Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 8 July 2021 [1]

Case C-422/20

RK
v
CR

(Request for a preliminary ruling from the Oberlandesgericht Köln (Higher Regional Court, Cologne, Germany))

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Recognition – Succession and European Certificate of Succession – Jurisdiction in the event of a choice of law – Declining of jurisdiction by a court previously seised)

I. Introduction

1. Article 4 of Regulation (EU) No 650/2012,[2] which is entitled 'General jurisdiction', provides that 'the courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole'. The criterion laid down in that provision to determine jurisdiction mirrors that laid down in Article 21(1) of that regulation, which is entitled 'General rule', to determine the law applicable to the succession as a whole.

2. The consistency of those criteria allows for a general guarantee of compliance with the principle of the compatibility of the applicable law and the court,[3] to which recital 27 of Regulation No 650/2012 refers. That recital states that the rules of that regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law.

3. Under Article 22(1) of Regulation No 650/2012, a person may choose as the law to govern his or her succession as a whole the law of the State whose nationality he or she possesses at the time of making the choice or at the time of death. However, such a choice may call into question that principle of the compatibility of the applicable law and the court. That regulation does, nevertheless, also provide for mechanisms intended to ensure compliance with the principle where a choice is made as to the applicable law. In particular, it follows from Article 6(a) read in

1 Original language: French.

2 Regulation 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).

3 See my Opinion in *Oberle* (C-20/17, EU:C:2018:89, point 104).

conjunction with Article 7(a) of that regulation that the courts of a Member State whose law has been chosen by the deceased are to have jurisdiction to rule where a court previously seised has declined jurisdiction further to the request made by one of the parties to the proceedings.

4. Those provisions lie at the heart of the second question referred to the Court for a preliminary ruling in the present case, by which the referring court asks, in essence, whether, and if so to what extent, the declining of jurisdiction by a court of Member State previously seised in matters of succession is binding vis-à-vis the court of another Member State subsequently seised.

5. In accordance with the request made to the Court, this Opinion will be confined to examining that question.

II. Legal context

6. Article 6 of Regulation No 650/2012, which is entitled 'Declining of jurisdiction in the event of a choice of law', provides in point (a):

'Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the court seised pursuant to Article 4 or Article 10:

(a) may, at the request of one of the parties to the proceedings, decline jurisdiction if it considers that the courts of the Member State of the chosen law are better placed to rule on the succession, taking into account the practical circumstances of the succession, such as the habitual residence of the parties and the location of the assets …'

7. Article 7 of that regulation, which is entitled 'Jurisdiction in the event of a choice of law', provides in point (a):

'The courts of a Member State whose law had been chosen by the deceased pursuant to Article 22 shall have jurisdiction to rule on the succession if:

(a) a court previously seised has declined jurisdiction in the same case pursuant to Article 6;'

8. Article 22 of that regulation, which is entitled 'Choice of law', provides, in paragraph 1, that 'a person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death'.

9. Article 83(4) of the same regulation states that, 'if a disposition of property upon death was made prior to 17 August 2015 in accordance with the law which the deceased could have chosen in accordance with this Regulation, that law shall be deemed to have been chosen as the law applicable to the succession'.

III. Facts, procedure and questions referred

10. Following the death of her husband on 9 March 2017, CR applied to the Amtsgericht Düren (Local Court, Düren, Germany) for the issue of a national certificate of inheritance and a European Certificate of Succession on the basis of the joint will drawn up in accordance with German law in 1990, by which CR and her husband had named each other as their sole heirs. The last habitual residence of the deceased was in Spain.

11. RK, the brother of the deceased, opposed the application made by CR.

12. By decision of 20 December 2017, the Amtsgericht Düren (Local Court, Düren) granted CR's application.

13. Following an appeal brought before it by RK, the referring court, the Oberlandesgericht Köln (Higher Regional Court, Cologne, Germany) annulled that decision on the ground that only the Spanish courts had jurisdiction, in accordance with the criterion of the 'habitual residence' of the deceased at the time of death, within the meaning of Article 4 of Regulation No 650/2012.

14. On 29 April 2019, CR obtained an order from the Juzgado de Primera Instancia e Instrucción n.º 3 de Estepona (Court of First Instance and Preliminary Investigation No 3, Estepona, Spain), from which it is apparent that that court decided, at the request of the applicant, 'to refrain from giving a decision, on the ground that the German courts are better placed to rule on the succession and on account of the practical circumstances, such as CR's habitual residence and the location of the essential part of the estate in Germany'.

