



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

7 April 2022*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 650/2012 – Article 10 – Subsidiary jurisdiction in matters of succession – Deceased person habitually resident at the time of his or her death in a State that is not bound by Regulation (EU) No 650/2012 – Deceased person who is a national of a Member State and has assets in that Member State – Obligation for the court of that Member State seised to examine of its own motion the criteria as regards its subsidiary jurisdiction – Appointment of an administrator of the estate)

In Case C-645/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 18 November 2020, received at the Court on 1 December 2020, in the proceedings

V A,

Z A

v

TP,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, I. Jarukaitis, M. Ilešič (Rapporteur), D. Gratsias and Z. Csehi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- TP, by F. Rocheteau, avocat,
- the French Government, by A. Daniel and A.-L. Desjonquères, acting as Agents,

* Language of the case: French.

- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- the Spanish Government, initially by I. Herranz Elizalde and S. Jiménez García, and subsequently by I. Herranz Elizalde, acting as Agents,
- the European Commission, initially by C. Valero and M. Wilderspin, and subsequently by C. Valero, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 December 2021,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 10(1)(a) of 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, and corrigenda OJ 2012 L 344, p. 3 and OJ 2013 L 60, p. 140).
- 2 The request has been made in proceedings between, on the one hand, V A and Z A ('the appellants in the main proceedings'), children of XA, and, on the other, TP, XA's wife, concerning an application for the appointment of an administrator of XA's estate as a whole.

Legal context

- 3 Recitals 7, 27, 30, 43 and 82 of Regulation No 650/2012 state:
 - '(7) The proper functioning of the internal market should be facilitated by removing the obstacles to the free movement of persons who currently face difficulties in asserting their rights in the context of a succession having cross-border implications. In the European area of justice, citizens must be able to organise their succession in advance. The rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession must be effectively guaranteed.
- ...
- (27) The rules of this Regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law. This Regulation therefore provides for a series of mechanisms which would come into play where the deceased had chosen as the law to govern his succession the law of a Member State of which he was a national.
- ...
- (30) In order to ensure that the courts of all Member States may, on the same grounds, exercise jurisdiction in relation to the succession of persons not habitually resident in a Member State at the time of death, this Regulation should list exhaustively, in a hierarchical order, the grounds on which such subsidiary jurisdiction may be exercised.

...

- (43) The rules of jurisdiction laid down by this Regulation may, in certain cases, lead to a situation where the court having jurisdiction to rule on the succession will not be applying its own law. When that situation occurs in a Member State whose law provides for the mandatory appointment of an administrator of the estate, this Regulation should allow the courts of that Member State, when seised, to appoint one or more such administrators under their own law. ... In order to ensure a smooth coordination between the law applicable to the succession and the law of the Member State of the appointing court, the court should appoint the person(s) who would be entitled to administer the estate under the law applicable to the succession, such as for instance the executor of the will of the deceased or the heirs themselves or, if the law applicable to the succession so requires, a third-party administrator. ...

...

- (82) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the [TEU] and to the [TFEU], those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application. This is, however, without prejudice to the possibility for the United Kingdom and Ireland of notifying their intention of accepting this Regulation after its adoption in accordance with Article 4 of the said Protocol.'

4 Chapter II of that regulation, entitled 'Jurisdiction', includes, inter alia, Articles 4 to 6, 10 and 15 thereof.

5 Article 4 of that regulation, entitled 'General jurisdiction', provides:

'The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.'

6 Article 5 of that regulation, entitled 'Choice-of-court agreement', provides, in paragraph 1 thereof:

'Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction to rule on any succession matter.'

7 Article 6 of Regulation No 650/2012, which is entitled 'Declining of jurisdiction in the event of a choice of law', states:

'Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the court seised pursuant to Article 4 or Article 10:

- (a) may, at the request of one of the parties to the proceedings, decline jurisdiction if it considers that the courts of the Member State of the chosen law are better placed to rule on the succession, taking into account the practical circumstances of the succession, such as the habitual residence of the parties and the location of the assets; or

(b) shall decline jurisdiction if the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of the Member State of the chosen law.’

8 Article 10 of that regulation, entitled ‘Subsidiary jurisdiction’, provides:

‘1. Where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as:

- (a) the deceased had the nationality of that Member State at the time of death; or, failing that,
- (b) the deceased had his previous habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed.

