Reports of Cases

OPINION OF ADVOCATE GENERAL
WATHELET
delivered on 26 May 2016[1]

Case C-294/15

Edyta Mikołajczyk
v
Marie Louise Czarnecka,
Stefan Czarnecki
(Request for a preliminary ruling

from the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw, Poland))

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 1(1)(a) — Material scope — Application for annulment of a marriage brought by a third party after the death of one of the spouses — Article 3(1) — Jurisdiction of the courts of the Member State of residence of the applicant to deal with such an application)

I – **Introduction**

1. This request for a preliminary ruling relates to the interpretation of Article 1(1)(a), Article 1(3) and Article 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[2] ('Regulation No 2201/2003').

2. In particular, the request concerns the application of that regulation to actions for annulment of marriage brought by a third party after the death of one of the spouses.

II – **Legal framework**

3. Recital 8 of Regulation No 2201/2003 states that 'as regards judgments on divorce, legal separation or marriage annulment, this Regulation should apply only to the dissolution of matrimonial ties and should not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures'.

1 — Original language: French.

2 — OJ 2003 L 338, p. 1. In this opinion, I will refer to the version of Regulation No 2201/2003 as amended by Council Regulation (EC) No 2116/2004 of 2 December 2004 (OJ 2004 L 367, p. 1).

4. The scope of Regulation No 2201/2003 is set out in Article 1(1) and (3) thereof in the following terms:

‘1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

(a) divorce, legal separation or marriage annulment;

…

3. This Regulation shall not apply to:

(a) the establishment or contesting of a parent-child relationship;

(b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;

(c) the name and forenames of the child;

(d) emancipation;

(e) maintenance obligations;

(f) trusts or succession;

(g) measures taken as a result of criminal offences committed by children.’

…’

5. Article 3 of that regulation, entitled ‘General jurisdiction’, provides:

‘1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State:

(a) in whose territory:

— the spouses are habitually resident, or

— the spouses were last habitually resident, in so far as one of them still resides there, or

— the respondent is habitually resident, or

— in the event of a joint application, either of the spouses is habitually resident, or

— the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or

— the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her “domicile” there;

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the “domicile” of both spouses.

2. For the purpose of this Regulation, "domicile" shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland.'

III – **The main proceedings and the questions referred for a preliminary ruling**

6. The facts before the Court in the present case are unusual and span several decades.

7. On 20 November 2012, Edyta Mikołajczyk brought an action before the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland) seeking annulment of the marriage of Stefan Czarnecki to Marie Louise Czarnecka (née Cuenin) entered into on 4 July 1956 before the superintendent registrar of the city council of the 16th district of Paris (France). She stated that she was the heir to the estate of Stefan Czarnecki's first wife, Zdzisława Czarnecka, who died on 15 June 1999.

8. According to Edyta Mikołajczyk, the marriage of Stefan Czarnecki to Zdzisława Czarnecka, entered into on 13 July 1937 before the superintendent registrar of Poznań (Poland), was never dissolved, and therefore the subsequent marriage between Stefan Czarnecki and Marie Louise Czarnecka was a bigamous union.

9. That action for annulment is brought against Stefan Czarnecki and Marie Louise Czarnecka. Since Stefan Czarnecki died on 3 March 1971, an executor was appointed to represent him in those proceedings and the executor endorsed the submissions of Marie Louise Czarnecka.

10. Marie Louise Czarnecka raised a plea claiming that the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) lacked jurisdiction and argued that the action for annulment was inadmissible. As to the substance, she contended that the action should be dismissed in its entirety as unfounded.

11. By order of 9 September 2013, the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) rejected the plea alleging lack of jurisdiction. None of the parties challenged that order.

12. By judgment of 13 February 2014, that court, ruling that the marriage of Stefan Czarnecki to Zdzisława Czarnecka had been dissolved by divorce granted by the Polish courts on 29 May 1940, held that the action for annulment of the marriage was unfounded.

13. Edyta Mikołajczyk brought an appeal against that judgment before the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw).

14. In examining that appeal, the court expressed doubts as to whether the Polish courts had international jurisdiction to hear the main proceedings on the basis of Articles 1 and 3 of Regulation No 2201/2003. It therefore decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Do actions for annulment of a marriage following the death of one of the spouses fall within the scope of [Regulation No 2201/2003]?

(2) In the event of an affirmative answer to Question 1, does the scope of [Regulation No 2201/2003] extend to an action for annulment of marriage brought by a person other than one of the spouses?

