



Press and Information

Court of Justice of the European Union

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Judgments in Cases C-484/15 and C-551/15
Ibrica Zulfikarpašić v Slaven Gajer and Pula Parking d.o.o. v Sven Klaus
Tederahn

Notaries in Croatia, acting in enforcement proceedings on the basis of an ‘authentic document’, cannot be deemed to be ‘courts’ either within the meaning of the Regulation on the European Enforcement Order or for the purposes of the application of the Regulation on the recognition and enforcement of judgments in civil and commercial matters

The writs of execution which they issue cannot therefore, in principle, be certified as European Enforcement Orders and may not be recognised or enforced in other Member States as judicial decisions

Facts in Case C-484/15

Mr Ibrica Zulfikarpašić is a Croatian lawyer who brought an application for enforcement before a notary against one of his clients, Mr Slaven Gajer, on the ground that the latter had failed to pay for legal services provided to him. On the basis of that application, the notary issued a writ of execution which, in the absence of any opposition on the part of the client, became definitive.

Mr Zulfikarpašić then applied to a notary, pursuant to the Regulation on the European Enforcement Order,¹ for certification of that writ of execution as a European Enforcement Order. According to that regulation, judgments of ‘courts’ on uncontested claims may be certified as European Enforcement Orders, which must be recognised and enforced in all Member States.

The notary, however, refused to certify the writ on the ground that the claim at issue was not uncontested within the meaning of the regulation. In accordance with Croatian law, he referred the case to the Općinski sud u Novom Zagrebu — Stalna služba u Samoboru (Municipal Court of New Zagreb — Samobor Permanent Service, Croatia). That court asks the Court of Justice whether the concept of a ‘court’ used in the regulation also includes notaries in Croatia (first part of the question referred) and whether a European Enforcement Order may be issued on the basis of such a writ of execution (second and third parts of the question referred).

Facts in Case C-551/15

Pula Parking, a company owned by the town of Pula (Croatia) carries out the administration of the public pay-parking spaces in that town. That company is seeking from Mr Sven Klaus Tederahn, who is domiciled in Germany, the payment of a parking ticket which it issued to him. On the basis of accounting documents demonstrating the existence of a debt connected to the amount indicated on that ticket, a notary issued a writ of execution against Mr Tederahn.

However, following an appeal lodged by Mr Tederahn against that writ, the case was referred to the Općinski sud u Puli-Pola (Municipal Court of Pula, Croatia). That court, in essence, asks the Court of Justice whether such enforcement proceedings come within the scope of the Regulation on the recognition and enforcement of judgments in civil and commercial matters² (the first question referred) and whether notaries in Croatia, acting in the context of enforcement

¹ 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).

² 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).

proceedings on the basis of an ‘authentic document’, come within the concept of a ‘court’ for the purposes of that regulation (second question referred).

The Court’s replies

With regard to the classification of notaries in Croatia as ‘courts’ for the purposes of the aforementioned regulations, the Court states, in its judgments handed down today, that compliance with the principle of mutual trust between Member States in the area of judicial cooperation in civil matters requires that judgments of national authorities of a Member State, the enforcement of which is sought in another Member State, must be delivered in court proceedings which offer guarantees of independence and impartiality and respect the principle of *audi alteram partem*. In that regard, however, the Court finds that **the procedure under which notaries in Croatia issue a writ of execution** on the basis of an ‘authentic document’, such as the invoice issued by Mr Zulfikarpašić to his client or the accounting records presented by Pula Parking, **is not *inter partes***.

First, the request of the creditor seeking the issuing of such a writ is not communicated to the debtor and, second, the writ itself is served on the debtor only after it has been adopted. Consequently, in Croatia, notaries acting within the scope of the powers conferred on them by national law in enforcement proceedings on the basis of an ‘authentic document’ **cannot come within the concept of a ‘court’ within the meaning of the two regulations mentioned above**.

With regard to the second and third parts of the question referred in Case C-484/15, the Court finds that, even though notaries in Croatia are authorised to draw up authentic instruments which can also serve as the basis for the issuing of a European Enforcement Order, provided that they relate to undisputed claims, **the writs of execution which those notaries issue can be certified in that capacity only if it is established that the debtor has expressly agreed to the claim contained therein**. In the present case, however, the notary issued a writ of execution on the basis of an invoice drawn up unilaterally by the creditor without the debtor having expressly agreed to the claim.

With regard to the first question referred in Case C-551/15, the Court specifies that, although the powers of Pula Parking have been entrusted to it by an act of public authority, neither the determination of the unpaid parking debt, which is contractual in nature, nor the action for recovery of that debt, the purpose of which is to safeguard private interests and which is governed by the general provisions of law applicable to relations between private individuals, appears to require the exercise of public-authority powers. Likewise, that debt does not appear to be coupled with any penalties, the imposition of which would come within the exercise of public authority, but, on the contrary, appears merely to constitute consideration for a service provided. Consequently, the enforcement proceedings brought by Pula Parking against Mr Tederahn are of a private-law nature and, as such, **come within the scope of the Regulation on the recognition and enforcement of judgments in civil and commercial matters**.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text of the judgments [C-484/15](#) and [C-551/15](#) are published on the CURIA website on the day of delivery.

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