

Case C-307/19

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

11 April 2019

Referring court:

Visoki trgovački sud Republike Hrvatske (Commercial Court of Appeal, Croatia)

Date of the decision to refer:

26 March 2019

Appellant:

Obala i lučice d.o.o.

Respondent:

NLB Leasing d.o.o.

Subject matter of the main proceedings

Civil proceedings to recover the principal amount of HRK 84 owed as payment for a daily parking ticket for a car parked on the public highway in Zadar (Croatia) on 30 June 2012.

Subject matter and legal basis of the request for a preliminary ruling

Request for interpretation of EU law under Article 267 TFEU.

Questions referred for a preliminary ruling

1. Are notaries authorised to effect service of documents under Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and

extrajudicial documents in civil or commercial matters when they serve notice of their decisions in cases in which Regulation No 1215/2012 does not apply, bearing in mind that, in Croatia, notaries acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an ‘authentic document’ do not fall within the concept of ‘court’ within the meaning of Regulation No 1215/2012? In other words, given that notaries do not fall within the concept of ‘court’ for the purposes of Regulation No 1215/2012, are they able, when acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an ‘authentic document’, to apply the rules governing service of documents established in Regulation (EC) No 1393/2007?

2. Can parking in the street and on the public highway, where the right to collect payment is conferred by the *Zakon o sigurnosti prometa na cestama* (Law on Road Safety) and the legislation governing the performance of municipal activities as public authority activities, be considered a civil matter within the meaning 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 (recast), which governs the question of the jurisdiction of the courts and the recognition and enforcement of judgments in civil and commercial matters, especially having regard to the fact that, where a vehicle is found without a parking ticket or with an invalid ticket, it is immediately subject to a requirement to pay for a daily ticket, as though it had been parked for the whole day, regardless of the precise length of time for which it was parked, meaning that this daily parking charge has a punitive effect, and that in some Member States this type of parking constitutes a traffic offence?
3. In court proceedings of the type referred to above concerning parking in the street and on the public highway, where the right to collect payment is conferred by the Law on Road Safety and the legislation governing the performance of municipal activities as public authority activities, can the courts effect service of a document on the defendants in another Member State under Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters?

If, based on the above questions, this type of parking is ruled to be a civil matter, the following further questions are referred.

4. In the present case, there is a presumption that a contract is concluded in respect of the aforesaid on-street parking in a space designated by horizontal and/or vertical markings; in other words, by parking there one is deemed to enter into a contract, and if one fails to pay the correct hourly parking charge one has to pay for a daily ticket. The question is therefore raised as to whether that presumption, that parking gives rise to a contract and entails

consent to pay for a daily ticket if one does not buy a ticket in accordance with the hourly parking tariff or if the parking period on the ticket has expired, is contrary to the basic stipulations on the provision of services in Article 56 of the Treaty on the Functioning of the European Union and to the other provisions in the EU *acquis*.

5. In the present case the parking took place in Zadar, Croatia, and there is therefore a connection between that contract and the Croatian courts. But does this parking constitute a 'service' within the meaning of Article 7(1) of Regulation (EU) No 1215/2012, bearing in mind that the concept of service implies that the party who provides the service carries out a particular activity, that is, that the said party carries out that particular activity in return for remuneration. The question is therefore whether the activity carried out by the appellant is sufficient for it to be considered a service. If the Croatian courts do not have special jurisdiction under Article 7(1) of Regulation (EU) No 1215/2012, jurisdiction to hear the case would lie with the court of the respondent's domicile.
6. Can parking in the street and on the public highway, where the right to collect payment is conferred by the Law on Road Safety and the legislation governing the performance of municipal activities as public authority activities, and charges are levied only during a specified period during the day, be considered a tenancy agreement for immovable property under Article 24(1) of Regulation (EU) No 1215/2012?
7. If the aforementioned presumption that the parking entails the conclusion of a contract (fourth question referred) cannot be applied in this case, can this type of parking, where authority to collect parking charges is conferred by the Law on Road Safety and a daily ticket must be purchased if a ticket for the parking period is not purchased in advance or if the parking ticket has expired, be deemed to constitute a matter relating to tort, delict or quasi-delict within the meaning of Article 7(2) of Regulation (EU) No 1215/2012?
8. In the present case, the parking took place before Croatia joined the European Union, specifically at 13.02 on 30 June 2012. Therefore, the question is asked whether the regulations governing applicable law, namely Regulation No 593/2008 or Regulation No 864/2007, apply in the present case, having regard to their temporal validity.

