Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

4 October 2024*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Article 1(1) – Scope – Civil and commercial matters – Concept – Proceedings seeking to substitute the defendant's consent to the release of property seized by the law enforcement authorities from the custody of the court – Article 8(2) – Application to intervene – Concept of 'third party')

In Case C-494/23 [Mahá],[i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší soud (Supreme Court, Czech Republic), made by decision of 7 June 2023, received at the Court on 3 August 2023, in the proceedings

QE,

IJ

v

DP,

EB,

THE COURT (Seventh Chamber),

composed of F. Biltgen (Rapporteur), President of the Chamber, N. Wahl and M.L. Arastey Sahún, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the German Government, by J. Möller, M. Hellmann and J. Simon, acting as Agents,

* Language of the case: Czech.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.

– the European Commission, by S. Noë and K. Walkerová, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1(1) and Article 8(2) of 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 (OJ 2012 L 351, p. 1).

2 The request for a preliminary ruling has been made in proceedings between, on the one hand QE and IJ, two Czech residents, and, on the other, DP and EB, two French residents, concerning the release of a vehicle purchased by QE and IJ from the custody of the court.

Legal context

European Union law

The Brussels Convention

3 Title I of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36) ('the Brussels Convention') provides:

'This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal.

…'

Regulation (EC) No 44/2001

4 Article 1(1) of 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), in force until 9 January 2015 and repealed by Regulation No 1215/2012, provided:

'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.'

Regulation No 1215/2012

5 Under recital 10 of Regulation No 1215/2012:

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

6 Article 1(1) of that regulation provides:

‘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*).’

7 Article 8 of that regulation states:

‘A person domiciled in a Member State may also be sued:

…

(2) as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

…’

8 Under Article 26(1) of that regulation:

‘Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. …’

Czech law

Law No 141/1961 on Criminal Procedure (Code of Criminal Procedure)

9 Paragraph 80(1) and (3) of zákon č. 141/1961 Sb., o trestním řízení soudním (trestní řád) (Law No 141/1961 on Criminal Procedure (Code of Criminal Procedure)) provides:

‘(1) If the item released or removed is no longer necessary for the rest of the proceedings and if confiscation or seizure is not possible, it shall be returned to the person who released it or to the person from whom it was removed. If another person claims a right to that item, it shall be returned to the person whose right to the item is not disputed. Where there are doubts, the item shall be placed in the custody of the court and the person who claims it shall be informed of the fact that he or she must claim it in a civil action. …

…

(3) The decision referred to [in subparagraph 1] shall be taken by the President of the Chamber or, in the context of a preliminary investigation, by the public prosecutor’s office or the law enforcement authorities in the course of the preliminary investigation. …’

Law No 99/1963 on Civil Procedure

10 Paragraph 88(d) of zákon č. 99/1963 Sb., občanský soudní řád (Law No 99/1963 on Civil Procedure) provides:

'Instead of the ordinary court, … the court before which the court custody proceedings are pending shall have jurisdiction to hear the dispute if it concerns a decision which requires the party who had an objection to the item in the custody of the court being returned to the applicant to consent to it.'

Law No 292/2013 on special judicial proceedings

11 Title IV, Section 1 of zákon č. 292/2013 Sb., o zvláštních řízeních soudních (Law No 292/2013 on Special Court Proceedings) is entitled 'Custody-of-the-court proceedings'. It includes, inter alia, Paragraphs 298 and 299 of that law.

12 Subparagraph 1 of Paragraph 298 of that law, entitled 'Return of the item placed in the custody of the court', provides:

'The court shall release the item from its custody to the person to whom the return was granted, at that person's request. Where the item was placed into the custody of the court because a person other than the person to whom the return was granted requests the release from court custody or because another person whose consent is required does not consent to the release to the person to whom the return was granted, consent, to the return, of all the parties and the person whose disagreement with the enforcement led to the item being placed into the custody of the court for the purposes of the return is required. …'

13 Paragraph 299 of the same law, entitled 'Substitution of consent to the return of the item in court custody', states:

'(1) Where consent to the return of the item in the custody of the court was refused, it can be substituted by a final judgment of a court which decided that the person who had an objection to the release must consent to the return of the item in court custody to the applicant.

