Reports of Cases

ORDER OF THE COURT (Sixth Chamber)

14 June 2017*

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Article 1(2)(a) — Scope — Matters excluded — Rights in property arising out of a matrimonial relationship — Dissolution of the marriage — Liquidation of property acquired during the marriage)

In Case C-67/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rayonen sad Varna (District Court, Varna, Bulgaria), made by decision of 26 January 2017, received at the Court on 7 February 2017, in the proceedings

Todor Iliev

v

Blagovesta Ilieva,

THE COURT (Sixth Chamber),

composed of E. Regan, President of the Chamber, J.-C. Bonichot and C.G. Fernlund (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

Order

1 The present request for a preliminary ruling concerns the interpretation of Article 1(2)(a) 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 (OJ 2012 L 351, p. 1).

2 The request has been made in the course of proceedings between Mr Todor Iliev and Ms Blagovesta Ilieva concerning the liquidation of a motor vehicle following the dissolution of their marriage.

* Language of the case: Bulgarian.

Legal context

EU law

Regulation No 1215/2012

3 In recital 34 of Regulation No 1215/2012, the Council of the European Union stressed the need to ensure continuity between the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36; 'the Brussels Convention') and the regulations which replace it, including with regard to the Court's interpretation of the provisions of that convention which are equivalent to those of Regulation No 1215/2012.

4 Article 1(1) and (2)(a) of Regulation No 1215/2012 provides:

'1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

2. This Regulation shall not apply to:

(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage'.

5 Article 4(1) of that regulation is worded as follows:

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

6 Regulation No 1215/2012, pursuant to Article 80 thereof, repeals Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

7 Under Article 81 of Regulation No 1215/2012:

'…

[This Regulation] shall apply from 10 January 2015, with the exception of Articles 75 and 76, which shall apply from 10 January 2014.'

The Brussels Convention

8 Article 1 of the Brussels Convention provides as follows:

'This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. …

This Convention shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

…’

Bulgarian law

The Private International Law Code

9 Article 4(1)(2) of the Private International Law Code provides as follows:

‘Bulgarian courts and other bodies shall have international jurisdiction where:

…

2. the applicant or petitioner is a Bulgarian national or a legal person governed by Bulgarian law.’

The Family Code

10 Article 21(1) of the Family Code provides that spouses are to have the same rights over property acquired where they have jointly contributed to its acquisition during the marriage, irrespective of the name under which that property was acquired.

11 According to Article 28 of that code, in the case where joint ownership of all matrimonial property ends, the spouse are entitled to equal shares in that property.

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 Mr Iliev, a Bulgarian national, and Ms Ilieva, who has both Italian and Bulgarian nationalities, married on 1 June 2007 in Shumen (Bulgaria).

13 On 2 July 2015, the marriage between the parties was dissolved by a decision of the Rayonen sad Choumen (Shumen District Court, Bulgaria).

14 Following the divorce pronounced by that court, Mr Iliev brought an action before the referring court seeking the liquidation of a motor vehicle purchased by Ms Ilieva and registered in her name in November 2009.

15 Mr Iliev submits that that vehicle was purchased through the use of joint funds while the parties were married and that, under Articles 21 and 28 of the Family Code, the motor vehicle belonged to both parties equally, even though it was registered in Italy in Ms Ilieva’s name alone.

16 According to the order for reference, although Mr Iliev and Ms Ilieva were registered as being permanently resident in Bulgaria, they are to be regarded as having been habitually resident in Italy on the date of their civil marriage and on the dates on which the vehicle was acquired, the divorce pronounced and the action in the main proceedings brought. That court states that Ms Ilieva has lived and worked in Italy on a continuous basis for 10 years, that she declared to the Bulgarian authorities on 14 March 2016 that she was resident in Italy and that her identity card issued by the Italian authorities indicates that she is a resident of Alba, in the province of Cuneo (Italy).

17 Ms Ilieva disputes the jurisdiction of the Bulgarian courts to give a ruling in the case in the main proceedings, claiming that the Italian courts have jurisdiction on the basis of Article 4(1) of Regulation No 1215/2012.

18 The referring court expresses doubts in this respect in so far as it has available to it only a judgment delivered by the Bulgarian Supreme Court concerning liquidation of property acquired during marriage, handed down in the context of a divorce. According to that judgment, the exception referred to in Article 1(2)(a) of Regulation No 1215/2012 relates only to cases concerning the matrimonial property regime as defined in certain articles of the Family Code, which do not include such liquidations. It follows, in that court's view, that those liquidations come within the scope of that regulation. If that were the case, the Italian courts would, according to that court, have jurisdiction to give judgment in the main proceedings, in accordance with Article 4(1) of that regulation. However, if that regulation were not applicable, the Bulgarian courts would have jurisdiction under Article 4(1)(2) of the Private International Law Code.

19 In those circumstances the Rayonen sad Varna (District Court, Varna, Bulgaria) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does an action between former spouses on the division of movable property acquired during the marriage as joint property of the spouses constitute a legal dispute relating to rights in property arising out of a matrimonial relationship within the meaning of Article 1(2)(a) of Regulation [No 1215/2012]?

(2) Is a dispute concerning the division of movable property acquired during the marriage, but registered with the competent national authorities only in the name of one of the spouses, excluded from its scope under Article 1(2)(a) of Regulation [No 1215/2012]?

