



## Reports of Cases

### JUDGMENT OF THE COURT (Third Chamber)

6 October 2015\*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 1(1)(b) — Substantive scope — Inheritance settlement agreement between the surviving spouse and minor children represented by a guardian ad litem — Classification — Requirement for approval of such an agreement by the court — Measure relating to parental responsibility or measure relating to succession)

In Case C-404/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší soud (Supreme Court, Czech Republic) made by decision of 25 June 2014, received at the Court on 25 August 2014, in the proceedings brought by

**Marie Matoušková**, acting as court commissioner,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh, C. Toader (Rapporteur), E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written proceedings,

after considering the observations submitted on behalf of:

- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- the European Commission, by M. Wilderspin and M. Thomannová-Körnerová, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 June 2015,

gives the following

\* Language of the case: Czech.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 1(1)(b) and (3)(f) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).
- 2 The request has been made in proceedings brought by Ms Matoušková in her capacity as court commissioner, in order to determine jurisdiction to approve the agreement on the sharing-out of the estate concluded by the guardian *ad litem* on behalf of minor children.

### Legal context

#### *EU law*

#### Regulation No 2201/2003

- 3 Article 1 of the regulation provides:

‘1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

...

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. The matters referred to in paragraph 1(b) may, in particular, deal with:

...

(b) guardianship, curatorship and similar institutions;

(c) the designation and functions of any person or body having charge of the child’s person or property, representing or assisting the child;

...

(e) measures for the protection of the child relating to the administration, conservation or disposal of the child’s property.

3. This Regulation shall not apply to:

...

(f) trusts or succession;

...’

- 4 According to Article 2 of that regulation:

‘For the purposes of this Regulation:

...

7. the term “parental responsibility” shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access;

8. the term “holder of parental responsibility” shall mean any person having parental responsibility over a child;

...’

5 Article 8(1) of the regulation, headed ‘General jurisdiction’, provides:

‘The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.’

6 Article 12 of Regulation No 2201/2003 is worded as follows:

‘1. The courts of a Member State exercising jurisdiction ... on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application ...:

...

3. The courts of a Member State shall also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 where:

(a) the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the best interests of the child.’

Regulation (EU) No 650/2012

7 Recital 9 in the preamble to Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ 2012 L 201, p. 107), is worded as follows:

‘The scope of this Regulation should include all civil-law aspects of succession to the estate of a deceased person, namely all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession.’

8 According to Article 1(2)(a) and (b) of the same regulation:

‘The following shall be excluded from the scope of this Regulation:

- (a) the status of natural persons, as well as family relationships and relationships deemed by the law applicable to such relationships to have comparable effects;
- (b) the legal capacity of natural persons, without prejudice to point (c) of Article 23(2) and to Article 26;

...’

9 Article 23 of the regulation states:

‘1. The law determined pursuant to Article 21 or Article 22 shall govern the succession as a whole.

2. That law shall govern in particular:

...

- (c) the capacity to inherit;

...’

10 Article 26 of that regulation, entitled ‘Substantive validity of dispositions of property upon death’, provides:

‘1. For the purposes of Articles 24 and 25 the following elements shall pertain to substantive validity:

- (a) the capacity of the person making the disposition of property upon death to make such a disposition;

...’

11 Since, in accordance with Article 84 thereof, that regulation is applicable from 17 August 2015, it is not applicable *ratione temporis* to the dispute in the main proceedings.

#### *Czech law*

12 Paragraph 179 of the Civil Procedure Code, in the version in force at the material time provides:

‘If the validity of a legal act undertaken on behalf of a minor requires approval by a court, the court is to give approval if this is in the interests of the minor.’

13 Under Paragraph 28 of the Civil Code, in force until 31 December 2013, legal representatives are to manage the property of those they represent. However, for legal acts relating to the disposal of property which falls outside the scope of routine matters, they must obtain the approval of the competent court.

14 Under Paragraph 36(1) of Law No 94/1963 on the family, in force until 31 December 2013, ‘parents shall represent the child in legal acts of which he or she is not fully capable’.

- 15 Paragraph 37(1) of that law provides that no parent can represent his or her child as regards legal acts in matters where a conflict of interest between the parents and the child or a conflict of interest between children of the same parents could arise.

