

**Case C-242/20****Request for a preliminary ruling****Date lodged:**

8 June 2020

**Referring court:**

Visoki trgovački sud Republike Hrvatske (Croatia)

**Date of the decision to refer:**

6 May 2020

**Appellant:**

HRVATSKE Šume d.o.o.[,] Zagreb, as the legal successor to HRVATSKE ŠUME javno poduzeće za gospodarenje šumama i šumskim zemljištima u Republici Hrvatskoj[,] p.o. Zagreb

**Respondent:**

BP EUROPA SE, as the legal successor to DEUTSCHE BP AG, as the legal successor to THE BURMAH OIL (Deutschland), GmbH

...

Subject matter: Request for a preliminary ruling — Judicial cooperation in civil matters

**Referring court:**

Visoki trgovački sud Republike Hrvatske [Commercial Court of Appeal of the Republic of Croatia] ...

**Parties to the main proceedings ...:**

Appellant: HRVATSKE ŠUME d.o.o. [,] Zagreb, ... as the legal successor to HRVATSKE ŠUME javno poduzeće za gospodarenje šumama i šumskim zemljištima u Republici Hrvatskoj [,] p.o. Zagreb [CROATIAN FORESTS, a public limited company for forest and woodland management in the Republic of Croatia, established in Zagreb], ...; ‘the appellant’

Respondent: BP EUROPA SE Hamburg, ..., as the legal successor to DEUTSCHE BP AG, ..., as the legal successor to THE BURMAH OIL (Deutschland), GmbH, ...; 'the respondent'

Summary of the subject matter of the dispute in the main proceedings and the relevant facts, substance of the applicable provisions of national law and presentation of the reasons why the court is seeking an interpretation of provisions of EU law:

In the present case, the Trgovački sud u Zagrebu [Commercial Court of Zagreb, Croatia] ... declared that it does not have jurisdiction and dismissed the action because it considers that the courts of the Republic of Croatia do not have international jurisdiction. The appellant lodged an appeal against that order, which is being considered by the Visoki trgovački sud Republike Hrvatske [Commercial Court of Appeal of the Republic of Croatia] ... .

The proceedings before the Trgovački sud u Zagrebu [Commercial Court of Zagreb] were initiated by an application of 1 October 2014, in which the appellant claimed that the judgement of the Vrhovni sud Republike Hrvatske [Supreme Court of the Republic of Croatia] of 21 May 2009 [Or. 2] ... varied the earlier judgments and found that the enforcement of the enforceable title on the basis of the final enforcement order, which the Trgovački sud u Zagrebu [Commercial Court of Zagreb] made against the appellant, was impermissible. At the same time, that judgment ordered the defendants to reimburse the appellant in the present case for costs of the civil proceedings in the amount of HRK 299 974.65 within eight days and refused the respondent in the present case, and the first defendant, reimbursement of the costs of the civil proceedings in the amount of HRK 231 480.90.

Previously, pursuant to an enforcement order made by the Trgovački sud u Zagrebu [Commercial Court of Zagreb], and at the request of the predecessor of the respondent in the present case, as the applicant for enforcement, enforcement was carried out against the debtor subject to enforcement, namely the company FUTURA d.o.o. Zagreb, and the cash due from the debtor subject to enforcement to the appellant in the present case, as the debtor of the debtor subject to enforcement, was distrained and transferred to the predecessor of the respondent in the present case, as the applicant for enforcement, for the purpose of payment. The appellant, as the alleged debtor of the debtor subject to enforcement, sought legal remedies, but in enforcement proceedings they do not have suspensory effect, and therefore judicial recovery of the debt was carried out in the enforcement proceedings by removing a total amount of HRK 3 792 600.87 from the appellant's account on 11 March 2003 and transferring it to the respondent.

In the proceedings brought by the appellant for a declaration that the judicial enforcement against it is impermissible, the Vrhovni sud Republike Hrvatske [Supreme Court of the Republic of Croatia] ruled, in its judgment of 21 May 2009 ..., that the enforcement was impermissible, therefore the respondent did not

become the creditor of the appellant in the present case, and at the time the abovementioned judgment of the Vrhovni sud Republike Hrvatske [Supreme Court of the Republic of Croatia] was declared final the legal basis for the payment by the respondent in the present case to the appellant had ceased to exist. In the present case, the respondent, as the person unduly enriched, must restore to the appellant what it unduly received on the basis of the enforcement proceedings carried out, plus statutory default interest.

