

Anonymised version

Translation

C-291/23 – 1

Case C-291/23 [Hantoch] ¹

Request for a preliminary ruling

Date lodged:

8 May 2023

Referring court:

Landgericht Düsseldorf (Germany)

Date of the decision to refer:

27 April 2023

Applicant:

LS

Defendant:

PL

[...]

Landgericht Düsseldorf (Germany)

Order

In the case

of Ms LS, [...] Düsseldorf,

applicant,

[...]

[...]

¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

against

Mr PL, [...], [...] Düsseldorf,

defendant,

[...]

[...]

on 27 April 2023

the 1st Civil Chamber of the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany)

[...]

ordered:

The following question is referred to the Court of Justice of the European Union for a preliminary ruling under Article 267 TFEU:

Must an interpretation of Article 10 of the EU Succession Regulation with regard to the question whether any estate assets existed in the Member State of the court seised be based on the time of the succession or on the time when the action was filed?

[...]

Reasons:

I.

The parties are descendants of the deceased ('the deceased') who died on 18 March 2017. The defendant is the sole heir of the deceased on the basis of a notarised will dated 13 May 2015. The deceased was born in Egypt and lived and worked for many years in Germany, where he also started a family. He held both German and Egyptian citizenship. After retiring, the deceased resided mainly in Egypt, where he also died. During this time, however, he was still covered by German health insurance and was entitled to a pension in Germany. He transferred any payments thereunder to his Egyptian account via an account [...] maintained solely for this purpose. Due to the receipt of his pension under the German insurance fund for physicians, he was also liable to pay tax in Germany. At the time of the deceased's death, there was a credit balance in an account at Apo Bank, which, however, had already been closed at the time the action was filed.

The applicant brings claims for information and payment against the defendant [...] with regard to a claim for a compulsory share of the deceased's estate. She argues that the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany) has international jurisdiction. According to the applicant, at the time of the succession, the deceased had held assets in Germany, in addition to the credit

balance at Apo Bank in particular, in the form of tax refund claims against the tax authorities and claims against the private health insurance provider.

The defendant argues that the court does not have international jurisdiction.

II.

Pursuant to Article 4 of the EU Succession Regulation, international jurisdiction is based on where the deceased had his or her habitual residence at the time of his or her death. According to the known facts of the case and status of the dispute, it can be assumed that this habitual residence is located in Egypt. [...]

The deceased was born in Egypt, lived and worked in Germany for many years and also started a family here. It is undisputed that he had German and Egyptian citizenship, and the applicant did not argue in a substantiated manner that, or when, he should have given up his Egyptian citizenship. After his retirement, the deceased resided mainly in Egypt. He was still covered by German health insurance and was entitled to a pension in Germany. He continued, by way of a continuous standing order, to transfer these benefits to his Egyptian account via an account at Apo Bank, which was maintained solely for that purpose. Because he received his pension under the German insurance fund for physicians, he was also liable to pay tax in Germany. However, there is nothing in the above or other factors to suggest that the centre of the deceased's interests was in Germany at the time of death. The fact that the deceased was registered in Düsseldorf is not, in the opinion of the court, sufficient. In the opinion of the court [...], the fact that the deceased no longer maintained a home [...] can be derived from the annex [...], in which the former landlord stated that he did not have the deceased's new address and asked for the mail to be forwarded. In addition, the fact that he also kept the address of the defendant's surgery as a contact address also does not establish a centre of his interests in Germany. The applicant has not shown that the deceased had any movable or immovable assets in Germany apart from the account at Apo Bank and his health insurance and pension scheme at the German Medical Association. The applicant also does not explain how regularly the deceased stayed in Germany and what contact he had with his family. Against this background, it must be assumed on the basis of the information provided by the defendant that he initially visited Germany once a year after retiring, but has not been in Germany since 2015.

Subsidiary international jurisdiction under Article 10 of the EU Succession Regulation is based on where the assets of the estate are situated; according to the general view, the jurisdiction of the court seised in each case extends only to the estate assets situated in the Member State in question, which means that there is a risk of a fragmentation of the estate or procedural split of the estate [...].

With regard to Article 10(a) of the EU Succession Regulation, it is disputed which point in time must be referred to in order to assess whether 'assets belonging to the estate are located in the Member State'. In this respect, both the view that the

time of death is decisive [...] and the view that the time of the filing of the action is decisive [...] are held.

III.

The answer to this question is of considerable relevance for the determination of the scope of jurisdiction of the court in the present dispute, because the assets situated in Germany as a Member State consisted of an account balance at Apo Bank which existed at the time of the succession, but which had already been closed at the time the action was filed.

[...]

WORKING DOCUMENT