

# Anonymised version

Translation

C-57/24 – 1

Case C-57/24 [Ławida]<sup>i</sup>

## Request for a preliminary ruling

### Date lodged:

26 January 2024

### Referring court:

Sąd Okręgowy w Gliwicach (Poland)

### Date of the decision to refer:

24 October 2023

### Appellant:

BA

BR

---

## ORDER

24 October 2023

The Sąd Okręgowy w Gliwicach III Wydział Cywilny Odwoławczy (Regional Court in Gliwice, Poland, 3rd Division, dealing with Civil Appeals)

[...]

following the hearing on 24 October 2023 in Gliwice of the case brought by BA

[...]

for the court to approve the heir being freed from the legal consequences of failure to submit, in a timely manner, a declaration of waiver of the succession

as a result of the appellant's appeal

<sup>i</sup> This case has been given a fictitious name which does not correspond to the real name of either of the parties to the proceedings.

against the order of the Sąd Rejonowy w Gliwicach (District Court in Gliwice, Poland)

of 17 February 2022, [...] decides:

to refer the following question concerning the interpretation of the provisions of EU law to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 TFEU:

Must Article 13 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) be interpreted as meaning that it does not apply in a situation where, in addition to a declaration of waiver of the succession being received, that declaration must additionally be approved by a court in order to be effective pursuant to the laws of the Member State of habitual residence of the person submitting it, for instance where the declaration is submitted after the expiry of the deadline?

## GROUND(S)

for the order of 24 October 2023 – as a request for a preliminary ruling

### I. Subject matter of the present case

- 1 The appellant BA, represented by her legal representative – her father BR – made an application for the court to approve her being freed from the legal consequences of failure to submit, in a timely manner, a declaration of waiver of the succession following the death of her relative ZJ, and submitted the relevant declaration at the same time.
- 2 The testator died in Germany, where he also had his habitual residence at the time of his death.
- 3 The appellant lives in Poland, as do other persons who were statutory heirs of the deceased, and who have already waived the succession.

### II. Provisions of national law relied on

- 4 Pursuant to Article 1012 of the ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny (Civil Code of 23 April 1964, consolidated text: Dziennik Ustaw (Journal of Laws) of 2023, item 1610, ‘the CC’), an heir may either accept the succession without a limitation of liability for debts (simple acceptance), or accept the succession with a limitation of that liability (acceptance with the benefit of inventory), or else waive the succession.

- 5 Pursuant to Article 1015 of the CC, a declaration concerning the acceptance or waiver of the succession may be made within six months following the day on which the heir becomes aware of his or her entitlement (paragraph 1). The absence of the heir's declaration within the time limit set forth in paragraph 1 is tantamount to acceptance of the succession with the benefit of inventory (paragraph 2).
- 6 Pursuant to Article 1018 of the CC, a declaration concerning the acceptance or waiver of the succession made on condition or with the reservation of a time limit is invalid (paragraph 1). A declaration concerning the acceptance or waiver of the succession may not be revoked (paragraph 2). A declaration concerning the acceptance or waiver of the succession must be made before a court of law or before a notary public. It may be made orally or in writing with an officially certified signature. The power of attorney for making the declaration concerning the acceptance or waiver of the succession must be made in writing with an officially certified signature (paragraph 3).
- 7 Therefore, according to Polish law, a declaration of waiver of the succession may be made before a court. Article 640 of the ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego (Code of Civil Procedure of 17 November 1964, consolidated text: Journal of Laws of 2023, item 1550, 'the CCP') determines the territorial jurisdiction of the court, stipulating that a declaration of simple acceptance of the succession, a declaration of acceptance of the succession with the benefit of inventory or a declaration of waiver of the succession may be made before a notary public or before the district court in whose district the person making the declaration is domiciled or resident. The notary public or the court immediately forwards the declaration, together with attachments, to the probate court (paragraph 1). The declarations referred to in the first paragraph may also be submitted to the probate court in the course of proceedings to determine the rights to the succession (paragraph 2).
- 8 Pursuant to Article 628 of the CCP, the probate court – that is to say, the court before which succession proceedings should take place if Polish courts have jurisdiction over the matter – is the court of the last place of habitual residence of the testator, and if his or her place of habitual residence in Poland cannot be determined, the court of the place where the estate or part thereof is located (court of the estate). If none of the above can be determined, the probate court is the sąd rejonowy dla m.st. Warszawy (District Court for the Capital City of Warsaw, Poland).
- 9 Under Article 1020 of the Civil Code, an heir who has waived the succession is excluded from it as if he or she had predeceased the opening of the succession.
- 10 A declaration concerning the acceptance or waiver of the succession is a declaration of intent that does not have a designated addressee and has legal effect, if made within the statutory time limit, following its submission to a court or to a notary public. Pursuant to Article 1015(1) of the CC, the deadline for