(2) The court before which the court-custody proceedings are pending shall have jurisdiction to hear an action intended to substitute the consent provided for in subparagraph 1.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 On 19 August 2017, QE and IJ, two Czech residents, purchased a vehicle in Germany for the sum of EUR 13 000. On 12 September 2017, the vehicle was seized by Czech police on the ground that it may have been involved in a theft committed in France. Following the seizure, that vehicle was not returned to QE and IJ but was placed in the custody of the court with the Okresní soud v Českých Budějovicích (District Court, České Budějovice, Czech Republic), in view of the fact that, in earlier proceedings, DP and EB, two French residents, had also claimed their right to it.

15 QE and IJ filed an application, with that court, for the return of the vehicle from the custody of the court. As Czech law requires, in such a case, the consent of all the persons concerned, QE and IJ also submitted a request seeking that that court adopt a decision substituting the consent of DP and EB for the purposes of that return. That request was notified to DP and EB, who did not submit observations within the prescribed period.

16 The court seised, as the court of first instance, declined international jurisdiction in order to hear and determine the request to substitute consent, taking the view, in essence, that that jurisdiction could be established only on the basis of Article 26(1) of Regulation No 1215/2012, but that DP and EB, as defendants, had not appeared before it.

17 Hearing the case on appeal by QE and IJ, the Krajský soud v Českých Budějovicích (Regional Court, České Budějovice, Czech Republic) confirmed, by order of 5 November 2021, the decision of the court of first instance.

18 QE and IJ brought an appeal on a point of law against that decision before the Nejvyšší soud (Supreme Court, Czech Republic), the referring court, arguing that since the proceedings for substituting consent are special proceedings which do not arise from a substantive-law relationship between the parties, the provisions of Regulation No 1215/2012 do not apply.

19 The referring court is of the opinion that certain considerations lead to the conclusion that the proceedings for substituting consent to the release from court custody come within the concept of 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 1215/2012 and, consequently, within the material scope of that regulation. Accordingly, the purpose of court custody is to dispel, in the context of a civil action, any doubt as to which of the persons concerned may have the item returned to them by reason of a right to property or another right. Furthermore, those proceedings, which are *inter partes*, are governed by rules of civil procedure, more specifically by those relating to special court proceedings.

20 The referring court states, nevertheless, that there is reason to doubt the applicability of Regulation No 1215/2012 because of the incidental nature of the proceedings at issue. Despite the fact that the court-custody proceedings and the proceedings for substituting consent to the release from court custody are two sets of proceedings which are different in nature, the existence of the second set of proceedings is closely dependent on the court-custody proceedings.

21 Having recalled that the jurisdiction of the Czech courts in hearing court-custody proceedings is based on the exercise of public powers by the law enforcement authorities, the referring court draws a parallel with the judgment of 18 September 2019, *Riel* (C-47/18, EU:C:2019:754), in which the Court held that an action for a declaration of the existence of a debt for the purposes of its registration in the context of insolvency proceedings derives directly from insolvency proceedings, is closely linked therewith and arises from the law on insolvency proceedings.

22 Furthermore, the referring court points out that, if it were accepted that international jurisdiction, in respect of proceedings seeking to substitute the consent to release from the custody of the court, were to be determined in accordance with the rules on jurisdiction laid down in Regulation No 1215/2012, the parties to the court-custody proceedings could be encouraged to establish strategic courses of action, to the effect that certain parties to the proceedings would remain passive and would wait to be sued before the court of their place of residence under the general rule laid down in Article 4 of that regulation.

23 The referring court's doubts relate also to the interpretation of Article 8(2) of Regulation No 1215/2012 on the rules of jurisdiction applicable to applications to intervene, in particular because several language versions of that provision refer to the concept of 'third party' and 'proceedings involving third parties'.

24 If the answer to the question of whether proceedings to substitute consent to release from court custody come within the concept of 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 1215/2012 is in the affirmative, the referring court therefore asks whether it is possible to interpret Article 8(2) of that regulation as applying to those proceedings.

25 In those circumstances, the Nejvyšší soud (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 1(1) of [Regulation No 1215/2012] be interpreted as meaning that the proceedings concerning the substitution of the defendant's consent to the release of an item from judicial custody, which are proceedings incidental to proceedings on judicial custody commenced with the deposit in such custody of an item seized by law enforcement authorities, fall under the concept of "civil and commercial matters" within the meaning of that provision?

