

**Case C-395/23 [Anikovi]<sup>i</sup>****Request for a preliminary ruling****Date lodged:**

29 June 2023

**Referring court:**

Sofiyski rayonen sad (Bulgaria)

**Date of the decision to refer:**

24 June 2023

**Applicants in non-contentious proceedings:**

E. M. A.

E. M. A.

M. I. A.

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**ORDER**

Sofia, 24 June 2023

In a closed session on 24 June 2023, the Sofiyski rayonen sad (Sofia District Court) ... [...], composed of

**PRESIDENT:** [...]

heard ... [...] **Civil Case No 14139/2023** and took account of the following in reaching its decision:

**The proceedings are governed by the first paragraph of Article 267 TFEU.**

- 1 The question concerns international jurisdiction for non-contentious proceedings concerning the granting of permission for the sale of immovable property of minor

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

children and the relationship between Regulation 2019/1111 and Regulation 593/2008. It further asks about the relationship between Regulation 2019/1111 and a bilateral international agreement between a Member State (Bulgaria) and a third country (the Soviet Union or the Russian Federation), which was concluded before the Member State's accession to the European Union.

## **PARTIES TO THE PROCEEDINGS**

### **Applicants:**

**E. M. A.**, a national of the Russian Federation, born on ... [...] 2005,

**E. M. A.**, a national of the Russian Federation, born on ... [...] 2008,

both with consent of their mother, **M. I. A.**, a national of the Russian Federation,

Authorised representative: lawyer ... [...] Tsoncheva (Sofia Bar Association) ... [...]

### **Applications of the parties**

- 2 The applicants are applying for permission to sell the co-ownership shares of 1/6 each in two residential (holiday) properties in the village of R. (on the Black Sea coast) and one property in the town of B. (a holiday resort in the mountains), which are described in detail in the application, at a price not lower than the tax valuation of the properties, with the sale price to be transferred to two bank accounts of the children at banks in Germany.

## **FACTS OF THE CASE**

- 3 During the marriage between the mother, **M. I. A.**, of the two children, **E. M. A.** and **E. M. A.**, and the father, **M. A.**, all Russian nationals, the mother acquired three properties in Bulgaria in her own name for residential (holiday) purposes, two on the Black Sea coast and one in a resort in the mountains. As the acquisition took place during the marriage, the husband, **M. A.**, was a 50% co-owner of the properties. Following the death of the husband, **M. A.**, on 29 July 2015 in the town of L., Republic of Cyprus, the surviving wife, **M. I. A.**, and the two children inherited his half co-ownership share. A Russian notary drew up a correct document stating that the children and the mother/wife accepted the inheritance. The children and the mother live in Germany, where according to their statements they have their habitual residence.

## **APPLICABLE PROVISIONS OF EUROPEAN UNION LAW**

Article 1(e) of Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction [...]

Article 7(1) of Regulation 2019/1111 [...]

Article 98 of Regulation 2019/1111 [...]

Article 4(1)(c) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations [...]

Article 24(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [...]

## **APPLICABLE PROVISIONS OF BULGARIAN LAW**

### **(a) International agreements**

Dogovor mezhdu Narodna Republika Bulgaria i Sayuza na Savetskite sotsialisticheski Republiki za pravna pomosht po grazhdanski, semeyni i nakazatelni dela (Agreement on legal assistance in civil, family and criminal matters between the People's Republic of Bulgaria and the Union of Soviet Socialist Republics)

(Ratified by Decree No 784 of the Council of State of 15 April 1975, DV 1975, No 33, in force since 18 January 1976)

Published in DV No 12 of 10 February 1976, correction in DV No 17 of 28 February 2014

‘Article 25

Legal relationships between parents and children

1. Legal relationships between parents and children shall be determined by the law of the contracting party in whose territory they have their joint domicile.
2. Where the parents, or one of the parents, is/are domiciled in the territory of one contracting party and the child is domiciled in the territory of the other contracting party, the legal relationships between them shall be determined by the law of the contracting party of which the child is a national.

3. Proceedings to contest or establish paternity or maternity and to establish the birth of a legitimate child shall be decided in accordance with the law of the contracting party of which the child is a national at the time of his or her birth.

4. The legal relationships between a child of persons who are not married to each other and his or her mother or father shall be determined by the law of the contracting party of which the child is a national.

5. Where the child is a national of one contracting party and lives in the territory of the other contracting party, and the law of that contracting party is more favourable to the child, the law of that contracting party shall apply.

6. The authorities of the contracting party of which the child is a national or of the territory in which the child is domiciled or resident shall have jurisdiction to take decisions concerning the legal relationships referred to in paragraphs 1, 2, 3, 4 and 5.

#### Article 30

##### Forms of legal transactions

1. The form of a legal transaction shall be determined by the law applicable to the legal transaction. However, compliance with the law of the place where the legal transaction is concluded shall be sufficient.

2. The form of a legal transaction concerning immovable property shall be determined by the law of the contracting party in whose territory the immovable property is situated.'