If the Court of Justice of the European Union has jurisdiction to provide a response on the application of the material law, the following question is referred.

9. Is the presumption that this type of parking gives rise to a contract and entails consent to pay for a daily ticket if one does not pay the hourly parking charges or if the ticket expires, contrary to the basic stipulations on the provision of services in Article 56 TFEU and to the other provisions of

the *acquis*, irrespective of whether the owner of the vehicle is a natural or a legal person? In other words, for the purposes of determining the material law, can the provisions of Article 4 of Regulation No 593/2008 apply in this case (given that there is no evidence in the proceedings to show that the parties came to an agreement on the applicable law)?

- If a contract is held to exist, would it be a contract for the provision of services in the present case, that is to say, can the parking contract be considered a service within the meaning of Article 4(1)(b) of Regulation No 593/2008?
- In the alternative, could the parking be considered to constitute a tenancy agreement in accordance with Article 4(1)(c) of Regulation No 593/2008?
- In the alternative, if the parking comes under the provisions of Article 4(2) of Regulation No 593/2008, the question arises as to what constitutes the characteristic performance in the present case, bearing in mind that, in essence, the appellant merely marks the parking area on the roadway and collects parking charges, while the respondent parks and pays for the parking. In practice, if the characteristic performance is considered to be that of the appellant, Croatian law would apply, whereas if the characteristic performance is that of the respondent, Slovenian law would apply. However, given that in this case the right to collect parking charges is regulated by Croatian law, with which, therefore, the contract is more closely connected, can the provisions of Article 4([3]) of Regulation No 593/2008 nevertheless also apply?
- If the case is considered to involve a non-contractual obligation within the terms of Regulation No 864/2007, could this non-contractual obligation be considered to constitute damage, meaning that the applicable law would be determined in accordance with Article 4(1) of Regulation No 864/2007?
- In the alternative, could this type of parking be considered to constitute unjust enrichment, meaning that the applicable law would be determined in accordance with Article 10(1) of Regulation No 864/2007?
- In the alternative, could this type of parking be considered to constitute *negotiorum gestio*, in which case the applicable law would be determined in accordance with Article 11(1) of Regulation No 864/2007?
- In the alternative, could this type of parking be considered to constitute liability on the part of the respondent for *culpa in contrahendo*, in

which case the applicable law would be determined in accordance with Article 12(1) of Regulation No 864/2007?

Provisions of EU law cited

Article 56 TFEU.

Articles 4(1), 10(1), 11(1) and 12(1) of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40; 'Regulation No 864/2007').

Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79; 'Regulation No 1393/2007'), as amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ 2013 L 158, p. 1).

Article 4(1)(b) and (c) and Article 4(2) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6; 'Regulation No 593/2008').

Article 7(1) and (2) and Article 24(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 (OJ 2012 L 351, p. 1; 'Regulation No 1215/2012'), as amended by Regulation (EU) No 542/2014 of the European Parliament and of the Council of 15 May 2014 (OJ 2014 L 163, p. 1) and Commission Delegated Regulation (EU) 2015/281 of 26 November 2014 (OJ 2015 L 54, p. 1).

Provisions of national law cited

Article 1 of the Zakon o sigurnosti prometa na cestama (Law on Road Safety) ('Narodne novine' Nos 67/2008, 48/2010 and 74/2011) states that the purpose of this law is to establish the basic principles of mutual relations, the behaviour of users and others when using the roads, the basic road safety requirements for public highways, road traffic regulations, road signage and markings and signals to be used by authorised officials. Article 5(1)(6) establishes that autonomous local and regional entities shall regulate traffic in their territory in accordance with the provisions of this law and with the prior approval of the Ministry of the Interior. In particular, they are responsible for regulations governing parking zones and procedures, parking prohibitions and restricted parking zones.

Article 1(2) of the *Zakon o komunalnom gospodarstvu* (Law on the management of municipal services) ('Narodne novine' Nos 36/1995, 109/1995, 21/1996, 70/1997, 128/1999, 57/2000, 129/2000, 59/2001, 26/2003 — *Zakon o komunalnom gospodarstvu* (consolidated text), 82/2004, 110/2004, 178/2004, 38/2009, 79/2009, 153/2009, 153/2009, 49/2011, 84/2011, 90/2011 and 144/2012) states that for the purposes of that law, management of municipal services means the performance of municipal activities, such as providing municipal services for the benefit of natural and legal persons, financing buildings and maintaining overall municipal infrastructure facilities and equipment within the territory of the municipalities, cities and city of Zagreb, and also of the counties where the law so provides.