(2) Should the first question be answered in the affirmative, must Article 8[(2)] of [Regulation No 1215/2012] be interpreted as meaning that an application for the substitution of consent to the release of an item from judicial custody filed by one of the parties to the judicial custody proceedings concerning that item, against another party to those judicial custody proceedings, constitutes an application [in proceedings] as provided for in the provision concerned?'

Consideration of the questions referred

The first question

26 By its first question, the referring court asks, in essence, whether Article 1(1) of Regulation No 1215/2012 must be interpreted as meaning that the concept of 'civil and commercial matters', within the meaning of that provision, includes an action seeking to substitute the defendant's consent in the context of an application to release an item from the custody of the court, whereas that action constitutes proceedings that are incidental to the proceedings to place the item seized by the law enforcement authorities into the custody of the court.

27 As a preliminary point, it should be noted that, in so far as Regulation No 1215/2012 repeals and replaces Regulation No 44/2001, which itself replaced the Brussels Convention, the Court's interpretation of the provisions of the latter legal instruments also applies to Regulation No 1215/2012 whenever those provisions may be regarded as 'equivalent' (judgment of 30 June 2022, *Allianz Elementar Versicherung*, C-652/20, EU:C:2022:514, paragraph 20 and the case-law cited).

28 That is the case with Article 1(1) of Regulation No 1215/2012, which states that that regulation 'shall apply in civil and commercial matters whatever the nature of the court or tribunal. …', in so far as that provision is equivalent to Article 1(1) of Regulation No 44/2001 and the first sentence of the first paragraph of Article 1 of the Brussels Convention.

29 In accordance with settled case-law, in order to ensure, as far as possible, that the rights and obligations which derive from Regulation No 1215/2012 for the Member States and the persons to whom it applies are equal and uniform, the concept of 'civil and commercial matters' should not be interpreted as a mere reference to the internal law of one or other of the States concerned.

That concept must be regarded as being an autonomous concept to be interpreted by reference, first, to the objectives and scheme of that regulation and, second, to the general principles which stem from the corpus of the national legal systems (see, to that effect, judgments of 7 May 2020, *Rina*, C-641/18, EU:C:2020:349, paragraph 30 and the case-law cited, and of 16 July 2020, *Movic and Others*, C-73/19, EU:C:2020:568, paragraph 33).

30 In that regard, it is apparent from the case-law of the Court that although certain actions, where the opposing parties are a public authority and a person governed by private law, may come within the scope of Regulation No 1215/2012 where the legal proceedings relate to acts performed *iure gestionis*, it is otherwise where the public authority is acting in the exercise of its public powers (see, to that effect, judgments of 6 October 2021, *TOTO and Vianini Lavori*, C-581/20, EU:C:2021:808, paragraph 37 and the case-law cited, and of 22 December 2022, *Eurelec Trading*, C-98/22, EU:C:2022:1032, paragraph 21 and the case-law cited).

31 The exercise of public powers by one of the parties to the action, because it exercises powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals, excludes such an action from 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 1215/2012 (judgments of 6 October 2021, *TOTO and Vianini Lavori*, C-581/20, EU:C:2021:808, paragraph 38 and the case-law cited, and of 22 December 2022, *Eurelec Trading*, C-98/22, EU:C:2022:1032, paragraph 22 and the case-law cited).

32 In order to determine whether or not a matter falls within the scope of the concept of 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 1215/2012, and, consequently, whether it comes within the scope of that regulation, it is necessary to determine the nature of the legal relationships between the parties to the action and the subject matter of the action or, alternatively, the basis of the action and the detailed rules applicable to it (judgments of 6 October 2021, *TOTO and Vianini Lavori*, C-581/20, EU:C:2021:808, paragraph 36 and the case-law cited, and of 22 December 2022, *Eurelec Trading*, C-98/22, EU:C:2022:1032, paragraph 23 and the case-law cited).

33 Although it is for the referring court to carry out that assessment, it is nevertheless helpful for the Court to provide, in the light of the observations lodged before it, some clarification as to the factors which may be taken into consideration.

