



Reports of Cases

ORDER OF THE COURT (Tenth Chamber)

17 July 2023*

(Reference for a preliminary ruling – Article 99 of the Rules of Procedure of the Court of Justice – Questions the answer to which may be clearly deduced from the Court’s existing case-law – Jurisdiction, applicable law, recognition and enforcement of decisions, acceptance and enforcement of authentic instruments in matters of succession, and creation of a European Certificate of Succession – Regulation (EU) No 650/2012 – Article 10(1)(a) – Subsidiary jurisdiction – Article 267 TFEU – Obligation to comply with the directions of a higher court)

In Case C-55/23 [Jurtukała],ⁱ

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy Szczecin – Prawobrzeże i Zachód w Szczecinie (District Court, Szczecin, Prawobrzeże and Zachód districts, Poland), made by decision of 6 December 2022, received at the Court on 3 February 2023, in the proceedings

PA

other party:

MO,

THE COURT (Tenth Chamber),

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

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to rule by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

* Language of the case: Polish.

ⁱ — The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

Order

- 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), and of Article 267 TFEU.
- 2 The request has been made in court proceedings brought upon application by PA concerning the determination of the heirs of her brother, who died in Hamburg (Germany) on 9 May 2020.

Legal context

European Union law

- 3 Recitals 23 and 30 of Regulation No 650/2012 read as follows:

‘(23) In view of the increasing mobility of citizens and in order to ensure the proper administration of justice within the [European] Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised, this Regulation should provide that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the habitual residence of the deceased at the time of death. ...

...

(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.’

- 4 Chapter II of that regulation, entitled ‘Jurisdiction’, includes, inter alia, Articles 4 to 10 and 15 thereof.

- 5 Article 4 of Regulation No 650/2012, 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 of that article:

‘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 Articles 6 to 9 of Regulation No 650/2012 specify the circumstances in which Article 5(1) of that regulation is applicable.

8 Article 10 of Regulation No 650/2012, 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’, reads as follows:

‘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 Regulation No 650/2012, entitled ‘Applicable law’, Article 22 of that regulation, itself 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.

...’

Polish law

11 Article 386(6) of the ustawa – Kodeks postępowania cywilnego (Law on the Code of Civil Procedure) of 17 November 1964, in the version applicable to the main proceedings (Dz. U. of 2021, item 1805) (‘the Code of Civil Procedure’), provides:

‘The legal assessment set out in the grounds of the judgment of the court of second instance shall be binding on both the court to which the case has been remanded and on the court of second instance where the case is being reconsidered. However, this shall not apply to cases where there has been a change in the legal or factual position, or where, following the delivery of the judgment by the court of second instance, the Sąd Najwyższy [(Supreme Court, Poland)], in a resolution disposing of the legal issue, adopted a different legal assessment.’

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

12 BF (‘the deceased’), who was of Polish nationality, died on 9 May 2020 in Hamburg.

13 PA, the sister of the deceased, made an application to the Sąd Rejonowy Szczecin – Prawobrzeże i Zachód w Szczecinie (District Court, Szczecin, Prawobrzeże and Zachód districts, Poland), the referring court, for the purposes of determining the heirs of the deceased.

- 14 In her application, PA stated that her brother's last habitual residence was located in Hamburg, that he owned immovable property in Poland, and that he had not chosen any law to govern his succession. She also stated that the deceased's son, his wife, his mother, his niece and she herself had declared before a German court that they waived the succession.
- 15 By order of 30 August 2022, the referring court dismissed PA's application on the ground that the Polish courts did not have jurisdiction to rule on the succession of a deceased whose last habitual residence was located in a Member State other than the Republic of Poland. It rejected the application of the rule of subsidiary jurisdiction laid down in Article 10(1)(a) of Regulation No 650/2012, holding that that rule concerned only deceased persons whose last habitual residence was not located in a Member State.
- 16 By order of 14 November 2022, the Sąd Okręgowy w Szczecinie (Regional Court, Szczecin, Poland), before which an appeal was brought, set aside the order of 30 August 2022, holding that the referring court's interpretation of Article 10(1)(a) of Regulation No 650/2012 was incorrect. According to the Sąd Okręgowy w Szczecinie (Regional Court, Szczecin), that provision confers subsidiary jurisdiction on the Member State in which the deceased left behind assets and of which he or she was a national, even if the deceased's habitual residence was not located in that Member State.
- 17 Rehearing the case in the main proceedings, the referring court does not agree with the interpretation of Article 10(1)(a) of Regulation No 650/2012 adopted by the Sąd Okręgowy w Szczecinie (Regional Court, Szczecin), which, in the referring court's view, is contrary to the literal meaning of that article and to the objectives of Regulation No 650/2012.
- 18 The referring court states that, under national law, a court seised is bound by an interpretation, even incorrect, of EU law adopted by a higher court, with the result that the conflict of interpretation of EU law at issue could be resolved only by an answer of the Court to a question referred for a preliminary ruling. In that regard, it notes that no provision of national law expressly states that an answer of the Court would permit it to depart from the higher court's interpretation. However, it considers that, in order to contribute to attaining the objectives pursued by Article 267 TFEU, it must be able to take full account of the interpretation of EU law provided by a judgment giving a preliminary ruling, even where that interpretation is different from the one adopted by the higher national court in the case in the main proceedings.
- 19 In those circumstances, the Sąd Rejonowy Szczecin – Prawobrzeże i Zachód w Szczecinie (District Court, Szczecin, Prawobrzeże and Zachód districts) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
 - '(1) Should Article 10(1)(a) of Regulation [No 650/2012] be interpreted in such a way that it applies only in a situation in which the deceased was not domiciled in any Member State bound by the [regulation], or does it confer [subsidiary] jurisdiction on the Member State in which the deceased left behind his or her property and whose nationality he or she held at the time of death, even if his or her habitual residence at the time of death was in another Member State bound by the [regulation]?
 - (2) Should [EU] law, in particular ... Article 267 TFEU[,] be interpreted in such a way that it overrides the rule of national law according to which the Court is bound by the legal ruling of a higher court concerning the interpretation of [EU] law, where that ruling contradicts the interpretation applied by the [Court of Justice] also in a specific case in a preliminary ruling?'

