



Reports of Cases

Case C-565/16 Proceedings brought by Alessandro Saponaro and Kalliopi-Chloi Xylina

(Request for a preliminary ruling from the Eirinodikeio Lerou)

(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)

Summary — Judgment of the Court (Sixth Chamber), 19 April 2018

1. *Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation No 2201/2003 — Scope — Definition of ‘civil matters’ — Measures concerning the exercise of parental responsibility — Judicial permission to renounce an inheritance on behalf of a child — Included — Regulation No 650/2012 not applicable*

(European Parliament and Council Regulation No 650/2012; Council Regulation No 2201/2003, Arts 1(1)(b), 2(e) and 3(f))

2. *Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation No 2201/2003 — Jurisdiction in matters of parental responsibility — Prorogation of jurisdiction — Express or unequivocal acceptance of jurisdiction by the parties — Scope — Joint application by both parents lodged before the same court — Included*

(Council Regulation No 2201/2003, Art. 12(3)(b))

3. *Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation No 2201/2003 — Jurisdiction in matters of parental responsibility — Prorogation of jurisdiction — Express or unequivocal acceptance of jurisdiction by the parties — Definition of ‘parties’ — Prosecutor who, in accordance with national law, has the capacity of a party to the proceedings — Included*

(Council Regulation No 2201/2003, Art. 12(3)(b))

4. *Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation No 2201/2003 — Jurisdiction in matters of parental responsibility — Prorogation of jurisdiction — Express or unequivocal acceptance of jurisdiction by the parties — Acceptance must exist at*

the time the document commencing proceedings is lodged — Facts arising after the date on which the court was seised may demonstrate the lack of acceptance at that date — Opposition by the prosecutor who has the capacity of a party to the proceedings

(Council Regulation No 2201/2003, Art. 12(3)(b))

5. *Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation No 2201/2003 — Jurisdiction in matters of parental responsibility — Prorogation of jurisdiction — Express or unequivocal acceptance of jurisdiction by the parties — Scope — Application for permission to renounce a child's inheritance lodged jointly by the child and his or her parents — Included — Conditions*

(Council Regulation No 2201/2003, Art. 12(3)(b))

1. See the text of the decision.

(see paras 16-19)

2. See the text of the decision.

(see para. 25)

3. See the text of the decision.

(see paras 26-29)

4. As regards the date at which the parties acceptance of the proceedings 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).

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.

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.

(see paras 30-32)

5. 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.

(see para. 40, operative part)