15. By notarised document of 29 August 2019, CR made a fresh application for the issue of certificates of succession, submitting that order to the Amtsgericht Düren (Local Court, Düren). By order of 19 February 2020, that court again granted CR's application, taking the view that its international jurisdiction was established as the Spanish court seised by CR had declined jurisdiction pursuant to Article 6(a) of Regulation No 650/2012.

16. By an appeal lodged against the order of 19 February 2020, RK once again opposed that decision and the case was referred to the referring court.

17. It is in that context that the Oberlandesgericht Köln (Higher Regional Court, Cologne), by decision of 28 August 2020, received at the Court on 8 September 2020, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is it necessary, for a declaration of lack of jurisdiction by the court previously seised, as provided for in Article 7(a) of Regulation No 650/2012, that that court should expressly decline jurisdiction, or may even a non-express declaration suffice if it supports the inference, through interpretation, that that court has declined jurisdiction?

(2) Is the court of the Member State whose jurisdiction is intended to follow from a declaration of lack of jurisdiction by the court previously seised in the other Member State competent to examine whether the conditions governing a decision by the court previously seised, as provided for in Articles 6(a) and 7(a) of Regulation No 650/2012, were met? To what extent is the decision of the court previously seised binding?

In particular:

(a) Is the court of the Member State whose jurisdiction is intended to follow from a declaration of lack of jurisdiction by the court previously seised in the other Member State competent to examine whether the deceased validly chose the law of the Member State in accordance with Article 22 of Regulation No 650/2012?

(b) Is the court of the Member State whose jurisdiction is intended to follow from a declaration of lack of jurisdiction by the court first seised in the other Member State competent to examine whether a request for a declaration of lack of jurisdiction, as provided for in Article 6(a) of Regulation No 650/2012, has been brought by one of the parties to the proceedings before the court previously seised?

(c) Is the court of the Member State whose jurisdiction is intended to follow from a declaration of lack of jurisdiction by the court first seised in the other Member State competent to examine whether the court previously seised rightly assumed that the courts of the Member State of the chosen law are better placed to rule on the succession?

(3) Are Articles 6(a) and 7(a) of Regulation No 650/2012, which presuppose a choice of law "pursuant to Article 22", applicable even where the deceased has made no express or implied choice of law in a testamentary disposition made before 17 August 2015, but the law applicable to the succession is capable of being inferred only from Article 83(4) of Regulation No 650/2012?'

18. Written observations were submitted by CR, the Spanish and Italian Governments and the European Commission. A hearing was not held.

IV. Analysis

A. Preliminary remarks on the second question and its subject matter

19. By its second question, the referring court is seeking to ascertain, in essence, whether, when a court of a Member State previously seised in matters of succession declines jurisdiction pursuant to Article 6(a) of Regulation No 650/2012, the court subsequently seised pursuant to Article 7(a) of that regulation can examine whether the conditions laid down in the former provision were met when the decision declining jurisdiction was adopted.

1. The conditions referred to in the second question referred for a preliminary ruling

20. In the opening part of the second question, the referring court makes general reference to the conditions set out in Articles 6(a) and 7(a) of Regulation No 650/2012. However, it focuses that question on three specific conditions that must be met in order for the court previously seised to be able to decline jurisdiction in favour of the courts of the Member State whose nationality the deceased possessed. More specifically, the second question, which is divided into three sub-questions, concerns whether the latter courts can examine, first, whether the court previously seised correctly found that the law of that Member State was chosen or is deemed to have been chosen to govern the succession; secondly, whether one of the parties to the proceedings made a request pursuant to Article 6(a) of Regulation No 650/2012 before the court previously seised; and, thirdly, whether the court previously seised correctly found that the courts of the Member State are better placed to rule on the succession.

21. Although those three sub-questions are preceded by the words 'in particular', other factors that may be relevant from the perspective of the court subsequently seised pursuant to Article 7(a) of Regulation No 650/2012 do not, however, form the subject matter of the questions

put by the referring court.[4] It is clear from the statement of grounds for the request for a preliminary ruling that, as far as concerns the second question, the referring court limits its scope to the conditions to which it refers in those same sub-questions.

2. The relationship between the first sub-question of the second question and the third question

22. There appears, a priori, to be an inconsistency between the first sub-question of the second question and the third question.