Article 3 of the Law on the management of municipal services states that for the purposes of that law, municipal activities comprise activities such as the supply of drinking water, collection and treatment of waste water, public passenger transport, cleaning services, removal of municipal waste, public lighting and maintenance of public spaces.

The *Odluka o organizaciji i načinu naplate parkiranja u Gradu Zadru* (decision on organisation and procedures for collecting parking charges in the city of Zadar) ('Glasnik Grada Zadra' No 4/2011) establishes parking zones, periods when charges shall apply for on-street parking and hourly parking charges.

Articles 550 to 578 of the *Zakona o obveznim odnosima* (Law on Obligations) ('Narodne novine' Nos 35/2005, 41/2008, 125/2011, 78/2015 and 29/2018) governs rental agreements. Tenancy agreements for immovable property must be in writing.

Those provisions stipulate that the lessor must hand over the property to the lessee in an appropriate condition for the agreed use and must maintain it in that condition. In order to maintain the property in an appropriate condition for the agreed use, the lessor must, in a timely manner, pay for the necessary repairs and the lessee must allow the lessor to carry out such repairs. However, the cost of minor repairs and those arising from normal wear and tear shall be borne by the lessee.

The provisions also stipulate that the lessee must pay the rent at the times stipulated in the lease or by law or, in the absence of any contractual or legal provisions, in accordance with the custom and practice of the place where the property is handed over to the lessee. In the absence of any agreement or provision to the contrary, the rent is to be paid on the conclusion of the rental period, that is, every six months in the case of contracts having a term of at least a year. If the contract is for an indefinite period, in the absence of any agreement to the contrary, the rent is payable monthly. With regard to non-payment of rent and other amounts owed under the tenancy agreement, the lessor of the immovable property is entitled to a pledge over any items which the lessee has placed in the property; these may be subject to enforcement action and may be retained by the

lessor until the debts are paid. Where the term of the tenancy agreement is not specified and cannot be determined having regard to circumstances or local custom, it shall end on termination, and either party may serve notice of termination on the other party by giving notice within the stipulated period; if the notice period is not stipulated in the contract or by law or local custom, the notice period shall be 8 days for leases of movable property and 30 days for tenancies of immovable property; in the case of immovable property, termination of the agreement must be in writing.

Brief summary of the facts and the main proceedings

- 1 On 30 June 2012, at 13.02, the respondent parked a car on the public highway in a street in Zadar, Croatia, without buying a parking ticket in advance. Following an inspection, the appellant issued a daily ticket, which the respondent did not pay for.
- 2 On 20 February 2017 the appellant commenced enforcement proceedings through a notary in Pula by making an enforcement application on the basis of an authentic document.
- 3 On 8 March 2017, acting on an enforcement application based on an authentic document, the notary issued a writ of execution on the basis of an authentic document, in which the defendant in the enforcement proceedings, that is, the respondent, was ordered to pay the sum of HRK 84, which was the cost of the daily ticket, HRK 1 235 for the costs already incurred in the proceedings and HRK 506.25 for foreseeable costs.
- 4 The writ of execution issued on the basis of an authentic document was served by registered letter with acknowledgement of receipt. The defendant in the enforcement proceedings challenged the decision, and the case was therefore referred to the competent commercial court, which set aside the writ of execution issued on the basis of an authentic document in so far as it ordered enforcement, and the proceedings continued as legal proceedings commenced by means of an objection to a demand for payment. The Trgovački sud u Pazinu (Commercial Court, Pazin, Croatia) ruled that it did not have jurisdiction and referred the case to the Trgovački sudu u Zadru (Commercial Court, Zadar, Croatia) for a decision. The Commercial Court, Zadar, ruled that it did not have jurisdiction and referred the case to the Visoki trgovačkom sudu Republike Hrvatske (Commercial Court of Appeal, Croatia) for a decision on the case.