making a declaration concerning the acceptance or waiver of the succession is a mandatory time limit under substantive law, which means that upon its expiry, the right to exercise that individual right expires, and a declaration submitted after the deadline has no legal effect. The expiry of the deadline is taken into account *ex officio* and it cannot be extended (see order of the Sąd Najwyższy (Supreme Court, Poland) of 13 December 2012, Ref. No V CSK 18/12 [...]).

- 11 It is only possible – albeit in strictly defined and enumerated situations – to be freed from the legal consequences of failure to submit, in a timely manner, a declaration of waiver of the succession or its acceptance with a limitation of liability. Indeed, pursuant to Article 1019(1) of the CC, if a declaration concerning the acceptance or waiver of the succession has been made in error or under coercion, the provisions on defects in the declaration of intent apply with the following modifications:
- 1) the heir must apply to be freed from the legal consequences of the declaration to a court of law;
  - 2) the heir should at the same time declare whether and in what manner he or she accepts or waives the succession.

Pursuant to Article 1019(2) of the CC, an heir who, in error or under coercion, failed to make a declaration within the time limit, may be freed from the legal consequences of his or her failure to observe the deadline in the above manner.

- 12 **What is significant for the case at hand is that pursuant to Article 1019(3) of the CC, being freed from the legal consequences of the declaration concerning the acceptance or waiver of the succession requires the approval of a court.**
- 13 **In the case at hand, the appellant, relying on the above provision, requested the court to approve her being freed from the legal consequences of failure to submit, as a result of an error, a declaration of waiver of the succession following the death of ZJ within the stipulated six-month time limit, and thus requested that the court assess in substantive terms whether her failure to submit the declaration within the stipulated deadline was indeed the result of an error, and submitted that declaration at the same time.**

### III. Jurisdiction

- 14 Pursuant to Article 4 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) ('the regulation'), the courts of the Member State in which the deceased had his habitual residence at the time of death have jurisdiction to rule on the succession as a whole.

15 However, under the special provision of Article 13 of the regulation, in addition to the court having jurisdiction to rule on the succession pursuant to the regulation, the courts of the Member State of the habitual residence of any person who, under the law applicable to the succession, may make, before a court, a declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person concerned in respect of the liabilities under the succession, have jurisdiction to receive such declarations where, under the law of that Member State, such declarations may be made before a court.

16 It is therefore beyond doubt that where a declaration concerning the acceptance or waiver of the succession is submitted within the stipulated six-month time limit, the courts of the Member State of the habitual residence of any person who, under the law applicable to the succession, may make, before a court, a declaration concerning the acceptance or waiver of the succession, also have jurisdiction.

In such a case, pursuant to Article 28 of the regulation, a declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person making the declaration, is valid as to form where it meets the requirements of: (a) the law applicable to the succession pursuant to Article 21 or Article 22; or (b) the law of the State in which the person making the declaration has his or her habitual residence.