23. Although the first sub-question of the second question does refer to a choice of law made pursuant to Article 22 of Regulation No 650/2012, it is nevertheless apparent from the wording of the third question that, according to the referring court, German law could not be chosen by the deceased on the basis of that provision and that the application of that law follows from Article 83(4) of that regulation. Following that line of reasoning, the referring court, by its third question, seeks to establish whether Articles 6(a) and 7(a) of that regulation, which presuppose a choice of the applicable law 'pursuant to Article 22', likewise apply where the application of the law of the State whose nationality the deceased possessed follows from Article 83(4) of the same regulation and, therefore, that 'that law shall be deemed to have been chosen as the law applicable to the succession'.[5]

24. The remark made by CR, to the effect that the first sub-question 'overlooks' Article 83(4) of Regulation No 650/2012, could suggest that CR noted the inconsistency mentioned in points 22 and 23 of this Opinion. CR also states that, in examining its jurisdiction, the Spanish court assessed Article 22 of that regulation. However, it cannot be ruled out that, by that statement, CR is seeking to demonstrate that the courts of the Member State whose nationality the deceased possessed could not examine the application of the law of that State, regardless of whether such application follows from Article 22 (first sub-question of the second question) or from Article 83(4) of that regulation (third question).

[4] Specifically, the referring court does not ask the Court to determine whether the courts of the Member State whose nationality the deceased possessed can examine whether the court previously seised had jurisdiction under Article 4 or Article 10 of Regulation No 650/2012 or whether the decision adopted by the court previously seised fell within the scope of that application, or to determine whether declining jurisdiction pursuant to Article 6(a) produces effects for any other proceedings relating to the succession of the deceased or solely for proceedings having the same subject matter as that in the context of which the declining of jurisdiction at issue in the main proceedings occurred. It is established that the Spanish court had jurisdiction under Article 4 of the same regulation. Moreover, there is no basis for the view that the subject matter of the proceedings initiated before the Spanish court differs substantially from that of the proceedings pending before the referring court.

[5] For the sake of completeness, I would point out that it follows from Regulation No 650/2012 that that regulation, first, with the exception of a few articles applicable to earlier dates, is applicable with effect from 17 August 2015 (second paragraph of Article 84) and, secondly, applies to the successions of persons who die on or after 17 August 2015 (Article 83(1)). Taken in isolation, the solutions adopted by those provisions vis-à-vis the scope *ratione temporis* of that regulation could disregard dispositions of property upon death made prior to 17 August 2015. In order to avoid that situation, the EU legislature introduced supplementary transitional provisions in Article 83 of that regulation. Thus, Article 83(2) of that regulation provides: 'Where the deceased had chosen the law applicable to his succession prior to 17 August 2015, that choice shall be valid if it meets the conditions laid down in Chapter III or if it is valid in application of the rules of private international law which were in force, at the time the choice was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed.' Furthermore, Article 83(4) of Regulation No 650/2012 provides: 'If a disposition of property upon death was made prior to 17 August 2015 in accordance with the law which the deceased could have chosen in accordance with this Regulation, that law shall be deemed to have been chosen as the law applicable to the succession.' As the Court has already stated, the former provision 'seeks to protect the testator's wishes and, for that choice to be valid, it must meet the conditions laid down in the provision', whereas the latter 'governs those cases in which a disposition of property upon death does not include such a choice'. See judgment of 16 July 2020, *E. E. (Jurisdiction and law applicable to inheritance)* (C-80/19, EU:C:2020:569, paragraph 92).

25. Furthermore, the Spanish Government states that the court of that Member State, which declined jurisdiction in favour of the German courts, pointed out that, prior to the entry into force of Regulation No 650/2012, the deceased had drawn up a will on the basis of his national law – namely, German law – which, pursuant to Article 83(4) of that regulation, automatically entailed the choice of that law as the law applicable to the succession.

26. In any case, taking the view, in the context of the analysis of the first sub-question of the second question, that the courts of the Member State whose nationality the deceased possessed, which were seised pursuant to Article 7(a) of Regulation No 650/2012, cannot examine whether the court previously seised correctly found that the law of that Member State was chosen or is deemed to have been chosen to govern the succession would render the inconsistency referred to in points 22 and 23 of this Opinion irrelevant. In addition, the fact that the law was not chosen pursuant to Article 22 of that regulation but is deemed to have been chosen on the basis of Article 83(4) of that regulation cannot result in the courts of the Member State whose nationality the deceased possessed being compelled, by the decision declining jurisdiction, to apply that regulation, even though the succession does not fall within the scope *ratione temporis* of that regulation. [6]

27. In those circumstances, in order to be able to provide a useful answer to the referring court, the first sub-question must be understood as seeking to determine whether the court of the Member State whose jurisdiction is intended to follow from the declining of jurisdiction by the court previously seised can examine whether the latter court correctly found that the law of that Member State was chosen or is deemed to have been chosen to govern the succession.