(3) In the event of an affirmative answer to Question 2, in actions for annulment of marriage brought by a person other than one of the spouses, may the jurisdiction of the court be based on the grounds set out in the fifth and sixth indents of Article 3(1)(a) of [Regulation No 2201/2003]?'

IV – **Procedure before the Court**

15. The request for a preliminary ruling was lodged at the Court on 17 June 2015.

16. Written observations were submitted by the Polish and Italian Governments and by the European Commission. Neither the parties to the main proceedings nor the interveners in the proceedings before the Court requested a hearing. The Court considered that it had sufficient information to give judgment without arranging a hearing.

V – **Analysis**

A – *The first question*

17. By its first question, the referring court asks the Court whether Regulation No 2201/2003 is applicable to actions for annulment of a marriage brought following the death of one of the spouses.

18. Prima facie, since the referring court in its request for a preliminary ruling largely repeats the findings of fact made by the Sąd Okręgowy w Warszawie (Regional Court, Warsaw), including the finding that the marriage of Stefan Czarnecki to Zdzisława Czarnecka was dissolved by divorce in 1940,[3] it seems to me that the action giving rise to the first question is probably unfounded.

19. However, this question of substance can only be dealt with after a determination has been made as to whether the Polish courts have international jurisdiction to hear the main proceedings. That is the key question in this request for a preliminary ruling.

20. According to the referring court, the fact that, under Article 1(1)(a) of Regulation No 2201/2003, that regulation applies to civil matters relating to annulment of marriage is not, in itself, conclusive.

21. It recalls that Regulation No 2201/2003 repealed Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses.[4] The basis of the latter was the 'Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters'.[5]

22. Even though the provisions at issue in the present case are broadly similar to those of that convention, which does not exclude any class of action for marriage annulment from its scope, the national court refers to paragraph 27 of the explanatory report on the convention of Professor Borrás, approved by the Council on 28 May 1998,[6] according to which 'it was necessary to establish grounds of jurisdiction in matrimonial proceedings without becoming involved in any examination of the situation in which the validity of a marriage needs to be considered as part of annulment proceedings when one of the spouses is deceased or after the decease of both spouses, since that situation is not within the scope of the Convention. Such situations arise, in the majority of cases, as preliminary questions relating to successions. Instead, it will be resolved by the international instruments applicable in the matter … or according to the internal legislation of the State where that is possible'.[7]

3 — This means that Stefan Czarnecki's second marriage, to Marie Louise Czarnecka, entered into in 1956, was not bigamous.

4 — OJ 2000 L 160, p. 19.

5 — OJ 1998 C 221, p. 1.

6 — OJ 1998 C 221, p. 27; hereinafter 'the explanatory report of Professor Borrás'.

7 — Questions of jurisdiction relating to succession to the estates of deceased persons are currently governed by 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).

23. According to the Polish and Italian Governments, actions for marriage annulment following the death of one of the spouses do not come within the scope of Regulation No 2201/2003 because, at the time such actions are brought, the matrimonial ties to which they relate no longer exist due to the death of one of the spouses.

24. The Governments submit that, where a marriage has come to an end, any dispute relating to its annulment does not concern primarily the status of natural persons, but rather, as in the present case, property rights in succession proceedings.

25. In support of their view, the Polish and Italian Governments also rely on paragraph 27 of the explanatory report of Professor Borrás..

26. On the contrary, I take the view, as does the Commission, that Regulation No 2201/2003 is applicable to all actions for marriage annulment, even where one of the spouses has died, irrespective of whether or not the action may be related, as in the main proceedings, to a dispute concerning succession.

27. Contrary to what is submitted by the Italian Government, the fact that the action for annulment at issue in the main proceedings relates to a marriage previously dissolved by the death of one of the spouses does not mean that the action falls outside the scope of Regulation No 2201/2003. While death has the effect of dissolving a marriage *ex nunc*, an action for annulment seeks to have it invalidated *ex tunc*. There may therefore be an interest in having a marriage annulled even after its dissolution as a result of the death of one of the spouses.

28. Furthermore, as the Commission observes, the wording of Article 1(1)(a) of Regulation No 2201/2003 leaves no doubt as to the applicability of that regulation to an action for marriage annulment such as that at issue in the main proceedings. That provision states — unequivocally, unreservedly and without imposing any additional conditions — that 'this Regulation shall apply … to … marriage annulment'. Moreover, actions for marriage annulment where one of the spouses has died are not among the cases expressly excluded from the scope of Regulation No 2201/2003 by Article 1(3) thereof.

