Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

13 October 2016*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 1(1)(a) — Material scope — Action for annulment of marriage brought by a third party after the death of one of the spouses — Article 3(1) — Jurisdiction of the courts of the Member State of residence of the 'applicant' — Scope)

In Case C-294/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw, Poland), made by decision of 20 March 2015, received at the Court on 17 June 2015, in the proceedings

Edyta Mikołajczyk

v

Marie Louise Czarnecka,

Stefan Czarnecki,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Prechal, A. Rosas, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— the Polish Government, by B. Majczyna, acting as Agent,

— the Italian Government, by G. Palmieri, acting as Agent, and by P. Pucciariello, avvocato dello Stato,

— the European Commission, by M. Wilderspin and A. Stobiecka-Kuik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 May 2016,

gives the following

* * Language of the case: Polish.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1(1)(a) and the fifth and sixth indents of Article (3)(1)(a) of 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).

2 The request has been made in proceedings between Edyta Mikołajczyk, the applicant, and Stefan Czarnecki (deceased; represented in the main proceedings by an executor) and Marie Louise Czarnecka, the defendants, concerning an application for annulment of the marriage between the two defendants.

Legal context

EU law

3 Recitals 1 and 8 of Regulation No 2201/2003 state:

‘(1) The European Community has set the objective of creating an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.

...

(8) As regards judgments on divorce, legal separation or marriage annulment, this Regulation should apply only to the dissolution of matrimonial ties and should not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures.’

4 Article 1 of that regulation provides:

‘1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

(a) divorce, legal separation or marriage annulment;

...

3. This Regulation shall not apply to:

(a) the establishment or contesting of a parent-child relationship;

(b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;

(c) the name and forenames of the child;

(d) emancipation;

(e) maintenance obligations;

(f) trusts or succession;

(g) measures taken as a result of criminal offences committed by children.'

5 Article 3(1) of that regulation is worded as follows:

'In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

— the spouses are habitually resident, or

— the spouses were last habitually resident, in so far as one of them still resides there, or

— the respondent is habitually resident, or

— in the event of a joint application, either of the spouses is habitually resident, or

— the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or

— the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her "domicile" there;

...'

6 Article 17 of the regulation, entitled 'Examination as to jurisdiction', provides:

'Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.'

Polish law

7 It is apparent from the order for reference that, under Article 13(1) of the kodeks rodzinny i opiekuńczy (Law of 25 February 1964 on the Family and Guardianship Code) (Dz. U. No 9, item 59, as amended), a person who is already married may not contract another marriage.

8 Article 13(2) of that law provides that annulment of a marriage on the ground that one of the spouses is still married to another person may be requested by any person who has a legal interest in the matter.

9 Article 13(3) of the law then provides that a marriage cannot be annulled on the ground that one of the spouses is still married to another person if the previous marriage has been dissolved or annulled, unless the dissolution of that marriage resulted from the death of the person who contracted a new marriage while remaining party to a marriage contracted previously.

10 Pursuant to Article 1099 of the kodeks postępowania cywilnego (Law of 17 November 1964 on the Code of Civil Procedure) (Dz. U. No 43, item 296, as amended), the court seised is required to consider, of its own motion and at all stages of the proceedings, whether the national courts have jurisdiction, and is required to declare the application inadmissible should it find the national courts do not have jurisdiction. A finding that national courts do not have jurisdiction constitutes a ground of invalidity of the proceedings.

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

11 On 20 November 2012, Edyta Mikołajczyk brought an action before the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland) seeking annulment of the marriage of Stefan Czarnecki to Marie Louise Czarnecka (née Cuenin), entered into on 4 July 1956 in Paris (France). The applicant stated that she was the heir to the estate of Zdzisława Czarnecka, Stefan Czarnecki's first wife, who died on 15 June 1999.

12 According to the applicant, the marriage of Stefan Czarnecki to Zdzisława Czarnecka, contracted on 13 July 1937 in Poznań (Poland), had not been dissolved at the time the marriage between Stefan Czarnecki and Marie Louise Czarnecka was contracted. Consequently, that second marriage was a bigamous union which should therefore be annulled.

13 Marie Louise Czarnecka contended that the action for annulment was inadmissible because the Polish courts did not have jurisdiction. She submitted that, pursuant to the second and third indents of Article 3(1)(a) of Regulation No 2201/2003, that action should have been addressed to a court of the Member State in which the spouses were last habitually resident, in so far as one of them is still habitually resident in that State, or to a court of the State where the respondent is habitually resident, namely, in both cases, France. The executor representing, in the main proceedings, Stefan Czarnecki, who died on 3 March 1971 in France, supported the view of Marie Louise Czarnecka.