2. Where no court in a Member State has jurisdiction pursuant to paragraph 1, the courts of the Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on those assets.’

9 Article 15 of that regulation, entitled ‘Examination as to jurisdiction’, provides:

‘Where a court of a Member State is seised of a succession matter over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.’

10 In Chapter III of that regulation, entitled ‘Applicable law’, Article 21 thereof, entitled ‘General rule’, provides:

‘1. Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.

2. Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State.’

11 Article 22 of Regulation No 650/2012, entitled ‘Choice of law’, provides, in paragraph 1 thereof:

‘A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.

...’

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

12 XA, a French national, died on 3 September 2015, in France. Since 1981, he had been resident in the United Kingdom, where he had married TP in 1996. Having fallen ill, he had returned to France in order to live with one of his children as from August 2012, in a flat acquired two months earlier through a real estate company in which he was a partner.

- 13 XA was survived by a wife, TP, a United Kingdom national, and three children from his first marriage, YA and the appellants in the main proceedings. YA having died in the meantime, the appellants in the main proceedings have stated that they also act as successors in title to their brother. XA's estate includes assets located in France.
- 14 The appellants in the main proceedings brought proceedings against TP before the French courts in order to have an administrator of the deceased's estate as a whole appointed, relying on Article 4 of Regulation No 650/2012 and the fact that the deceased had his habitual residence in France at the time of his death.
- 15 By order of 12 December 2017, the President of the tribunal de grande instance de Nanterre (Regional Court, Nanterre, France), in interim proceedings, found that it had jurisdiction under Article 4 of Regulation No 650/2012 to hear and determine the application of the appellants in the main proceedings. Consequently, an administrator of the estate was appointed.
- 16 By judgment of 21 February 2019, the cour d'appel de Versailles (Court of Appeal, Versailles, France) set aside that order and, pursuant to Regulation No 650/2012, found that the French courts did not have jurisdiction to rule on the deceased's succession as a whole under Article 4 of Regulation No 650/2012, on the ground, in essence, that the deceased still had his habitual residence in the United Kingdom at the time of his death.
- 17 The appellants in the main proceedings lodged an appeal on a point of law with the Cour de cassation (Court of Cassation, France), the referring court, claiming, in particular, that the cour d'appel de Versailles (Court of Appeal, Versailles) had erred in law by not taking into consideration Article 10 of Regulation No 650/2012, which provides for subsidiary jurisdiction for the courts of the Member State in which assets of the estate are located to rule on the succession as a whole, despite the fact that the deceased did not have his habitual residence in France at the time of his death, but had the nationality of that Member State and had assets there.
- 18 The referring court states, first of all, that the appellants in the main proceedings did not rely on Article 10 of Regulation No 650/2012 before the cour d'appel de Versailles (Court of Appeal, Versailles). Therefore, the question arises as to whether that court of appeal, which found that XA had French nationality and had assets in France at the time of his death, was required to examine of its own motion the criteria as regards its subsidiary jurisdiction pursuant to that Article 10.
- 19 According to the referring court, in providing that a court of a Member State seised of a succession matter which it has no jurisdiction to hear and determine under Regulation No 650/2012 may declare of its own motion that it has no jurisdiction, Article 15 of that regulation does not specify whether that court must first verify all the possible jurisdictional criteria, as regards both its general jurisdiction and its subsidiary jurisdiction. In particular, that regulation does not indicate whether the examination of subsidiary jurisdiction is optional.
- 20 On the one hand, the referring court states that Regulation No 650/2012 sets up a system for resolving conflicts of jurisdiction which the courts of the Member States seised of a dispute must apply of their own motion wherever the subject matter of that dispute comes within the material scope of that regulation. It would not be logical if, after applying that regulation of their own motion in order to resolve a conflict of jurisdiction, the courts of Member States seised were able to decline jurisdiction in favour of courts of a third State, solely on the basis of Article 4 thereof,

without having first to ascertain whether they have subsidiary jurisdiction on the basis of Article 10 of that regulation. It therefore appears more logical that those courts seised are required to ascertain, including of their own motion, all the possible criteria for exercising jurisdiction.