Consideration of the questions referred

- 20 Under Article 99 of its Rules of Procedure, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order where the reply to a question referred may be clearly deduced from existing case-law or where the answer to such a question admits of no reasonable doubt.
- 21 In this instance, the Court considers that, as regards the first question, the wording of Article 10(1)(a) of Regulation No 650/2012 admits of no reasonable doubt and that, as regards the second question, the interpretation of EU law sought by the referring court may be clearly deduced from the judgment of 5 October 2010, *Elchinov* (C-173/09, EU:C:2010:581). It is therefore appropriate to apply Article 99 of the Rules of Procedure in the present case.

The first question

- 22 By its first question, the referring court asks, in essence, whether Article 10(1)(a) of Regulation No 650/2012 is to be interpreted as meaning that the rule of subsidiary jurisdiction laid down by that provision applies only where the habitual residence of the deceased at the time of death was located in a Member State not bound by that regulation or in a third State.
- 23 In that regard, it should be noted that Article 4 of Regulation No 650/2012 establishes a rule of general jurisdiction according to which the courts of the Member State in which the deceased had his or her habitual residence at the time of death are to have jurisdiction to rule on the succession as a whole.
- 24 Where the deceased had his or her habitual residence in a Member State, the courts of another Member State whose nationality he or she possessed may acquire jurisdiction, in accordance with Articles 5 to 9 of Regulation No 650/2012, where the deceased had chosen, in accordance with Article 22 of that regulation, the law of that latter Member State as the law to govern his or her succession as a whole.
- 25 In addition, Article 10(1)(a) of Regulation No 650/2012 establishes a rule of subsidiary jurisdiction for ruling on the succession as a whole, in favour of the courts of the Member State in which assets of the estate are located, in so far as the deceased had the nationality of that Member State at the time of death. However, as is apparent from the wording of the first part of Article 10(1) of that regulation, the subsidiary jurisdiction based on that provision is envisaged only where the habitual residence of the deceased at the time of death is not located in a Member State.
- 26 In that respect, it should be pointed out that the Court, when interpreting Article 10(1)(a) of Regulation No 650/2012 in the judgment of 7 April 2022, *V A and Z A (Subsidiary jurisdiction in matters of succession)* (C-645/20, EU:C:2022:267), stated that 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. Article 10 of Regulation No 650/2012, found in Chapter II of that regulation, which establishes a set of rules of jurisdiction in matters of succession, 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 (judgment of 7 April 2022, *V A and Z A (Subsidiary jurisdiction in matters of succession)*, C-645/20, EU:C:2022:267, paragraph 30).

- 27 In that context, the Court has stated that 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. In that regard, 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 the abovementioned regulation are met (judgment of 7 April 2022, *V A and Z A (Subsidiary jurisdiction in matters of succession)*, C-645/20, EU:C:2022:267, paragraphs 33 and 34).
- 28 Furthermore, the Court has held that those jurisdictional rules for ruling on a succession as a whole do not offer 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 (judgment of 7 April 2022, *V A and Z A (Subsidiary jurisdiction in matters of succession)*, C-645/20, EU:C:2022:267, paragraph 32).
- 29 As regards, in particular, circumstances where the Court adopted such an interpretation, it should be noted that, in paragraph 25 of the judgment of 7 April 2022, *V A and Z A (Subsidiary jurisdiction in matters of succession)* (C-645/20, EU:C:2022:267), the Court proceeded from the premiss that the habitual residence of the deceased was located in the United Kingdom, that is to say, in a Member State which, even before that country’s departure from the European Union, was not bound by Regulation No 650/2012. It held that, for the purposes of interpreting Article 10 of that regulation, the jurisdictional rules provided for in that article were capable of applying where the deceased had his or her habitual residence in a Member State of the European Union that is not bound by the abovementioned regulation.
- 30 In the present case, as is apparent from the order for reference, the last habitual residence of the deceased was located in Germany, and the deceased did not choose the law applicable to his succession as a whole.
- 31 In those circumstances, it is clear from the unequivocal wording of Article 10(1)(a) of Regulation No 650/2012 that that provision does not apply in a situation, such as that at issue in the main proceedings, where the habitual residence of the deceased at the time of death was located in a Member State bound by that regulation.
- 32 In the light of all the foregoing considerations, the answer to the first question is that Article 10(1)(a) of Regulation No 650/2012 must be interpreted as meaning that the rule of subsidiary jurisdiction laid down by that provision applies only where the habitual residence of the deceased at the time of death was located in a Member State not bound by that regulation or in a third State.

