Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

12 October 2023 *

[Text rectified by order of 9 January 2024]

(Reference for a preliminary ruling – Judicial cooperation in civil matters – National law applicable in matters of succession – Regulation (EU) No 650/2012 – Article 22 – Choice-of-law clause – Scope *ratione personae* – Third-country national – Article 75 – Relationship with existing international conventions – Bilateral agreement between the Republic of Poland and Ukraine)

In Case C-21/22,

[As rectified by order of 9 January 2024] REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Opolu (Regional Court, Opole, Poland), made by decision of 10 December 2021, received at the Court on 7 January 2022, in the proceedings brought by

OP

intervener:

Notariusz Justyna Gawlica,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, N. Piçarra, M. Safjan, N. Jääskinen (Rapporteur) and M. Gavalec, 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:

– Notariusz Justyna Gawlica, by M. Margoński, zastępca notarialny,

– the Polish Government, by B. Majczyna and S. Żyrek, acting as Agents,

– the Spanish Government, by M.J. Ruiz Sánchez, acting as Agent,

* Language of the case: Polish.

– the Hungarian Government, by Zs. Biró-Tóth and M.Z. Fehér, acting as Agents,

– the European Commission, by S.L. Kalėda and W. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 March 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 22 and 75 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).

2 The request has been made in proceedings between OP, a Ukrainian national residing in Poland, where she is the co-owner of immovable property, and the deputy notary of Notariusz Justyna Gawlica (Ms Justyna Gawlica, notary) who runs the notary's office in Krapkowice ('the deputy notary'), concerning the latter party's refusal to draw up a notarial will containing a clause under which the law applicable to OP's succession would be Ukrainian law.

Legal context

European Union law

3 Recitals 7, 37, 38, 57 and 59 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.

…

(37) In order to allow citizens to avail themselves, with all legal certainty, of the benefits offered by the internal market, this Regulation should enable them to know in advance which law will apply to their succession. Harmonised conflict-of-laws rules should be introduced in order to avoid contradictory results. The main rule should ensure that the succession is governed by a predictable law with which it is closely connected. For reasons of legal certainty and in order to avoid the fragmentation of the succession, that law should govern the succession as a whole, that is to say, all of the property forming part of the estate, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State.

(38) This Regulation should enable citizens to organise their succession in advance by choosing the law applicable to their succession. That choice should be limited to the law of a State of their nationality in order to ensure a connection between the deceased and the law chosen and to avoid a law being chosen with the intention of frustrating the legitimate expectations of persons entitled to a reserved share.

…

(57) The conflict-of-laws rules laid down in this Regulation may lead to the application of the law of a third State. In such cases regard should be had to the private international law rules of that State. If those rules provide for *renvoi* either to the law of a Member State or to the law of a third State which would apply its own law to the succession, such *renvoi* should be accepted in order to ensure international consistency. *Renvoi* should, however, be excluded in situations where the deceased had made a choice of law in favour of the law of a third State.

…

(59) In the light of its general objective, which is the mutual recognition of decisions given in the Member States in matters of succession, irrespective of whether such decisions were given in contentious or non-contentious proceedings, this Regulation should lay down rules relating to the recognition, enforceability and enforcement of decisions similar to those of other Union instruments in the area of judicial cooperation in civil matters.'

4 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 [or her] 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.'

5 Under Article 6 of that regulation, entitled 'Declining of jurisdiction in the event of a choice of law':

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

…'

6 Article 12(1) of the regulation provides:

'Where the estate of the deceased comprises assets located in a third State, the court seised to rule on the succession may, at the request of one of the parties, decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third State.'

7 Article 20 of Regulation No 650/2012, entitled 'Universal application', is worded as follows:

'Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.'

8 Article 21 of that regulation, 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 [or her] habitual residence at the time of death.

…'

9 Article 22 of that regulation, entitled 'Choice of law', provides, in paragraph 1 thereof:

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

…'

10 Article 75 of that regulation, entitled 'Relationship with existing international conventions', provides in paragraph 1 thereof:

'This Regulation shall not affect the application of international conventions to which one or more Member States are party at the time of adoption of this Regulation and which concern matters covered by this Regulation.

…'

Polish law

11 Article 37 of the Agreement of 24 May 1993 between the Republic of Poland and Ukraine on legal assistance and legal relations in civil and criminal matters ('the Bilateral Agreement') provides:

'Legal relationships in matters relating to the succession of movable property shall be governed by the law of the contracting party of which the deceased was a national at the time of his or her death.

Legal relationships in matters relating to the succession of immovable property shall be governed by the law of the contracting party in the territory of which that property is situated.

The classification of the property forming part of the estate as movable or immovable property shall be governed by the law of the contracting party in the territory of which the property is situated.'

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

12 OP is a Ukrainian national residing in Poland where she is the co-owner of immovable property. She requested the deputy notary to draw up a notarial will containing a clause under which the law applicable to her succession would be Ukrainian law.

