



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 judgments in matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Lis pendens — Articles 16 and 19(1) and (3) — Judicial separation proceedings in a first Member State and divorce proceedings in a second Member State — Jurisdiction of the court first seised — Concept of ‘established’ jurisdiction — Lapse of the first proceedings and commencement of fresh divorce proceedings in the first Member State — Consequences — Time difference between the Member States — Effects on the procedure for seising the courts)

In Case C-489/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court of Justice of England and Wales, Family Division (United Kingdom), made by decision of 31 October 2014, received at the Court on 4 November 2014, in the proceedings

A

v

B,

THE COURT (Third Chamber),

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

Advocate General: P. Cruz Villalón,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 1 June 2015,

after considering the observations submitted on behalf of:

- A, by T. Amos QC and H. Clayton, Barrister,
- the United Kingdom Government, by M. Holt, acting as Agent, and by M. Gray, Barrister,
- the European Commission, by M. Wilderspin, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 8 September 2015,

* Language of the case: English.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 19(1) and (3) 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 Ms A and Mr B concerning their divorce.

Legal context

EU law

Regulation No 2201/2003

- 3 Article 3 of Regulation No 2201/2003, entitled ‘General jurisdiction’, sets out in paragraph 1 the rules of jurisdiction that apply on the basis of the place of residence of one or both spouses, their nationality or, in the case of the United Kingdom, the ‘domicile’ of both spouses.

- 4 Article 16 of that regulation, entitled ‘Seising of a Court’, provides:

‘A court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;

or

- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.’

- 5 Article 19 of that regulation, entitled ‘Lis pendens and dependent actions’, provides:

‘1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where proceedings relating to parental responsibility relating to the same child and involving the same cause of action are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court.

In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised.’

Regulation (EC) No 44/2001

6 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) was repealed by 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).

7 Article 27 of Regulation No 44/2001, which was part of Section 9 of Chapter II of the regulation, entitled ‘Lis pendens — related actions’, provided:

‘1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.’

The Brussels Convention

8 Regulation No 44/2001 replaced, in relations between the Member States, the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by successive conventions on the accession of further Member States to that convention (‘the Brussels Convention’).

9 Article 21 of the Brussels Convention, which was contained in Section 8, entitled ‘Lis pendens — related actions’, of Title II thereof, provided:

‘Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.’

French law

10 Article 1111 of the Code of Civil Procedure (code de procédure civile) states:

‘Where he establishes, after having heard each spouse on the principle of the breakdown of the marriage, that the petitioner is maintaining his petition, the judge shall make an order by which he may either refer the parties, in accordance with Article 252-2 of the Civil Code [(code civil)], for a further conciliation attempt, or immediately authorise the spouses to institute proceedings for a decree of divorce.

In either case, he may order all or part of such interim measures as are provided for under Articles 254 to 257 of the Civil Code.

When granting authorisation to institute proceedings for a decree of divorce, the judge shall recite in his order the time-limits laid down under Article 1113 of this Code.’

11 Article 1113 of the Civil Code is worded as follows:

‘Within three months from the pronouncement of the order only the spouse who has presented the initial *requête* (request) may file an *assignation* (petition for a decree) for divorce.

In the event of reconciliation of the spouses, or if the proceedings for a decree of divorce have not been instituted within 30 months from the pronouncement of the order, all its provisions shall be null and void, including the authorisation to institute proceedings for a decree of divorce.’

12 In accordance with Article 1129 of the Civil Code, ‘[t]he procedure in relation to judicial separation shall follow the rules laid down for the procedure in relation to divorce’.

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

13 Ms A and Mr B, who are French nationals, were married in France on 27 February 1997, having entered into a marriage contract under French law under the regime of *séparation des biens* (principle of separate property during marriage). They moved to the United Kingdom in 2000. The couple had two children, twins, in 1999, and a third child in 2001. The family continued to reside in the United Kingdom until June 2010, when the couple separated after Mr B moved out of the former matrimonial home.

14 On 30 March 2011, Mr B lodged a request for judicial separation with the family court of the tribunal de grande instance de Nanterre (Nanterre Regional Court) (France).

15 On 19 May 2011, in response to the proceedings brought by her husband, Ms A applied to the Child Support Agency for child support for the children in her care, then filed a petition for divorce and a separate application for maintenance with the courts of the United Kingdom on 24 May 2011.

16 The High Court of Justice of England & Wales, Family Division, nevertheless declined jurisdiction in respect of the divorce petition on 7 November 2012, on the basis of Article 19 of Regulation No 2201/2003, with Ms A’s consent.