28. It is indeed true that the first sub-question, thus reformulated, appears to prejudice the answer to be given to the third question. It in fact follows therefrom that Articles 6(a) and 7(a) of Regulation No 650/2012 are applicable where the law of the Member State whose nationality the deceased possessed is deemed to have been chosen on the basis of Article 83(4) of that regulation.

29. However, first, as all the parties have argued, Articles 6(a) and 7(a) of Regulation No 650/2012 apply in such a situation. Secondly, if the courts of the Member State whose nationality the deceased possessed cannot verify whether the court previously seised correctly found that the law of that Member State was chosen or is deemed to have been chosen to govern the succession (first sub-question), the question whether that court can rule on the basis of Article 6(a) of Regulation No 650/2012 where the law of the Member State whose nationality the deceased possessed is deemed to have been chosen on the basis of Article 83(4) of that regulation would have to have been settled not by the courts of the Member State whose nationality the deceased possessed but rather by the court previously seised. If that were the case, the courts of that Member State cannot, a fortiori, dismiss an interpretation such as that put forward by all of the parties by relying on the joint non-applicability of those provisions.

30. I recall that, in accordance with the request made to the Court, this Opinion will be confined to examining the second question referred for a preliminary ruling. I will begin by setting out the positions of the parties as regards the three conditions mentioned by the referring court (Section B), before analysing the mechanism laid down in Article 6(a) and in Article 7(a) of Regulation No 650/2012 in order to provide an answer to that question (Section C).

[6] With regard to the transitional provisions of Regulation No 650/2012, see footnote 5.

B. Positions of the parties

31. CR and the Italian Government argue that the court of a Member State whose law has been chosen or is deemed to have been chosen by the deceased cannot examine whether the conditions referred to in the three sub-questions of the second question were met when the decision declining jurisdiction was adopted by the court previously seised.

32. The Spanish Government is of the view that Articles 6(a) and 7(a) of Regulation No 650/2012 are to be interpreted as meaning that the court of a Member State whose jurisdiction follows from a declaration declining jurisdiction cannot review the decision declining jurisdiction previously adopted. In its view, that court is, however, required to examine its own jurisdiction and, therefore, to examine whether its national law was chosen by the deceased (first sub-question) and whether the court previously seised declined jurisdiction. The Spanish Government does not explain the practical implications of that interpretation, which is primarily based on Article 7 read in conjunction with Article 15 of that regulation. It states that, pursuant to the latter article, a court of a Member State seised of a succession matter over which it has no jurisdiction under that regulation is to declare of its own motion that it has no jurisdiction.

33. Furthermore, the Spanish Government relies on the judgments in *Overseas Union Insurance and Others*[7] and *Gasser*[8] and observes that, in the context of the Brussels Convention,[9] the Court held that the jurisdiction of a court is determined, inter alia, directly by the rules of that convention, which are common to both courts and may be interpreted and applied with the same authority by each of them.

34. The Spanish Government likewise refers to the definition of the concept of a 'decision', contained in Article 3(1)(g) of Regulation No 650/2012,[10] and points out that only decisions coming under that definition benefit from the system of mutual recognition established by that regulation.

35. As for the Commission, it states that the decision declining jurisdiction, adopted pursuant to Article 6(a) of Regulation No 650/2012, must be binding on the court seised in the second instance in the light of the existence of a request from one of the parties seeking a declaration declining jurisdiction (second sub-question) and of the fact that the view has been taken that the courts of the Member State whose law has been chosen are better placed to rule on the succession (third sub-question). In support of that interpretation, the Commission refers, inter alia, to the judgment in *Gothaer Allgemeine Versicherung and Others*,[11] which in its view can be transposed to the present case.

36. However, in the Commission's opinion, the court second seised can examine the validity of the choice of the applicable law made pursuant to Article 22 of Regulation No 650/2012 (third sub-question). In its view, there is a degree of contradiction between the general principle that the court seised second cannot examine the decision declining jurisdiction and the fact that the court seised second is the court required to determine the applicable law. The court seised

7 Judgment of 27 June 1991 (C-351/89, EU:C:1991:279, paragraph 23).

8 Judgment of 9 December 2003 (C-116/02, EU:C:2003:657, paragraph 48).

9 Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32), as amended by the successive conventions on the accession of the new Member States to that convention ('the Brussels Convention').

10 Pursuant to Article 3(1)(g) of Regulation No 650/2012.

11 Judgment of 15 November 2012 (C-456/11, EU:C:2012:719).

second must therefore be able to examine the validity of the choice of law made in favour of the law of the forum State not as regards international jurisdiction but rather the effect of that choice in terms of the conflict of laws. In the present case, as far as concerns such jurisdiction, the court previously seised ruled on the basis of its own assessment of Article 6(a) of Regulation No 650/2012, which presupposes in all cases a choice of law made pursuant to Article 22 of that regulation.

