

Case C-494/23 [Mahá] ⁱ

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:

3 August 2023

Referring court:

Nejvyšší soud (Czech Republic)

Date of the decision to refer:

7 June 2023

Applicants:

QE

IJ

Defendants:

DP

EB

Subject matter of the main proceedings

Judicial custody of an item deposited by a law-enforcement authority once the item is no longer required for the purposes of criminal proceedings – Release of the item from custody – Multiple parties claiming a right to the item – The need to obtain consent to the release of the item from all parties to the judicial custody proceedings – Substitution, by court decision, of the consent of persons who have withheld their consent.

In the original proceedings, the applicants (resident in the Czech Republic) sought a decision that would substitute an expression of will of the defendants (resident in the French Republic) and have the effect of consent by those defendants to the release of an item from judicial custody to the applicants.

ⁱ The title of the present case is fictitious. It does not correspond to the actual name of any of the parties to the proceedings.

Subject matter and legal basis of the request

The subject of the request for a preliminary ruling is the interpretation of the rules for determining jurisdiction in civil and commercial matters.

In particular, the Court of Justice is asked to determine whether proceedings concerning the substitution of the defendant's consent to the release of an item from judicial custody in which the item was placed by a law enforcement authority in criminal proceedings falls within the autonomous term of EU law of a 'civil and commercial matter' as defined in 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 (OJ 2012 L 351, p. 1; 'Brussels I bis Regulation').

If it indeed does fall within that term, the Court of Justice is asked to determine whether an application initiating such proceedings may be deemed to constitute an application in 'any other third-party proceedings' within the meaning of Article 8, point 2, of the Brussels I bis Regulation, given that these proceedings are incidental to the proceedings concerning judicial custody.

The legal basis of the request is Article 267 TFEU.

Questions referred for a preliminary ruling

1. Must 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 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, point 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 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?

Provisions of European Union law relied on

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): Article 1(1), Article 4(1), Article 5(1), Article 8, point 2, and Article 26(1)

Provisions of European Union case-law relied on

Judgment of 14 October 1976, *LTU* (29/76, EU:C:1976:137)

Judgment of 27 October 1977, *Bouchereau* (30/77, EU:C:1977:172)

Judgment of 3 October 2013, *Schneider* (C-386/12, EU:C:2013:633)

Judgment of 28 February 2019, *BUAK Bauarbeiter-Urlaubs- u. Abfertigungskasse* (C-579/17, EU:C:2019:162)

Judgment of 18 September 2019, *Riel* (C-47/18, EU:C:2019:754)

Provisions of national law relied on

Zákon č. 141/1961 Sb., o trestním řízení soudním (trestní řád) – Law 141/1961 on criminal proceedings (Code of Criminal Procedure)

‘Paragraph 80

1. If an item which was [...] removed [...] is no longer necessary for further proceedings [...] it shall be returned to the person [...] from whom it was removed. If another person claims a right to it, then it shall be released to the person whose rights to the item are unquestionable. If there are doubts, the item shall be placed into custody and the person claiming their right to it shall be advised to exercise their right in civil proceedings. [...]

Zákon č. 292/2013 Sb., o zvláštních řízeních soudních – Law 292/2013 on special judicial proceedings (‘LSJP’)

‘Paragraph 298

Release from custody

- (1) The court shall release the subject of custody to the recipient at the recipient’s request. If the item was placed in custody due to the fact that a person other than the recipient is claiming a right to the release of the subject of custody [...], the consent of all parties shall be required for the release of the subject of custody [...]

[...]

Paragraph 299

Substitution of consent to the release from custody

- (1) If consent to the release of the subject of custody has been withheld, it can be substituted by a final judgment of a court ruling that the person who opposed the release is obliged to consent to the release of the subject of custody to the applicant.
- (2) The court before which proceedings concerning custody are being conducted has jurisdiction in proceedings concerning the substitution of consent pursuant to Paragraph 299(1).

Paragraph 300

Special custody cases

Where a court accepts into custody items in situations as provided for by other legislation, it shall be governed by the provisions of the applicable legislation [...], as appropriate according to the nature of the custody and its purpose.'

Zákon č. 91/2012 Sb., o mezinárodním právu soukromém – Law 91/2012 on private international law ('LPIL')

'Paragraph 6

Jurisdiction of Czech courts

- (1) Courts of the Czech Republic shall have jurisdiction if, according to procedural legislation, a court in the territory of the Czech Republic has territorial jurisdiction, unless the provisions of this Law or another legislation indicate otherwise.'

