



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

19 April 2018 *

(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 — Court of a Member State seised with an application for judicial authorisation to renounce an inheritance on behalf of a minor child — Jurisdiction in matters of parental responsibility — Prorogation of jurisdiction — Article 12(3)(b) — Acceptance of jurisdiction — Conditions)

In Case C-565/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Eirinodikeio Lerou (Small Claims Court, Leros, Greece), made by decision of 25 October 2016, received at the Court on 9 November 2016, in the proceedings brought by

Alessandro Saponaro,

Kalliopi-Chloi Xylina,

THE COURT (Sixth Chamber),

composed of C.G. Fernlund (Rapporteur), President of the Chamber, A. Arabadjiev and E. Regan, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

- the Greek Government, by T. Papadopoulou, G. Papadaki and E. Tsaousi, acting as Agents,
- the European Commission, by M. Wilderspin and A. Katsimerou, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 December 2017,

gives the following

* Language of the case: Greek.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 12(3)(b) 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 between Mr Alessandro Saponaro and Ms Kalliopi-Chloi Xylina on behalf of their minor child, seeking judicial authorisation to renounce an inheritance intended for the latter.

Legal context

European Union law

- 3 Recital 12 of Regulation No 2201/2003 is worded as follows:

‘The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child’s habitual residence, except for certain cases of a change in the child’s residence or pursuant to an agreement between the holders of parental responsibility.’

- 4 Article 1 of the regulation states:

‘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:

...

(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;

...’

- 5 Article 8 of the regulation, headed ‘General jurisdiction’, provides:

‘1. 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.

2. Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12.’

- 6 Article 12 of the regulation, entitled ‘Prorogation of jurisdiction’, provides, in paragraphs (1) and (2) to (3):

‘1. The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

...

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and it is in the superior interests of the child.

2. The jurisdiction conferred in paragraph 1 shall cease as soon as:

(a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;

(b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;

(c) the proceedings referred to in (a) and (b) have come to an end for another reason.

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.’

Greek law

- 7 Under Article 797 of the Kodikas Politikis Dikonomias (Code of Civil Procedure), when leave is sought on behalf of a minor child by a person holding parental responsibility, the competent court is the small claims court of the place where the child is habitually resident, under the voluntary jurisdiction procedure.
- 8 From reading together the provisions of Article 748(2) and Article 750 of the Code of Civil Procedure, it is clear that a copy of the petition with notification of the fixing of a hearing date must be sent to the eisangeleas protodikon (prosecutor before the first instance courts of the area, ‘the prosecutor’) who has the right to appear at the hearing and before the small claims court.
- 9 The prosecutor has the quality of a ‘party’ to the non-contentious proceedings and has the right to undertake any procedural steps, for example to submit an appeal, irrespective of whether or not the prosecutor was summoned to the hearing and irrespective of whether he has appeared at the hearing.

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

- 10 Mr Sapanoro and Ms Xylina, acting on behalf of their minor child, have made an application to the Eirinodikeio Lerou (Small Claims Court, Leros, Greece) for authorisation to renounce the inheritance from the maternal grandfather ('the deceased') of that child.
- 11 The deceased died intestate on 10 May 2015. At the date of his death, he was living in Greece. His estate comprises a car and a boat located in that Member State and worth EUR 900 in total. In addition, the deceased had been convicted for attempted fraud and his heirs were liable to be the subject of a civil action for damages brought by the victim.
- 12 For that reason, the deceased's wife and daughters, the grandmother, mother and aunt of the minor child, have already renounced their inheritance and the father and mother of the minor child have applied, on behalf of the latter to whom the inheritance fell, for authorisation to renounce it.
- 13 Mr Sapanaro and Ms Xylina and their minor child are habitually resident in Rome (Italy).
- 14 The Eirinodikeio Lerou (Small Claims Court, Leros) wonders whether the Greek courts have jurisdiction to rule on the parents' application and, more specifically, on the possibility of a prorogation of jurisdiction based on Article 12(3) of Regulation No 2201/2003.
- 15 In those circumstances, the Eirinodikeio Lerou (Small Claims Court, Leros) decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling.

