

Anonymised version

Translation

C-30/21 – 1

Case C-30/21

Request for a preliminary ruling

Date lodged:

19 January 2021

Referring court:

Amtsgericht Lennestadt (Germany)

Date of the decision to refer:

11 January 2021

Applicant:

Nemzeti Útdíjfizetési Szolgáltató Zrt., National Toll Payment Services PLC

Defendant:

NW

Amtsgericht Lennestadt (District Court, Lennestadt, Germany)

Order

In the case of

Nemzeti Útdíjfizetési Szolgáltató Zrt., National Toll Payment Services PLC v NW
the District Court, Lennestadt

on 11 January 2021

[...]

ordered as follows:

The proceedings are stayed.

The following question is referred to the Court of Justice of the European Union for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union:

Is 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 to be interpreted as meaning that judicial proceedings brought by a State-owned company against a natural person domiciled in another Member State, for the purposes of recovering a debt, which is punitive in nature, for the unauthorised use of a toll road, come within the scope of that regulation?

Grounds: [Or. 2]

The applicant is a Hungarian public limited company having its registered office in Budapest and is asserting claims against the defendant, who resides in Germany, for a so-called substitute toll charge (supplementary charge) for driving on the toll-subject motorway network in Hungary. The applicant's German name is Nationale Mauterhebung Geschlossene Dienstleistungs-AG (National Toll Payment Services PLC; 'NMGD AG').

A) Legal basis/National law

Paragraph 15(1) of the Hungarian Law on road traffic provides that the Minister may make transport with certain vehicles subject to the payment of a charge by way of a decree. Paragraph 33/A(1) stipulates that a charge (usage charge) must be paid for the use of public secondary roads, specified in a separate law, during a certain period, failing which a supplementary charge must be paid. Reference is made to the translated extract from the Hungarian Law on road traffic [...] placed in the case file.

The Decree of the Minister of Economy and Transport No 36/2007 (III. 26.) GKM on tolls for motorways, expressways and main roads ('the Decree on tolls') was adopted on the basis of that statutory authority. A translation of that decree has also been placed in the case file; reference is made thereto [...].

The registered holder of the vehicle is liable for the payment of the charges set out in the Decree on tolls. This follows directly from Paragraph 15(2) of the Hungarian Law on road traffic.

Paragraph 7/A(7) of the Decree on tolls provides that the supplementary charge (see below) is to be collected by the applicant. According to Paragraph 1 of the Decree on tolls, the use of the toll roads takes place 'within a relationship governed by civil law'.

The amount of the regular charge is governed in Paragraph 6 of the Decree on tolls. For example, in accordance with Paragraph 6(1)(a), Category D1, the charge payable for a normal passenger car for one week is HUF 2 975.00 (Paragraph 6(6) of the Decree on tolls). This corresponds to a charge of just under EUR 10.00. **[Or. 3]**

Paragraph 7/A(1) of the Decree on tolls provides that a supplementary charge or a surcharge is payable if a motor vehicle does not have a valid vignette when inspected.

The amount of that surcharge is regulated in Paragraph 7/A(10) read in conjunction with point 1 of Annex 1 to the Decree on tolls. If payment is made within 60 days of receipt of a request for payment, the surcharge is HUF 14 875.00, which equates to just under EUR 50.00. If payment is not made within 60 days of receipt of the request for payment, the additional charge increases to HUF 59 500.00, which equates to just over EUR 190.00.

B) Recovery of the additional charges

The applicant commissioned and authorised Ungarische Autobahn Inkasso GmbH ('UAI GmbH'), having its registered office in Eggenfelden, Germany, to identify motor vehicles registered in Germany and subject to the supplementary charge, or the holders of those vehicles, and to collect the substitute toll charge.

UAI GmbH identifies the vehicles on the basis of photographs of the respective vehicle registration numbers taken by an electronic system, which are used to establish the alleged toll violations of the vehicles concerned. On the basis of the vehicle registration numbers, UAI GmbH obtains the holders' details and then issues, usually by way of the first payment demand, a notification requesting payment of the basic surcharge of HUF 14 875.00. The value in euros calculated on the basis of that amount varies according to the exchange rate.

In addition to the substitute toll as such, collection fees charged by UAI GmbH are claimed at the same time. In addition, the debtor is charged a fee for costs incurred in connection with the identification of the holders of vehicles.

If payment is not made in response to the first payment demand, the higher surcharge of HUF 59 500.00 is claimed by way of further payment demands. The value of that surcharge in euros also varies according to the exchange rate.