14 By order of 9 September 2013, which became definitive in the absence of any challenge by the parties, the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) dismissed the plea of inadmissibility and held that, pursuant to the fifth indent of Article 3(1)(a) of Regulation No 2201/2003, it had jurisdiction to hear the action for annulment of the marriage.

15 By judgment of 13 February 2014, that court held that the action for annulment was unfounded, as the applicant had not proved that the first marriage of Stefan Czarnecki had not been dissolved at the time the marriage between Stefan Czarnecki and Marie Louise Czarnecka was contracted. To the contrary, it was apparent from the facts, as established by that court, that the first marriage had been dissolved by divorce on 29 May 1940.

16 Edyta Mikołajczyk brought an appeal against that judgment before the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw), the referring court.

17 The referring court considers that it is required, under Article 17 of Regulation No 2201/2003 and Article 1099 of the Code of Civil Procedure to consider of its own motion whether it has international jurisdiction to hear the main proceedings, notwithstanding the fact that the court of first instance has already ruled on that point.

18 In that regard, the referring court has expressed doubts concerning the interpretation, in particular, of Articles 1 and 3 of Regulation No 2201/2003, and seeks clarification on the material scope of that regulation. It thus asks, first, whether an action for annulment of a marriage brought following the death of one of the spouses falls within the scope of the regulation. In that context, it observes that Regulation No 2201/2003 repealed Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (OJ 2000 L 160, p. 19), the contents of which largely reproduced that of the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters, drawn up by Council Act of 28 May 1998 (OJ 1998 C 221, p. 1). The explanatory report on that Convention, written by Alegria Borrás and approved by the Council (OJ 1998 C 221, p. 27), stated that the scope of the Convention does not extend to cases where the validity of a marriage is considered on the basis of a petition for its annulment following the death of one or both spouses.

19 Secondly, again in relation to the material scope of Regulation No 2201/2003, and in the event of an affirmative answer to its first question, the referring court asks whether an action for annulment of marriage brought by a person other than one of the spouses falls under that regulation.

20 Should the second question be answered in the affirmative, the referring court requests clarification as to whether the jurisdiction of the courts of a Member State to hear an action for annulment of marriage brought by a third party may be based on the grounds provided for in the fifth and sixth indents of Article 3(1)(a) of Regulation No 2201/2003 so that the courts of the Member State in which that third party is habitually resident could assume jurisdiction without there being a link between the court seised and the place in which the spouses or one of the spouses was habitually resident.

21 In those circumstances, the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Do actions for annulment of a marriage following the death of one of the spouses fall within the scope of Regulation No 2201/2003?

(2) In the event of an affirmative answer to Question 1, does the scope of that regulation extend to an action for annulment of marriage brought by a person other than one of the spouses?

(3) In the event of an affirmative answer to Question 2, in actions for annulment of marriage brought by a person other than one of the spouses, may the jurisdiction of the court be based on the grounds set out in the fifth and sixth indents of Article 3(1)(a) of the regulation?’

Consideration of the questions referred

The first and second questions

22 By its first and second questions, which should be examined together, the referring court asks, in essence, whether an action for annulment of marriage brought by a third party following the death of one of the spouses falls within the scope of Regulation No 2201/2003.

23 Under Article 1(1)(a) of Regulation No 2201/2003, the regulation is to apply, whatever the nature of the court or tribunal, in civil matters relating to divorce, legal separation or marriage annulment.

24 To determine whether an application falls within the scope of that regulation, the focus must be on the object of the application (judgment of 21 October 2015, *Gogova*, C-215/15, EU:C:2015:710, paragraph 28 and the case-law cited). In the present case, it is apparent from the order for reference that the referring court has been requested to rule on an application for annulment of the marriage contracted on 4 July 1956 in Paris between Marie Louise Czarnecka and Stefan Czarnecki, an application based on the alleged existence of a previous marriage contracted between Zdzisława Czarnecka and Stefan Czarnecki. In principle, the object of that action is therefore ‘marriage annulment’ within the meaning of Article 1(1)(a) of Regulation No 2201/2003.

25 Nevertheless, the referring court is uncertain whether such an action falls within the scope of that regulation when brought by a third party following the death of one of the spouses.

26 In that regard, it follows from the Court's settled case-law that in interpreting a provision of EU law, it is necessary to consider not only its wording but also its context and the aims pursued by the legislation of which it forms part (judgments of 19 September 2013, *Van Buggenhout and Van de Mierop*, C-251/12, EU:C:2013:566, paragraph 26, and of 26 March 2015, *Litaksa*, C-556/13, EU:C:2015:202, paragraph 23).