Under the provisions governing enforcement proceedings, in such cases it is possible to apply, in the same enforcement proceedings, for the enforcement actions to be stayed, but no later than one year from the date of enforcement, and therefore the appellant initiated these particular civil proceedings to recover [the amount of] the unjust enrichment because the basis for acquiring it subsequently had ceased to exist. The rule governing the time limit for applying for a stay of enforcement actions is set out in Article 58(5) of the Ovršni zakon [Law on enforcement] ('Narodne novine' Nos: 57/96, 29/99, 42/00, 173/03, 194/03, 151/04, 88/05, 121/05, 67/08, 139/10, 154/11 and 70/12), and all subsequent provisions relating to enforcement set the same time limit for seeking recovery of an amount paid in the same enforcement proceedings.

The provisions governing repayment of unjust enrichment are contained in Articles 1111 to 1120 of the Zakon o obveznim odnosima [Law on obligations] ('Narodne novine' Nos: 35/05, 41/08, 125/11, 78/15 and 29/18), and the basic rule is contained in Article 1111(1) which is worded as follows: 'Where part of the property of a particular person has been transferred in any way to another person, and that transfer has no basis in any legal act, judgment of a court or other competent body [or] law, the person who gained the benefit shall be required to restore it or — where that is not possible — to compensate for the value of the benefit gained.'

The parties to the present dispute also contest the jurisdiction of the court since the defendant is a company established in the Federal Republic of Germany and in its defence challenged the jurisdiction of the court of the Republic of Croatia.

The Trgovački sud u Zagrebu [Commercial Court of Zagreb] held that it does not have jurisdiction, incorrectly applying 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)] ... [OJ, Special edition in Croatian: Chapter 19, Volume 11, p. 289, and corrigendum at OJ 2014 L 160, p. 40 and OJ 2016 L 202, p. 57)], Article 66(1) of which stipulates as follows: 'This Regulation shall apply only to legal proceedings instituted, **[Or. 3]**, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015'. The court reached that conclusion regarding international jurisdiction on the ground that there is no specific provision on jurisdiction in matters of unjust enrichment and therefore the general rule on the forum of the defendant's domicile applies. As the action in this case was brought on 1 October

2014, 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)] ... [(Special edition in Croatian: Chapter 19, Volume 3, p. 30) ('Regulation (EC) No 44/2001')], applies, and the correct interpretation of the concept of 'quasi-delict' and enforcement proceedings is not so obvious as to leave no room for reasonable doubt, it was decided in relation to these unresolved matters to make a request for a preliminary ruling in order to ascertain whether or not the courts of the Republic of Croatia have jurisdiction to rule on the present application. A ruling of the Court of Justice on this matter is necessary to enable the Visoki trgovački sud Republike Hrvatske [Commercial Court of Appeal of the Republic of Croatia] to deliver a judgment in the present case and the issue raised is in the general interest of the uniform application of EU law.

... [Staying of proceedings pending a preliminary ruling by the Court of Justice with reference to the relevant provisions of national law]

### I. Question 1

Article 5(3) of Council Regulation No 44/2001 is worded as follows: 'A person domiciled in a Member State may, in another Member State, be sued ... in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur'.

Since unjust enrichment (the legal basis is the enforcement which has been declared impermissible and now the appellant is seeking reimbursement because the one-year time limit for recovery in those enforcement proceedings has expired) was already classified as a quasi-delict in Roman law, it could be found that the courts of the Republic of Croatia do have jurisdiction as the place where the unjust enrichment occurred. However, the link in the case of a quasi-delict is the place where the harmful event occurred and *forum delicti* does not apply to claims based on unjust enrichment, and therefore this provision is a somewhat confusing since Council Regulation (EC) No 44/2001 provides for special jurisdiction for quasi-delicts but does not provide the appropriate link or links; the link which exists gives rise to confusion since no harm occurs in the event of unjust enrichment.

According to the case-law of the Court of Justice, the concept of 'matters relating to tort, delict or quasi-delict' covers all actions which seek to establish the liability of a defendant and does not concern 'matters relating to a contract' within the meaning of Article 5(1)(a) of Regulation (EC) No 44/2001 (see judgments of 27 September 1988, *Kalfelis*, C-189/87, EU:C:1988:459, paragraphs 17 and 18; of 13 March 2014, *Brogstetter*, C-548/12, EU:C:2014:148, paragraph 20; and of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 44).