Brief summary of the grounds for the questions referred

- 5 Although the principal amount owed is small, in practice a large number of similar cases are being pursued through the courts, and the answers to the questions referred are not so obvious as to leave no room for any reasonable doubt. Therefore, as the Visoki trgovački sud Republike Hrvatske (Commercial Court of

Appeal, Croatia) is a court of last instance in these proceedings, in view of all the unresolved issues, it has decided to make this request for a preliminary ruling to the Court of Justice for a ruling on whether the Croatian courts have jurisdiction to give judgment in the present case and, if they do have jurisdiction, to ask, as a subsidiary question, what legislation should provide the basis for determining the applicable substantive law.

First question referred

- 6 In its judgment of 9 March 2017 in *Pula Parking* (C-551/15, EU:C:2017:193), the Court of Justice held that Regulation No 1215/2012 must be interpreted as meaning that, in Croatia, notaries acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an ‘authentic document’ do not fall within the concept of ‘court’ within the meaning of that regulation.
- 7 Under Article 14 of Regulation No 1393/2007, the notary in the main proceedings served the writ of execution, dated 8 March 2017, which was based on an authentic document, on the respondent by registered letter with acknowledgement of receipt.
- 8 Bearing in mind, first, that under Article 1 of Regulation No 1393/2007, the regulation applies in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there and, secondly, that, in Croatia, notaries acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an ‘authentic document’ do not fall within the concept of ‘court’ within the meaning of Regulation No 1215/2012, the first question referred asks whether notaries are authorised to effect service of a document under Regulation No 1393/2007 when serving notice of their decisions in cases to which Regulation No 1215/2012 does not apply.
- 9 In other words, given that notaries do not fall within the concept of ‘court’ for the purposes of Regulation No 1215/2012, are they able, when acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an ‘authentic document’, to apply the rules governing service of documents established in Regulation No 1393/2007?

Second and third questions referred

- 10 There is also the question of whether the parking in the present case is a civil or commercial matter.
- 11 In the present case it is clear that the respondent’s authority to collect the parking charge is based on the provisions in the Law on Road Safety. Under Article 5(1)(6) of that law, all municipalities and cities have taken a decision on parking zones and have delegated their public authority powers to a municipal

commercial company formed in order to collect parking charges. The aforesaid decisions on parking zones that regulate the collection of parking charges are founded on the public authority powers in both the Law on Road Safety and the provisions on performing municipal activities contained in the Law on the management of municipal services.

- 12 Under the decision on organisation and procedures for collecting parking charges in the city of Zadar, the appellant — a commercial company created by the city of Zadar in order to perform municipal activities — is authorised to collect parking charges. Among other matters, the aforesaid decision contains rules on collecting parking charges in public on-street parking zones. These are parking zones on the road and on the pavement that are specifically designated by horizontal and/or vertical markings in accordance with the road safety regulations, just as for off-street parking zones. As with other identical decisions adopted by other cities and municipalities, the aforementioned decision defines the parking zones, the period during which on-street parking charges will apply, the hourly parking charges in each zone, any limits on the length of time for which a vehicle may be parked in a particular zone, and the charge for a daily parking ticket issued where the hourly parking charge has not been paid for a vehicle or the period for which advance payment was made has expired. In that regard, although there is a tariff for a daily ticket, it is not possible to pay in advance for a full day's parking.
- 13 Although in the present case there is evidence to show that the vehicle was in the parking space from 13.02, the appellant is claiming the price of the daily ticket from the respondent as if the vehicle had been parked for the whole day. The parking charge is therefore determined by virtue of the authority conferred by mandatory provisions, namely the Law on Road Safety, and the charge is determined unilaterally in relation to users, meaning that if the hourly parking charge is not paid voluntarily, a charge is levied for a full day's parking, regardless of how long the vehicle was parked. The conclusion can therefore be drawn that these are penalty provisions, that is, provisions governing payment of a specific fine that must be paid where an individual has not voluntarily paid in advance for the parking at the hourly rate or where the parking period that was paid for has expired.
- 14 Under Croatian case-law, in these legal situations concerning on-street parking, the presumption applies that a contract has been entered into, because users of such on-street parking, where the parking spaces are marked on the road, are deemed to enter into a contract. In these zones a charge is made for parking at certain times of day (and therefore not 24 hours a day) and the level of the charge depends on the zone the parking space is in. When an individual parks his vehicle he must buy a parking ticket for a certain period of time (depending on the parking zone), and where a vehicle is found not to have a pre-paid ticket, a charge is made for a daily parking ticket.
- 15 The ordinary courts are considered to have jurisdiction in civil proceedings concerning contracts for this type of parking charge. But in some Member States,

where someone fails to pay for on-street parking in a marked parking space he incurs liability for an infringement for which a penalty is imposed. In essence, this liability for an infringement means that the individual concerned has to pay a far higher charge than he would have incurred had he voluntarily paid in advance.