17 Pursuant to Article 15 of the regulation, where a court of a Member State is seised of a succession matter over which it has no jurisdiction under the regulation, it shall declare of its own motion that it has no jurisdiction.

18 Pursuant to Article 1099 of the CCP, the court is required to consider, of its own motion and at all stages of the proceedings, whether the national courts have jurisdiction. If the court finds that there is no national jurisdiction, it must reject the application or motion subject to Article 1104(2) or Article 1105(6) (paragraph 1), which are not applicable in the case at hand. A finding that the national courts have no jurisdiction constitutes a ground of invalidity of the proceedings (paragraph 2).

#### **IV. Doubts raised by the referring court**

19 As the testator had his habitual residence in Germany at the time of his death, under the general rule laid down in Article 4 of the regulation, the jurisdiction to rule on his succession as a whole lies in principle with the German courts.

The referring court is not aware of any proceedings pending before the German courts regarding the testator's estate.

The appellant, who has her habitual residence in Poland, did not initiate any such proceedings.

She only made an application for the Polish court to approve her being freed from the legal consequences of failure to submit, in a timely manner, a declaration of waiver of the succession, and submitted that declaration at the same time.

- 20 Pursuant to Article 13 of the regulation, as an exception to the aforementioned rule, in addition to the German court, which has jurisdiction to rule on the testator's succession under Article 4 of the regulation, Polish courts have jurisdiction to receive declarations of waiver of the succession from persons who are habitually resident in Poland.
- 21 **The problem in the case at hand is whether the jurisdiction laid down in Article 13 of the regulation also covers cases in which receiving such a declaration entails the need, due to its late submission, to approve the declaration in order for it to have the legal effect of excluding from inheritance an heir who waives the succession of the testator concerned.**
- 22 A narrow interpretation of the concept of 'receiving' a declaration referred to in Article 13, as an act which is essentially technical in nature, amounting to the receipt of the declaration by the court, leads to the conclusion that the courts of the Member State of habitual residence of the person making the declaration of waiver of the succession only have jurisdiction to that extent. On this interpretation, the alternative path, which is open to the legal successor in terms of the rules of jurisdiction and conflict-of-laws rules in the place of his or her habitual residence, does not include declarations that are not just submitted, but must also be approved by the probate court, such as a declaration that the heir wishes to be freed from the legal consequences of failure to submit, in a timely manner, a declaration of waiver of the succession. In those circumstances, it should be assumed that such declarations may be submitted, pursuant to the rules on succession, exclusively before the authorities that have jurisdiction over the case under Article 4 of the regulation.
- 23 That is the interpretation favoured by the Advocate General in his opinion submitted on 20 January 2022 in Case C-617/20; in the opinion, the Advocate General agrees with the views expressed in the legal literature that Article 13 of Regulation No 650/2012 should be interpreted as not applying in a situation where, in order to produce certain legal effects provided for in the law applicable to the succession, the court must take measures which go beyond the mere acceptance of the declaration, such as, for instance, issuing a ruling or instituting other proceedings (see points 38 and 39 of the opinion).

In its judgment of 2 June 2022, the Court of Justice did not address this issue, as it was not the subject of the question referred in Case C-617/20.

- 24 [...]
- 25 It should also [...] be stated that the scope of the jurisdiction set forth in Article 13 of the regulation is not clear, yet it concerns an issue that is important also from the practical point of view.

- 26 Admittedly, in accordance with the general rules of interpretation, the scope of jurisdiction provided for in Article 13 of the regulation, as an exception to the rule provided for in Article 4 thereof, should be interpreted restrictively.
- 27 However, it should be pointed out that according to the settled case-law of the Court, it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union; that interpretation must take into account not only its wording but also its context and the objective pursued by the legislation in question (judgments of 1 March 2018, *Mahnkopf*, C-558/16, EU:C:2018:138, paragraph 32, and of 9 September 2021, *UM (Contract transferring ownership mortis causa)*, C-277/20, EU:C:2021:708, paragraph 29).
- 28 Meanwhile, Article 13 of the regulation, read in the light of recital 32 thereof, aims to simplify procedures for heirs and legatees by providing a derogation from the rules of jurisdiction set out in Articles 4 to 11 of that regulation (judgment of 21 June 2018, *Oberle*, C-20/17, EU:C:2018:485, paragraph 42).