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 16 By decision of 27 April 2010, the Městský soud v Brně (Brno Municipal Court) commenced succession proceedings concerning the estate of Ms Martinus who died in the Netherlands on 8 May 2009. Ms Matoušková, a notary, was authorised to act as court commissioner in the succession proceedings. She established that the deceased was a citizen of the Czech Republic who was living in Brno (Czech Republic), at the time of her death. The deceased's spouse and two minor children ('the heirs') lived in the Netherlands.
- 17 In order to avoid any possible conflict of interest between the heirs, the Městský soud v Brně (Brno Municipal Court), in accordance with Czech law, appointed a guardian *ad litem* to represent the interests of the minor children. The participants to the proceedings declared that no succession proceedings were pending in the Netherlands.
- 18 On 14 July 2011, the heirs concluded an agreement on the sharing-out of the estate. By decision of 10 August 2011, the Městský soud v Brně (Brno Municipal Court) determined the market value of the deceased's property, the amount of debts and the net value of the estate.
- 19 On 2 August 2012, in notarial inheritance proceedings, the surviving spouse made mention of a new fact, namely that, at the date of her death, the deceased had in fact resided in the Netherlands and had merely maintained a record of permanent residence in the Czech Republic which was not consistent with the real situation. Furthermore, he also stated that succession proceedings were already ongoing in the Netherlands, and submitted an attestation to that effect, dated 14 March 2011.
- 20 The agreement on the sharing-out of the estate was submitted by Ms Matoušková to the court dealing with guardianship matters, since two of the parties to the agreement were minor children.
- 21 The court dealing with guardianship matters returned the file to Ms Matoušková without an examination of the substance of the dispute, on the ground that the minor children were long-term residents outside the Czech Republic, stating that it could not decline jurisdiction or refer the case to the Nejvyšší soud (Supreme Court) in order to determine the court having jurisdiction.
- 22 In those circumstances Ms Matoušková applied directly to the Nejvyšší soud (Supreme Court) on 10 July 2013, asking it to designate the court with local jurisdiction to decide the matter of approval of the agreement on the sharing-out of the estate at issue in the main proceedings.
- 23 That court takes the view that the interpretation by the Court of Justice of Regulation No 2201/2003 is necessary in so far as the approval at issue is a measure intended to protect the interests of minors and may fall within the scope of that regulation. However, such a measure, adopted in succession proceedings might also be classified as a matter relating to succession and, therefore, as such be excluded from the scope of the regulation by virtue of Article 1(3)(f) thereof.
- 24 In those circumstances, the Nejvyšší soud (Supreme Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'If an agreement on the sharing-out of an estate concluded on behalf of a minor by his or her guardian *ad litem* requires the approval of a court in order to be valid, is that decision on the part of the court a measure within the meaning of Article 1(1)(b) or a measure within the meaning of Article 1(3)(f) of [Regulation No 2201/2003]?'

