

Anonymised version

Translation

C-645/20 - 1

Case C-645/20

Request for a preliminary ruling

Date lodged:

1 December 2020

Referring court:

Cour de cassation (Court of Cassation) (France)

Date of the decision to refer:

18 November 2020

Applicant:

VA

ZA

Defendant:

TP

[...]

Judgment of the Cour de cassation (Court of Cassation) (Civil Chamber One)

of 18 November 2020

1/ VA [...] [particulars]

2/ ZA [...] [particulars]

lodged appeal No Y 19-15.438 against the judgment delivered on 21 February 2019 by the cour d'appel de Versailles (Court of Appeal, Versailles) (France) (Chamber Fourteen), in proceedings between themselves and TP [...] [particulars], defendant on appeal.

In support of their appeal the applicants rely on the single ground of appeal annexed to this judgment.

[...]

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

[...]

[considerations relating to procedure and the composition of the court]

Facts and proceedings

- 1 According to the contested judgment [...], XA, who had French nationality, died in France [...], leaving his wife, TP, and his three children from his first marriage, YA, ZA and VA (the A siblings).
- 2 The A siblings brought proceedings against TP before the President of a regional court ruling in interlocutory proceedings, applying for the appointment of a person to administer the succession, claiming that the French courts had jurisdiction under 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 on the grounds that XA had his habitual residence in France at the time of death.
- 3 YA having died [...], his brother and sister stated that they also acted as his successors in title.

Analysis of the ground of appeal

The first three parts of the annexed ground of appeal

- 4 Under Article 1014(2) of the code de procédure civile (the French Code of Civil Procedure, a court is not required to rule by a specially reasoned decision on claims which are manifestly not such as to give rise to an appeal.

The fourth part of the ground of appeal

Description of the ground of appeal

- 5 The A siblings allege that the judgment errs in finding that the French courts do not have jurisdiction to rule on XA's succession as a whole and on the application to appoint a person to administer the succession **[Or. 3]**, given that '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 subsidiary jurisdiction to rule on the succession as a whole in so far as the deceased had the nationality of that Member State at the time of death; that this provision, laid down by Regulation No 650/2012 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, is a public policy (*ordre public*) provision and must be examined by the court of its own motion; that it is common ground in the present case that XA had French nationality and owned property in France and that the cour d'appel (Court of Appeal) (France) should therefore have determined whether it had subsidiary jurisdiction; and that by failing to do so, the cour d'appel (Court of Appeal) infringed Article 10 of Regulation No 650/2012 of 4 July 2012.'

Response of the Cour de cassation (Court of Cassation) (France)

- 6 Under 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, in whose adoption the United Kingdom did not take part, 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 subsidiary jurisdiction to rule on the succession as a whole in so far as the deceased had the nationality of that Member State at the time of death.
- 7 The A siblings did not invoke that provision before the cour d'appel de Versailles (Court of Appeal, Versailles) which, after finding that the deceased had his habitual residence in the United Kingdom, held that, under Article 4 of the regulation, the French court did not have jurisdiction to rule on his succession or to appoint a person to administer it.
- 8 The matter to be determined is therefore whether the cour d'appel (Court of Appeal), which found that XA had French nationality and owned property in France, was bound to examine of its own motion whether it had subsidiary jurisdiction laid down in Article 10 of the regulation.
- 9 Although under Article 15 of the regulation a court of a Member State seised of a succession matter over which it has no jurisdiction under that regulation must declare of its own motion that it has no jurisdiction, that article does not indicate whether it is incumbent on that court to verify as a preliminary matter not only that the conditions are not satisfied for it to have principal jurisdiction (Article 4) but that nor are the conditions satisfied for its subsidiary jurisdiction (Articles 10 and 11) [Or. 4]. The regulation does not indicate whether subsidiary jurisdiction is optional.