C. The mechanism laid down in Article 6(a) and in Article 7(a) of Regulation No 650/2012

37. As has been noted in legal literature,[12] the mechanism laid down in Article 6(a) and in Article 7(a) of Regulation No 650/2012 is guided by the *forum non conveniens* doctrine, which also echoes other provisions of EU private international law, such as Article 12 of that regulation, Article 15 of Regulation (EC) No 2201/2003[13] and Articles 33 and 34 of Regulation (EU) No 1215/2012.[14]

38. However, the specific features of that mechanism set it apart from the typical manifestations of the *forum non conveniens* doctrine. The factors on the basis of which the second question referred for a preliminary ruling can be answered must therefore be found primarily in Regulation No 650/2012 itself. Those factors concern, in the first place, the nature of the conditions referred to in the three sub-questions to which a decision declining jurisdiction adopted pursuant to Article 6(a) of that regulation is subject; in the second place, the classification of that decision as a decision falling within the scope of the recognition mechanism established by that regulation; and, in the third place, the effect produced by that decision as regards the division of jurisdiction between Member States.

1. The nature of the conditions referred to in the three sub-questions

39. Article 6(a) of Regulation No 650/2012 concerns an option to decline jurisdiction. Even if the conditions relating to the choice of the law of a Member State whose nationality the deceased possessed (first sub-question) and to the existence of a request made by one of the parties seeking a declaration declining jurisdiction (second sub-question) are met, the court previously seised is by no means obliged to decline jurisdiction in favour of the courts of that Member State: it *may* do so *if it considers* that those courts are better placed to rule on the succession. The fact that the adoption (or non-adoption) of the decision declining jurisdiction, pursuant to Article 6(a) of Regulation No 650/2012, is a matter for its assessment is a serious indication that that decision should not be reviewed by the courts of another Member State, at the very least to the extent that that decision concerns the fact that the view was taken that the courts of that Member State are better placed to rule on the succession (third sub-question).

[12] See Marongiu Buonaiuti, F., 'Article 6', in Calvo Caravaca, A.L., Davì, A., and Mansel, H.P., *The EU Succession Regulation. A Commentary*, Cambridge University Press, Cambridge, 2016, p. 165.

[13] Council Regulation 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).

[14] Regulation 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).

40. In addition, a request that jurisdiction be declined made pursuant to Article 6(a) of Regulation No 650/2012 (second sub-question) must be drafted and lodged before the court previously seised in accordance with the rules of the *lex fori*. That court can therefore readily examine both whether such a request was made to it by one of the parties to the proceedings and whether it produces effects that enable it to decline jurisdiction.

41. Whilst acknowledging that the conditions referred to in the second and third sub-questions of the second question do not have to be examined by the court previously seised, the Spanish Government takes the view that it follows from Article 7 read in conjunction with Article 15 of Regulation No 650/2012 that the court of a Member State whose nationality the deceased possessed is required to examine its own jurisdiction and, accordingly, to examine whether its national law was chosen by the deceased and whether the court previously seised declined jurisdiction (first sub-question). That argument appears to be based on an interpretation of those provisions to the effect that the factors to which the wording of the former provision refers must be examined by the court of the Member State whose nationality the deceased possessed. [15]

42. In addition, although, by its second question, the referring court asks the Court to interpret Articles 6(a) and 7(a) of Regulation No 650/2012, the conditions to which that court refers by the three sub-questions are set out in the former provision. Those conditions govern the jurisdiction of the courts as laid down in Articles 4 and 10 of that regulation or, more specifically, determine whether those courts may decline the jurisdiction that they are required to exercise, save in the cases expressly provided for in that regulation.

43. By contrast, the conditions to which that court refers by its three sub-questions are only indirectly laid down in Article 7(a) of Regulation No 650/2012, since that provision applies 'if a court previously seised has declined jurisdiction in the same case pursuant to Article 6'. It is true that the first part of Article 7 of that regulation does refer to the 'courts of a Member State whose law had been chosen by the deceased pursuant to Article 22'. Nevertheless, the condition relating to the choice of the law of that Member State already appears in Article 6 of that regulation. [16] The purpose of the reference to Article 7 is, according to the referring court, only to designate the courts covered by that provision.

