

# Anonymised version

Translation

C-422/20 – 1

Case C-422/20

## Request for a preliminary ruling

### Date lodged:

8 September 2020

### Referring court:

Oberlandesgericht Köln (Germany)

### Date of the decision to refer:

28 August 2020

### Defendant and appellant:

RK

### Applicant and respondent:

CR

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...

**OBERLANDESGERICHT KÖLN**

**(HIGHER REGIONAL COURT, COLOGNE, GERMANY)**

### ORDER

In the succession proceedings

concerning the succession of the German national having [his] last habitual residence in Manilva, province of Malaga, Spain, who died on 9 March 2017 [...],

to which the following are parties:

1. Mrs CR. [...]

applicant and respondent,

[...]

2. Mr RK, ...

defendant and appellant,

[...]

the Second Civil Chamber of the Oberlandesgericht Köln (Higher Regional Court, Cologne)

[...] **[Or. 2]**

has made the following order:

I.

[...]

II.

The following questions are referred to the Court of Justice of the European Union (Court of Justice), pursuant to the second paragraph of Article 267 of the Treaty on the Functioning of the European Union (TFEU), in the version of 7 June 2016 (OJ 2016 C 202, p. 164), for an interpretation of [EU] law:

1.

Is it necessary, for a declaration of lack of jurisdiction by the court previously seised, as provided for in Article 7(a) of Regulation No 650/2012, that that court should expressly decline jurisdiction, or may even a non-express declaration suffice if it supports the inference, through interpretation, that that court has declined jurisdiction?

2.

Is the court of the Member State whose jurisdiction is intended to follow from a declaration of lack of jurisdiction by the court previously seised in the other Member State competent to examine whether the conditions governing a decision by the court previously seised, as provided for in Articles 6(a) and 7(a) of Regulation No 650/2012, were met? To what extent is the decision of the court previously seised binding? In particular: **[Or. 3]**

(a)

Is the court of the Member State whose jurisdiction is intended to follow from a declaration of lack of jurisdiction by the court previously seised in the other Member State competent to examine whether the deceased validly

chose the law of the Member State in accordance with Article 22 of Regulation No 650/2012?

(b)

Is the court of the Member State whose jurisdiction is intended to follow from a declaration of lack of jurisdiction by the court first seised in the other Member State competent to examine whether a request for a declaration of lack of jurisdiction, as provided for in Article 6(a) of Regulation No 650/2012, has been brought by one of the parties to the proceedings before the court previously seised?

(c)

Is the court of the Member State whose jurisdiction is intended to follow from a declaration of lack of jurisdiction by the court first seised in the other Member State competent to examine whether the court previously seised rightly assumed that the courts of the Member State of the chosen law are better placed to rule on the succession?

3.

Are Articles 6(a) and 7(a) of Regulation No 650/2012, which presuppose a choice of law ‘pursuant to Article 22’, applicable even where the deceased has made no express or implied choice of law in a testamentary disposition made before 17 August 2015, but the law applicable to the succession is capable of being inferred only from Article 83(4) of Regulation No 650/2012? **[Or. 4]**

**Grounds:**

I.

1 In previous proceedings, [...] the party at 1., the wife of the deceased, had, by notarised application of 23 March 2017 to the Amtsgericht Düren (Local Court, Düren, Germany), requested the issue of a certificate of inheritance as sole heir and a European Certificate of Succession on the basis of a will dated 14 June 1990 [...]. The will submitted is handwritten in German and is worded as follows [...]:

2 *‘Joint spousal will*  
*[...]*

*By this will,*  
*the spouses [...]*  
*appoint each other as sole heir to their estates.*

