

Parties to the main proceedings

Applicant: OF

Defendant: PG

Questions referred

1. Should Article 3(1) of Regulation (EC) No 2201/2003 ⁽¹⁾ be interpreted as meaning that a failure on the part of the defendant to raise an objection that the Romanian courts lack international jurisdiction to give a ruling on a case concerning a 'divorce involving a minor' amounts to his giving tacit consent to the case being decided by the court seised by the applicant, where the parties have their habitual residence in another Member State [of the European Union] (in the present case, Italy) and the divorce proceedings have been brought before a court of the State of which the parties are nationals?
2. Should [Article] 3(1) and [Article] 17 of Regulation (EC) No 2201/2003 be interpreted as meaning that a court may or must raise, of its own motion, an objection that the Romanian courts lack international jurisdiction to give a ruling on a case concerning a 'divorce involving a minor', where there has been no agreement between the parties, who are resident in another Member State [of the European Union] (in the present case, Italy), regarding the choice of the court having jurisdiction (resulting in the action being dismissed as not falling within the jurisdiction of the Romanian courts), which has priority over Article 915(2) of the Codul de procedură civilă (Code of Civil Procedure), pursuant to which an objection may be raised that the Judecătoria Rădăuți (Court of First Instance, Rădăuți) does not have exclusive territorial jurisdiction (resulting in its declining jurisdiction to give a ruling on the case in favour of the Judecătoria Sectorului 5 București (Court of First Instance, Sector 5, Bucharest) and the case being decided on the merits), especially given that those provisions are less favourable than the provision of national legislation concerned (Article 915(2) of the Codul de procedură civilă (Code of Civil Procedure))?
3. Should the expression contained in Article 12(1)(b) of Regulation (EC) No 2201/2003, namely 'the jurisdiction of the courts has been accepted ... otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised', be interpreted as meaning that, where the parties, who are habitually resident in another Member State [of the European Union] (in the present case, Italy), choose as the court having jurisdiction to give a ruling in divorce proceedings a court of the State of which they are nationals (the Judecătoria Rădăuți (Court of First Instance, Rădăuți) in Romania), that court automatically also has jurisdiction to rule on heads of claim concerning 'the exercise of parental authority, the child's place of habitual residence and the determination of parental contributions towards the costs of the child's care and upbringing'?
4. Should the concept of 'parental responsibility' referred to in Article 2(7) and Article 12 of Regulation (EC) No 2201/2003 be interpreted as also including the concepts of 'parental authority' referred to in Article 483 of the Codul civil (Civil Code), 'the child's place of habitual residence' covered by Article 400 of the Codul civil (Civil Code), and 'parental contributions towards the costs of the child's care and upbringing' covered by Article 402 of the Codul civil (Civil Code)?

⁽¹⁾ 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).

Appeal brought on 17 December 2018 by Jean-François Jalkh against the judgment delivered on 17 October 2018 in Case T-26/17 Jalkh v Parliament

(Case C-792/18 P)

(2019/C 65/36)

Language of the case: French

Parties

Appellant: Jean-François Jalkh (represented by: F. Wagner, avocat)

Other party: European Parliament

Form of order sought

The appellant submits that the Court should:

- Set aside the judgment given on 17 October 2018 by the Seventh Chamber of the General Court of the European Union (T-26/17);

Accordingly:

- Annul the decision of the European Parliament of 22 November 2016 adopting Report No A8-0319/2016 on the request for waiver of the immunity and privileges of Jean-François Jalkh, Member of the European Parliament;
- Make an appropriate order on the amount to be awarded to the appellant in respect of the costs of the proceedings;
- Order the European Parliament to pay the entirety of the costs.

Grounds of appeal and main arguments

The grounds of appeal allege a breach of EU law, error of law and error of characterisation of the legal nature of the facts, as well as manifest error of assessment.

1. The preliminary observations in the judgment

Contrary to the General Court's assertion set out in paragraph 21 of the judgment under appeal, the absence of any waiver of parliamentary immunity does not deprive a party of the possibility of seeking, in France, compensation for the harm suffered solely at civil level, on the ground of fault (Article 1240 of the Civil Code) against a Member of Parliament.

2. The first plea in law analysed by the General Court

The General Court's analysis is based on confusion between two provisions. Point H is part of the reasoning in reference to Article 8 of Protocol No 7, on expressing opinions, whereas the General Court sets out its reasons on that subject in paragraphs 44 to 46, in reference to Article 9 of Protocol No 7 on immunity, which refers to the relevant national provisions.

3. The second and third pleas in law examined by the General Court

It is on account of a manifest error of assessment that the General Court fails to give normative value to the *European Parliament Directorate General for Research Working Paper on 'Parliamentary Immunity in the Member States of the European Community and in the European Parliament, Legal Affairs Series*, and fails to take into account the principles recalled therein, which leads to an erroneous assessment of Article 9 of Protocol No 7 in the light of the facts of the case.

4. The fourth plea in law examined by the General Court

- Existing legal practice

Contrary to the General Court's declaration, an established legal practice of the European Parliament 'consisting in refusing requests for waiver of parliamentary immunity based on facts relating to the political activities of Members of Parliament' did exist, which ought to have led the General Court to make a different finding on the waiver of parliamentary immunity.

- *Fumus persecutionis*

There is no review on the part of the judicial authorities as to whether an association is partisan, which the General Court ought to have taken into account on a simple reading of the Law of 29 July 1881.

The General Court was able, by examining the statement of the Bureau National de Vigilance contre l'Antisemitisme (National Office for Vigilance against Anti-Semitism; BNVCA), to verify the partisan nature of that association, which seeks the dissolution of the Front National and therefore is indeed a political opponent of Jean-François Jalkh.

This is a clear case of *fumus persecutionis*.

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