44. Thus, the examination carried out by those courts pursuant to Article 15 of Regulation No 650/2012 must cover whether a decision declining has been adopted on the basis of Article 6(a) of that regulation. By contrast, compliance with the conditions mentioned by the referring court in the three sub-questions of the second question must be examined by a court with jurisdiction under Article 4 or Article 10 of that regulation. In so doing, that court is, in practice, to examine the conditions for its jurisdiction. As is apparent from the judgments in *Overseas Union Insurance and Others* [17] and *Gasser*, [18] to which the Spanish Government refers, the court subsequently seised is never in a better position than the court previously seised to determine whether the latter has jurisdiction.

[15] The factors relating to whether the deceased chose his national law and whether the court previously seised by virtue of the deceased's habitual residence declined jurisdiction appear to be reflected in the wording of Article 7 of Regulation No 650/2012, according to which that provision concerns 'the courts of a Member State whose law had been chosen by the deceased pursuant to Article 22', which are to have jurisdiction if 'a court previously seised has declined jurisdiction in the same case pursuant to Article 6'.

[16] 'Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State …'

[17] Judgment of 27 June 1991 (C-351/89, EU:C:1991:279, paragraph 23).

[18] Judgment of 9 December 2003 (C-116/02, EU:C:2003:657, paragraph 48).

45. That consideration is not called into question by the Commission's argument by which it appears to refer to a dual nature of the condition concerning the choice of the law of the Member State whose nationality the deceased possessed. That argument seems to be based on the interpretation that the court previously seised would examine the choice of the law applicable to the succession solely for the purpose of the rules of jurisdiction, such that it would be for the court subsequently seised to examine that choice for the purpose of the conflict-of-law rules.

46. However, there is no basis for the view that Regulation No 650/2012 draws a distinction between the choice of the law applicable that is valid for the purpose of the rules of jurisdiction and the choice valid for the purpose of the conflict-of-law rules. This is always a choice made (or deemed to have been made) on the basis of the same provisions of that regulation and, as legal academics have noted, the existence of a valid choice of law found to exist by the court previously seised is not re-examined by the courts of the Member State whose law has been chosen and which are seised pursuant to Article 7(a) of the same regulation.[19] In addition, a declaration declining jurisdiction in favour of those courts allows the compatibility of forum and *ius* to be preserved.

2. The decision on declining jurisdiction as a decision covered by the recognition mechanism

47. As the Commission observes, it follows from the judgment in *Gothaer Allgemeine Versicherung and Others*[20] that, as far as concerns Regulation (EC) No 44/2001,[21] which replaced the Brussels Convention, a decision by which a court of a Member State declines jurisdiction on the basis of a jurisdiction clause is a decision falling within the scope of the recognition mechanism established by that regulation and binds the courts of other Member States as regards the finding on the validity of that clause.

48. Since the provisions of the Brussels Convention to which the Court referred in the judgment in *Gothaer Allgemeine Versicherung and Others* in arriving at that solution are not substantially different from those of Regulation No 650/2012, it is my view that the guidance provided in the judgment in *Gothaer Allgemeine Versicherung and Others*[22] can be transposed to that regulation.

49. Accordingly, *mutatis mutandis*, a decision declining jurisdiction binds the courts of other Member States as regards the finding that the conditions set out in Article 6(a) of Regulation No 650/2012 were met when that decision was adopted, if those conditions were examined by that court.[23]

[19] See Bonomi, A., 'Article 6', in Bonomi, A., Wautelet, P., *Le droit européen des successions. Commentaire du règlement (UE) No 650/2012, du 4 juillet 2012*, Bruylant, Brussels, 2016, p. 219. See also, to that effect, Marongiu Buonaiuti, F., 'Article 7', in Calvo Caravaca, A.L., Davì, A., and Mansel, H.P., *The EU Succession Regulation. A Commentary*, Cambridge University Press, Cambridge, 2016, p. 174.

[20] Judgment of 15 November 2012 (C-456/11, EU:C:2012:719).

[21] Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

[22] Judgment of 15 November 2012 (C-456/11, EU:C:2012:719).

[23] The Court held, in judgment of 15 November 2012, *Gothaer Allgemeine Versicherung and Others* (C-456/11, EU:C:2012:719, paragraph 41), that a judgment by which a court of a Member State has declined jurisdiction on the basis of a jurisdiction clause, on the ground that that clause is valid, binds the courts of the other Member States both as regards that court's decision to decline jurisdiction, contained in the operative part of the judgment, and as regards the finding on the validity of that clause, contained in the *ratio decidendi* which provides the necessary underpinning for that operative part. I infer from that that a court first seised must state, in the operative part of its judgment or the grounds therefor, that the conditions referred to in the three sub-questions of the second question referred for a preliminary ruling were examined when the decision declining jurisdiction was adopted so that the court seised second can establish, on the basis of that operative part and/or those grounds, that a decision declining jurisdiction has been adopted on the basis of Article 6(a) of Regulation No 650/2012, which binds that court as regards those three conditions, preventing it from being able to call into question the merits of the examinations carried out by the court previously seised.