'Where a petition for authorisation to renounce an inheritance is brought before a Greek court by the parents of a minor child who is habitually resident in Italy, for the purposes of determining whether prorogation of jurisdiction complies with Article 12(3)(b) of Regulation No 2201/2003:

- (a) is the unequivocal agreement to the prorogation by the parents demonstrated merely by the lodging of the application before the Greek court;
- (b) is the prosecutor one of the parties who must agree to prorogation at the time of the lodging of the application, given that under Greek law he is legally a party to the relevant proceedings;
- (c) is the prorogation of jurisdiction in the best interests of the child, in circumstances where the child in question and the applicants, who are the child's parents, are habitually resident in Italy, while the place of residence of the deceased at the time of his death was Greece and the assets which are the object of the inheritance are in Greece?

Preliminary observations

- 16 It is necessary, as a preliminary matter, to examine whether Regulation No 2201/2003 applies to the determination of the competent jurisdiction in a situation such as that in the main proceedings. That situation falls within the context of a succession. However, as stated in Article 1(3)(f) of Regulation No 2201/2003, that regulation does not apply to succession.
- 17 In that regard, the Court has already held in the judgment of 6 October 2015, *Matoušková* (C-404/14, EU:C:2015:653, paragraph 31), that the fact that a measure — such as the approval from the court dealing with guardianship matters of an agreement on the sharing out of an estate concluded in the name of minor children — 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.

- 18 In the same way, it is necessary to regard an application lodged by parents in the name of their minor child for authorisation to renounce an inheritance as being concerned with the status and capacity of the person and does not fall within the law on succession.
- 19 It follows that such an application does not fall within the law on succession but within that of parental responsibility and that, therefore, the question referred must be examined having regard to Regulation No 2201/2003.

Consideration of the question referred

- 20 By its question, the referring court asks in essence whether, in a situation such as that in the main proceedings, where the parents of a minor child, who are habitually resident with the latter in a Member State, lodged, in the name of that child, an application for authorisation to renounce an inheritance before the court of another Member State, Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning that the prorogation of jurisdiction in favour of the court of that other Member State complies with the terms of that provision and, in particular, the best interests of the child, where that application was jointly lodged by the parents of that child before that court, the prosecutor, who is legally a party to the procedure in question according to the applicable national law, has not objected to that prorogation of jurisdiction, and the residence of the deceased and location of his assets, at the time of his death, was in that other Member State.
- 21 That question thus concerns, first, the notion that the prorogation of 'jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner', secondly, the terms 'all the parties to the proceedings at the time the court is seised', and, thirdly, the notion of 'the best interests of the child', all of which are found in Article 12(3) of Regulation No 2201/2003.

The notion of 'accepted expressly or otherwise in an unequivocal manner'

- 22 According to Article 12(3) of Regulation No 2201/2003, the jurisdiction of a court, under that provision, must be accepted expressly or otherwise in an unequivocal manner.
- 23 As the Court held in the judgment of 12 November 2014, *L* (C-656/13, EU:C:2014:2364, paragraph 56), that provision requires express, or at least unequivocal, agreement to be established on the prorogation of jurisdiction between all the parties to the proceedings.
- 24 Such an agreement does not exist if one party initiates proceedings before a court and another party later appears before that same court in order to challenge its jurisdiction (see, to that effect, the judgment of 12 November 2014, *L*, C-656/13, EU:C:2014:2364, paragraph 57).
- 25 It is necessary, however, to find that, where both parents of a minor child make a joint application to the same court, they demonstrate their willingness to seise that court and, in so doing, their agreement with the choice of court having jurisdiction. In the absence of other facts contradicting that finding, that agreement must be regarded as 'unequivocal', within the meaning of Article 12(3)(b) of Regulation No 2201/2003.