*Titling, 14 June 1990*

-Husband's signature  
-Wife's signature-

- 3 The party at 2., the brother of the deceased, had opposed the application made at that time; [...]
- 4 By order of 20 December 2017, the probate judge at the Amtsgericht Düren (Local Court, Düren) deemed the facts necessary for issuing the certificate of inheritance applied for to be established [...] **[Or. 5]**
- 5 On appeal by the party at 2., the Chamber of the Amtsgericht Düren (Local Court, Düren), by order of 4 July 2018, [...] declared that that court lacked jurisdiction. [...] That Chamber gave the following reasons for its decision:
- 6 ‘... the Amtsgericht (Local Court) must be declared to lack jurisdiction pursuant to Article 15 of Regulation No 650/2012 because the German probate courts lack international jurisdiction in respect of the present proceedings for the issue of a certificate of inheritance. [...]
- 7 The international jurisdiction of the German probate courts cannot be based on Paragraph 105, in conjunction with Paragraph 343(2) and (3), of the [Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (Law on court proceedings in family and non-contentious matters; ‘the FamFG’)]. The rules contained in those provisions, which govern jurisdiction *ratione loci*, are not compatible with Article 4 of Regulation No 650/2012 because the international jurisdiction governed by that regulation applies – *inter alia* – to national certificates of succession, such as the certificate of inheritance (*Erbschein*) under German law.
- 8 The judgment of the European Court of Justice of 21 June 2018, C-20/17, which was delivered after the decision under appeal of the Amtsgericht (Local Court), [...] states:  

“An interpretation of Article 4 of that regulation whereby that provision determines the international jurisdiction of the courts of the Member States as regards the procedures for issuing national certificates of succession seeks, in the interests of the sound administration of justice within the European Union, to achieve that objective, by limiting the risk of parallel proceedings before the courts of different Member States and of contradictions that may arise as a result. Conversely, achievement of the objectives pursued by Regulation No 650/2012 would be hindered if, in a situation such as that at issue in the main proceedings, the provisions of Chapter II of that regulation, in particular Article 4 thereof, were to be interpreted as not determining the international jurisdiction of the courts of the Member States in relation to proceedings concerning the issuing of national certificates of succession”.
- 9 It is true that the decision of the Court of Justice was given in a case concerning international jurisdiction (on the part of the Amtsgericht Schöneberg (Local

*Court, Schöneberg, Germany)) under Paragraph 105, in conjunction with Paragraph 343(3), of the FamFG. In accordance with the principles cited by the Court of Justice, however, Article 4 of Regulation No 650/2012 precludes international jurisdiction on the part of the German probate courts on the basis of Paragraph 105, in conjunction with Paragraph 343(2), of the FamFG too. [...] This is because those rules determine the courts having jurisdiction by reference to the last habitual residence in national territory, whereas Article 4 of Regulation No 650/2012 takes as its point of reference the habitual residence at the time of death. The risk of parallel proceedings before the courts of different Member States is just as high if the courts having international jurisdiction are determined by reference to the last habitual [Or. 6] residence in Germany as it is if they are determined by reference to the conditions laid down in Paragraph 343(3) of the FamFG.*

- 10 *Under Article 4 of Regulation No 650/2012, the courts of the Member State in which the deceased had his habitual residence at the time of death are to have jurisdiction to rule on the succession as a whole. On the basis of the information provided by the applicant, the deceased's last habitual residence was not in Germany but in Spain. That is because he stayed in Germany for only a few weeks following medical treatment there in 2015; other than that, he lived in Spain, where the couple owned a property.'*
- 11 Subsequently, the party at 1. obtained an order from the [Juzgado de Primera Instancia e Instrucción No 3 de Estepona] (Court of First Instance and Preliminary Investigation No 3, Estepona (Spain) of 29 April 2019 [...] The [English] translation of that order states, inter alia:
- 12 '...  
  
