, the weight to be accorded to the natural meaning of the term 'court or tribunal' in this case is arguably reduced by the diversity of translations of the corresponding term in other language versions. Thus, for example, the Croatian version refers to 'courts' (sud), French to 'jurisdictions' (juridiction), Spanish to 'jurisdictional organs' (órgano jurisdiccional), German to 'tribunals' (Gericht), Czech to 'courts' (soud), Italian to 'jurisdictional authorities' (autorità giurisdizionale).

72. Since the natural meaning of those terms is not devoid of ambiguity, I shall consider below two key aspects of the context and purpose of the Regulation, before proposing a way forward in this case.

73. First, Article 3 of the Regulation is instructive. It specifically identifies Hungarian notaries and the Swedish Enforcement Authority (when adopting certain acts) as being 'courts', 'for the purposes of this Regulation'.

27 — Judgment of 15 November 2012, *Gothaer Allgemeine Versicherung and Others* (C-456/11, EU:C:2012:719, paragraph 26 et seq.).

28 — The term 'judgment' in English (and in Croatian 'sudska odluka') itself implies the type of entity that must adopt the act. The other requirement in Article 2(a) of the Regulation that judgments must emanate from courts '*of a Member State*' is not an issue in this case.

29 — The English version of the Regulation uses both the term 'court' and 'court or tribunal' interchangeably. I will do likewise in this Opinion. Other language versions are more consistent and stick to one single term.

30 — Judgments of 2 June 1994, *Solo Kleinmotoren* (C-414/92, EU:C:1994:221, paragraph 17), and of 14 October 2004, *Mærsk Olie & Gas* (C-39/02, EU:C:2004:615, paragraph 45).

31 — The concept of 'judgment' does cover certain acts adopted by 'an officer of the court'. Such officers are thus capable of being seen as forming part of the 'court or tribunal' (see judgment of 2 June 1994, *Solo Kleinmotoren* (C-414/92, EU:C:1994:221, paragraphs 16 and 17). However, in the present case, the issuing of writs of execution has been delegated *externally*, to notaries, that is, outside the institutional court structures, and not *internally*, within the structure of a court.

32 — Judgment of 1 October 2015, *ERSTE Bank Hungary* (C-32/14, EU:C:2015:637, paragraph 47).

33 — See recital 20 of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ 2012 L 201, p. 107).

74. That approach sends a very strong signal that the legislature did not automatically consider Hungarian notaries and the Swedish Enforcement Authority as falling within the notion of 'court or tribunal'.[34] If it did, there would be little point in listing them explicitly. Article 3 most obviously reads as a kind of exception to, or extension of, the natural meaning of 'court or tribunal'.

75. Thus, contrary to what is argued by the Croatian Government, Article 3 should not, in my view, be read as a mere clarification of borderline cases. That is also because, as noted above, notaries (and enforcement authorities[35]) are not 'courts or tribunals' within the normal meaning of that term. Moreover, if notaries would normally be 'courts or tribunals', *quod non,* it is not clear why it would be necessary to state that fact explicitly and only in relation to a specific function exercised by Hungarian notaries, but not in relation to other functions or notaries of other Member States.[36]

76. Therefore, the structure and wording of Articles 2 and 3 of the Regulation appear to confirm the exclusion of notaries from the notion of 'court or tribunal'.

77. Second, parallel legislation, which deals with jurisdiction, recognition and enforcement in specific areas (and more broadly in matters of civil procedure),[37] is also of interest. Those instruments propose a range of different approaches. Several contain explicit definitions of 'court', which are wide and varied[38] (they may also employ and define different terms).[39] Others do not define the basic term itself, but are accompanied by specifications, for example, a list of particular entities that should be regarded as 'courts' in any event.[40] That is the case for Regulation No 1215/2012.[41]

78. The point here is that there is little horizontal commonality, let alone uniformity, across the individual instruments in the area of EU civil procedure. Recourse to a systemic approach therefore does not take one much further. The notion of 'court' clearly depends heavily on the legislative context and the purpose of the individual measure. In some cases there is a clear desire to give a specific and ad hoc definition, while in others a more generic, undefined term is used (accompanied by specifications).

34 — The documented legislative history does not explain why Article 3 was inserted.

35 — Which, by their very name, would tend to be considered as part of the executive as opposed to the judiciary. In parallel legislation they are referred to as an 'administrative authorities' (see below, footnote 41).