50. The conditions set out in Article 6(a) of Regulation No 650/2012 are conditions of jurisdiction, in the broad sense of the term, which determine, more specifically, whether the court previously seised may decline jurisdiction.[24] Furthermore, the decision declining jurisdiction falls within the scope of the recognition mechanism established by Regulation No 650/2012. Moreover, compliance with the principle of mutual trust in the administration of justice in the Member States, which underlies the application of the provisions of that regulation relating to the recognition and enforcement of decisions,[25] allows recognition of the decision to be refused only in the situations provided for in that regulation. Following that logic, in accordance with Article 41 of that regulation, a decision declining jurisdiction adopted in a Member State cannot be reviewed as to its substance. The absence of any review of the substance usually extends to the court's application of the harmonised rules of jurisdiction.[26] In addition, Article 40 of the same regulation, which sets out grounds of non-recognition, does not allow a court of another Member State to refuse to recognise a decision declining jurisdiction solely on the ground that it considers that EU law was misapplied in that decision.[27]

51. Furthermore, that solution can be explained by the fact that the decision declining jurisdiction adopted pursuant to Article 6(a) of Regulation No 650/2012 is open to review within the legal system of the Member State of the court previously seised. That review may also cover the examination of the conditions referred to in the three sub-questions of the second question. Moreover, in order to ensure the uniform interpretation of the rules of that regulation within the Union, the courts of that legal system may have recourse to the preliminary ruling mechanism established under Article 267 TFEU.

52. Thus, in keeping with the principle of mutual trust in the administration of justice in the Member States, a court of another Member State, which is seised subsequently pursuant to Article 7(a) of Regulation No 650/2012, cannot take the place of the courts performing the judicial review within the legal system of the Member State of the court previously seised. It follows from the foregoing that a court subsequently seised cannot examine the conditions referred to in the three sub-questions of the second question if those conditions have been examined by the court previously seised.

3. The effect produced by the declining of jurisdiction pursuant to Article 6(a) of Regulation No 650/2012

53. Article 22(1) of Regulation No 650/2012 allows a person to choose as the law to govern his or her succession as a whole the law of the State whose nationality he or she possesses. Article 83(4) of that regulation provides that that law is deemed to have been chosen as the law applicable to the succession. A court previously seised pursuant to Article 4 or Article 10 of that regulation may decline jurisdiction only in favour of the courts of the *Member State* whose nationality the deceased possessed. If the law of a third State has been chosen (or is deemed to have been chosen) as the law applicable to the succession, a court previously seised cannot decline jurisdiction in favour of the courts of that third State.

[24] See point 42 of this Opinion.

[25] Judgment of 23 May 2019, *WB* (C-658/17, EU:C:2019:444, paragraph 52).

[26] See, by analogy, judgment of 15 November 2012, *Gothaer Allgemeine Versicherung and Others* (C-456/11, EU:C:2012:719, paragraph 37).

[27] See also, by analogy, judgment of 11 May 2000, *Renault* (C-38/98, EU:C:2000:225, paragraph 33).

54. Legal authors have considered several reasons that could explain that solution without finding any of them to be entirely convincing. [28] Another reason could relate to the effect produced by the declining of jurisdiction, which results in jurisdiction automatically being conferred on the courts of the Member State whose nationality the deceased possessed. However, the courts of a third State which do not apply Regulation No 650/2012 cannot be compelled, pursuant to Article 7(a) of that regulation, to exercise the jurisdiction that a court of a Member State has declined. In addition, those courts do not enjoy the mutual trust between Member States that underlies that regulation.

55. The legislature's intention to focus on the effect produced by the declining of jurisdiction is borne out by analysis of the *travaux préparatoires* for Regulation No 650/2012.

56. Article 5(1) of the proposal for a regulation [29] provides that, 'where the law of a Member State was chosen by the deceased to govern their succession …, the court seised in accordance with Article 4 may, at the request of one of the parties and if it considers that the courts of the Member State whose law has been chosen are better placed to rule on the succession, stay proceedings and invite the parties to seise the courts in that Member State with the application'. That same article provided that the court first seised continued to exercise its jurisdiction, first, if the courts of the Member State whose law had been chosen were not seised by a deadline set by that first court [30] and, secondly, if the courts of the Member State whose law had been chosen had not declared themselves competent within a maximum period of eight weeks from the date on which they were seised. [31]

57. The transfer of jurisdiction to the courts of the Member State whose law was chosen by the deceased thus did not occur automatically, [32] but rather where those courts, having been seised of a matter of succession, had agreed to it. As has been noted in legal literature, that solution echoed the solution contained in Article 15 of Regulation No 2201/2003, [33] without ignoring the differences between them.