### Consideration of the question referred for a preliminary ruling

- 25 The case-file states that the agreement concluded between the heirs is not an agreement as rights to the future estate, but is an agreement on the sharing-out of an estate in respect of a process of succession already under way.
- 26 Therefore, it must be held that, by its question, the referring court asks essentially whether Regulation No 2201/2003 must be interpreted as meaning that the approval of an agreement on the sharing-out of an estate concluded by a guardian *ad litem* on behalf of minor children constitutes a measure relating to the exercise of parental responsibility within the meaning of Article 1(1)(b) thereof, falling as a result within the scope of that regulation, or whether such a procedure constitutes a measure relating to succession, within the meaning of Article 1(3)(f) thereof, excluded from its scope.
- 27 In the case in the main proceedings, the information before the Court shows that Ms Matoušková, in her capacity as court commissioner, brought proceedings for the approval of the agreement on the sharing-out of the estate before the court dealing with guardianship matters because that agreement was concluded by the guardian *ad litem* on behalf of minor children who have a limited legal capacity and who, in accordance with the provisions of Czech law, may only perform legal acts adapted to their level of intellectual and psychological maturity corresponding to their age. Other legal acts are to be performed on behalf of the minors by their legal representatives.
- 28 Thus, the approval of the agreement on the sharing-out of the estate is a measure taken having regard to the legal capacity of the minor, which aims to protect the best interests of the child and which is required, under Czech law, for legal acts relating to the administration of property which are not routine matters.
- 29 Such a measure relates directly to the legal capacity of a natural person (see, by analogy, judgment in *Schneider*, C-386/12, EU:C:2013:633, paragraph 26) and, by its nature, constitutes an action intended to ensure that the requirements of protection and assistance of minor children are met.
- 30 As the Advocate General observed in point 41 of her Opinion, legal capacity and the associated representation issues must be assessed in accordance with their own criteria and are not to be regarded as preliminary issues dependent on the legal acts in question. Therefore, it must be held that the appointment of a guardian for the minor children and the review of the exercise of her activity are so closely connected that it would not be appropriate to apply different jurisdictional rules, which would vary according to the subject-matter of the relevant legal act.
- 31 Therefore, the fact that the approval at issue in the main proceedings has been requested in succession proceedings cannot be regarded as decisive as to whether that measure should be classified as falling within the law on succession. The need to obtain approval from the court dealing with guardianship matters is a direct consequence of the status and capacity of the minor children and constitutes a protective measure for the child relating to the administration, conservation or disposal of the child's property in the exercise of parental responsibility within the meaning of Article 1(1)(b) and 2(e) of Regulation No 2201/2003.
- 32 Such an interpretation is supported by the report of Mr Lagarde on the Hague Convention 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, the scope of which corresponds with regard to parental responsibility to that of Regulation No 2201/2003. While explaining that successions must, in principle, be excluded from that convention, the report states that, if the legislation governing the rights to succession provides for the intervention of the legal representative of the child heir, that representative must be designated in accordance with the rules of the convention, since such a situation falls within the area of parental responsibility.

- 33 That interpretation is also confirmed by Regulation No 650/2012, not applicable *ratione temporis* in the case in the main proceedings, which, in accordance with recital 9 in the preamble thereto, was adopted in order to cover all civil law aspects of succession to the estates of a deceased person. Article 1(2)(b) thereof excludes from its scope the legal capacity of natural persons. That regulation governs only the aspects relating specifically to the capacity to inherit, under Article 23(2)(c) thereof, and the capacity of the person making the disposition of property upon death to make such a disposition in accordance with Article 26(1)(a) thereof.
- 34 Moreover, that interpretation of the scope of Regulations No 2201/2003 and No 650/2012 is consistent with the case-law of the Court which is designed to avoid any overlap between the rules of law that those texts lay down and any legal vacuum (see, by analogy, judgment in *Nickel & Goeldner Spedition*, C-157/13, EU:C:2014:2145, paragraph 21 and the case-law cited).
- 35 In the present case, the order for reference states that the Nejvyšší soud (Supreme Court) also asks whether the best interests of the child would be compromised by a splitting of the decision-making process concerning matters relating to succession between two different Member States, one in which the succession proceedings have been opened and the other which is the habitual residence of the child, laid down in Article 8(1) of Regulation No 2201/2003.
- 36 In that connection, it must be observed that, according to Article 12(3) of Regulation No 2201/2003, the courts of a Member State also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 of that article where, first, the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State, and, second, the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the best interests of the child.
- 37 In the case in the main proceedings, as the European Commission submits, Article 12(3) of Regulation No 2201/2003 is capable of founding the jurisdiction of the court dealing with the matters relating to succession to approve the agreement on the sharing-out of the estate, even though that court is not the court of the child's habitual residence, as long as the abovementioned conditions are fulfilled.
- 38 Having regard to the foregoing considerations, the answer to the question referred is that Regulation No 2201/2003 must be interpreted as meaning that the approval of an agreement for the sharing-out of an estate concluded by a guardian *ad litem* on behalf of minor children constitutes a measure relating to the exercise of parental responsibility, within the meaning of Article 1(1)(b) of that regulation and thus falls within the scope of the latter, and not a measure relating to succession, within the meaning of Article 1(3)(f) thereof, excluded from the scope thereof.

### Costs

- 39 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that the approval of an agreement for the sharing-out of an estate concluded by a guardian *ad litem* on behalf of minor children constitutes a measure relating to the exercise of parental responsibility,**

**within the meaning of Article 1(1)(b) of that regulation and thus falls within the scope of the latter, and not a measure relating to succession, within the meaning of Article 1(3)(f) thereof, excluded from the scope thereof.**

[Signatures]