34 Accordingly, the Court has previously held that the concept of 'civil and commercial matters' covers a dispute between two undertakings in proceedings to lift a garnishee order relating to the supply of fuel for a military operation, where the public purpose of certain activities does not, in itself, constitute sufficient evidence to classify them as being carried out *iure imperii* (see, to that effect, judgment of 3 September 2020, *Supreme Site Services and Others*, C-186/19, EU:C:2020:638, paragraphs 65 and 66). The Court considered that that is not so, however, in the case of an application to be granted the power to determine future infringements simply by means of a report issued by an official of the public authority in question, since such an application relates in actual fact to special powers that go beyond those arising from the ordinary legal rules applicable to relationships between private individuals (judgment of 22 December 2022, *Eurelec Trading*, C-98/22, EU:C:2022:1032, paragraph 25 and the case-law cited).

35 In the present case, it is apparent from the order for reference that the action seeking to substitute the consent for the release from the custody of the court constitutes proceedings whereby the defendant's lack of consent to the application to release the item from court custody may be substituted by a judicial decision, with a view to establishing to whom the property in custody is to be returned by the judicial authority.

36 As stated by the referring court, that action, which is based on the seizure proceedings ordered by the law enforcement authorities and the placing of the property in question in the custody of the court, is an essential prerequisite for the release of the property from the custody of the court and the restoration of the property.

37 It follows that, in the light of both its subject matter and its basis, since proceedings to substitute consent are inextricably linked to the seizure of the property at issue by the law enforcement authorities and to the subsequent placing of the property in the custody of the court, they cannot be examined without having regard to those proceedings.

38 The seizure of property in the course of criminal proceedings and the subsequent placing in the custody of the court typically come from public authorities, in particular since they are decided unilaterally by the law enforcement authorities and are binding on the parties to the dispute.

39 A dispute of that nature results from the exercise of public powers by one of the parties to the case, as it exercises powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals (see, to that effect, judgment of 15 February 2007, *Lechouritou and Others*, C-292/05, EU:C:2007:102, paragraph 34).

40 It follows that an action to substitute consent, in so far as it constitutes proceedings that are incidental to placing the property seized by the law enforcement authorities into the custody of the court and prior to the release of that property from court custody, must also be regarded as an exercise of public powers.

41 In that regard, the Court has previously held that if, by virtue of its subject matter, a dispute falls outside the scope of Regulation No 1215/2012, the existence of a preliminary issue which the court must resolve in order to determine the dispute cannot, whatever that issue may be, justify application of that regulation (see, to that effect, judgment of 25 July 1991, *Rich*, C-190/89, EU:C:1991:319, paragraph 26).

42 It would indeed be contrary to the principle of legal certainty, which is one of the objectives of Regulation No 1215/2012, for the applicability of that regulation to be able to vary according to the existence of a preliminary issue (see, to that effect, judgment of 15 May 2003, *Préservatrice foncière TIARD*, C-266/01, EU:C:2003:282, paragraph 42).

43 In addition, that interpretation cannot be called into question by the fact that those preliminary proceedings take place between individuals not involving law enforcement authorities, that the procedure is *inter partes* and that the detailed rules for its exercise are governed by rules of civil procedure.

44 The fact that the applicant seeking the release from the custody of the court is acting on the basis of an action which arises from an act in the exercise of public powers is sufficient for those proceedings, whatever the nature of the procedural rules followed, to be treated as being outside the scope of Regulation No 1215/2012. The fact that the proceedings brought before the referring

court are presented as being of a civil nature in so far as they seek to determine to whom the item seized, and in the custody of the court, should be returned is consequently irrelevant (see, to that effect, judgment of 15 February 2007, *Lechouritou and Others*, C-292/05, EU:C:2007:102, paragraph 41 and the case-law cited).

45 In the light of the foregoing, the answer to the question referred is that Article 1(1) of Regulation No 1215/2012 must be interpreted as meaning that the concept of 'civil and commercial matters', within the meaning of that provision, does not include an action seeking to substitute the defendant's consent in the context of an application to release an item from the custody of the court; whereas that action constitutes proceedings that are incidental to the proceedings to place the item seized by the law enforcement authorities into the custody of the court.

The second question

46 In the light of the answer to the first question, there is no need to answer the second question.

Costs

47 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

Article 1(1) of 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

must be interpreted as meaning that the concept of 'civil and commercial matters', within the meaning of that provision, does not include an action seeking to substitute the defendant's consent in the context of an application to release an item from the custody of the court; whereas that action constitutes proceedings that are incidental to the proceedings to place the item seized by the law enforcement authorities into the custody of the court.

[Signatures]