27 As regards, first, the terms of Article 1(1)(a) of Regulation No 2201/2003, it should be noted that that provision states, inter alia, that marriage annulment is one of the matters which fall within the scope of that regulation, without making any distinction on the basis of the date on which such an action is brought in relation to the death of one of the spouses or the identity of the person entitled to bring such an action. Consequently, if account is taken only of the wording of that provision, an action for annulment of marriage brought by a third party following the death of one of the spouses would appear to fall within the scope of Regulation No 2201/2003.

28 Such an interpretation of Article 1(1)(a) of Regulation No 2201/2003 is, in the second place, supported by the context of that provision.

29 In that regard, it should be noted that Article 1(3) of Regulation No 2201/2003 provides an exhaustive list of matters excluded from the scope of the regulation, including, inter alia, maintenance obligations as well as trusts and successions. Recital 8 of that regulation also states that the regulation should apply only to the dissolution of matrimonial ties and should not deal with issues such as the property consequences of the marriage.

30 On the other hand, an action for annulment of marriage brought by a third party following the death of one of the spouses is not included in the list, set out in Article 1(3) of Regulation No 2201/2003, of matters excluded from the scope of that regulation.

31 In addition, while it is true that, according to the referring court, Edyta Mikołajczyk's legal interest in bringing the action in the main proceedings is linked to her status as the heir to the estate of Zdzisława Czarnecka, that court states that the dispute relates only to the annulment of the marriage between Marie Louise Czarnecka and Stefan Czarnecki and cannot therefore come within Article 1(3)(f) of Regulation No 2201/2003 relating to trusts and successions, which fall outside the scope of the regulation.

32 Third , the interpretation of Article 1(1)(a) of Regulation No 2201/2003 to the effect that an action for annulment of marriage brought by a third party following the death of one of the spouses falls within the scope of that regulation is also borne out by the objective pursued by that regulation.

33 In that regard, it should be noted that, according to recital 1 of Regulation No 2201/2003, that regulation is to contribute to the creation of an area of freedom, security and justice, in which the free movement of persons is ensured. Accordingly, with the objective of ensuring legal certainty, Chapters II and III of the regulation lay down rules on jurisdiction and on recognition and enforcement of judgments concerning the dissolution of matrimonial ties (judgment of 16 July 2009, *Hadadi*, C-168/08, EU:C:2009:474, paragraphs 47 and 48).

34 Excluding an action such as that in the main proceedings from the scope of Regulation No 2201/2003 would undermine the attainment of that objective, in so far as that exclusion would be liable to increase legal uncertainty as a result of there being no uniform regulatory framework in this area, especially since Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ 2012 L 201, p. 107), does not cover matters relating to the status of natural persons or family relationships.

35 Furthermore, as the Advocate General stated in point 27 of his Opinion, the fact that the action for annulment at issue in the main proceedings relates to a marriage previously dissolved by the death of one of the spouses does not mean that the action falls outside the scope of Regulation No 2201/2003. Indeed, it cannot be excluded that a person may have an interest in having a marriage annulled, even after the death of one of the spouses.

36 While such an interest must be assessed in the light of the applicable national legislation, there is no reason to deprive a third party who has brought an action for annulment of marriage following the death of one of the spouses of the benefit of the uniform conflict of law rules laid down by Regulation No 2201/2003.

37 In the light of the foregoing considerations, the answer to the first and second questions referred is that Article 1(1)(a) of Regulation No 2201/2003 must be interpreted as meaning that an action for annulment of marriage brought by a third party following the death of one of the spouses falls within the scope of Regulation No 2201/2003.

The third question

38 By its third question, the referring court asks, in essence, whether the fifth and sixth indents of Article 3(1)(a) of Regulation No 2201/2003 must be interpreted as meaning that a person other than one of the spouses who brings an action for annulment of marriage may rely on the grounds of jurisdiction provided for in those provisions.

39 The referring court has doubts regarding the answer to that question, in so far as, in the event of an affirmative answer, a court with no connection to the habitual place of residence of the spouses or one of the spouses could hear an action for annulment of marriage brought by a third party.

40 In that regard, it should be noted that Article 3 of Regulation No 2201/2003 lays down the general criteria of jurisdiction with respect to divorce, legal separation and marriage annulment. These criteria, which are objective, alternative and exclusive, meet the need for rules that address the specific requirements of conflicts relating to the dissolution of matrimonial ties.