##### (b) National law

#### **Zakon za zadalzheniata i dogovorite (Law on Obligations and Contracts) of 1951**

Article 18. Contracts on the transfer of ownership or the establishment of other rights in rem in immovable property shall require notarial attestation.

#### **Kodeks na mezhdunarodnoto chastno pravo (Code on Private International Law) of 2005**

Article 85. (1) Relationships between parents and children shall be governed by the law of the State in which they have their joint habitual residence.

(2) Where the parents and the child do not have a joint habitual residence, relationships between them shall be governed by the law of the State in which the child has his or her habitual residence or by the law of the State of which the child is a national, if the latter is more favourable to the child.

#### **Grazhanski protsesualen kodeks (Code of Civil Procedure) of 2007**

Article 586. (1) When drawing up a notarial instrument relating to the transfer of a right of ownership or the establishment, transfer, modification or termination of another right in rem to immovable property, the notary shall verify whether the person transferring the right is the owner of the property and whether the specific requirements for the legal transaction are met.

(2) The right of ownership shall be evidenced by appropriate documents. [...]

(3) The notary shall also certify in the instrument that the verification referred to in paragraph 1 has been carried out, stating the documents evidencing the right of ownership and the other requirements.

(4) Where the document of ownership of the person transferring the right has not been registered, the notarial instrument shall not be drawn up until after that document has been registered.

### **Semeen kodeks (Family Code) of 2009**

Article 130. (1) The parents shall manage the child's property in his or her interests and with all due care.

(2) Income from the child's property which is not required to meet his or her needs may be used to meet the needs of the family.

(3) Acts disposing of immovable property, movable property by way of a formal legal transaction, deposits and securities belonging to the child may be carried out with the approval of the district court at the child's current place of residence if such disposal is not contrary to the child's interest.

(4) Any donation, waiver of rights, and lending and securing of third-party liabilities by a minor child shall be null and void. By way of exception, the securing of third-party liabilities may be effected by a pledge or mortgage in accordance with paragraph 3, in the case of a need of the child or an obvious benefit to the child, or in the case of an extraordinary need of the family.

(5) The transactions of a minor child who is married shall be subject only to the restriction laid down in Article 6(4).

### **(c) Relevant national case-law:**

Order No 144 of 2 June 2015 in Civil Case No 1100/2015 of the Varhoven kasatsionen sad na Republika Bulgaria (Supreme Court of Cassation of the Republic of Bulgaria), Chamber of the Second Civil Division, states:

‘Under Article 130(3) of the Family Code, acts disposing of immovable property, movable property by way of a formal legal transaction, deposits and securities belonging to a child may be carried out with approval of the district court at the current place of residence if such disposal is not contrary to the child's interests.

The provision is found in the chapter governing relationships between parents and children. Under Article 85 of the Code on Private International Law, relationships between parents and children are to be governed by the law of the State in which they have their joint habitual residence. Article 25 of the Agreement on legal assistance in civil, family and criminal matters between the People's Republic of Bulgaria and the USSR also provides for the application to the relationships between parents and children of the law of the contracting party in whose territory they are domiciled. At the same time, account should be taken of the fact that the objective of Article 130(3) of the Family Code is to ensure the protection of the child's interests when disposing of his or her property. The approval of the disposal is a requirement of special law for concluding a disposal transaction for the purposes of Article 586(1) of the Code of Civil Procedure, compliance with which must be verified by the notary when the contract is concluded. Under Article 65(1) of the Code on Private International Law, the acquisition and termination of rights in rem and possession are governed by the law of the State in which the property is situated. Article 30(2) of the abovementioned agreement on mutual assistance is to the same effect. Consequently, with regard to the special requirements of the law, including those under Article 130(3) of the Family Code, that same law is to be applied to the transfer of ownership of immovable property. Since the permission of disposal of immovable property is to be granted by a court, it follows that that must be the court of the State in which the property is situated.'

The abovementioned order, which is available on the website of the Supreme Court of Cassation, concerns a case of Russian nationals and the question on which the Supreme Court of Cassation has given an interpretation is: Does the Bulgarian court have jurisdiction over an application under Article 130(3) of the Family Code submitted by the legal representative of a minor of Russian nationality seeking consent to the disposal of immovable property that belongs to the child and is situated in the territory of the Republic of Bulgaria?

The same view is taken in Order No 7276 of 14 June 2023 in Civil Case No 6491/2023, Sofiyski gradski sad (Sofia City Court), First Civil Chamber, which set aside Order No 15959 of 2 May 2023 in Civil Case No 14139/2023, Sofia District Court, [...] (the present case). However, in this case, in finding that the provisions of Regulation 2019/1111 did not apply to applications by children for permission to dispose of immovable property situated in Bulgaria, the chamber of the Sofia City Court also referred to Article 4(1)(c) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations. In so far as that provision concerns the applicable law and not the international jurisdiction for the dispute, it can be assumed that the Sofia City Court intended to refer to Article 24(1) of Regulation No 1215/2012, which governs the exclusive international jurisdiction of the courts of the Member States in which the immovable property is situated in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property.