- 21 On the other hand, the referring court observes that the jurisdiction provided for in Article 10 of Regulation No 650/2012, which is described as ‘subsidiary’ therein, derogates from the principle of the unity of jurisdiction and applicable law that informs that regulation. Where the court of a Member State finds that it has jurisdiction under Article 10 of Regulation No 650/2012, it nevertheless has to apply the law of the State where the deceased had his or her habitual residence at the time of his or her death, unless it follows from all the circumstances of the case that, at the time of that death, the deceased was manifestly more closely connected with another State, in accordance with Article 21(2) of that regulation, or had expressly chosen the law of another State, pursuant to Article 22 of that regulation. Thus, it appears difficult to accept that the court of a Member State seised is under an obligation to examine a rule of jurisdiction described as ‘subsidiary’, even where the parties do not rely on it.
- 22 Furthermore, according to the referring court, although Regulation No 650/2012 expressly provides, in Article 15 thereof, that a court which does not have jurisdiction is under an obligation to raise of its own motion its lack of jurisdiction, it contains, by contrast, no equivalent provision under which that court would be under an obligation to examine its jurisdiction of its own motion. The rules on successions are, for the purposes of that regulation, disposable rights, since that regulation allows the parties to agree, by concluding a choice-of-court agreement, that the court or courts of the Member State of the law chosen by the deceased to govern his or her succession are to have exclusive jurisdiction (Article 5 of Regulation No 650/2012) and provides for the possibility for those courts to continue to exercise jurisdiction even where there are parties to the proceedings who were not party to that agreement, if those parties enter an appearance before those courts without contesting that jurisdiction (Article 9 of that regulation).
- 23 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:
- ‘Must Article 10(1)(a) of [Regulation No 650/2012] be interpreted as meaning that, where the habitual residence of the deceased at the time of death is not located in a Member State, the court of a Member State in which the deceased had not established his habitual residence, but which finds that the deceased had the nationality of that State and held assets in it must, of its own motion, examine whether it has subsidiary jurisdiction under that article?’

Consideration of the question referred

- 24 By its question, the referring court asks, in essence, whether Article 10(1)(a) of Regulation No 650/2012 must be interpreted as meaning that a court of a Member State must raise of its own motion its jurisdiction under the rule of subsidiary jurisdiction referred to in that provision where, having been seised on the basis of the rule of general jurisdiction established in Article 4 of that regulation, it finds that it has no jurisdiction under that latter provision.
- 25 In the present case, it is apparent from the order for reference that the cour d’appel de Versailles (Court of Appeal, Versailles) found that the deceased had his last habitual residence in the United Kingdom and not in France. In that regard, it should be noted that, as can be seen from recital 82

of Regulation No 650/2012, the United Kingdom – in accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and the TFEU – did not take part in the adoption of that regulation. Moreover, it does not appear that, as at the date of XA's death, the United Kingdom had made use of the option provided for in Article 4 of that protocol to notify its intention to accept that regulation. At that date, the United Kingdom, even though it was an EU Member State, was thus neither bound by Regulation No 650/2012 nor, as a result, subject to its application. For the purpose of interpreting Article 10 of that regulation, the view should be taken that the jurisdiction provided for in that provision may apply where the deceased had his or her habitual residence in such a Member State that is not bound by that regulation at the time of his or her death. Consequently, provided that the other criteria referred to in that provision are also met, it must be concluded that the situation at issue in the main proceedings is capable of coming within the scope of that provision.