13 The deputy notary refused to draw up such an act, providing two main reasons. First, Article 22 of Regulation No 650/2012, read in the light of recital 38 thereof, confers the right to choose the applicable law only on nationals of Member States of the European Union. Second, Article 37 of the Bilateral Agreement, which in any event takes precedence over that regulation, provides that the law applicable in matters of succession is the law of the State whose nationality the deceased

possesses in the case of movable property, and the law of the State in which the property is situated in the case of immovable property. The deputy notary thus found that the law applicable to OP's succession is Polish law in respect of the immovable property which she owns in Poland.

14 OP brought an action before the Sąd Okręgowy w Opolu (Regional Court, Opole, Poland), which is the referring court, against the deputy notary's refusal on the ground that the latter relied on a misreading of Regulation No 650/2012. In that regard, OP argued, in particular, that Article 22 of that regulation allows 'a person' to choose the law of his or her country as the law applicable to his or her succession. In addition, OP maintained that the purpose of Article 75(1) of Regulation No 650/2012 is to preserve the conformity of that regulation with the obligations arising from agreements concluded by the Member States with third States. In so far as the Bilateral Agreement does not govern the choice of succession law, OP submits that the application of Article 22 of Regulation No 650/2012 is not incompatible with that agreement.

15 In those circumstances, the Sąd Okręgowy w Opolu (Regional Court, Opole) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 22 [of Regulation No 650/2012] be interpreted as meaning that a person who is not a citizen of the European Union is entitled to choose the law of his or her native country as the law governing all matters relating to succession?

(2) Must Article 75, in conjunction with Article 22, of Regulation No 650/2012 be interpreted as meaning that, in the case where a bilateral agreement between a Member State and a third [State] does not govern the choice of law applicable to a case involving succession but indicates the law applicable to that case involving succession, a national of that third [State] residing in a Member State bound by that bilateral agreement may make a choice of law?'

The first question

16 By its first question, the referring court asks, in essence, whether Article 22 of Regulation No 650/2012 must be interpreted as meaning that a third-country national residing in a Member State of the European Union may choose the law of that third State as the law governing his or her succession as a whole.

17 Article 22 of Regulation No 650/2012 provides that 'a person may choose as the law to govern his [or her] succession as a whole the law of the State whose nationality he [or she] possesses at the time of making the choice or at the time of death'.

18 As is apparent from its wording, that provision encompasses any 'person', without making any distinction between nationals of Member States of the European Union and third-country nationals. The only restriction on the freedom of choice available to such a person is that he or she can choose only the law of a State of which he or she is a national, irrespective of whether or not that State is a Member State of the European Union.

19 Therefore, it cannot be considered that only EU citizens may enjoy such freedom of choice.

20 That literal interpretation is supported by other provisions of Regulation No 650/2012 which also refer to the law of a third State which is not a Member State of the European Union.

21 Thus, first, Article 20 of that regulation provides that the law designated by that regulation is to apply whether or not it is the law of a Member State. Although it is apparent from recital 57 of Regulation No 650/2012 that the conflict-of-laws rules set out in that regulation may lead to the application of the law of a third State and that, in such a case, regard must be had to the *renvoi* rules laid down by the private international law of that State, it is expressly stated therein that that type of *renvoi* should be excluded 'where the deceased [has] made a choice of law in favour of the law of a third State'.

22 Second, Article 5 of that regulation limits choice-of-court agreements to the situation where 'the law chosen by the deceased to govern his [or her] succession pursuant to Article 22 [of that regulation] is the law of a Member State'. Similarly, Article 6 of that regulation governs the declining of jurisdiction 'where the law chosen by the deceased to govern his [or her] succession pursuant to Article 22 is the law of a Member State'. Such details make sense only if there is a choice other than the law of a Member State. However, if it is not the law of a Member State, then it can only be the law of a third State.

23 Third, by stating that 'this Regulation should enable citizens to organise their succession in advance by choosing the law applicable to their succession', recital 38 of Regulation No 650/2012 refers, in a generic manner, to any 'citizen' and not only EU citizens.

24 In the light of all the foregoing reasons, the answer to the first question is that Article 22 of Regulation No 650/2012 must be interpreted as meaning that a third-country national residing in a Member State of the European Union may choose the law of that third State as the law governing his or her succession as a whole.

The second question

25 By its second question, the referring court asks, in essence, whether Article 75 of Regulation No 650/2012, read in conjunction with Article 22 of that regulation, must be interpreted as meaning that, where a Member State of the European Union has concluded, before the adoption of that regulation, a bilateral agreement with a third State which designates the law applicable to succession and does not expressly provide for the possibility of choosing another law, a national of that third State, residing in the Member State in question, may choose the law of that third State to govern his or her succession as a whole.

26 In that regard, it follows, in essence, from Article 75(1) of Regulation No 650/2012 that the application of that regulation cannot affect the application of international conventions to which one or more Member States are parties, provided that, first, the Member State or States concerned were already parties to the international convention at issue at the time of the adoption of Regulation No 650/2012 and, second, that convention concerns matters governed by that regulation. It is clear from the case-law of the Court that, where the EU legislature provides that the application of a regulation 'shall not affect' existing international conventions, those conventions are to apply in the event of there being concurrent rules with such a regulation (see, by analogy, judgment of 4 May 2010, *TNT Express Nederland*, C-533/08, EU:C:2010:243, paragraph 46).

