



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

3 October 2013 *

(Jurisdiction and recognition and enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 — Scope — Legal capacity of natural persons — Exclusive jurisdiction in matters relating to rights in rem in immovable property — Scope — Non-contentious proceedings concerning the right of a person who has been placed under guardianship and is domiciled in a Member State to dispose of immovable property situated in another Member State)

In Case C-386/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Bulgaria), made by decision of 29 June 2012, received at the Court on 13 August 2012, in the proceedings initiated by

Siegfried János Schneider,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, E. Jarašiūnas, A. Ó Caoimh, C. Toader (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the German Government, by T. Henze and J. Kemper, acting as Agents,
- the Hungarian Government, by K. Szijjártó and Á. Szilágyi, acting as Agents,
- the Austrian Government, by A. Posch, acting as Agent,
- the United Kingdom Government, by A. Robinson, acting as Agent,
- the European Commission, by V. Savov and M. Wilderspin, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

* Language of the case: Bulgarian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 22(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).
- 2 The request has been made in non-contentious proceedings brought by Mr Schneider – a Hungarian national who has been placed under guardianship – for authorisation to sell his share of a property situated in the Republic of Bulgaria.

Legal context

European Union law

Regulation No 44/2001

- 3 Recital 7 in the preamble to Regulation No 44/2001 states:

‘The scope of this Regulation must cover all the main civil and commercial matters apart from certain well-defined matters.’

- 4 Recital 19 of that regulation is worded as follows:

‘Continuity between the [Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32; “the Brussels Convention”)] and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of the Brussels Convention by the Court of Justice of the European Communities and the 1971 Protocol [on that interpretation by the Court, as revised and amended,] should remain applicable also to cases already pending when this Regulation enters into force.’

- 5 Under Article 1(1) and (2)(a) of Regulation No 44/2001:

‘1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

2. The Regulation shall not apply to:

(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession’.

- 6 In Section 6 of Chapter II of Regulation No 44/2001, Article 22, entitled ‘Exclusive jurisdiction’, provides:

‘The following courts shall have exclusive jurisdiction, regardless of domicile:

1. in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

...’

Bulgarian law

- 7 Under Article 168(2) of the Family Code (Semeen kodeks), read in conjunction with Article 165(4) and Article 130(3) thereof, immovable property belonging to a person who lacks full legal capacity may be disposed of, with the authorisation of the Rayonen sad (district court), in the place where that person is currently domiciled, provided that the disposal of the property does not adversely affect the person's interests.

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

- 8 Pursuant to Hungarian legislation, a Hungarian court placed Mr Schneider under guardianship and, for those purposes, appointed as legal representative and official guardian for him a person who is also a Hungarian national.
- 9 Following the death of his mother on 17 June 2009, Mr Schneider inherited a half-share in an apartment in Lovech (Bulgaria); his brother owns the other half-share.
- 10 Acting with the approval of his guardian, Mr Schneider applied to the Sofiyski rayonen sad (Sofia District Court) for authorisation to sell his share of that property. In support of his application, he claimed that the sale would help him to meet his individual needs in Hungary, in particular, the costs of constant healthcare and accommodation in a healthcare establishment.
- 11 By decision of 29 February 2012, the Sofiyski rayonen sad refused that application on the ground that disposal of the property in question was not in the interests of a person declared to be lacking full legal capacity. That court decided that Mr Schneider's interests as an adult under guardianship would be adversely affected if his immovable property were to be sold and the money thus obtained put into a trust fund, leaving him homeless in Hungary.
- 12 Mr Schneider brought an appeal against that decision before the Sofiyski gradski sad (Sofia City Court).
- 13 On the view that it is unclear from Article 22(1) of Regulation No 44/2001 whether that provision can be applied to non-contentious proceedings such as those pending before it, the Sofiyski gradski sad decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 22(1) of [Regulation No 44/2001] applicable only to contentious proceedings which have as their object rights *in rem* in immovable property or does it also apply to non-contentious proceedings by which a national of a Member State who, in accordance with its national law, has been declared by a court of that State to be lacking full legal capacity and for whom a guardian has been appointed (who is also a national of that Member State) seeks to dispose of immovable property belonging to him which is situated in another Member State?'

The question referred for a preliminary ruling

- 14 By its question, the referring court asks, in essence, whether Article 22(1) of Regulation No 44/2001 must be interpreted as applying to non-contentious proceedings by which a national of a Member State who has been declared to be lacking full legal capacity and placed under guardianship in accordance with the law of that State applies to a court in another Member State for authorisation to sell his share of a property situated in that other Member State.