- 26 In that regard, it is common ground that Article 10 of Regulation No 650/2012 was not relied on by the appellants in the main proceedings, either at first instance or on appeal. Accordingly, the question referred for a preliminary ruling seeks only to determine if Regulation No 650/2012 requires the court of a Member State, seised on the basis of Article 4 of that regulation, to examine of its own motion whether it has jurisdiction in the light of the criteria referred to in Article 10(1)(a) thereof, or if that court may declare that it has no jurisdiction where the applicant has not relied on that provision in respect of that court exercising its jurisdiction.
- 27 In accordance with settled case-law, the provisions relating to the rules on jurisdiction, in so far as they do not refer to the law of the Member States for the purpose of determining their meaning and scope, must be given an autonomous and uniform interpretation throughout the European Union; that interpretation must take into account not only the wording of those provisions but also their context and the objective pursued by the legislation in question (see, to that effect, judgment of 21 June 2018, *Oberle*, C-20/17, EU:C:2018:485, paragraph 33 and the case-law cited).
- 28 As regards, in the first place, the wording of Article 10(1)(a) of Regulation No 650/2012, it must be noted that that provision establishes a rule of jurisdiction providing that, where the habitual residence of the deceased at the time of his or her death is not located in a Member State, the courts of a Member State in which assets of the estate are located are nevertheless to have jurisdiction to rule on the succession as a whole if the deceased had the nationality of that Member State at the time of his or her death.
- 29 It is apparent from the wording of Article 10(1)(a) of Regulation No 650/2012 that the two criteria referred to by that provision, for the purpose of conferring jurisdiction on the courts of a Member State where the habitual residence of the deceased at the time of his or her death is not located in that Member State, are, first, that there are assets of the estate in that Member State and, second, that the deceased had the nationality of that Member State at the time of his or her death. By contrast, it does not in any way follow from that wording that the conferral of such jurisdiction would depend on any action whatsoever on the part of the deceased or an interested party. On the contrary, as the Advocate General stated, in essence, in points 67 and 68 of his Opinion, the use of the expression 'shall ... have jurisdiction' is such as to indicate that the jurisdiction provided for in Article 10(1) of that regulation is mandatory in nature.
- 30 As regards, in the second place, the context of which Article 10(1)(a) of Regulation No 650/2012 forms part, it must be noted that Article 10 of that regulation is found in Chapter II thereof, which establishes a set of rules of jurisdiction in matters of succession. In particular, that Article 10

provides for subsidiary jurisdiction in relation to general jurisdiction, established by the rule set out in Article 4 of that regulation, which designates the courts of the place of the deceased's habitual residence as being the courts having jurisdiction to rule on the whole of the succession concerned.

- 31 As regards, in the third place, the objective of Article 10 of Regulation No 650/2012, it is important to note that that article must be read in the light of recital 30 of that regulation, according to which it must be '[ensured] that the courts of all Member States may, on the same grounds, exercise jurisdiction in relation to the succession of persons not habitually resident in a Member State at the time of death'. To that end, according to that recital, that regulation 'should list exhaustively, in a hierarchical order, the grounds on which such subsidiary jurisdiction may be exercised'.
- 32 It follows that, since Regulation No 650/2012 seeks, inter alia, to ensure the uniform application of rules of international jurisdiction in matters of succession, both Article 4 of that regulation and Article 10(1) thereof have as their sole objective the definition of uniform jurisdictional criteria for ruling on a succession as a whole. They do not offer, in that regard, interested parties the possibility of choosing, depending on their interests, the forum of a Member State, subject to the application of Article 5 of that regulation in the event that the deceased has chosen the law applicable to his or her succession.
- 33 It should be pointed out, in that regard, that, as the Advocate General stated in points 47 and 65 of his Opinion, there is no hierarchical relationship between the forum established in Article 4 of Regulation No 650/2012 and the forum established in Article 10 thereof, as each of them refers to distinct cases. Likewise, the fact that the jurisdiction provided for in Article 10 of that regulation is described as 'subsidiary' does not mean that that provision is less binding than Article 4 of that regulation, relating to general jurisdiction.
- 34 In that regard, it must be noted that the use of the term 'nevertheless' in Article 10(1) of Regulation No 650/2012 suggests that that provision refers to a rule of jurisdiction that is equivalent and supplementary to the rule of general jurisdiction established in Article 4 of that regulation, with the result that, where that latter article is inapplicable, it is appropriate to ascertain whether the jurisdictional criteria referred to in Article 10 of that regulation are met.
- 35 That interpretation is, moreover, supported by the objective pursued by Regulation No 650/2012, as is apparent from recital 7 thereof, consisting in facilitating the proper functioning of the internal market by removing the obstacles to the free movement of persons who wish to assert their rights arising from a cross-border succession, in particular, by ensuring that, in the European area of justice, the rights of heirs and legatees, of other persons close to the deceased and of creditors of an estate are effectively guaranteed (see, to that effect, judgment of 1 March 2018, *Mahnkopf*, C-558/16, EU:C:2018:138, paragraph 35).
- 36 To that end, Regulation No 650/2012 lays down rules of international jurisdiction for the succession as a whole, which are based on objective criteria. In that context, Article 10(1) of that regulation contributes to ensuring that the access to justice of heirs and legatees, of other persons close to the deceased and of creditors of an estate is guaranteed, where the situation in question is closely connected with a Member State on account of, inter alia, the existence of assets of the estate in the territory of the latter.