The terms ‘all the parties to the proceedings at the time the court is seised’

- 26 As regards the terms ‘all the parties to the proceedings at the time the court is seised’, it is necessary to examine whether the prosecutor, who is legally a party to the proceedings under national law, is also a ‘party’ within the meaning of Article 12(3)(b) of Regulation No 2201/2003. The referring court states that the prosecutor acts as a representative of the State and in the general interest and that, in the case of an application for authorisation to renounce an inheritance on behalf of a minor child, the general interest coincides with that of the child.
- 27 In addition, it must be recalled, having regard to recital 12 of Regulation No 2201/2003, that the head of jurisdiction provided for in Article 12(3) is an exception to the criterion of proximity, under which it is in the first place for the courts of the Member State of the child’s habitual residence to hear actions concerning parental responsibility for that child, and of which Article 8(1) of the regulation is an expression. That exception is intended to allow the parties a certain autonomy in matters of parental responsibility by emphasising that the condition as to the unequivocal nature of the acceptance of jurisdiction of the courts seised by all the parties to the proceedings must be interpreted strictly (judgment of 21 October 2015, *Gogova*, C-215/15, EU:C:2015:710, paragraph 41).
- 28 As the Advocate General observed in point 46 of his opinion, it must be noted that the use of the word ‘all’ in the phrase ‘all the parties to the proceedings’, must be compared with the more precise term of ‘spouses’ or ‘the holders of parental responsibility’ that are found in Article 12(1) of Regulation No 2201/2003. The EU legislature thus took care to use a term that encompassed all the parties to the proceedings, within the meaning of national law.
- 29 It must therefore be held that a prosecutor who, according to the national law, has the capacity of a party to the proceedings in actions such as that in the main proceedings and who represents the interests of the child, is a party to the proceedings within the meaning of Article 12(3)(b) of Regulation No 2201/2003. Consequently, his opposition to prorogation of jurisdiction cannot be disregarded.
- 30 As regards the date at which the parties acceptance of the proceeding must be given, namely the date on which the court is seised, Article 16 of Regulation No 2201/2003 states that that date corresponds, in principle, to when the document instituting the proceedings or an equivalent document is lodged with the court (judgments of 1 October 2014, *E*, C-436/13, EU:C:2014:2246, paragraph 38, and of 12 November 2014, *L*, C-656/13, EU:C:2014:2364, paragraph 55).
- 31 Facts arising after the date on which the court is seised may nevertheless demonstrate that the acceptance required under Article 12(3)(b) of Regulation No 2201/2003 was lacking at that date. Thus, in the judgment of 12 November 2014, *L* (C-656/13, EU:C:2014:2364, paragraphs 56 and 57), the Court held that the existence of an express or at least unequivocal agreement within the meaning of that provision manifestly cannot be established where the court in question is seised on the initiative of only one of the parties to the proceedings and, later, another party to those proceedings, on taking the first step required of him in the first proceedings, pleads the lack of jurisdiction of the court seised.
- 32 Similarly, in a situation where a prosecutor is regarded, under the applicable national law, as having the capacity of a party to a procedure in matters of parental responsibility, the opposition, made by that party as regards the choice of jurisdiction made by the parents of the child in question after the date on which the court was seised, precludes the acceptance of prorogation of jurisdiction by all the parties to the proceedings at that date from being established. However, in the absence of such opposition, the agreement of that party may be regarded as implicit and the condition of the unequivocal acceptance of prorogation of jurisdiction by all the parties to the proceedings at the date on which that court was seised, may be held to be satisfied.

The notion of ‘the best interests of the child’