*At the request of the party making the application, I hereby refrain from hearing and determining the present proceedings, on the ground that the German courts are better placed to rule on the succession and on account of the practical circumstances, such as the habitual residence of the party concerned in this matter and the location of the essential part of the estate'.*
- 13 By notarised letter of 29 August 2019, the party at 1, by resubmitting the application notarised on 23 March 2017, applied to the Amtsgericht Düren (Local Court, Düren) for a certificate of inheritance as sole heir and a European Certificate of Succession [...]. She later submitted the abovementioned order of the Spanish court. The party at 2. once again opposed that application.
- 14 By order of 19 February 2020, the Amtsgericht Düren (Local Court, Düren) ... ruled that, on account of the decision of the Spanish [Or. 7] district court, the Amtsgericht Düren (Local Court, Düren) had jurisdiction under Article 6(a) of Regulation No 650/2012. The party at 2. appealed against that order [...].

## II.

- 15 The appeal proceedings must be stayed and a preliminary ruling sought from the Court of Justice of the European Union under the second paragraph of Article 267 of the Treaty on the Functioning of the European Union (TFEU). The decision on the appeal is contingent upon the answers to be given to the questions referred, which are not obvious and have not previously been clarified.
- 16 [...] In relations between Spain and Germany, the international jurisdiction of the probate courts is governed by Regulation No 650/2012. Since the deceased's last habitual residence before his death on 9 March 2017 was in Spain, international jurisdiction to rule on the succession as a whole lies with the courts in Spain rather than with the German probate courts, in accordance with Article 4 of Regulation No 650/2012 [...]. Thus, the international jurisdiction of the [...] German probate court seised depends on whether, in the present succession matter, the later decision delivered by the Spanish court on 29 April 2019 constitutes a valid declaration of lack of jurisdiction within the meaning of Article 7(a), in conjunction with Article 6(a), of Regulation No 650/2012.
- 17 1. In accordance with the wording of the [English] version of Article 7(a) of Regulation No 650/2012, which states that *'the [Or. 8] courts of a Member State whose law had been chosen by the deceased pursuant to Article 22 shall have jurisdiction to rule on the succession if: (a) a court previously seised has declined jurisdiction in the same case pursuant to Article 6'*, that provision presupposes that a choice of law has been made in accordance with Article 22 of Regulation No 650/2012 and that a declaration of lack of jurisdiction has been made by the court previously seised in the same case. The Spanish Court of [First Instance and] Preliminary Investigation No 3, Estepona, did not expressly decline jurisdiction. Rather, in its order of 29 April 2019, the Spanish court [...] decided to *'refrain from hearing and determining the present proceedings'* ([...] *'abstenerme de conocer, ..., de las presentes actuaciones'* [...]). The question therefore arises as to whether, in order to establish the international jurisdiction of a Member State under Article 7 of Regulation No 650/2012, it is necessary for the court previously seised to have expressly (in as many words) declined jurisdiction, or whether it is sufficient for an interpretation of the decision of that court by the court subsequently seised to be capable of showing that the court previously seised intended to decline jurisdiction.
- 18 2. The question then arises as to whether the court of the Member State whose jurisdiction is said to result from Article 7(a) of Regulation No 650/2012 may still review, under its own jurisdiction, a declaration of lack of jurisdiction made by a court previously seised, and, if so, which preliminary questions it may raise in the course of that review, or whether the decision of the court previously seised is binding, and, if so, to what extent.
- 19 This concerns the questions as to whether – as Articles 6 and 7 of Regulation No 650/2012 presuppose – the deceased made a choice of law under Article 22 of the Regulation, whether a request for a declaration of lack of jurisdiction had been made to the court previously seised by one of the parties to the proceedings, in

accordance with Article 6(a) of Regulation No 650/2012, and whether the court previously seised rightly assumed that the courts of the Member State of the chosen law are better placed to rule on the succession (Article 6(a) of Regulation No 650/2012). **[Or. 9]**

- 20 3. The next question that arises is whether Articles 6(a) and 7(a) of Regulation No 650/2012 are applicable, beyond the limits of their wording, even where the deceased has made no express or implied choice of law (Article 22 or Article 83(2) of Regulation No 650/2012) but the applicable law of a Member State is capable of being inferred from Article 83(4) of Regulation No 650/2012.

[...]

WORKING DOCUMENT