Moreover, bearing in mind that it follows from recital 67 of the regulation that in order for a succession with cross-border implications within the Union to be settled speedily, smoothly and efficiently, the heirs should be able to demonstrate easily their status and/or rights and powers, it appears that it may be argued that the scope of the court's competence under Article 13 of Regulation 650/2012 includes not only actions related to receiving the declaration referred to in that provision, but also other actions reserved for the court in such proceedings, including the court's approval for the heir being freed from the legal consequences of failure to submit, in a timely manner, a declaration of waiver of the succession. Such an interpretation is also possible given the objective of the regulation, which, according to recital 7, is intended to facilitate the proper functioning of the internal market by removing the obstacles to the free movement of persons who wish to assert their rights in the context of a succession having cross-border implications. In particular, in the European area of justice, the rights of heirs and legatees, of other persons close to the deceased and of creditors of the estate must be effectively guaranteed (see judgments of 1 March 2018, *Mahnkopf*, C-558/16, EU:C:2018:138, paragraph 35, and of 1 July 2021, *Vorarlberger Landes- und Hypotheken-Bank*, C-301/20, EU:C:2018:528, paragraphs 27 and 34).

Moreover, it can be pointed out that in its case-law, the Court of Justice has already indicated the existence of individual rights which do not directly arise from the literal wording of legislation (for example, the passenger's right to compensation also in the event of a flight delay – see judgment of 19 November 2009, *Sturgeon and others*, Joined Cases C-402/07 and C-432/07, EU:C:2009:716, paragraph 69).

- 29 Admittedly, recital 33 of the regulation indicates that it should not be possible for a person who wishes to limit his or her liability for the debts under the succession to do so by a mere declaration to that effect before the courts or other competent authorities of the Member State of his habitual residence where the law applicable to the succession requires him or her to initiate specific legal proceedings, for instance inventory proceedings, before the competent court, and that a declaration made in such circumstances by a person in the Member State of his or her habitual residence in the form provided for by the law of that Member State should therefore not be formally valid for the purposes of the regulation, nor should the documents instituting the legal proceedings be regarded as declarations for the purposes of the regulation.
- 30 It should be noted, however, that Regulation No 650/2012 distinguishes between a ‘declaration concerning the acceptance or waiver of the succession’ and a ‘declaration designed to limit the liability of the person concerned in respect of the liabilities under the succession’. This is clearly indicated, for instance, in the wording of Article 13 itself, which provides for the possibility of a person making before a court in the Member State of his or her habitual residence ‘a declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person concerned in respect of the liabilities under the succession’.
- 31 The principles of proper legislation and the reasonable legislator standard indicate that if different terms are used in a legal act, then they have different meanings, content and legal consequences attached to them.
- 32 Meanwhile, recital 33, cited above, which limits the scope of the jurisdiction provided for in Article 13 of the regulation, literally applies only to declarations designed to limit the liability of the person concerned in respect of the liabilities under the succession – which declarations entail, as a rule, the need for the court to take further actions as a consequence of the declaration made, such as, for instance, initiating inventory proceedings – and does not apply to a declaration of waiver of the succession, which does not entail the need to initiate further proceedings, but only possible approval if the declaration is made after the expiry of the provided deadline, and the appellant in the present case requests precisely such approval.
- 33 [...]
- 34 An answer resulting in a narrow interpretation of the jurisdiction laid down in Article 13 of the regulation will result in the court finding *ex officio*, pursuant to Article 15 of the regulation, that it has no jurisdiction, and the application that initiated the proceedings in the present case will be rejected pursuant to Article 1099(1) of the CCP.