29. As for the arguments based on paragraph 27 of the explanatory report of Professor Borrás, I note not only that the convention to which it was annexed has never entered into force, but also, as the Commission observes, that Professor Borrás gives no reasons to justify that exclusion.

30. In addition, as the Commission observes, the purpose of Regulation No 2201/2003 is to afford EU citizens a higher degree of foreseeability and legal clarity as regards jurisdiction and the recognition and enforcement of judgments on matrimonial matters with an international dimension. To exclude from the scope of the regulation actions for marriage annulment where one of the spouses has died would thus be contrary to its spirit and purpose.

31. Lastly, recital 8 of Regulation No 2201/2003 states that 'as regards judgments on … marriage annulment, this Regulation should apply only to the dissolution of matrimonial ties and should not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures'.

32. Contrary to what the Polish and Italian Governments claim, that recital does not mean that Regulation No 2201/2003 is not applicable to actions for marriage annulment where one or both spouses have died. On the contrary, it provides that, as regards this type of action, the regulation is applicable only to matters concerning the dissolution of the matrimonial ties, not to the property consequences of the marriage, such as succession, which is, moreover, expressly excluded from the scope of the regulation under Article 1(3)(f).

33. Therefore, while Regulation No 2201/2003 may establish the jurisdiction of a court to rule, in this case, on the validity of the marriage entered into by Stefan Czarnecki and Marie-Louise Czarnecka, it is not applicable to matters relating to the succession to the estate of Stefan Czarnecki or to that of his first wife, Zdzisława Czarnecka, to which Edyta Mikołajczyk claims to be the heir.

34. For these reasons, I propose that the Court answer the first question to the effect that actions for marriage annulment brought following the death of one of the spouses come within the scope of Regulation No 2201/2003.

B – *The second question*

35. By its second question, the referring court asks the Court whether the scope of Regulation No 2201/2003 also covers actions for marriage annulment brought by a person other than one of the spouses.

36. The referring court observes in that regard that the explanatory report of Professor Borrás is silent as to the possible exclusion of actions for annulment brought by a person other than one of the spouses. It also notes that academic writings on the matter are ambiguous; some writers consider that Article 3 of Regulation No 2201/2003 excludes by implication its application to actions for marriage annulment brought by a third party, whilst others accept the possibility of the regulation being applicable to actions for marriage annulment brought at the request of the public prosecutor's office or by a third party with a legal interest in bringing proceedings, in which case, however, only the first to fourth indents of Article 3(1)(a) and Article 3(1)(b) of the regulation would apply.

37. The Polish and Italian Governments share the opinion that Regulation No 2201/2003 is not applicable to actions for marriage annulment brought by a person other than one of the spouses. In support of its submissions, the Polish Government maintains that several of the grounds for jurisdiction set out in Article 3(1)(a) of the regulation refer to the place of the joint or individual habitual residence of the spouses to indicate that only spouses are intended to be parties to marriage annulment proceedings.

38. Like the Commission, I advocate an interpretation that is true to the wording of Articles 1 and 3 of Regulation No 2201/2003, which do not make the application of the regulation to actions for marriage annulment dependent on the identity of the applicant.

39. In addition, although it is true that matrimonial proceedings are personal in nature, there are cases where, as in the main proceedings, a third party may have a legal interest in bringing proceedings and there is no reason to prevent that party from asserting that interest, the determination thereof being based not on Regulation No 2201/2003 but on the applicable national law.

40. The fact that some of the grounds of jurisdiction listed in Article 3(1)(a) of Regulation No 2201/2003 refer to the habitual place of residence of the spouses has no bearing on the answer to be given to the second question, since the fact that the courts of the place in which the spouses are habitually resident have international jurisdiction concerning marriage annulment does not prevent a third party bringing proceedings there under the provisions of that regulation.

41. For these reasons, I propose that the Court answer the second question to the effect that the scope of Regulation No 2201/2003 covers actions for marriage annulment brought by a person other than one of the spouses.

C – The third question

42. By its third question, the referring court asks the Court whether the jurisdiction of a court of a Member State before which an action for marriage annulment is brought by a person other than the spouses may be established on the grounds of jurisdiction referred to in the fifth and sixth indents of Article 3(1)(a) of Regulation No 2201/2003.