- 10 The fact that Regulation (EU) No 650/2012 establishes a comprehensive system which resolves all international conflicts of jurisdiction arising from succession disputes brought before the courts of the Member States and therefore replaces all the solutions applied previously by those courts suggests that a court has a duty to determine of its own motion whether it has jurisdiction under Article 10 where the deceased did not have his habitual residence in a Member State at the time of death. The regulation sets up a system for resolving conflicts of jurisdiction which the courts of the Member States must apply of their own motion wherever the subject matter of the dispute falls within the regulation. The subsidiary jurisdiction under Article 10 of the regulation is intended to lay down grounds of jurisdiction which apply where no Member State court appears to have jurisdiction under the general rule set out in Article 4. It would therefore be contrary to logic if, after applying the regulation of their own motion in order to determine a conflict of jurisdiction, the courts were able to decline jurisdiction in favour of a third State solely on the basis of Article 4, with no requirement to verify as a preliminary matter whether they had subsidiary jurisdiction on the basis of Article 10. The more congruent solution, in contrast, would be for the courts seised to be required to examine, including of their own motion, all possible grounds of jurisdiction, provided no other Member State has jurisdiction. It is therefore inappropriate to draw a distinction in the courts' obligation to determine of their own motion whether they have jurisdiction, according to whether that jurisdiction is under Article 4 or under Article 10.
- 11 However, the rule in Article 10, which the regulation presents as subsidiary, has the effect of derogating from the principle of the unity of jurisdiction and applicable law that informs the regulation, recital 23 of which emphasises the need 'to ensure the proper administration of justice within the Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised', because where a court in a Member State where the deceased did not have his habitual [residence] finds itself to have jurisdiction on the basis of Article 10, that court will nevertheless have to apply the law of the State of habitual residence, unless it is apparent from all the circumstances of the case that, at the time of death, the deceased had manifestly closer links with another State (Article 21 of the regulation) or had expressly chosen the law of another State (Article 22). It therefore seems unlikely that the courts can have an obligation to invoke a rule of jurisdiction described as subsidiary and which derogates from the general principles that underpin the regulation, even if the parties do not invoke that rule. Moreover, although the regulation expressly provides in Article 15 that a court that does not have jurisdiction must declare of its own motion that it has no jurisdiction, it contains no equivalent provision where a court does have jurisdiction. There is nothing [Or. 5] in the regulation to suggest that a Member State court, hearing a matter under Article 4, must of its own motion examine whether it has jurisdiction under another rule, in particular under Article 10 which establishes only subsidiary jurisdiction. That asymmetry arises because the objective of the rule under Article 15 is to facilitate the recognition and enforcement of decisions made by a court which has found itself to have jurisdiction and to prevent it from being

argued subsequently in another Member State that the court did not in fact have jurisdiction. Lastly, for the purposes of the regulation the rules on successions concern disposable rights, since the regulation allows the parties to agree jurisdiction by means of a choice-of-court agreement (Article 5) and retains the ability of a court to declare itself to have jurisdiction on the basis of appearance alone (Article 9). It would therefore defy logic if the court were required to examine a subsidiary ground of jurisdiction that the parties did not propose to invoke.

- 12 There is a reasonable doubt as to the answer that should be given to that question, which is a determining factor in resolution of the dispute before the Cour de cassation (Court of Cassation).
- 13 It is therefore appropriate to refer to the Court of Justice of the European Union under Article 267 of the Treaty on the Functioning of the European Union and to stay the proceedings until that Court has given its ruling.

ON THOSE GROUNDS, the Cour de cassation (Court of Cassation) (France) hereby:

Refers the following question to the Court of Justice of the European Union:

‘Must 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 be interpreted as meaning that, where the habitual residence of the deceased at the time of death is not located in a Member State, the court of a Member State in which the deceased had not established his habitual residence but which finds that the deceased had the nationality of that State and held assets in it must, of its own motion, examine whether it has subsidiary jurisdiction under that article?’

[...] **[Or. 6]**

[...]

[...] [considerations relating to procedure] **[Or. 7]**

[...]

Ground in law produced by [...] SA and ZA.

[...]

[Or. 8]

[...]

[...] **[Or. 9]** [...]

[...]

[...] **[Or. 10]** [...]

[...]

[...] **[Or. 11]**

[...]

[...] **[Or. 12]** [...]

[...]

[...] **[Or. 13]** [...]

[...]

[reproduction of the fundamentally factual reasoning of the contested judgment, on conclusion of which the cour d’appel (Court of Appeal) (France) found it not to have been demonstrated that XA had decided to move his habitual residence to France and that the French courts therefore do not have jurisdiction to rule on XA’s succession as a whole or on the application to appoint a person to administer the succession]

[...]

[...] **[Or. 14]** [...]

[...]

[description of the first three parts of the ground of appeal, which are rejected in paragraph 4 of the order for reference]

[...]

[description of the fourth part of the ground of appeal, reproduced in quotation marks in paragraph 5 of the order for reference under the heading ‘Description of the ground of appeal’]