- 16 In essence, parking charges are determined and applied by local entities (the cities), to which authority has been delegated in respect of police and municipal police officers for the purposes of collecting payments for minor road traffic offences of this type. In Croatia, the legal entities responsible for collecting parking charges (in the present case, the appellant) employ wardens who regularly patrol the on-street parking and check whether vehicles are displaying parking tickets or whether the parking period has expired. Where the wardens find a vehicle without a parking ticket, they issue a daily parking ticket. These wardens have a contractual relationship (either a contract of employment or a service contract as a self-employed person) with the legal entities to which the local or autonomous entities have entrusted the collection of parking charges.
- 17 The present case therefore does not concern parking in zones with dedicated parking facilities where individuals have parked in a specific purpose-built enclosed parking space and obtain a specific parking ticket or a ticket recording the time of entry into the car park. That type of parking clearly constitutes a classic civil law contract and is, therefore, a civil law matter.
- 18 Another difference between the parking in the present case and the classic civil law contract relates to the duration of the parking and the payment method. Where the parking is regulated under the Law on Road Safety, when a driver parks he must purchase a parking ticket from an on-street machine (or pay for the parking by text message). The driver must pay in advance for a specific period of time as soon as he has parked. If the period of time that has been paid for expires, the driver has to pay for a day ticket. (For example, if a driver parks at 15.05 and pays for one hour's parking, that is, until 16.05, at 16.25 he will be given an order to pay for a full day's parking ticket; in other words, he must pay the price of a full day's parking, even though he has already paid for one hour's parking and even if, for example, no parking charges are due until 17.00.)
- 19 In the present case, the appellant states that the respondent parked at 13.02 on 30 June 2012, and it maintains that payment must be made as though the vehicle had been parked for the whole day. It can therefore be concluded that the payment has a punitive effect, because a charge is incurred for a daily ticket even though the vehicle was most probably not parked for the whole day and the warden who was checking for vehicles without tickets did not record the vehicle as being there before 13.02. By contrast, where parking takes place under a contract that has been freely entered into, the parking charge begins to accrue when the vehicle enters the car park, and the amount owed is collected when the vehicle leaves the car park, because the parking charge covers only the period between when the vehicle enters the car park and when it leaves.

- 20 In its judgment of 14 October 1976 in *LTU*, (C-29/76, EU:C:1976:137) the Court of Justice held that the concept of civil and commercial matters is an independent concept that is not dependent on the internal law of the Member State of the court concerned. It noted that although some situations involving an action between a public authority (regardless whether that authority takes the form of a commercial company) and a person governed by private law may fall within the scope of the Convention (Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ 1972 L 299, p. 32), that is not so where the public authority acts in the exercise of its powers. Such is the case in a dispute which concerns the recovery of charges payable for the use of public services, namely for the use of equipment where such use is obligatory and exclusive and where the rate of charges for that service or the method of calculation is fixed unilaterally in relation to the users.
- 21 In its judgment of 16 December 1980 in *Netherlands v Ruffer*, (C-814/79, EU:C:1976:137), the Court provided additional clarification on the concept of civil matters; it made clear that that case involved an action between a public authority and a private person in which the public authority was acting in the exercise of its public authority powers, even though the case only involved the recovery of costs incurred in the removal of a wreck, and that, therefore, the proceedings could not be considered to come within the concept of ‘civil and commercial matters’. In order for a dispute between a public authority and a private person to be considered to come within the concept of ‘civil and commercial matters’, the proceedings must ensure, as far as possible, that the rights and obligations which derive from that convention are equal and uniform for the Member State and the private person.
- 22 In the present case, it is not disputed that the respondent is a person governed by private law, that the appellant is a legal person created by the city of Zadar to perform municipal activities, and that authority to collect parking charges derives from the Law on Road Safety as a mandatory provision of public law. The parking charge is determined unilaterally and is the only procedure open to vehicle owners who wish to park in the street (the number and availability of off-street parking spaces is extremely limited in cities). Given that the purpose of these proceedings is to recover payment for a daily ticket that has a punitive element to it, in so far as the amount of the charge is not determined by the period of time for which the vehicle was parked but is levied as though the vehicle had been parked for the whole day, even though the vehicle was only found to be parked in the space at 13.02, the question arises whether the Croatian courts have jurisdiction to give judgment, that is, whether judgments by the Croatian courts could be the subject of enforcement action in other Member States, or whether the appellant would have to commence legal proceedings in the court of the place where the respondent is domiciled.
- 23 In the light of the above and of the legal considerations set out in the judgments in Cases C-29/76 and C-814/79, the question arises whether parking in the street and on the public highway, where the right to collect payment is conferred by the Law