58. Following the opinion of the Parliament at first reading, [34] the wording of the solution adopted in Article 5 of the proposal for a regulation was finalised; that wording appears in Articles 6(a) and 7(a) of Regulation No 650/2012. The amendment made confirms the intention of the EU legislature not to adopt the solution allowing the courts of the Member State whose law was chosen to decline jurisdiction.

59. In those circumstances, taking the view that the courts of the Member State whose law was chosen or is deemed to have been chosen as the law applicable to the succession can examine whether the conditions set out in Article 6(a) of Regulation No 650/2012 were met when the

28 See Bonomi, A., op. cit., p. 214.

29 Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession (COM(2009) 154 final) ('the proposal for a regulation').

30 Article 5(2) of the proposal for a regulation.

31 Article 5(3) of the proposal for a regulation.

32 This was, moreover, confirmed by the Commission when it stated that 'referral to a more appropriate court should not be automatic where the deceased has chosen the law of another Member State'. See the proposal for a regulation, p. 5.

33 See Lein, E., 'A Further Step Towards a European Code of Private International Law: The Commission Proposal for a Regulation on Succession', *Yearbook of Private International Law*, 2009, Vol. XI, pp. 119 and 120.

34 Position of the European Parliament adopted at first reading on 13 March 2012, EP-PE_TC1-COD(2009) 157.

decision declining jurisdiction was adopted could amount, in practice, to affording those courts the possibility of declining the jurisdiction that follows from that declining of jurisdiction and would therefore weaken the mechanism provided for in Articles 6(a) and 7(a) of that regulation.

60. The court which declined jurisdiction pursuant to Article 6(a) of Regulation No 650/2012 would not automatically have jurisdiction once more, which could lead to situations in which justice is denied.[35] The interpretation to the effect that the courts of the Member State whose nationality the deceased possessed cannot examine whether the conditions referred to in the three sub-questions were met thus avoids the risk of a negative conflict of jurisdiction which could arise if the court previously seised were to decline jurisdiction and if the court of the Member State whose nationality the deceased possessed were to consider that the conditions set out in Article 6(a) of that regulation are not met.

61. In view, in the first place, of the nature of the conditions referred to in the three sub-questions, which determine whether the court previously seised may decline the jurisdiction which it is, in principle, obliged to exercise;[36] in the second place, the classification of the decision declining jurisdiction as a decision falling within the scope of the recognition mechanism established by Regulation No 650/2012;[37] and, in the third place, of the aim of ensuring that that decision produces the effect intended by the EU legislature,[38] I propose that the second question referred for a preliminary ruling be answered to the effect that Articles 6(a) and 7(a) of that regulation are to be interpreted as meaning that the court of the Member State whose jurisdiction is intended to follow from a declaration declining jurisdiction by the court previously seised is not competent to examine, first, whether the court previously seised correctly found that the law of that Member State was chosen or is deemed to have been chosen to govern the succession, secondly, whether one of the parties to the proceedings made a request to the court previously seised pursuant to Article 6(a) of that regulation and, thirdly, whether the court previously seised correctly found that the courts of the Member State are better placed to rule on the succession, if those three conditions were examined by the court previously seised.

V. Conclusion

62. In the light of the foregoing considerations, I propose that the Court answer the second question referred by the Oberlandesgericht Köln (Higher Regional Court, Cologne, Germany) for a preliminary ruling as follows:

Articles 6(a) and 7(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 are to be interpreted as meaning that the court of the Member State whose jurisdiction is intended to follow from a declaration declining jurisdiction by the court previously seised is not competent to examine, first, whether the court previously seised correctly found that the law of that Member State was chosen or is deemed to have been chosen to govern the succession, secondly, whether one of the parties to the

[35] It is true that, in some circumstances, such a situation could theoretically be avoided by applying Article 11 of Regulation No 650/2012, which provides for a *forum necessitatis*. However, that provision lays down conditions that may preclude its application where the courts of two Member States have already found that they lack jurisdiction to rule on a succession.

[36] See points 42 to 44 of this Opinion.

[37] See point 52 of this Opinion.

[38] See point 54 of this Opinion.

proceedings made a request to the court previously seised pursuant to Article 6(a) of that regulation and, thirdly, whether the court previously seised correctly found that the courts of the Member State are better placed to rule on the succession, if those three conditions were examined by the court previously seised.