17 On 15 December 2011, the family court judge at the tribunal de grande instance de Nanterre made a non-conciliation order and declared that the issues relating to the children, including the applications concerning maintenance obligations, were to be dealt with in the United Kingdom, but that the French courts had jurisdiction to adopt certain interim measures. She ordered that Mr B pay Ms A a monthly allowance of EUR 5 000. That order was upheld on appeal by a decision of the cour d’appel de Versailles (Court of Appeal of Versailles) (France) of 22 November 2012.

18 The referring court explains that, no petition (*assignation*) having been filed within the period of 30 months from the making of the non-conciliation order by the French court, the provisions of that order expired at midnight on 16 June 2014.

19 On 17 December 2012, Mr B filed a petition for divorce in a French court. However, his petition was declared ‘illegitimate’ on 11 July 2013 on the ground that it could not succeed because judicial separation proceedings were pending.

20 On 13 June 2014, Ms A filed a fresh divorce petition with a United Kingdom court. The referring court states that Ms A had attempted — unsuccessfully — to ensure that that petition would take effect only from one minute past midnight on 17 June 2014.

- 21 At 08.20 local time on 17 June 2014, Mr B in turn filed a second divorce petition with a French court. The referring court observes that it was 07.20 in the United Kingdom and impossible, at that time of day, to bring an action before a United Kingdom court.
- 22 On 9 October 2014, Mr B applied to the referring court for Ms A's divorce petition in the United Kingdom to be dismissed or struck out on the ground that the jurisdiction of the French courts had been unambiguously and incontrovertibly established within the terms of Article 19(3) of Regulation No 2201/2003.
- 23 The referring court considers that, by seising the French courts of divorce petitions, Mr B sought to prevent Ms A from being able to issue divorce proceedings in the United Kingdom. He had thus not withdrawn his application for judicial separation before filing a divorce petition in France so as to ensure that, in the interval between the two sets of proceedings relating to those applications, Ms A could not legitimately file a divorce petition in the United Kingdom and obtain a decision from a United Kingdom court on all matters relating to the divorce, including property. According to the referring court, the procedural choices made by Mr B were such that he had, contrary to the intention of the EU legislature, abused the rights he held under Regulation No 2201/2003.
- 24 The referring court notes that Mr B took virtually no steps whatsoever in the judicial separation proceedings and queries whether, in those circumstances, the jurisdiction of the French courts may be considered to have been 'established' within the meaning of Article 19(1) and (3) of that regulation.
- 25 In those circumstances, the High Court of Justice of England and Wales, Family Division, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) For the purposes of Article 19(1) and (3) [of Regulation No 2201/2003], what does "established" mean, in circumstances where:
- (a) the applicant, in the proceedings in the court first seised ("the first proceedings"), takes virtually no steps in the first proceedings beyond the first court appointment, and in particular does not issue a Petition (*Assignment*) within the time-limit for the expiry of the Request (*Requête*), with the result that the first proceedings expire undetermined by effluxion of time and in accordance with the local (French) law of the first proceedings, namely 30 months after the first directions appointment;
 - (b) the first proceedings expire as above very shortly (3 days) after the proceedings in the court second seised ("the second proceedings") are issued in England, with the result that there is no judgment in France nor any danger of irreconcilable judgments between the first proceedings and the second proceedings; and
 - (c) by virtue of the United Kingdom's time zone the applicant in the first proceedings would, following the lapse of the first proceedings, always be able to issue divorce proceedings in France before the applicant [in the second proceedings] could issue divorce proceedings in England?
- (2) In particular, does "established" import that the applicant in the first proceedings must take steps to progress the first proceedings with due diligence and expedition to a resolution of the dispute (whether by the Court or by agreement), or is the applicant in the first proceedings, having once secured jurisdiction under Articles 3 and 19(1) [of Regulation No 2201/2003], free to take no substantive steps at all towards resolution of the first proceedings as above and free thereby simply to secure a stop of the second proceedings and a stalemate in the dispute as a whole?'