- 15 All the Member States which have submitted observations to the Court are of the opinion, as is the European Commission, that that question calls for a negative answer. Moreover, in their view, non-contentious proceedings of the kind before the referring court are concerned with the ‘legal capacity of natural persons’, as referred to in Article 1(2)(a) of Regulation No 44/2001.
- 16 Accordingly, in order to examine the question referred, it is also necessary to interpret Article 1(2)(a) of Regulation No 44/2001.
- 17 As a preliminary point, it should be borne in mind that, under Article 1(1) and (2)(a) of Regulation No 44/2001, that regulation applies – whatever the nature of the court or tribunal seised – ‘in civil and commercial matters’, but not to ‘the status or legal capacity of natural persons’.
- 18 Furthermore, according to settled case-law, the concept of ‘civil and commercial matters’ for the purposes of Article 1 of Regulation No 44/2001 must be regarded as an autonomous concept to be interpreted by reference, first, to the objectives and scheme of that regulation and, second, to the general principles which stem from the corpus of the national legal systems. As a particular consequence, the scope of Regulation No 44/2001 must be determined essentially in the light of the legal relationships between the parties to the action or the subject-matter of the action (see, to that effect, Case C-343/04 *ČEZ* [2006] ECR I-4557, paragraph 22, and Case C-420/07 *Apostolides* [2009] ECR I-3571, paragraphs 41 and 42 and the case-law cited).
- 19 In order to ensure, as far as possible, that the rights and obligations which derive from Regulation No 44/2001 for the Member States and the persons concerned are equal and uniform, the concept of ‘the status or legal capacity of natural persons’ as used in Article 1(2)(a) of that regulation must also be given an autonomous interpretation.
- 20 As regards the courts with jurisdiction in matters relating to rights *in rem* in immovable property, Article 22(1) of Regulation No 44/2001 provides that the courts of the Member State in which the property is situated are to have exclusive jurisdiction in such cases.
- 21 It should also be pointed out that, in its case-law relating to Article 16(1)(a) of the Brussels Convention – which, according to recital 19 of Regulation No 44/2001, also applies for the purposes of construing Article 22(1) of that regulation – the Court has held that that provision of the Brussels Convention must be interpreted as meaning that the exclusive jurisdiction of the courts of the Contracting State in which the property is situated does not encompass all actions concerning rights *in rem* in immovable property, but only those which both come within the scope of the convention and are actions which seek to determine the extent, content, ownership or possession of immovable property or the existence of other rights *in rem* therein and to provide the holders of those rights with protection for the powers which attach to their interest (see, *inter alia*, Case C-115/88 *Reichert and Kockler* [1990] ECR I-27, paragraph 11, and *ČEZ*, paragraph 30).
- 22 As has been argued by all the Member States which have lodged written observations and by the European Commission, an application such as that lodged before the referring court does not fall within the scope of Regulation No 44/2001.
- 23 The proceedings initiated by Mr Schneider, a Hungarian national who has been placed under guardianship, are directed to obtaining authorisation to sell his share of a property situated in the Republic of Bulgaria.
- 24 It should be noted that, as can be seen from the order for reference, Mr Schneider is applying for that authorisation because, as a person who has been placed under guardianship, he is unable to exercise his rights fully: he cannot dispose of his immovable property unless another person acts – as guardian – on his behalf, and prior authorisation must have been granted by the appropriate judicial authority.

- 25 It can also be seen from the order for reference that, pursuant to the Bulgarian Family Code, the need for judicial authorisation is a safeguard required by law for the protection of a person who has been placed under guardianship, as such a person is no longer able to dispose of his immovable property himself. As the referring court noted, that authorisation is not to be granted unless the disposal of the immovable property concerned is being undertaken in the interests of the person under protection.
- 26 It follows that an application by a person who has been placed under guardianship for authorisation to dispose of his immovable property, such as the application under consideration by the referring court, is directly linked to the legal capacity of the natural person concerned for the purposes of Article 1(2)(a) of Regulation No 44/2001: the fact that judicial authorisation is necessary for the disposal of immovable property belonging to persons under guardianship is the immediate consequence of their lack of full legal capacity, being a requirement laid down for their protection in that context.
- 27 That interpretation is borne out by Mr Jenard's Report on the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1979 C 59, p. 1), the scope of which is the same as that of Regulation No 44/2001. It is stated in page 10 of that report that the convention applies only to 'litigation and ... judgments relating to contractual or non-contractual obligations which do not involve the status or legal capacity of natural persons, wills or succession, rights in property arising out of a matrimonial relationship, bankruptcy or social security ...', and that in this respect the Convention should be interpreted as widely as possible'.
- 28 Lastly, as regards the fact that, in the case before the referring court, the judicial authorisation to sell, applied for by the person under guardianship, involves a property which belongs to him, it must be found that that particular aspect of the case cannot be regarded as decisive in determining whether those proceedings concern 'rights *in rem* in immovable property' for the purposes of Article 22(1) of Regulation No 44/2001. The German, Hungarian and United Kingdom Governments rightly point out, as does the Commission, that those proceedings do not seek to determine the extent, content, ownership or possession of immovable property or to provide the person under guardianship, as the owner of that property, with protection for the powers which attach to his interest.
- 29 In that regard, it should be noted that, in pages 34 and 35 of Mr Jenard's report, mention is made in the commentary on Article 16 of the Brussels Convention that the rule on jurisdiction laid down in Article 16(1)(a) thereof – which corresponds to the rule laid down in Article 22(1) of Regulation No 44/2001, since both rules 'take as their criterion the subject-matter of the action' – covers 'proceedings concerning rights *in rem* in immovable property'.
- 30 As it is, the sole aim of the main proceedings is to determine whether it is in the interests of a person who lacks full legal capacity to dispose of his immovable property; his rights *in rem* as owner of that property are not being called in question.
- 31 In the light of all of the foregoing, the answer to the question referred is that Regulation No 44/2001 and, in particular, Article 22(1) thereof must be interpreted as not applying to non-contentious proceedings by which a national of a Member State who has been declared to be lacking full legal capacity and placed under guardianship in accordance with the law of that State applies to a court in another Member State for authorisation to sell his share of a property situated in that other Member State, in view of the fact that such proceedings are concerned with the 'legal capacity of natural persons' for the purposes of Article 1(2)(a) of Regulation No 44/2001, a matter which falls outside the material scope of that regulation.

Costs

- 32 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:

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and, in particular, Article 22(1) thereof must be interpreted as not applying to non-contentious proceedings by which a national of a Member State who has been declared to be lacking full legal capacity and placed under guardianship in accordance with the law of that State applies to a court in another Member State for authorisation to sell his share of a property situated in that other Member State, in view of the fact that such proceedings are concerned with the ‘legal capacity of natural persons’ for the purposes of Article 1(2)(a) of Regulation No 44/2001, a matter which falls outside the material scope of that regulation.

[Signatures]