C) Claim at issue

The defendant is the holder of the vehicle having German registration number [...]. The defendant drove that vehicle on a toll road in Hungary at 11:24 p.m. on 19 December 2019 for at least a short period of time before purchasing an electronic toll vignette at a petrol station after approximately 15 to 20 km. **[Or. 4]**

By payment demand of 10 March 2020 [...], UAI GmbH, which had been commissioned by the applicant, requested that the defendant pay the substitute toll charge plus fees incurred.

As there was no response from the defendant, a notification requesting payment of the higher surcharge of HUF 59 500.00, which equates to EUR 178.89, was issued by way of a further payment demand of 13 May 2020. In addition, processing fees, expenses for obtaining the holder's details, a flat-rate fee for expenses and VAT were claimed. For further details, reference is made to the payment demands of 10 March 2020 and 13 May 2020 [...].

By its action, the applicant is now claiming the total amount of EUR 260.76. It takes the view that the dispute is civil in nature and that the referring court therefore has jurisdiction. The applicant is of the opinion that what is relevant in this respect is the legislation of the State concerned that entitles the claimant entity and justifies its claim. Therefore, pursuant to Paragraph 1 of the Hungarian Decree on tolls, a relationship under civil law is to be assumed. Moreover, according to the applicant, this also follows from the fact that the relationship between the claimant entity – the applicant – and road users is governed by civil law. The purchase of the vignette creates a reciprocal contract by which the road user acquires temporary authorisation to use a road with a specific vehicle. Furthermore, the applicant does not issue administrative notices, but asserts its claims by means of a simple request for payment. It submits that enforcement under civil law is required in any event.

The defendant contests the claim that he had purchased a vignette. Moreover, he raises concerns about jurisdiction and a breach of public policy.

D) Questions of the referring court

In examining its jurisdiction, the referring court must decide whether international jurisdiction is governed by the provisions of the Brussels I Regulation (*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 [Or. 5] (recast), Brussels Ia Regulation*). In this respect, the court has considerable doubts as to whether the present dispute is a civil matter within the meaning of Article 1 of the Brussels I Regulation or whether it is actually a public-law dispute, to which the Brussels I Regulation does not apply. In this regard, the referring court proceeds on the assumption that, contrary to the view taken by the applicant, national law is not determinative for the answer to this question, but rather an autonomous interpretation is required. The concept of civil and commercial matters must be interpreted by referring to the objectives and scheme of the Brussels I Regulation and to the general principles which stem from the corpus of the national legal systems (*judgment of the European Court of Justice, 14 October 1976, LTU Luftransportunternehmen GmbH & Co. KG v Eurocontrol, 29/76*,

ECLI:EU:C:1976:137; judgment of the European Court of Justice, 11 June 2015, Fahnenbrock and Others, C-226/13, C-245/13 and C-247/13, EU:C:2015:383, paragraph 35).

The Court of Justice of the European Union has already held, in a case also concerning road transport in the broadest sense, that enforcement proceedings brought by a company owned by a local authority against a natural person domiciled in another Member State, for the purposes of recovering an unpaid debt for parking in a public car park, the operation of which has been delegated to that company by that authority, which are not in any way punitive but merely constitute consideration for a service provided, fall within the scope of the Brussels I Regulation (*judgment of the European Court of Justice, 9 March 2017, Pula Parking d.o.o. v Tederahn, C-551/15, ECLI:EU:C:2017:193*).

However, the referring court considers that the aforementioned decision is not transferable to the present dispute. In the situation underlying the judgment of 9 March 2017, the road user was issued with a parking ticket (*paragraph 16 of the judgment of the European Court of Justice of 9 March 2017*). That case would be comparable with the present one if the defendant had purchased a vignette, subject to the question of whether a contract under civil law has in fact been concluded as a result of that purchase or whether the charge in the present case is instead a fee charged under public law for a public service, not least because the relevant national rules (also) come within the regulatory scope of Directives 1992/62/EC and 2006/38/EC. **[Or. 6]**

In the present case, however, the defendant did not initially purchase a vignette, which is why the applicant is claiming a charge described in the German translation of the Hungarian legal texts submitted in the case as a ‘Zusatzgebühr’ (supplementary charge) or ‘Nachgebühr’ (surcharge) instead of the actual toll charge (and not in addition to it; see the requests for payment of 10 March 2020 and 13 May 2020 [...]). According to the assessment made by the referring court, this is a penalty charge set unilaterally by a provision of public law and does not constitute mere consideration for a service provided (*unlike in the judgment of the European Court of Justice of 9 March 2017, see paragraph 36 thereof*). The referring court therefore takes the view that there is good reason to believe that the setting and enforcement of that charge which is punitive in nature must be regarded as an act in the exercise of State authority, with the result that the provisions of the Brussels I Regulation are not applicable to the present dispute.