The second question

- 33 By its second question, the referring court asks, in essence, whether EU law, in particular Article 267 TFEU, precludes a national court, ruling following the setting aside by a higher court of a decision which it delivered, from being bound, in accordance with national procedural law, by the legal rulings of that higher court, where those rulings are inconsistent with EU law, as interpreted by the Court.
- 34 In that regard, it is settled case-law that Article 267 TFEU gives national courts the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving interpretation of provisions of EU law, or consideration of their validity, which are necessary for the resolution of the case before them (judgment of 5 October 2010, *Elchinov*, C-173/09, EU:C:2010:581, paragraph 26 and the case-law cited).
- 35 Furthermore, it should be borne in mind that a judgment in which the Court gives a preliminary ruling is binding on the national court, as regards the interpretation or the validity of the acts of the EU institutions in question, for the purposes of the decision to be given in the main proceedings (judgment of 5 October 2010, *Elchinov*, C-173/09, EU:C:2010:581, paragraph 29 and the case-law cited).
- 36 In that regard, the national court, having exercised the discretion conferred on it by the second paragraph of Article 267 TFEU, is bound, for the purposes of the decision to be given in the main proceedings, by the interpretation of the provisions at issue given by the Court and must, if necessary, disregard the rulings of a higher court if it considers, having regard to that interpretation, that they are not consistent with EU law (judgments of 5 October 2010, *Elchinov*, C-173/09, EU:C:2010:581, paragraph 30, and of 9 September 2021, *Dopravní podnik hl. m. Prahy*, C-107/19, EU:C:2021:722, paragraph 46).
- 37 Moreover, in the light of the principle of primacy of EU law, where it is unable to interpret national law in compliance with the requirements of EU law, the national court which is called upon, within the exercise of its jurisdiction, to apply provisions of EU law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, and it is not necessary for the court to request or await the prior setting aside of such a provision by legislative or other constitutional means (see, to that effect, judgments of 5 October 2010, *Elchinov*, C-173/09, EU:C:2010:581, paragraph 31 and the case-law cited, and of 9 September 2021, *Dopravní podnik hl. m. Prahy*, C-107/19, EU:C:2021:722, paragraph 45 and the case-law cited).
- 38 As regards, in particular, the existence of rules of national law providing that a national court is unconditionally bound by the interpretation of EU law made by another national court, the Court has already held that EU law precludes a national court from being bound by a national rule under which it is bound by the rulings of a higher national court, where it appears that those rulings are inconsistent with EU law (judgment of 5 October 2010, *Elchinov*, C-173/09, EU:C:2010:581, paragraph 32).
- 39 In those circumstances, the requirement to give full effect to EU law includes the obligation on a national court to alter established case-law, where necessary, if that case-law is based on an interpretation of national law that is incompatible with EU law (judgment of 9 September 2021, *Dopravní podnik hl. m. Prahy*, C-107/19, EU:C:2021:722, paragraph 47 and the case-law cited).

- 40 It follows that, in the present case, the referring court is under a duty to give full effect to Article 267 TFEU, if necessary refusing of its own motion to apply national procedural provisions, in this instance, those of Article 386(6) of the Code of Civil Procedure, which require it to apply the legal interpretation adopted by the Sąd Okręgowy w Szczecinie (Regional Court, Szczecin), where that interpretation is not compatible with EU law, as interpreted by the Court.
- 41 In the light of all the foregoing considerations, the answer to the second question is that EU law, in particular Article 267 TFEU, must be interpreted as precluding a national court, ruling following the setting aside by a higher court of a decision which it delivered, from being bound, in accordance with national procedural law, by the legal rulings of that higher court, where those rulings are inconsistent with EU law, as interpreted by the Court.

Costs

- 42 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court.

On those grounds, the Court (Tenth Chamber) hereby orders:

- 1. 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 the rule of subsidiary jurisdiction laid down by that provision applies only where the habitual residence of the deceased at the time of death was located in a Member State not bound by that regulation or in a third State.

- 2. EU law, in particular Article 267 TFEU,**

must be interpreted as precluding a national court, ruling following the setting aside by a higher court of a decision which it delivered, from being bound, in accordance with national procedural law, by the legal rulings of that higher court, where those rulings are inconsistent with EU law, as interpreted by the Court.

[Signatures]