on Road Safety and by the legislation governing the performance of municipal activities as public authority activities, can be considered a civil matter within the meaning of Regulation No 1215/2012, having regard to the fact that, where a vehicle is found without a parking ticket or with an invalid ticket, it is immediately subject to a requirement to pay for a daily ticket, as though it had been parked for the whole day, regardless of the precise length of time for which it was parked.

- 24 The question also arises whether, in such cases concerning parking in the street and on the public highway, where the right to collect payment is conferred by the Law on Road Safety and the legislation governing the performance of municipal activities as public authority activities, the courts can effect service of a document on the defendants in another Member State under Regulation (EC) No 1393/2007.

Fourth question referred

- 25 If, based on the above questions, it is ruled that this type of parking is a civil matter, the following further question is referred: do the Croatian courts have jurisdiction to hear an appeal and to give judgment on the basis of Regulation No 1215/2012? Article 4 of that regulation provides that persons domiciled in a Member State are, whatever their nationality, to be sued in the courts of that Member State. However, in the present case, the respondent is domiciled in another Member State, namely Slovenia, and jurisdiction can therefore be determined under Article 7, or possibly under the first paragraph of Article 24(1) of that regulation. Moreover, in the light of the provisions on special jurisdiction in Article 7 of that regulation, the question arises as to whether the case involves contractual or non-contractual liability.
- 26 Bearing in mind that under Croatian case-law a contract is presumed to have been entered into in respect of this type of on-street parking in a space designated by horizontal and/or vertical markings — in other words, by parking there, one is deemed to have entered into a contract, and failure to pay the correct hourly charge means that one has to pay for a daily ticket — the question arises in this dispute whether that presumption, that parking gives rise to a contract and entails consent to pay for a daily ticket if one has not bought a ticket under the hourly parking tariff or if the parking period on the ticket has expired, is contrary to the basic stipulations on the provision of services in Article 56 TFEU and to the other provisions in the EU *acquis*, regardless whether the owner of the vehicle is a natural or a legal person.

Fifth and sixth questions

- 27 If that parking does involve entering into a contract, the question also arises as to what type of contract it is, that is, whether it is a contract that could provide the basis for the jurisdiction of the Croatian courts under Article 7(1) or Article 24 of Regulation No 1215/2012. This question is asked in view of recital 15 of that regulation.

- 28 Therefore, given that in the present case the act of parking in the street is deemed to imply the conclusion of a contract, the question is whether it constitutes a service contract or a tenancy agreement for immovable property whose provisions would give rise to special jurisdiction on the part of the Croatian courts, or whether it is a contract in respect of which there is no provision for special jurisdiction on the part of the courts of a Member State other than the court of the defendant's domicile.
- 29 In the present case, the appellant, as the provider of the right to park, merely proceeded to mark the on-street parking space and collect the parking charge. There is therefore the question of whether this involves a service or, possibly, a tenancy of immovable property. This question arises because of the doubts raised by the case-law of the Court of Justice. In particular, in its judgment of 23 April 2009, in *Falco Privatstiftung and Rabitsch* (C-533/07, EU:C:2009:257, paragraph 29) the Court held, inter alia, that the concept of service implies that the party who provides the service carries out a particular activity and, specifically, that it carries out that activity in return for remuneration. It is therefore questionable whether the mere act of marking the parking space, collecting payment via a parking machine and checking that tickets have been purchased are sufficient to enable the contract to be considered a service contract.
- 30 Moreover, in the order of 14 November 2013 in *Krejci Lager & Umschlagbetrieb* (C-469/12, EU:C:2013:788), the Court of Justice held that a storage contract entails a specific activity, consisting of the reception of goods, their storage in a safe place and their return in an appropriate state, and that such a contract is deemed to be a contract for the provision of services, but that where a contract is concluded for the rental of an area of space, then only the courts of the place where the property is situated have jurisdiction.
- 31 In the present case the parking took place in Zadar, Croatia. A connection therefore exists between that contract and the Croatian courts, and the court of first instance would be the Trgovački sud u Zadru (Commercial Court, Zadar), and the court of appeal would be the Visoki trgovački sud Republike Hrvatske (Commercial Court of Appeal, Croatia). But does this parking constitute a 'service' within the meaning of Article 7(1) of Regulation No 1215/2012? In particular, the concept of service implies that the party who provides the service carries out a particular activity, that is, that the said party carries out that particular activity in return for remuneration. The question therefore arises whether the activity performed by the appellant is sufficient for it to be considered a service. If the Croatian courts do not have special jurisdiction under Article 7(1) of that regulation, jurisdiction would lie with the court of the respondent's domicile.
- 32 Moreover, given that this type of parking involves occupying a specific space in an immovable property, it could be considered to entail a tenancy agreement of the kind referred to in Article 24(1) of Regulation No 1215/2012. In the present case, in so far as the parking does not include scope to profit from the parking