43. According to the referring court, the application of those provisions might have the effect of conferring jurisdiction on the Polish courts to review the validity of a marriage entered into in France on the sole basis that the residence of the non-spouse applicant, in this case Edyta Mikołajczyk, is in Poland, without there being any link to the place of residence of the spouses.

44. According to the Italian Government, the criteria set out in the fifth and sixth indents of Article 3(1)(a) of Regulation No 2201/2003 must, in so far as they designate the court of the place of habitual residence of the applicant as the ground of jurisdiction, be regarded as referring only to an applicant who is a spouse.

45. In that regard, it relies on paragraph 32 of the explanatory report of Professor Borrás, according to which the decision to include grounds of jurisdiction other than the habitual residence of the spouses was motivated by the concern of some Member States that access to justice should not be made particularly difficult for spouses who, as a result of the marriage breakdown, return to the country where they were domiciled prior to the marriage.

46. Like the Italian Government, the Commission takes the view that it would be contrary to the purpose of Regulation No 2201/2003 to interpret the provisions in issue literally, enabling the Polish courts to establish international jurisdiction to adjudicate on an action by a third party for annulment of a marriage celebrated in France. In its view, it is inconceivable that the EU legislature intended the term 'applicant' to refer to third parties in the context of an action for marriage annulment if they have *locus standi* under national law. According to the Commission, the rules on jurisdiction set out in that regulation are designed to protect the interests of the spouses, not those of third parties who might initiate proceedings of that kind. Although such third parties are entitled to bring those actions, they are bound by the rules on jurisdiction established for the benefit of the spouses.

47. I agree with the submissions and arguments of the Commission and the Italian Government.

48. In addition, it is to be recalled, first of all, that the Court previously held in paragraph 48 of the judgment of 16 July 2009, *Hadadi* (C-168/08, EU:C:2009:474) that 'Article 3(1)(a) and (b) of Regulation No 2201/2003 provides for a number of grounds of jurisdiction, without establishing any hierarchy. All the objective grounds set out in Article 3(1) are alternatives'.

49. The Court thus held in paragraph 49 of that judgment that 'the system of jurisdiction established by Regulation No 2201/2003 concerning the dissolution of matrimonial ties is not intended to preclude the courts of several States from having jurisdiction. Rather, the coexistence of several courts having jurisdiction is expressly provided for, without any hierarchy being established between them'.

50. These passages show that a third party who brings an action to annul a marriage is free to choose the court before which proceedings are to be initiated from those listed in Article 3(1)(a) of that regulation.

51. Even though the third, fifth and sixth indents of Article 3(1)(a) refer in general terms to the habitual residence of the respondent or applicant, the Court held in paragraph 50 of the judgment of 16 July 2009, *Hadadi* (C-168/08, EU:C:2009:474) that 'while *the grounds of jurisdiction listed in Article 3(1)(a) of that regulation are based in various respects on the habitual residence of the spouses*, that in Article 3(1)(b) is "the nationality" of both spouses or, in the case of the United Kingdom and

Ireland, the "domicile" of both spouses". [8]

52. It is quite evident from the italicised passage that, in the Court's opinion, all the grounds of jurisdiction listed in Article 3(1)(a) of Regulation No 2201/2003 are based on the habitual residence of one or both spouses.

53. That is why, in my view, the fifth indent of Article 3(1)(a) of Regulation No 2201/2003 does not simply establish the jurisdiction of the court of the place in which of the applicant is habitually resident, but also requires the applicant to have resided there for at least a year immediately before the application was made. The same is true of the sixth indent of that provision, according to which the applicant must have been resident for at least six months immediately before the application was made and must be a national of the Member State in question.

54. Why would the EU legislature have thus qualified the definition of the term 'applicant' if that term were not to refer to one of the spouses?

55. For these reasons, I propose that the Court answer the third question to the effect that: the fifth and sixth indents of Article 3(1)(a) of Regulation No 2201/2003 are not applicable to actions for marriage annulment brought by a person other than the spouses.

VI – **Conclusion**

56. In the light of the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw) as follows:

(1) Actions for marriage annulment brought following the death of one of the spouses come within the scope 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, as amended by Council Regulation (EC) No 2116/2004 of 2 December 2004.

(2) The scope of Regulation No 2201/2003, as amended by Regulation No 2116/2004, covers actions for marriage annulment brought by a person other than one of the spouses.

(3) The fifth and sixth indents of Article 3(1)(a) of Regulation No 2201/2003, as amended by Regulation No 2116/2004, are not applicable to actions for marriage annulment brought by a person other than the spouses.

8 — Emphasis added.