Consideration of the questions referred

- 26 By its questions, which must be considered together, the referring court asks, in essence, whether, in the case of judicial separation and divorce proceedings brought between the same parties before the courts of two Member States, Article 19(1) and (3) of Regulation No 2201/2003 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings in which the proceedings before the court first seised in the first Member State expired after the second court in the second Member State was seised, the jurisdiction of the court first seised must be regarded as not being established. The referring court asks in particular whether the fact that those proceedings expired very shortly before a third set of proceedings was brought before a court of the first Member State, the conduct of the applicant in the first proceedings, notably his lack of diligence, and the existence of a time difference between the Member States concerned, which would enable the courts of the first Member State to be seised before those of the second Member State, are relevant for the purposes of answering that question.
- 27 It should be noted at the outset that Article 19 of Regulation No 2201/2003 is expressed in very similar terms to those used in Article 27 of Regulation No 44/2001, which replaced Article 21 of the Brussels Convention, and establishes a mechanism for dealing with cases of *lis pendens* that is equivalent to that provided for by Article 27 of Regulation No 44/2001 and Article 21 of the Brussels Convention. Account must therefore be taken of the considerations of the Court in relation to those last two articles.
- 28 It is important to note in that regard that, as in the case of Article 27 of Regulation No 44/2001 and Article 21 of the Brussels Convention, the concept of ‘established jurisdiction’ in Article 19 of Regulation No 2201/2003 must be interpreted independently, by reference to the scheme and purpose of the act that contains it (see, to that effect, judgments in *Shearson Lehman Hutton*, C-89/91, EU:C:1993:15, paragraph 13, and *Cartier parfums-lunettes and Axa Corporate Solutions assurances*, C-1/13, EU:C:2014:109, paragraph 32).
- 29 As regards the purpose of the rules of *lis pendens* in Article 19 of Regulation No 2201/2003, it must be noted that those rules are intended to prevent parallel proceedings before the courts of different Member States and to avoid conflicts between decisions which might result therefrom (see judgment in *Purrucker*, C-296/10, EU:C:2010:665, paragraph 64). For that purpose, the EU legislature intended to put in place a mechanism which is clear and effective in order to resolve situations of *lis pendens* (see, by analogy, with regard to Regulation No 44/2001, judgment in *Cartier parfums-lunettes and Axa Corporate Solutions assurances*, C-1/13, EU:C:2014:109, paragraph 40).
- 30 As is clear from the words ‘court first seised’ and ‘court second seised’ in Article 19(1) and (3) of Regulation No 2201/2003, that mechanism is based on the chronological order in which the courts are seised.
- 31 In order to determine when a court is deemed to be seised and thereby establish which is the court first seised, it is necessary to refer to Article 16 of that regulation, entitled ‘Seising of a Court’.
- 32 Pursuant to the terms of Article 16, a court is to be deemed to be seised, depending on the option chosen in the national law applicable, either at the time when the document instituting the proceedings or an equivalent document is lodged with the court, or, if that document has to be served before being lodged with the court, at the time when it is received by the competent authority. The court will, however, be deemed to be seised only if the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent (under the first option), or to have the document lodged with the court (under the second option).

- 33 In order then to determine whether a situation of *lis pendens* exists, it is apparent from the wording of Article 19(1) of Regulation No 2201/2003 that, contrary to the rules in Article 27(1) of Regulation No 44/2001 applicable to civil and commercial matters, in matrimonial matters applications brought before the courts of different Member States are not required to have the same cause of action. As the Advocate General noted in point 76 of his Opinion, while the proceedings must involve the same parties, they may have a different cause of action, provided that they concern judicial separation, divorce or marriage annulment. That interpretation is supported by a comparison of paragraphs 1 and 2 of Article 19 of Regulation No 2201/2003, from which it is clear that only the application of paragraph 2, concerning proceedings relating to parental responsibility, is subject to the proceedings brought having the same cause of action. Consequently, a situation of *lis pendens* may exist where two courts of different Member States are seised, as in the main case, of judicial separation proceedings in one case and divorce proceedings in the other, or where both are seised of an application for divorce.
- 34 In such circumstances and where the parties are the same, in accordance with Article 19(1) of Regulation No 2201/2003, the court second seised is of its own motion to stay its proceedings until such time as the jurisdiction of the court first seised is established. It must be held that the Court's interpretation of Article 27 of Regulation No 44/2001 applies equally to Article 19(1) of Regulation No 2201/2003. Thus, in order for the jurisdiction of the court first seised to be established within the meaning of Article 19(1) of that regulation, it is sufficient that the court first seised has not declined jurisdiction of its own motion and that none of the parties has contested that jurisdiction before or up to the time at which a position is adopted which is regarded in national law as being the first defence on the substance submitted before that court. (see, by analogy, judgment in *Cartier parfums-lunettes and Axa Corporate Solutions assurances*, C-1/13, EU:C:2014:109, paragraph 44).
- 35 Where that jurisdiction is deemed to be established under the rules in Article 3 of Regulation No 2201/2003, the court second seised is to decline jurisdiction in favour of the court first seised, in accordance with Article 19(3) of that regulation.
- 36 In the present case, it is apparent from the non-conciliation order made on 15 December 2011 by the family court judge of the tribunal de grande instance de Nanterre in the first proceedings (the judicial separation proceedings) brought by Mr B on 30 March 2011 that the jurisdiction of that court and the lawfulness of its seising have not been challenged.
- 37 However, in order for there to be a situation of *lis pendens*, it is important that the proceedings brought between the same parties and relating to petitions for divorce, judicial separation or marriage annulment be pending simultaneously before the courts of different Member States. Where two sets of proceedings have been brought before the courts of different Member States, and one set of proceedings expires, the risk of irreconcilable decisions, and thereby the situation of *lis pendens* within the meaning of Article 19 of Regulation No 2201/2003, disappears. It follows that, even if the jurisdiction of the court first seised was established during the first proceedings, the situation of *lis pendens* no longer exists and, therefore, that jurisdiction is not established.
- 38 That is the case following the lapse of the proceedings before the court first seised. In that situation, the court second seised becomes the court first seised on the date of that lapse.
- 39 The case in the main proceedings appears to concern such a situation.
- 40 A petition for judicial separation had already been filed with the family court of the tribunal de grande instance de Nanterre when the United Kingdom court was seised, on 13 June 2014, of divorce proceedings, giving rise to a situation of *lis pendens* until midnight on 16 June 2014. Once that date had passed, that is to say, at 00.00 on 17 June, since the proceedings before the French court first seised had lapsed as a result of the expiry of the provisions of the non-conciliation order made by that court, only the United Kingdom court seised on 13 June 2014 remained seised of a dispute falling