36 — I also note that Hungarian notaries are not included in the equivalent Article 4(7) 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). See also the *a contrario* footnote 33 above on recital 20 of Regulation 650/2012.

37 — See, for example, Regulation No 805/2004 (European enforcement order); Regulation No 650/2012 (succession); the Lugano Convention of 16 September 1988 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2007 L 339, p. 3); Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1); 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); Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ 2009 L 7, p. 1); Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (OJ 2013 L 181, p. 4) and Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ 2007 L 199, p. 1).

38 — For example, the term 'court' can be defined in terms of the scope of the Regulation as in Article 2(1) of Regulation No 2201/2003 and Article 3(2) of Regulation No 650/2012. In both cases, Member States have some obligations to notify the Commission of (non-judicial) authorities falling within the definition of 'court' (Regulation No 650/2012, Article 79; Regulation No 2201/2003, Article 68). Another approach involves straight deference to Member State definitions (that is, courts are the authorities designated as courts by each jurisdiction). That is the case of Article 62 of the Lugano Convention, which has been referred to expressly by the German and Swiss Governments.

39 — See, for example, Article 3(4) of Regulation 606/2013, which defines 'issuing authorit[ies]' as 'judicial authorit[ies]' and certain other authorities adopting measures 'subject to review by a judicial authority and have similar force and effects to those of a decision of a judicial authority on the same matter'.

40 — Regulation No 861/2007 adopts yet another approach. That regulation contains no definition of the basic term 'court or tribunal' but indicates in the recitals that, for example, it must include one qualified judge, and respect the right to a fair trial and the principle of an adversarial process (recitals 9 and 27).

41 — As evidenced by its Article 3. See also Regulation No 805/2004. Regulation No 4/2009 does not define 'court' but states that 'courts' include 'administrative authorities' — which are listed in Annex X (that list includes the Swedish Enforcement Authority).

79. One must therefore be wary of wholesale transpositions of what are apparently context-specific definitions. Equally, the establishment of one all-encompassing EU law notion of 'court or tribunal' appears problematic.

80. At the same time, as observed in particular by the Commission and by the Croatian Government, the term 'court or tribunal' used in Article 2(a) of the Regulation is the same as that used in Article 267 TFEU. It would appear that in most of the language versions, the term used in the Regulation is identical to the one traditionally employed for designating entities that can make preliminary references to the Court.

81. The Article 267 TFEU case-law is rich. However, a wholesale transposition of the Article 267 TFEU case-law appears problematic. It is certainly possible to some extent,[42] but one must always keep in mind that the Article 267 TFEU definition was developed in a different context and with different purposes. That said, the approach taken under Article 267 TFEU still provides a useful starting point. After all, it captures the basic characteristics of an institution that may be called 'court or tribunal'.

– Proposed two-part definition

82. How should the term 'court [or tribunal]' then be defined in the context of Regulation No 1215/2012? How are national courts that are requested to recognise and enforce acts issued by foreign entities supposed to determine whether those entities are 'courts or tribunals'?

83. For the particular purposes of Regulation No 1215/2012, I would propose a two-tiered approach to the notion of 'court or tribunal', consisting of:

— a default *institutional* definition (based on a simple deferral to the recognised judicial structures of the Member States),

— corrected, in exceptional cases, by an EU law *functional* definition (consisting of the Article 267 TFEU criteria, but applied strictly).

84. Such a two-tiered approach, which could also be simply labelled as an 'institutional definition with a safety valve' would, in my view, best fit the specific purposes of Regulation No 1215/2012. On the one hand, it allows the vast majority of normal day-to-day cases to proceed quickly. On the other, it also makes provision for more difficult cases to be resolved relying on the existing case-law of the Court, albeit applied in a slightly modified way.

85. The default definition of the notion of 'court or tribunal' should be simple and based on an institutional approach: a 'court or tribunal' is a judicial body of a Member State. It is an entity forming part of the judicial structure of the Member State and recognised as such.[43]

42 — See judgment of 19 September 2006, *Wilson* (C-506/04, EU:C:2006:587, paragraphs 47 and 48), where the definition developed under Article 267 TFEU was imported for the purposes of interpreting secondary law.

43 — Although not at issue in this case, such a definition should not in principle exclude courts or tribunals common to several Member States such as the Benelux Court of Justice (see recital 11 to the Regulation).