space, but only to use it, the only possible agreement is a tenancy agreement without a right to profits, based on the general rules in the Law on Obligations.

- 33 However, it can be concluded from an examination of those provisions in the Law on Obligations that this type of on-street parking cannot be considered to constitute a tenancy of immovable property, because the contract is not in writing. Moreover, the tenancy is for an indefinite period of time and payment is to be collected over a specified period of time during the day (parking charges apply only during a certain part of the day rather than 24 hours a day), and there is no right of pledge over the vehicles parked in that immovable property. Nevertheless, given that a specific space in the immovable property is being occupied, there are also certain similarities with a tenancy agreement; therefore it could perhaps be concluded that in spite of everything a tenancy agreement has been concluded and consequently the jurisdiction provisions in Article 24(1) of Regulation No 1215/2012 apply.
- 34 The question therefore arises whether parking in the street and on the public highway, where the right to collect payment is conferred by the Law on Road Safety and the legislation governing the performance of municipal activities as public authority activities, and charges are levied only during a specified period during the day, can be considered a tenancy agreement for immovable property under Article 24(1) of Regulation No 1215/2012.

Seventh question referred

- 35 If the aforesaid presumption that this type of parking entails a contract cannot be applied in the present case, the question arises whether this type of parking, where authority to collect parking charges is provided by the Law on Road Safety and payment for a daily ticket is required if a ticket is not purchased in advance for the parking period or if the parking ticket has expired, could be considered to constitute a matter relating to tort, delict or quasi-delict within the meaning of Article 7(2) of Regulation (EU) No 1215/2012, which would mean that the Croatian courts had jurisdiction under those special provisions. If it cannot be considered a case of special jurisdiction, the Croatian courts would not have jurisdiction to hear proceedings involving an action for collection of parking charges pursuant to the authority conferred by the Law on Road Safety; instead, only the courts of the respondent's domicile would have jurisdiction to enforce payment.
- 36 Regulation No 1215/2012 contains no detailed provision on what constitutes a matter relating to tort, delict or quasi-delict. However, Article 2 of Regulation No 864/2007, entitled 'Non-contractual obligations', stipulates that damage shall cover any consequence arising out of tort/delict, unjust enrichment, *negotiorum gestio* or *culpa in contrahendo*. Parking of the type under consideration in the present case could, in certain circumstances, be considered a quasi-delict, that is to say, unjust enrichment or *culpa in contrahendo*, given that the owner of the

vehicle has not agreed to a contract and has not purchased a parking ticket from the machine on the street.

- 37 If the aforesaid presumption that the parking entails the conclusion of a contract (fourth question referred) cannot be applied in this case, then the question would arise whether this type of parking, where authority to collect parking charges is provided by the Law on Road Safety and a daily ticket must be purchased if a ticket for the parking period is not purchased in advance or if the parking ticket has expired, could be deemed to constitute a matter relating to tort, delict or quasi-delict within the meaning of Article 7(2) of Regulation (EU) No 1215/2012.