27 Therefore, where a Member State is a party to a bilateral agreement concluded with a third State before the entry into force of Regulation No 650/2012 and that bilateral agreement contains provisions laying down rules applicable to succession, it is those provisions which, in principle, are intended to apply and not those provided for in Regulation No 650/2012 in that regard.

28 Furthermore, as the Advocate General observed in points 29 and 30 of his Opinion, Article 75 of Regulation No 650/2012 is not an isolated provision in the EU instruments on judicial cooperation in civil and commercial matters. Many other regulations and conventions govern relationships between individuals in the European area of freedom, security and justice and include provisions which follow a similar logic to that of Article 75 of Regulation No 650/2012.

29 In that context, the Court has held that the article governing, within the EU legal act at issue, the relationship between that act and international conventions cannot have a scope which conflicts with the principles underlying the legislation of which it forms part (see, to that effect, judgment of 4 May 2010, *TNT Express Nederland*, C-533/08, EU:C:2010:243, paragraph 51).

30 In the present case, the purpose of Regulation No 650/2012 is, as is apparent, in essence, from recitals 7 and 59 thereof, to remove the obstacles to the free movement of persons who may face difficulties in asserting their rights in the context of a succession with cross-border implications, in particular by laying down rules on jurisdiction and applicable law in the matter, and on the recognition and enforcement, in a Member State, of judgments and acts of other Member States.

31 In that regard, Article 21 of that regulation establishes, under the heading 'General rule', a default connecting factor which is determined by reference to the habitual residence of the deceased at the time of death. In view of the structure of that regulation, the possibility of choosing the law of the State of which the deceased is a national, governed by Article 22 of that regulation, must be regarded as a derogation from the general rule laid down in Article 21 of that regulation.

32 Furthermore, both the habitual residence and nationality constitute objective connecting factors which both contribute to the aim of legal certainty for the parties to the succession proceedings pursued by Regulation No 650/2012, as is apparent from recital 37 thereof.

33 It follows from the foregoing considerations that the possibility of choosing the law applicable to his or her succession cannot be regarded as a principle underlying Regulation No 650/2012 and, therefore, judicial cooperation in civil and commercial matters within the European Union of which it is an instrument.

34 It is true that the Court has held that the general objective of that regulation, which seeks to ensure the mutual recognition of decisions given in the Member States in matters of succession, is linked to the principle of a single estate (see, to that effect, judgment of 21 June 2018, *Oberle*, C-20/17, EU:C:2018:485, paragraphs 53 and 54). However, that principle is not absolute (see, to that effect, judgment of 16 July 2020, *E. E. (Jurisdiction and law applicable to succession)*, C-80/19, EU:C:2020:569, paragraph 69).

35 In that regard, as the Advocate General observed in point 71 of his Opinion, Article 12(1) of that regulation expressly introduces a derogation from that principle by allowing the court having jurisdiction not to rule on property located in third States, owing to fear that the judgment will not be recognised or that it will not be declared enforceable in those third States.

36 It follows that the EU legislature expressly intended to comply, in certain specific cases, with the split model of succession that could be implemented in relations with certain third States.

37 Consequently, it must be held that the scheme of Regulation No 650/2012 does not preclude a situation where, under a bilateral agreement concluded between a Member State and a third State before the adoption of that regulation and in the light of the exception laid down in Article 75(1) of that regulation, a third-country national residing in the Member State bound by that bilateral agreement does not have the right to choose the law applicable to his or her succession. Furthermore, that finding is consistent with the principle laid down in the first paragraph of Article 351 TFEU, concerning the effect of international agreements concluded by the Member States before their accession to the European Union.

38 In the light of all the foregoing reasons, the answer to the second question is that Article 75 of Regulation No 650/2012, read in conjunction with Article 22 of that regulation, must be interpreted as not precluding – where a Member State of the European Union has concluded, before the adoption of that regulation, a bilateral agreement with a third State which designates the law applicable to succession and does not expressly provide for the possibility of choosing another law – a national of that third State, residing in the Member State in question, from not being able to choose the law of that third State to govern his or her succession as a whole.

Costs

39 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 (Third Chamber) hereby rules:

1. **Article 22 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 third-country national residing in a Member State of the European Union may choose the law of that third State as the law governing his or her succession as a whole.

2. **Article 75 of Regulation No 650/2012, read in conjunction with Article 22 of that regulation,**

   must be interpreted as not precluding – where a Member State of the European Union has concluded, before the adoption of that regulation, a bilateral agreement with a third State which designates the law applicable to succession and does not expressly provide for the possibility of choosing another law – a national of that third State, residing in the Member State in question, from not being able to choose the law of that third State to govern his or her succession as a whole.

[Signatures]