## FACTUAL BACKGROUND. NEED FOR THE INTERPRETATION OF THE PROVISIONS OF EUROPEAN UNION LAW

- 4 Currently, many nationals of the Russian Federation who have acquired immovable property in Bulgaria (on the Black Sea coast, in mountain resorts, and elsewhere) are trying to sell that property. In a large number of cases, that property belongs in whole or in part to children, either on account of inheritance or because the property was acquired in the children's names at the outset. Under Bulgarian national law, the disposal of a child's immovable property, for example by sale, requires prior permission by a court in non-contentious proceedings.
- 5 Some Bulgarian courts appear to take the view that they have international jurisdiction to grant such permission when a child who is a Russian national makes an application concerning the sale of immovable property in Bulgaria, setting out grounds based on the 1975 Agreement on legal assistance between the People's Republic of Bulgaria and the USSR and on Regulation No 563/2008 (which should be regarded, correctly, as a reference to Article 24(1) of Regulation No 1215/2012). The requirement of court permission for the sale of the immovable property is considered by the Bulgarian courts to be part of the form of the contract for the transfer of the immovable property and it is argued that the jurisdiction of the Bulgarian court derives from the fact that the case concerns the legal situation and transactions relating to immovable property in Bulgaria and not parental responsibility in relation to the children. Thus, the Bulgarian court has jurisdiction even if the children are habitually resident in another Member State of the European Union or in a third country, such as Russia.
- 6 In its judgment of 6 October 2015, *Matoušková*, C-404/14, [EU:C:2015:653], the Court of Justice of the European Union held that Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that the approval of an agreement for the sharing-out of an estate concluded by a guardian *ad litem* on behalf of minor children constitutes a measure relating to the exercise of parental responsibility, within the meaning of Article 1(1)(b) of that regulation and thus falls within the scope of the latter, and not a measure relating to succession, within the meaning of Article 1(3)(f) thereof, excluded from the scope thereof.
- 7 In the above interpretation, the Court of Justice ruled on the relationship between Regulation No 2201/2003 on international jurisdiction in matters of parental responsibility and Regulation No 650/2012 on international jurisdiction in matters of succession; however, the referring court is not aware of any case-law of the Court of Justice on the relationship between Regulation 2019/1111 on international jurisdiction in matters of parental responsibility in non-contentious proceedings concerning immovable property of children and Regulation No 1215/2012 on international jurisdiction in disputes over immovable property.

- 8 Nor is the referring court aware of any case-law of the Court of Justice on whether bilateral agreements on mutual legal assistance concluded by Member States with third countries (and containing provisions on international jurisdiction and applicable law in relation to disputes and claims raised by nationals of the parties to the agreement) prior to a Member State's accession and prior to the adoption of the relevant regulation result in a derogation from the provisions of the relevant regulation. Bulgaria and other former Eastern Bloc countries which are now Member States of the European Union concluded similar bilateral agreements on mutual legal assistance with the Soviet Union until 1989, and those agreements now apply in relation to the Russian Federation. Those bilateral agreements are not mentioned in Chapter VIII of Regulation 2019/1111, for example, and it is uncertain whether they constitute a derogation from the provisions of the regulation or, conversely, whether the regulation constitutes a derogation from those provisions.
- 9 Against that background, three questions are referred to the Court of Justice of the European Union for a preliminary ruling.

On those grounds, Sofia District Court has

**ORDERED AS FOLLOWS:**

Proceedings in Civil Case No **14139/2023** of the Sofia District Court are **STAYED** pending a decision of the **Court of Justice of the European Union**.

The following questions are **REFERRED** to the **COURT OF JUSTICE OF THE EUROPEAN UNION** for a preliminary ruling pursuant to the first paragraph of Article 267 TFEU:

1. Does the scope of Article 1(e) of Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, cover non-contentious proceedings concerning the granting of permission by a court for the disposal, e.g. a sale, of immovable property or co-ownership shares in immovable property belonging to a child?
2. Which regulation determines the international jurisdiction of a court of a Member State of the European Union in non-contentious proceedings concerning the granting of permission by a court for the disposal, e.g. a sale, of immovable property or co-ownership shares in immovable property belonging to a child: (i) Article 7(1) of Regulation 2019/1111 – **the court for the place where the child is habitually resident** – or (ii) Article 4(1)(c) of Regulation (EC) No 593/2008 or Article 24(1) of Regulation (EU) No 1215/2012 – **the court for the place where the immovable property is situated**?
3. Are the rules of Regulation 2019/1111 on international jurisdiction in matters of parental responsibility derogated from by a bilateral international agreement between a Member State (Bulgaria) and a third country (the Soviet

Union or the Russian Federation) which was concluded before the Member State's accession to the European Union, if that international agreement is not listed in Chapter VIII of Regulation 2019/1111?

**The order is definitive and may not be challenged.**

Judge

WORKING DOCUMENT