Eighth and ninth questions referred

- 38 The question posed above as to whether we are dealing with a contractual or a non-contractual obligation, on which the court's jurisdiction depends, also gives rise to a similar issue as regards the applicable law.
- 39 In the present case, the parking took place on 30 June 2012, that is, before Croatia joined the European Union on 1 July 2013. Therefore, the first question that arises is whether the regulations governing the applicable law, namely Regulation No 593/2008 or Regulation No 864/2007, apply in the present case, having regard to their temporal validity.
- 40 This question has become more acute in view of the positions set out in the order of 5 November 2014 in *VG Vodoopskrba* (C-254/14, EU:C:2014:2354), where the Court of Justice held that it did not have jurisdiction to reply to the question referred because the facts of the main case had occurred before Croatia joined the European Union. By contrast, in its judgment of 14 February 2019 in *Milivojević* (C-630/17, EU:C:2019:123), where the parties had also entered into a contract before Croatia joined the European Union, the Court of Justice replied to the question referred, because it had been established that some of the effects connected with the agreement and the legal acts consequent upon it continued to make themselves felt.
- 41 In view of the legal question raised above, and bearing in mind that in the present case the parking took place before Croatia joined the European Union, namely on 30 June 2012 at 13.02, the question arises whether the provisions on applicable law, that is to say, Regulation No 593/2008 or Regulation No 864/2007, apply in the present case, having regard to their temporal validity.
- 42 If the answer to the question regarding temporal validity is in the affirmative, that is, if the Court of Justice has jurisdiction to give a response on the application of the material law, the question arises whether, as regards the material law, the applicable provisions are those in Regulation No 593/2008 or those in Regulation No 864/2007, because in the present case there is an issue over whether the obligation is contractual or non-contractual, having regard to the fact that, under Croatian case-law, there is a presumption that by parking in the street in a place

designated by horizontal and/or vertical markings one has entered into a contract, that is to say, parking there is deemed to imply a contract and if one does not pay the hourly parking charges one has to pay the price of a daily parking ticket.

- 43 If this presumption is not contrary to the basic stipulations on the provision of services in Article 56 TFEU and to the other provisions of the *acquis*, irrespective of whether the owner of the vehicle is a natural or a legal person (fourth question referred), the question arises whether, for the purposes of determining the material law, the provisions of Article 4 of Regulation No 593/2008 apply in this case (especially as there is no evidence in the proceedings to show that the parties came to an agreement on the applicable law).
- 44 On the one hand, if it is held that a contract has actually been concluded, the question arises whether the present case involves a contract for the provision of services, that is, whether this parking contract can be considered to be a service within the meaning of Article 4(1)(b) of Regulation No 593/2008, which stipulates that a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence. If it is held not to be a contract for the provision of services, the next question is whether it is a tenancy agreement, in which case the provisions in Article 4(1)(c) of the aforementioned regulation would apply, which stipulate that a contract relating to a right *in rem* in immovable property or to a tenancy of immovable property shall be governed by the law of the country where the property is situated. If the contract is held to be neither a contract for the provision of services nor a tenancy agreement, then it could come within the scope of application of Article 4(2) of that regulation. However, the question arises as to what constitutes the characteristic performance because, in essence, the appellant merely marks the parking area on the roadway and collects parking charges, while the respondent parks and pays for the parking. In practice, if the characteristic performance is considered to be that of the appellant, Croatian law would apply, whereas if the characteristic performance is that of the respondent, Slovenian law would apply. However, given that in this case the right to collect parking charges is regulated by Croatian law, with which, therefore, the contract is more closely connected, the question arises whether the provisions of Article 4(3) of the said regulation may nevertheless also apply.
- 45 On the other hand, if it is held that the parking does not give rise to a contract, the question arises whether this type of parking, where authority to collect parking charges is conferred by the Law on Road Safety, could be considered a non-contractual obligation within the meaning of Regulation No 864/2007, under which non-contractual obligations include damage arising out of tort/delict, unjust enrichment, *negotiorum gestio* or *culpa in contrahendo*. If this type of parking is deemed to constitute damage, under Article 4(1) of the regulation the applicable law would be the law of the country in which the damage occurs. However, if the parking is deemed to constitute unjust enrichment, under Article 10(1) of that regulation, Croatian law would apply because the obligation arises out of a tort/delict committed by the respondent. But if the parking is deemed to constitute *negotiorum gestio*, under Article 11(1) of that regulation, Croatian law would

apply because the obligation arises out of a tort/delict committed by the respondent. Finally, if the parking is deemed to constitute *culpa in contrahendo* on the part of the respondent, under Article 12(1) of that regulation, Croatian law would apply because this would have been the applicable law if a contract had been entered into.

WORKING DOCUMENT