(3) Which court has jurisdiction over a dispute between former spouses on the ownership of immovable property acquired during their civil marriage, when the spouses are nationals of a Member State of [the European Union], but it has been established in the proceedings that at the time of entering the marriage, acquisition of the property, ending the marriage and the application for division of the property after the marriage had ended, they had their place of residence in another Member State?'

Consideration of the questions referred

20 Pursuant to Article 99 of its Rules of Procedure, where the answer to a question referred to the Court for a preliminary ruling may be deduced clearly from existing case-law, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

21 That provision must be applied in the present case.

22 By its three questions, which it is appropriate to examine together, the referring court asks in essence whether Article 1(2)(a) of Regulation No 1215/2012 must be interpreted as meaning that a dispute such as that in the main proceedings, relating to the liquidation of property — acquired during marriage by spouses who are nationals of a Member State but domiciled in another Member State — after a divorce has taken place, comes within the scope of Regulation No 1215/2012 or whether it comes within the scope of matrimonial property regimes and, consequently, within the exclusions listed in Article 1(2)(a) of that regulation.

23 In that regard, it must be recalled that, in so far as Regulation No 1215/2012 now replaces the Brussels Convention in relations between the Member States, with the exception of the Kingdom of Denmark, the interpretation given by the Court with regard to that convention also applies to the regulation, in cases where its provisions and those of the Brussels Convention may be treated as 'equivalent'.

Furthermore, it is clear from recital 34 of Regulation No 1215/2012 that continuity in interpretation between the Brussels Convention and that regulation must be ensured (see, to that effect, judgment of 18 October 2011, *Realchemie Nederland*, C-406/09, EU:C:2011:668, paragraph 38).

24 With regard to the scope of Regulation No 1215/2012, it must be held that Article 1(2)(a) of that regulation corresponds to point 1 of the second paragraph of Article 1 of the Brussels Convention and that those two provisions are drafted in similar terms.

25 It is therefore appropriate to refer to the Court's case-law relating to point 1 of the second paragraph of Article 1 of the Brussels Convention, and more particularly to the judgment of 27 March 1979, *de Cavel* (143/78, EU:C:1979:83).

26 In that judgment, the Court examined whether a dispute relating to a protective measure in respect of property in the context of divorce proceedings came within the scope of the Brussels Convention because of the proprietary nature of the measure in question.

27 The Court stated that, because of the specific nature of certain matters, including the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession and disputes relating to such matters were excluded from the scope of the Brussels Convention (judgment of 27 March 1979, *de Cavel*, 143/78, EU:C:1979:83, paragraph 6).

28 The Court held that the term 'rights in property arising out of a matrimonial relationship', featuring in point 1 of the second paragraph of Article 1 of the Brussels Convention, includes not only property arrangements specifically and exclusively envisaged by certain national legal systems in the case of marriage but also any proprietary relationships resulting directly from the matrimonial relationship or the dissolution thereof (judgment of 27 March 1979, *de Cavel*, 143/78, EU:C:1979:83, paragraph 7).

29 The Court concluded that disputes relating to the assets of spouses in the course of divorce proceedings may therefore, depending on the circumstances, concern or be closely connected with one of the following three categories: (1) questions relating to the status of persons; or (2) proprietary legal relationships between spouses resulting directly from the matrimonial relationship or the dissolution thereof; or (3) proprietary legal relations existing between them which have no connection with the marriage, and that, whereas disputes of the latter category come within the scope of the Brussels Convention, those relating to the first two categories must be excluded therefrom (judgment of 27 March 1979, *de Cavel*, 143/78, EU:C:1979:83, paragraph 7).

30 It follows that, in the case of a dispute between former spouses relating to the liquidation of movable property acquired during the marriage, since that dispute concerns proprietary legal relationships between those persons resulting directly from the dissolution of the marriage, such a dispute does not come within the scope of Regulation No 1215/2012 but comes rather within that of the second category mentioned in the previous paragraph.

31 Furthermore, it should be added that, although 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 (OJ 2003 L 338, p. 1) relates, pursuant to Article 1(1)(a) thereof, to civil matters relating to divorce, that regulation applies, as is apparent from recital 8 thereof, only to the dissolution of matrimonial ties, to the exclusion of issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures.

32 The answer to the questions referred is therefore that Article 1(2)(a) of Regulation No 1215/2012 must be interpreted as meaning that a dispute such as that in the main proceedings, relating to the liquidation of property — acquired during marriage by spouses who are nationals of a Member State

but domiciled in another Member State — after a divorce has taken place, does not come within the scope of that regulation but comes rather within the scope of matrimonial property regimes and, consequently, within the scope of the exclusions listed in Article 1(2)(a) of that regulation.

Costs

33 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds, the Court (Sixth Chamber) hereby rules:

Article 1(2)(a) 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 must be interpreted as meaning that a dispute such as that in the main proceedings, relating to the liquidation of property — acquired during marriage by spouses who are nationals of a Member State but domiciled in another Member State — after a divorce has taken place, does not come within the scope of that regulation but comes rather within the scope of matrimonial property regimes and, consequently, within the scope of the exclusions listed in Article 1(2)(a) of that regulation.

[Signatures]