- 37 Moreover, it must be borne in mind that, in order to contribute to the efficient resolution of disputes relating to a succession, Regulation No 650/2012 seeks to favour a uniform treatment of the succession. Thus, the Court has held on several occasions that an interpretation of the provisions of that regulation which would lead to a fragmentation of that succession would be incompatible with the objectives of that regulation (see, to that effect, judgments of 21 June 2018, *Oberle*, C-20/17, EU:C:2018:485, paragraph 56, and of 16 July 2020, *E. E. (Jurisdiction and law applicable to succession)*, C-80/19, EU:C:2020:569, paragraph 41).
- 38 That principle of a single estate also underpins the rule established in Article 10(1) of Regulation No 650/2012, inasmuch as that article states that that rule is to determine the jurisdiction of the courts of the Member States to rule ‘on the succession as a whole’.
- 39 Lastly, it must be borne in mind that the Court has held that respect for the independence of the court in the exercise of its functions requires that court to be able to examine its international jurisdiction in the light of all the information available to it, while pursuing the objective of the proper administration of justice, which underlies the EU legislation (see, to that effect, judgments of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 64, and of 16 June 2016, *Universal Music International Holding*, C-12/15, EU:C:2016:449, paragraph 45).
- 40 Having regard to the objective pursued by Regulation No 650/2012, consisting in ensuring the proper administration of justice, nothing precludes the same principles from prevailing as regards the examination, by the court seised, of its jurisdiction in the context of the application of the rules of international jurisdiction in matters of succession laid down in that regulation.
- 41 Thus, since the rules of subsidiary jurisdiction established in Article 10(1) of Regulation No 650/2012 contribute to fulfilling that objective of the proper administration of justice, the application of that provision cannot depend on the fact that it has not been relied on by one or other of the parties to the proceedings in question.
- 42 As the Advocate General stated in point 87 of his Opinion, Article 10 of Regulation No 650/2012 must be interpreted in the light of Article 15 thereof, as meaning that, while Article 10 does not oblige the court seised to look actively for a factual basis on which to rule on its jurisdiction in a particular dispute, it does require it to determine, by taking into consideration the uncontested facts, the basis for its jurisdiction, which may be different from that relied on by the applicant.
- 43 In particular, it should be noted that a declaration of lack of jurisdiction on the part of the court seised pursuant to Article 15 of Regulation No 650/2012 requires a preliminary examination of all the criteria established in Chapter II of Regulation No 650/2012 and that, in the context of that examination, that court is required to examine the jurisdiction it may have in the light of all the information available to it. Therefore, such an examination cannot be carried out having regard to the sole rule of jurisdiction expressly relied on by the interested parties.
- 44 That interpretation is not called into question by the arguments of the referring court, according to which Article 10 of Regulation No 650/2012 derogates from the principle that the jurisdiction and the applicable law should coincide, so that the court seised would have to apply the law of the State of the deceased’s habitual residence at the time of his or her death. The objective, referred to in recital 27 of that regulation, of having the jurisdiction coincide with the applicable law, is not, as the Advocate General stated in point 70 of his Opinion, absolute in nature.

- 45 Even though, according to recital 27 of Regulation No 650/2012, the rules of that regulation are devised so as to ensure that the authority dealing with the succession may, in most situations, apply its own law, that regulation neither requires nor guarantees that the jurisdiction and the applicable law coincide. The non-absolute nature of that coincidence is corroborated, first, by the expression ‘in most situations’ used in recital 27 of that regulation and, second, by the fact that, in recital 43 of that regulation, the EU legislature itself stated that the rules of jurisdiction laid down therein may lead to situations where the court having jurisdiction to rule on the succession will not be applying its own law.
- 46 Having regard to all the foregoing considerations, the answer to the question referred is that Article 10(1)(a) of Regulation No 650/2012 must be interpreted as meaning that a court of a Member State must raise of its own motion its jurisdiction under the rule of subsidiary jurisdiction referred to in that provision where, having been seised on the basis of the rule of general jurisdiction established in Article 4 of that regulation, it finds that it has no jurisdiction under that latter provision.

Costs

- 47 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 (Fifth Chamber) hereby rules:

Article 10(1)(a) of 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 must be interpreted as meaning that a court of a Member State must raise of its own motion its jurisdiction under the rule of subsidiary jurisdiction referred to in that provision where, having been seised on the basis of the rule of general jurisdiction established in Article 4 of that regulation, it finds that it has no jurisdiction under that latter provision.

[Signatures]