41 While the first to fourth indents of Article 3(1)(a) of Regulation No 2201/2003 expressly refer to the habitual residence of the spouses and of the respondent as criteria, the fifth and sixth indents of Article 3(1)(a) permit the application of the jurisdiction rules of the *forum actoris*.

42 The latter provisions recognise, under certain conditions, the jurisdiction of the courts of the Member State in whose territory the applicant is habitually resident to rule on the dissolution of matrimonial ties. Thus, the fifth indent of Article 3(1)(a) of Regulation No 2201/2003 establishes such jurisdiction where the applicant has resided there for at least a year immediately before the application was made, while the sixth indent of Article 3(1)(a) of that regulation also confers jurisdiction where the applicant has resided there for at least six months immediately before the application was made and is a national of the Member State in question or, in certain cases, is domiciled there.

43 In those circumstances, it is appropriate, for the purposes of answering the question referred by the national court, to determine the precise scope of the term ‘applicant’ within the meaning of those provisions, in order to determine whether that term is limited to spouses, or whether it also extends to third parties.

44 The Court of Justice has consistently held that the need for a uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union,

which must take into account the context of that provision and the purpose of the legislation in question (see, to that effect, judgments of 2 April 2009, *A*, C-523/07, EU:C:2009:225, paragraph 34, and of 16 July 2009, *Hadadi*, C-168/08, EU:C:2009:474, paragraph 38).

45 Since the fifth and sixth indents of Article 3(1)(a) of Regulation No 2201/2003 make no express reference to the law of the Member States for the purpose of determining the scope of the term 'applicant', that scope must be determined in the light of the context of those provisions and the purpose of the regulation.

46 As regards the context of the fifth and sixth indents of Article 3(1)(a) of Regulation No 2201/2003, it is apparent from the case-law of the Court that that article provides for a number of grounds of jurisdiction, without establishing any hierarchy, since the objective criteria set out in that article are alternatives (see, to that effect, judgment of 16 July 2009, *Hadadi*, C-168/08, EU:C:2009:474, paragraph 48).

47 It follows that the system for sharing jurisdiction established by Regulation No 2201/2003 concerning the dissolution of matrimonial ties is not intended to preclude the courts of several States having jurisdiction. Rather, the coexistence of several courts having jurisdiction is expressly provided for, without any hierarchy being established between them (judgment of 16 July 2009, *Hadadi*, C-168/08, EU:C:2009:474, paragraph 49).

48 As regards the criteria listed in Article 3(1)(a) of that regulation, the Court has held that they are based in various respects on the habitual residence of the spouses (judgment of 16 July 2009, *Hadadi*, C-168/08, EU:C:2009:474, paragraph 50).

49 It follows from the foregoing that the jurisdiction rules laid down in Article 3 of Regulation No 2201/2003, including those referred to in the fifth and sixth indents of Article 3(1)(a), are designed to protect the interests of spouses.

50 Such an interpretation is consonant with the objective pursued by that regulation, which established flexible conflict of law rules to reflect the mobility of individuals and to protect the rights of a spouse who has left the country of common habitual residence, while ensuring there is a genuine link between the party concerned and the Member State exercising jurisdiction (see, to that effect, judgment of 29 November 2007, *Sundelind Lopez*, C-68/07, EU:C:2007:740, paragraph 26).

51 It follows that, while an action for annulment of marriage brought by a third party falls within the scope of Regulation No 2201/2003, the third party must be bound by the jurisdiction rules set out for the benefit of spouses. That interpretation does not, moreover, deprive that third party of access to the courts, since the third party may rely on other grounds of jurisdiction provided for in Article 3 of that regulation.

52 Accordingly, the term 'applicant' within the meaning of the fifth and sixth indents of Article 3(1)(a) of Regulation No 2201/2003 does not extend to persons other than spouses.

53 In the light of the foregoing considerations, the answer to the third question is that the fifth and sixth indents of Article 3(1)(a) of Regulation No 2201/2003 must be interpreted as meaning that a person other than one of the spouses who brings an action for annulment of marriage may not rely on the grounds of jurisdiction set out in those provisions.

Costs

54 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

1. **Article 1(1)(a) of 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 an action for annulment of marriage brought by a third party following the death of one of the spouses falls within the scope of Regulation No 2201/2003.**

2. **The fifth and sixth indents of Article 3(1)(a) of Regulation No 2201/2003 must be interpreted as meaning that a person other than one of the spouses who brings an action for annulment of marriage may not rely on the grounds of jurisdiction set out in those provisions.**

[Signatures]