Succinct presentation of the facts and procedure in the main proceedings

- 1 On 19 August 2017, the applicants purchased a motor vehicle in Germany, based on an advertisement. On 12 September 2017, the vehicle was seized by the Police of the Czech Republic on the ground that it is the subject of suspicion of the criminal offence of theft committed in France. Subsequently, the Police placed the vehicle in custody with the Okresní soud v Českých Budějovicích (District Court, České Budějovice, Czech Republic).
- 2 The applicants filed an application with the aforementioned court for the release of the vehicle from custody. Given that, in previous proceedings, other persons had claimed a right to the vehicle, according to the laws of the Czech Republic,

consent of all of the persons concerned is required for the release of the subject of custody, or the substitution of their consent by a court ruling.

- 3 Consequently, applicants filed an application with the same court against defendants resident in France, for the substitution of their consent to the release of the item from custody. The defendants did not attend the proceedings.
- 4 In connection with the defendants' failure to appear, the court of first instance declared its lack of international jurisdiction and stayed the proceedings. The Krajský soud v Českých Budějovicích (Regional Court, České Budějovice, Czech Republic), as the court of appeal, upheld the decision of the court of first instance.
- 5 The two courts concurred that the substitution of an expression of the defendants' will is purely a civil claim, that there is an international aspect in the present case, and that the Brussels I bis Regulation applies. In view of the general rule of *actor sequitur forum rei* (Article 4(1) of the Brussels I bis Regulation) and the list of permissible departures from it (Article 5(1) of the same Regulation), they hold that jurisdiction of a Czech court could be based only on Article 26(1) of that regulation. But the defendants did not attend the proceedings before the Czech court, so there is no legal basis for its international jurisdiction.
- 6 The applicants filed an appeal in cassation with the Nejvyšší soud (Supreme Court, Czech Republic), the referring court, challenging the decision of the court of appeal.

The essential arguments of the parties in the main proceedings

- 7 The applicants submit that the court of appeal erred in addressing the issue of international jurisdiction of the courts of the Czech Republic. They refer to Paragraph 299 LSJP, according to which the court before which the proceedings concerning custody are being conducted has jurisdiction in the proceedings concerning the substitution of consent. In the applicants' view, the fact that the item was placed in custody with the District Court, České Budějovice, pursuant to Paragraph 80(1) of the Code of Criminal Procedure, is decisive for the jurisdiction of courts of the Czech Republic. Hence, in accordance with the *perpetuatio fori* principle, that jurisdiction must also exist in proceedings derived from the custody proceedings. In the applicants' view, the proceedings concerning substitution of consent do not stem from the substantive relationship between the applicants and the defendants, and hence, the rules laid down in the Brussels I bis Regulation cannot be applied.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 8 In the case in the original proceedings, it was necessary to answer the question whether the courts of the Czech Republic have international jurisdiction to decide the matter. The question at issue is whether the Brussels I bis Regulation should

be applied in determining that jurisdiction and whether the jurisdiction of the courts of the Czech Republic could be based on its rules, and if so, whether it can be based on provisions of Article 8, point 2, of the Regulation, which is formulated differently in various language versions. If the Court of Justice were to determine that the Brussels I bis Regulation is not applicable, the international jurisdiction, or competence, of the courts of the Czech Republic could be based on Paragraph 6(1) LPIL in conjunction with Paragraph 299(2) LSJP.

The first question

- 9 To reach a conclusion concerning the applicability of the Brussels I bis Regulation, it must first be assessed whether the matter in the original proceedings is civil or commercial.¹ There is no doubt that other conditions for the applicability of the Regulation are met.
- 10 In the case in the original proceedings, the applicants' car was seized by the police as an item important for the purpose of criminal proceedings. Once the item was no longer needed for the criminal proceedings, the law enforcement authority should in principle have returned the car to the applicants. However, other persons claimed a right to the car in the criminal proceedings. Consequently, doubts arose as to the person to whom the car is to be released, and therefore, that authority placed the item in judicial custody.
- 11 The following facts support the conclusion that the original proceedings concerning the substitution of consent falls within the factual scope of the concept 'commercial and criminal matters' within the meaning of Article 1(1) of the Brussels I bis Regulation.
- 12 According to national case-law, namely the unifying opinion of the Supreme Court R 24/2007,² the custody on which the law-enforcement authority decided according to Paragraph 80 of the Code of Criminal Procedure, constitutes judicial custody according to LSJP. The purpose of this custody is to remove doubt as to which of the persons concerned has the right to have the item released to him or her by virtue of an ownership title or another right. The item is being placed in custody because the resolution of factual or substantive doubts as to the claimed ownership title or another right is not the purpose of criminal proceedings.