- 33 Article 12(3) of Regulation No 2201/2003 makes it clear that recourse to prorogation of jurisdiction cannot in any case be contrary to the best interests of the child and whether that condition is complied with must be examined in each individual case (see, to that effect, judgment of 12 November 2014, *L*, C-656/13, EU:C:2014:2364, paragraphs 49 and 58).
- 34 In the judgment of 27 October 2016, *D*, (C-428/15, EU:C:2016:819, paragraph 58), concerning the interpretation of Article 15 of Regulation No 2201/2003, which concerns the transfer to a court better placed to hear the case, the Court held that the requirement that the transfer must be in the best interests of the child implies that the court having jurisdiction must be satisfied, having regard to the specific circumstances of the case, that the envisaged transfer of the case to a court of another Member State is not liable to be detrimental to the situation of the child concerned.
- 35 In that regard, it must be noted that recital 12 of Regulation No 2201/2003, which states that the grounds of jurisdiction established in that regulation are shaped in the light of the best interests of the child, refer explicitly to the possibility of the courts of a Member State other than that of the child’s habitual residence having jurisdiction if an agreement on that matter has been reached between the holders of parental responsibility.
- 36 In the present case, such an agreement was concluded between the parents of the child. Moreover, in addition to the nationality of the child which is that of Member State of the chosen courts, the referring court states that the residence of the deceased at the date of his death, and the assets that are the subject matter of the inheritance, were situated in that Member State. It is also clear from the order for reference that that was also the case for the liabilities under the succession.
- 37 Those matters substantiate the connection between the child and the Member State of the chosen courts and, as the Advocate General observed in paragraph 72 of his opinion, put the latter in a good position to evaluate the context of the renunciation of the inheritance on behalf of the child.
- 38 In addition the referring court has given no indication that might suggest that seisure of the court chosen by the parents would in any way prejudice the interests of the child. In particular, it is clear from the order for reference that the prosecutor himself, who is required to protect the interests of the child, has not opposed that choice.
- 39 In such a context, the matters stated by the referring court, which notes the connection between the child and the Member State of those courts, lead to the conclusion that the condition of taking the best interests of the child into account is satisfied.
- 40 In the light of the foregoing considerations, the answer to the question is that, in a situation such as that in the main proceedings in which the parents of a minor child, who are habitually resident with the latter in a Member State, have lodged in the name of that child an application for permission to renounce an inheritance before the courts of another Member State, Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning:
- the joint lodging of proceedings by the parents of the child before the courts of their choice is an unequivocal acceptance by them of that court;
 - a prosecutor who, according to the national law, has the capacity of a party to the proceedings commenced by the parents, is a party to the proceedings within the meaning of Article 12(3)(b) of Regulation No 2201/2003. Opposition by that party to the choice of jurisdiction made by the parents of the child in question, after the date on which the court was seised, precludes the acceptance of prorogation of jurisdiction by all the parties to the proceedings at that date from

being established. In the absence of such opposition, the agreement of that party may be regarded as implicit and the condition of the unequivocal acceptance of prorogation of jurisdiction by all the parties to the proceedings at the date on which that court was seised may be held to be satisfied;

- the fact that the residence of the deceased at the time of his death, his assets, which are the subject matter of the succession, and the liabilities of the succession were situated in the Member State of the chosen courts leads, in the absence of matters that might demonstrate that the prorogation of jurisdiction was liable to have a prejudicial impact on the child's position, to the conclusion that that prorogation of jurisdiction is in the best interests of the child.

Costs

- 41 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 (Sixth Chamber) hereby rules:

In a situation, such as that in the main proceedings, where the parents of a minor child, who are habitually resident with the latter in a Member State, have lodged, in the name of that child, an application for permission to renounce an inheritance before the courts of another Member State, Article 12(3)(b) 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, must be interpreted as meaning:

- the joint lodging of proceedings by the parents of the child before the courts of their choice is an unequivocal acceptance by them of that court;
- a prosecutor who, according to the national law, has the capacity of a party to the proceedings commenced by the parents, is a party to the proceedings within the meaning of Article 12(3)(b) of Regulation No 2201/2003. Opposition by that party to the choice of jurisdiction made by the parents of the child in question, after the date on which the court was seised, precludes the acceptance of prorogation of jurisdiction by all the parties to the proceedings at that date from being established. In the absence of such opposition, the agreement of that party may be regarded as implicit and the condition of the unequivocal acceptance of prorogation of jurisdiction by all the parties to the proceedings at the date on which that court was seised may be held to be satisfied; and
- the fact that the residence of the deceased at the time of his death, his assets, which are the subject matter of the succession, and the liabilities of the succession were situated in the Member State of the chosen courts leads, in the absence of matters that might demonstrate that the prorogation of jurisdiction was liable to have a prejudicial impact on the child's position, to the conclusion that that prorogation of jurisdiction is in the best interests of the child.

[Signatures]