within one of the areas referred to in Article 19(1) of Regulation No 2201/2003. The commencement on 17 June 2014 of divorce proceedings before a French court was subsequent to the commencement of the proceedings brought before that United Kingdom court. Taking into account the chronological rules laid down by that regulation, it must be held that the effect of that sequence of events is that, subject to its being lawfully seised under the rules in Article 16 of Regulation No 2201/2003, the United Kingdom court became the court first seised.

- 41 It must be pointed out that the fact that there were other proceedings before a French court when the United Kingdom court was seised, on 13 June 2014, does not in any way preclude the United Kingdom court from having been properly seised under the rules in Article 16 of that regulation.
- 42 Accordingly, in a situation such as that described in paragraph 40 of the present judgment, in which the judicial separation proceedings before the French court lapse as a result of the expiry of legal time-limits, the criteria for *lis pendens* are no longer fulfilled as from the date of that lapse, and the jurisdiction of that court must, therefore, be regarded as not being established.
- 43 It follows from the foregoing that the conduct of the applicant in the first proceedings, notably any lack of diligence on his part, is not relevant for the purpose of determining whether the jurisdiction of the court first seised is established.
- 44 With regard to the time difference between the Member States concerned, which would enable proceedings to be brought in France before they could be brought in the United Kingdom, and which could disadvantage certain applicants, such as Ms A, apart from the fact that it does not seem to work against such an applicant in a case such as that in the main proceedings, the time difference is not in any event capable of frustrating the application of the rules of *lis pendens* in Article 19 of Regulation No 2201/2003, which, taken in conjunction with the rules in Article 16 of that regulation, are based on chronological precedence.
- 45 It follows from all the foregoing considerations that the answer to the questions referred is that, in the case of judicial separation and divorce proceedings brought between the same parties before the courts of two Member States, Article 19(1) and (3) of Regulation No 2201/2003 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings in which the proceedings before the court first seised in the first Member State expired after the second court in the second Member State was seised, the criteria for *lis pendens* are no longer fulfilled and, therefore, the jurisdiction of the court first seised must be regarded as not being established.
- 46 The fact that those proceedings expired very shortly before a third set of proceedings was brought before a court of the first Member State is not relevant.
- 47 The conduct of the applicant in the first proceedings, notably his lack of diligence, and the existence of a time difference between the Member States concerned, which would enable the courts of the first Member State to be seised before those of the second Member State, are also not relevant.

Costs

- 48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

In the case of judicial separation and divorce proceedings brought between the same parties before the courts of two Member States, Article 19(1) and (3) 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 that, in a situation such as that at issue in the main proceedings in which the proceedings before the court first seised in the first Member State expired after the second court in the second Member State was seised, the criteria for *lis pendens* are no longer fulfilled and, therefore, the jurisdiction of the court first seised must be regarded as not being established.

[Signatures]