In his Opinion of [7] April 2016 in *Gazdasági Versenyhivatal v Siemens Aktiengesellschaft Österreich* (C-102/15, EU:C:2016:225), the Advocate General proposed in the alternative, that the Court of Justice answer the question referred

to the effect that, on a proper construction of Article 5(3) of Regulation No 44/2001, an action for restitution on the ground of [Or. 4] unjust enrichment does not constitute a ‘matter relating to tort, delict or quasi-delict’ within the meaning of that provision. However, since the first of the proposals made by the Advocate General was accepted, the Court of Justice did not rule on that matter (it was not a civil case because restitution was sought in administrative proceedings).

In Case C-572/14, concerning a request for a preliminary ruling from the Oberster Gerichtshof (Supreme Court, Austria) ... the Court of Justice noted in its judgment of 21 April 2016 that: ‘Article 5(3) of Council Regulation (EC) No 44/2001 ... must be interpreted as meaning that a claim seeking to obtain payment of remuneration due by virtue of a national law, such as that at issue in the main proceedings, implementing the ‘fair compensation’ system provided for in Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, falls within ‘matters relating to tort, delict or quasi-delict’, within the meaning of Article 5(3) of that regulation.’

A similar rule on special jurisdiction in the same matter is to be found in Regulation (EC) No 1215/2012, but in Article 7(2), which is worded as follows: ‘A person domiciled in a Member State may be sued in another Member State: ... in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur’.

Recital 12 of Council Regulation (EC) No 44/2001 emphasises that in addition to the defendant’s domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice. In the present case, there is precisely a close link between the court and the proceedings and the sound administration of justice is facilitated because it was the defendant who brought the first action in the Republic of Croatia, in which payment was made to it, it subsequently being found that this was contrary to the rules on enforcement proceedings. All the evidence required is also to be provided in the Republic of Croatia.

Therefore, the first question is as follows: Do actions for recovery of sums unduly paid by way of unjust enrichment fall within the basic jurisdiction established in Council Regulation (EC) No 44/2001 ... 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’?

## II. Question 2

Furthermore, in the present case unjust enrichment 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 and Article 22(5) of Council Regulation (EC)

No 44/2001 provides that in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced is to have exclusive jurisdiction, regardless of domicile.

**[Or. 5]**

The liability was met in enforcement proceedings which the Vrhovni sud Republike Hrvatske [Supreme Court of the Republic of Croatia] subsequently found in its judgment were not conducted properly in relation to the appellant. It is not possible to seek recovery of the levied amount in the same enforcement proceedings because one year has elapsed since the date of enforcement, and therefore the rules governing enforcement compelled the appellant to bring an action in civil proceedings in order to recover the amount in question. On account of the close link which exists between the present proceedings and the enforcement proceedings, the question to be answered is as follows: Does the court of the Republic of Croatia have exclusive jurisdiction in this case?

Thus, the second question is as follows: Since there is a time limit on seeking recovery of sums unduly paid in the same judicial enforcement proceedings, do civil proceedings which have been initiated fall within exclusive jurisdiction under Article 22(5) of Council Regulation (EC) No 44/2001 ... which provides that in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced is to have exclusive jurisdiction, regardless of domicile?

Questions referred for a preliminary ruling:

1. Do actions for recovery of sums unduly paid by way of unjust enrichment fall within the basic jurisdiction established in Council Regulation (EC) No 44/2001 ... 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’?

2. Since there is a time limit on seeking recovery of sums unduly paid in the same judicial enforcement proceedings, do civil proceedings which have been initiated fall within exclusive jurisdiction under Article 22(5) of Council Regulation (EC) No 44/2001 ... which provides that in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced is to have exclusive jurisdiction, regardless of domicile?

Together with the reference, the referring court submits copies of the application (p. 1 to 8 of the file); the defence (p. 43 to 47 of the file); the order of the Trgovački sud u Zagrebu [Commercial Court of Zagreb] [...] of 20 March 2019 (p. 78 to 82 of the file); the appeal lodged against the order (p. 86 to 88 of the file); the response to the appeal (p. 91 to 94 of the file); and the order staying proceedings of 6 May 2020.

Zagreb, 6 May 2020

... [Or. 6] ...

WORKING DOCUMENT