¹ The referring court notes that the general guidelines for an autonomous interpretation arising from the case-law of the Court of Justice do not clarify its doubts concerning the correct interpretation of the concept of 'civil and commercial matter' in relation to the original proceedings. In this context, it refers to judgments of 14 October 1976, *LTU* (29/76, EU:C:1976:137); of 3 October 2013, *Schneider* (C-386/12, EU:C:2013:633, paragraph 18), and of 28 February 2019, *BUAK Bauarbeiter-Urlaubs- u. Abfertigungskasse* (C-579/17, EU:C:2019:162, paragraphs 46 and 47).

² Opinion of the civil and commercial chamber of the Supreme Court of 11 October 2006, Cpjn 203/2005, R 24/2007, ECLI:CZ:NS:2006:CPJN.203.2005.1.

Decisions on such matters are, in principle, within the competence of courts in civil proceedings.

- 13 The parties to civil proceedings concerning the custody of an item on the basis of a decision of a law enforcement authority are the party that released the item or from which it was seized, the party that claimed it in criminal proceedings, and potentially also the party that claimed a right to it in court in civil proceedings without having done so before a law enforcement authority. The depositor (in the case in the original proceedings, the Police of the Czech Republic) is not a party to the proceedings.
- 14 Given that, in the original proceedings, the car was placed in custody because a party other than the recipient claims a right to its release, its release will require the consent of all parties to the custody proceedings (i.e., in the original proceedings, also the defendants resident in France), or substitution of that consent by a final court judgment. The exclusive territorial jurisdiction in the proceedings, laid down in Paragraph 299(2) LSJP, ensures that applications to substitute consent to the release of one and the same subject of custody, which in some cases several parties to custody proceedings have grounds to file, are joined before a single court for joint deliberation.
- 15 According to the Supreme Court,³ an application seeking the substitution of consent to the release of a subject of custody constitutes a procedural form of expression of the assessment of the question to whom the subject of custody should be released – that is, in other words – who has ownership title or another right to the subject of custody, on the basis of which a court will release the subject of custody. It is of no matter that ownership title or another right to the subject of custody is addressed in those proceedings merely as a preliminary issue and is manifest in the operative part of the judgment in the form of a ‘substitution of an expression of will’.
- 16 To support the conclusion of the non-applicability of the Brussels I bis Regulation to proceedings concerning the substitution of consent to the release of the subject of custody, the referring court lists, in particular, the incidental nature of these proceedings to the custody proceedings initiated on the basis of provisions of the Criminal Code, and the risk of parties to custody proceedings thinking strategically in determining the venue.
- 17 The referring court emphasises that the existence of the proceedings concerning the consent of another person to the release of the subject of custody is dependent on the proceedings on judicial custody. They constitute a method envisaged by the law for achieving the release of an item from judicial custody, as the lack of consent of the defendant to the release of the item in custody cannot be substituted by a decision determining ownership title to the item that is the subject of custody.

³ Opinion cited in Footnote 2.

As the Supreme Court noted in the unifying opinion referred to above,⁴ ‘a final judgment of a court determining ownership title of the applicant or another party to judicial custody proceedings to an item in custody is not in itself a valid basis for the conclusion that the item will be released from custody to that person, as the resolution of the question of who is the owner of the deposited item may not necessarily put it beyond doubt whether the item should in fact be released from custody to that person and whether, for example, a secured creditor, the beneficiary of the right of retention, or a bankruptcy administrator is entitled to have the item released from custody, rather than the owner’.