86. This institutional approach to the definition of 'court or tribunal' is supported by the existing case-law of the Court.[44] In the Court's case-law, the fact that the entity under examination is a 'court or tribunal' is generally not even discussed. By way of example from judicial practice, *of course* the English High Court of Justice,[45] the Arondissementsrechtsbank (Dutch District Court),[46] or the French Regional Court (Tribunal de Grande Instance)[47] are 'courts or tribunals'.

87. The discussion in those cases focuses rather on the type of procedure followed and whether the resulting measure amounts to a 'judgment' within the meaning of what is now Article 2(a) of the Regulation. This may be in doubt because of, for example, the *ex parte* or provisional nature of the proceedings. In other words, the 'functional' or 'procedural' analysis is reserved mainly for the assessment of the *act*, not the *institution* adopting it.

88. Perhaps most importantly, a default institutional definition of 'court [or tribunal]' is not only in line with the natural meaning of the term, but it also best reflects the purpose of the Regulation. That purpose is one of mutual recognition and speed and predictability in the administration of justice. That purpose requires simplicity. A case-by-case analysis is clearly not appropriate to achieve that. It also requires trust. If the entity is obviously part of (or obviously not part of) the issuing Member State's judicial institutions, why would the executing Member State begin questioning that fact in any but the most exceptional of cases?[48]

89. To that overall purpose connects an operational point: if the default definition of 'court or tribunal' for the purpose of the Regulation were to be an autonomous EU law definition, would the Court expect national courts to verify the fulfilment of all elements of that definition in every single case in which a recognition under that Regulation is sought? Should every first instance judge in Member State X, on being asked to enforce a judgment, start checking whether or not a tribunal of first instance in Member State Y, which issued the judgment, is an independent and impartial organ of a judicial nature, established by law on a permanent basis, following an *inter partes* procedure?

90. The reasonable answer is clearly 'no'. Thus, the default approach is bound to be institutional: courts or tribunals forming part of the normal judicial structure of a Member State are simply to be presumed to be 'courts or tribunals' for the purpose of the Regulation, without further individual checks being necessary. Again, that is an expression of mutual trust: unless shown emphatically and clearly otherwise, what you call a court, I shall call a court.

91. The default institutional definition has yet another important practical implication: it allows for *internal delegation* within the national courts, in particular the first instance courts. The fact that a measure issued in the institution's name is signed by a clerk, a legal secretary, or other officer of the court duly authorised to do so under national law, typically in summary, unopposed or small claims procedures, does not bring into question the classification of the institution as a 'court or tribunal'. Precisely who decides or who signs may come into play in determining whether the measure constitutes a 'judgment', but that is another matter.

92. Conversely, where a Member State chooses to delegate even a judicial function *externally*, that is, outside the system of the courts, the entity to which delegation has been made does not, by the simple virtue of that delegation, qualify by default as a 'court or tribunal'.

44 — See judgments of 2 June 1994, *Solo Kleinmotoren* (C-414/92, EU:C:1994:221, paragraph 17) and of 14 October 2004, *Mærsk Olie & Gas* (C-39/02, EU:C:2004:615, paragraph 45). In those cases the Court uses the term 'judicial body' apparently as a synonym for the term 'court or tribunal'.

45 — Judgment of 2 April 2009, *Gambazzi* (C-394/07, EU:C:2009:219).

46 — Judgment of 14 October 2004, *Mærsk Olie & Gas* (C–39/02, EU:C:2004:615).

47 — Judgment of 21 May 1980, *Denilauler* (C–125/79, EU:C:1980:130).

48 — This does not of course preempt the qualification of the relevant act as a 'judgment'.

93. To ignore this distinction would, in my view, be at odds with the natural meaning of the term 'court or tribunal' as well as the structure of Articles 2 and 3 of the Regulation. It would also have quite undesirable and impractical implications.

94. However, while default rules are the best practical solution to deal with the vast majority of cases,[49] the issue cannot stop there. There can always be unexpected and exceptional situations. Moreover, the adoption of a purely national institutional definition of 'court or tribunal' would be ultimately controlled entirely by Member States and their choices of judicial architecture. That would negate the EU origin of the notion.[50] At the same time, the creation of a stand-alone, entirely autonomous EU law notion of 'court' is inappropriate given its purpose. For the reasons outlined above, that would also entail a number of practical difficulties. Thus, the definition requires both national and EU law dimensions, corresponding with the first and second tiers of the approach proposed here.

95. As far as the second tier of the suggested approach is concerned, I can think of (at least) two situations in which the default institutional definition might *exceptionally* be brought into question and trigger a more nuanced appreciation of whether a body is or is not a court or tribunal.

96. First, decisions on civil and commercial matters in principle falling within the material scope of the Regulation would be delegated *internally* within the Member State's judicial system, but in a way which raises serious and obvious constitutional concerns in other Member States. Two scenarios are conceivable within this category: a Member State might seek to designate as 'ordinary courts' within its judicial system institutions and/or individuals, which are simply, in spite of their formal classification, unacceptable as such bodies to other Member States.[51] Alternatively, again in truly exceptional circumstances, it might be conceivable that ordinary courts of a Member State experience dysfunctions that make automatic mutual recognition problematic.[52] In both of these scenarios, an assessment of the relevant bodies based on an autonomous EU law definition ought to provide a necessary corrective.

97. Second, an activity that could be considered as a judicial function has been delegated *externally* to a body that does not at first sight form part of the Member State's system of courts. One would expect this second scenario to be significantly more likely to arise than the first. Indeed, it appears to be what has happened in this case. Again it ought to be possible to fall back on a more nuanced definition of 'court or tribunal', which is based purely on EU law.

98. What should that definition be? For the reasons set out above, I consider it inappropriate to import wholesale definitions that have been developed in different contexts of other instruments of secondary law.

99. At the same time, as already mentioned (point 80 of this Opinion), Regulation No 1215/2012 employs textually the same terminology as Article 267 TFEU.

49 — Corroborated by the fact that, since the entry into force of the Brussels Convention over 40 years ago, the specific meaning of 'court or tribunal' in this context has never been addressed in detail by this Court.

50 — An indication that this was indeed not intended in the case of Regulation No 1215/2012 is the fact that the initial Commission proposal for the Regulation had included a definition of 'court' as 'any authorities designated by a Member State' (Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM(2010) 0748 final — COD 2010/0383, Article 2(c)). That definition was, however, not retained.

51 — A number of clearly absurd examples could be provided as illustrations in this category. What is, however, perhaps more important is to underline the purpose of an autonomous EU definition in such cases, which may not be primarily in the interest of the Union, but above all in the interest of the other Member States.

52 — See, by way of a broader analogy, judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 98 et seq.).

100. There are good normative and pragmatic reasons not to reinvent the wheel, i.e. to create new definitions from scratch. Normatively, coherency in the law is an important element of predictability and legality. As set out above at points 77 and 78, this is an area already characterised by a high degree of definitional particularism. As a result, the more advised course of action appears to be a gradual attempt at bringing the individual instruments together, rather than pulling yet another new definition out of the hat. Pragmatically speaking, the Article 267 TFEU test already captures quite well the quintessential characteristics of a body of judicial nature that could be referred to as a 'court or tribunal'.

101. In the light of the above, I propose that in cases such as the present, where the default institutional classification of a body has been brought into question, that classification may be reassessed on the basis of the characteristics used to identify 'courts or tribunals' in the context of the Court's Article 267 TFEU case-law. That means determining whether the national body in question shares all the individual characteristics traditionally listed in that definition, which are: whether the body is established by law; whether it is permanent; whether its jurisdiction is compulsory; whether its procedure is *inter partes*, i.e. it is a procedure of contradictory judicial nature; whether it applies rules of law; and whether it is independent. [53]

102. However, avoiding a complete reinvention of the wheel does not preclude the modification or adaptation of its use. The adaptation in the present case consists not in *what* criteria ought to be employed, but rather *how* they should be employed in the particular context of Regulation No 1215/2012.

103. The adaptation I propose here takes into account the different aims of the preliminary ruling mechanism on the one hand and of the Regulation on the other. The first drives a dialogue between judges and promotes uniformity of EU law. The second is an instrument for mutual recognition and free movement of judgments, implying goals of speed, simplicity and predictability, [54] but based on mutual trust of adequate standards of judicial protection.

104. That difference in purpose must indeed be reflected in a different approach in terms of how to apply the same criteria. In the context of the admissibility of preliminary rulings, the practice could arguably be labelled as a somewhat lenient 'if in doubt, it's admissible' approach. Previous descriptions of this flexibility, more literary in their nature, have alluded to the possibility of accepting even a request for a preliminary ruling submitted by Sancho Panza acting as the Governor of the island of Barataria. [55]

105. However, given the very different context and purpose of the Regulation, the same criteria must in my view be applied *strictly*. Indeed, mutual trust requires clarity and reassurances that, in borderline cases, the acts of the body a Member State is being asked to enforce offer sufficient guarantees in terms of independence, impartiality, *inter partes* contradictory procedure, and the overall respect for the rights of the defence. The factors listed above (point 101) should thus not be treated as optional or as more or less important elements of an overall assessment. Instead, I propose they should be read as a checklist.