- 18 A certain parallel can be drawn with the judgment of the Court of Justice in *Riel*.⁵ In that judgment, the Court of Justice inferred that an application for the identification of receivables for the purpose of registering them in insolvency proceedings follows directly out of the insolvency proceedings, is closely connected with them, and has its origin in the law governing insolvency proceedings. Similarly, an application to substitute consent to the release of an item from judicial custody arises directly out of proceedings on judicial custody, is closely related to those proceedings, and has its origins in the law governing judicial custody, which shall apply, *mutatis mutandis*, to judicial custody proceedings initiated by law enforcement authorities.
- 19 At the same time, the referring court points to the fact that, potentially, parties to the custody proceedings would be given latitude for strategic thinking, if it were necessary to determine international jurisdiction for proceedings on substitution of consent to the release of an item from custody on the basis of the jurisdictional rules of the Brussels I bis Regulation.
- 20 It points out that, in the case in the original proceedings, the Czech parties to the custody proceedings sought the release of the car from custody, so that the French parties to the same proceedings were the defendants in the proceedings concerning the substitution of consent. Had the French parties sought the release of the subject of custody, they would have had to sue the Czech parties. This might motivate the parties to custody proceedings not to file an application for the substitution of will, and to wait for the other party to initiate proceedings, as according to the general rule of Article 4 of the Brussels I bis Regulation, they would be sued before the courts of their country of residence. In a standard situation, this would not constitute a problem, as it is a natural consequence of the jurisdictional rules embodied in the Brussels I bis Regulation.
- 21 The original proceedings, however, constitute a dispute incidental to proceedings conducted before a Czech court, whose jurisdiction was established by an action of a law enforcement authority which did not assess its international jurisdiction. Without the intervention of the law enforcement authority, the international

⁴ Opinion cited in Footnote 2.

⁵ Judgment of 18 September 2019, *Riel* (C-47/18, EU:C:2019:754).

jurisdiction of the courts would have been determined differently in the case of an application for the release of the item between the same persons. Had the car not been seized by the police, it would have remained in the possession of the applicants, meaning that the original owners from France would have had to file an application for the release of the item. Due to the exercise of public powers by the law enforcement authorities, the determination of the court having international jurisdiction is influenced, and hence, there is potential interference with an otherwise predictably determined venue.

The second question

- 22 In the event of an affirmative response to the first question, the referring court asks whether Article 8, point 2, of the Brussels I bis Regulation must be interpreted to mean that an application for the substitution of consent to the release of the subject of custody, filed by one of the parties to the custody proceedings concerning that item against another party to those custody proceedings, constitutes an application [in proceedings] as provided for in that provision.
- 23 The doubts of the referring court arise from the different wording of this provision in different language versions, and from the absence thus far of an interpretation of this provision by the Court of Justice.
- 24 The Czech version of Article 8, point 2, of the Regulation uses the term ‘*intervenční žaloba*’ [(application to intervene)], without making any reference to the status of the defendant as a third party. Similarly, the German version uses the term ‘*Interventionsklage*’ and the French version the term ‘*demande en intervention*’.
- 25 On the other hand, the English version of the same provision accents the position of the defendant as a third party, and it refers to ‘third-party proceedings’. Similar wording is used, for example, by the Polish, Slovak, and Croatian versions.
- 26 It follows from Court of Justice case-law that, in the case of diverging language versions, the provision concerned must be interpreted in its context and with a view to the purpose of the legal regulation of which it forms part.⁶
- 27 In identifying the purpose of Article 8, point 2, of the Brussels I bis Regulation, the referring court also examined the previous legislation,⁷ the Court of Justice case-law concerning the purpose of that legislation and the previous legal

⁶ Judgment of 27 October 1977, *Bouchereau* (30/77, EU:C:1977:172), paragraph 14.

⁷ Article 6(2) of the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972, L 299, p. 32; ‘Brussels Convention’) and Article 6(2) 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; [Czech] Special edition 19/04, p. 42).

regulation, and the Jenard Report,⁸ the text of which is used as commentary on the Brussels Convention, and it examines the purpose it pursues. It follows from the Report that, among other things, it was deemed appropriate in drafting the Brussels Convention to create separate provisions for guarantors and other third parties. The answer to the question of what is meant by ‘third-party proceedings’ was settled by reference to Articles 15 and 16 of the Belgian Code of Judicial Proceedings, which defined them as cases ‘*in which a third party is accepted as a party to the proceedings.*’

- 28 If the purpose of Article 8, point 2, of the Regulation were interpreted in the light of the Jenard Report and applied to the present case, it would probably not be possible to establish the jurisdiction of the Czech courts on the basis of that rule, as there is no third party in the proceedings for the substitution of consent to the release of the subject of custody, but rather, parties to the original custody proceedings.
- 29 Another conclusion could, however, be reached in the case of a different autonomous interpretation of the provision. An application seeking the substitution of consent to the release of an item from judicial custody constitutes proceedings incidental to the custody proceedings. In many jurisdictions, incidental proceedings are subsumed under the more general term of an ‘application to intervene’ as used by the Czech version of the Brussels I bis Regulation.

⁸ OJ 1979, C 59, p. 1.