106. In other words, in the specific context of Regulation No 1215/2012, the approach in the second tier of the potential functional assessment of the nature of a national body should be *strict*: all criteria must be met, without the possibility of compensation or an overall assessment. [56]

53 — See, for example, judgment of 17 September 1997, *Dorsch Consult* (C-54/96, EU:C:1997:413, paragraph 23), recently confirmed by judgment of 24 May 2016, *MT Højgaard and Züblin* (C-396/14, EU:C:2016:347, paragraph 23).

54 — Judgment of 15 November 2012, *Gothaer Allgemeine Versicherung and Others* (C-456/11, EU:C:2012:719, paragraph 26).

55 — See Opinion of Advocate General Ruiz-Jarabo Colomer in *De Coster* (C-17/00, EU:C:2001:366, point 14).

56 — With the national courts of course free (and sometimes obliged) to consult the Court of Justice pursuant to Article 267 TFEU in borderline cases.

107. In a nutshell, concluding with the quixotic metaphor alluded to above: one might stretch the definition of court or tribunal under Article 267 TFEU and accept a question from Sancho Panza, submitted in his capacity as Governor of the island of Barataria. After all, answering questions to promote unity and clarity of the law should generally be looked upon positively. However, enforcing judgments issued by Governor Sancho Panza against individuals on different islands is quite a different story.

– Application to the present case

108. In the present case and on the basis of the request for a preliminary reference and the observations submitted to the Court, Croatian notaries do not appear to fulfil the default institutional definition of 'court or tribunal'.

109. Could they be nonetheless qualified as 'courts or tribunals' under the second step of the proposed approach, that is, by application of the 'Article 267 TFEU checklist'?

110. Several of those factors are arguably fulfilled in the present case, as suggested notably by the Croatian Government. Whether or not that is the case is ultimately a question for the national court to decide.

111. However, in my view, as observed by the Commission, and further explored at the hearing, the procedure before Croatian notaries described in the request for a preliminary ruling strongly gives the impression of not being *inter partes*. Indeed, that appears to be the case by definition, since jurisdiction over any actual dispute must be transferred to the court by application of Article 282(3) of the Law on Enforcement.

112. In cases of application of the definition of 'court or tribunal' under Article 267 TFEU, the *inter partes* nature of the procedure is not a condition sine qua non. However, for the reasons set out above, I consider it must be viewed as a necessary condition in defining 'court or tribunal' within the meaning of the Regulation.

113. Even if a procedure can *become inter partes* (even easily) by being transferred to a different body, that is not, in my view, sufficient in itself to reclassify the transferring body as a 'court or tribunal' within the meaning of the Regulation. The reason is simple: the actual *inter partes*, contradictory part of the procedure of judicial nature will happen before the court, but not before the notary.

iii) Conclusion on the second question

114. For the reasons given above, I propose that the Court replies to the second question of the referring court as follows: in order to qualify as a 'court or tribunal' within the meaning of Regulation No 1215/2012 an entity must be a judicial body of a Member State forming part of its judicial system. However, in cases of doubt, such an entity may nonetheless fall within the definition of 'court or tribunal' where it fulfils the following criteria (i) it is established by law, (ii) it is permanent, (iii) its jurisdiction is compulsory, (iv) its procedure is *inter partes*, (v) it applies rules of law and (vi) it is independent.

V – Conclusion

115. I propose to the Court to answer the questions referred to it by the Općinski sud u Puli-Pola (Pula Municipal Court, Croatia) as follows:

Question 1

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 is applicable in circumstances such as those in the present case where a contract for use of a parking space is concluded between, on the one hand, a private individual and, on the other, an entity owned by a public authority, if the latter is not exercising its public powers.

Question 2

In order to qualify as a 'court or tribunal' within the meaning of Regulation No 1215/2012 an entity must be a judicial body of a Member State forming part of its judicial system. However, in cases of doubt, such an entity may nonetheless fall within the definition of 'court or tribunal' where it fulfils the following criteria (i) it is established by law, (ii) it is permanent, (iii) its jurisdiction is compulsory, (iv) its procedure is *inter partes*, (v) it applies rules of law and (vi) it is independent.