Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 25 June 2015 [1]

Case C-404/14

Marie Matoušková, court commissioner in succession proceedings
(Request for a preliminary ruling from

the Nejvyšší soud České republiky (Czech Republic))

(Council Regulation (EC) No 2201/2003 — Jurisdiction of the courts and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility — Material scope — Agreement on the sharing-out of an estate between the deceased's spouse and their children represented by a guardian ad litem — Requirement of court approval)

I – **Introduction**

1. In the present case the Court of Justice will define the material scope of the Brussels IIa Regulation [2] in respect of 'the matters of parental responsibility'.

2. These matters are, in principle, covered by the scope of application of the Brussels IIa Regulation. However, Article 1(3)(f) of that regulation provides that the Regulation is not to apply to 'trusts or succession'.

3. The referring court wishes to know whether the exception laid down in Article 1(3)(f) is applicable where a guardian *ad litem*, appointed for minor children in succession proceedings, reaches an agreement in the name of the minor children on the sharing-out of an estate and this agreement is then to be approved by a court.

4. In answering this question referred for a preliminary ruling, the Court of Justice is also given the opportunity to demarcate the respective areas of application of the Brussels IIa Regulation and the Succession Regulation. [3]

1 — Original language: German.

2 — 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).

3 — 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): see, as regards its entry into force and validity, Article 84 of the Succession Regulation.

II – **Legal framework**

5. According to recitals 5 and 9 in its preamble, the Brussels IIa Regulation covers 'all decisions on parental responsibility' and accordingly covers, inter alia, 'the designation and functions of a person or body having charge of the child's property, representing or assisting the child, and ... the administration, conservation or disposal of the child's property …'.

6. Article 1 of the Brussels IIa Regulation sets out the material scope of the Regulation and provides as follows:

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

…

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. The matters referred to in paragraph 1(b) may, in particular, deal with:

…

(b) guardianship, curatorship and similar institutions;

(c) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;

…

(e) measures for the protection of the child relating to the administration, conservation or disposal of the child's property.

3. This Regulation shall not apply to:

…

(f) trusts or succession;

…'

7. Article 2(7) of the Brussels IIa Regulation establishes that 'parental responsibility' encompasses 'all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect'. In this regard, according to Article 2(8) of the Regulation, the term 'holder of parental responsibility' shall mean 'any person having parental responsibility over a child'.

III – **The dispute in the main proceedings and the question referred**

8. In May 2009 a Czech national died in the Kingdom of the Netherlands. She was survived by her spouse and their two minor children ('the heirs'). At the time of the deceased's death, the heirs were resident in the Netherlands.

9. In April 2010 the Městsky soud v Brně (Brno Municipal Court) commenced succession proceedings and appointed a notary, Ms Matoušková as court commissioner to be responsible for the detailed steps in the proceedings. In view of possible conflicts of interest on the part of the heirs, the Městsky soud also appointed a guardian *ad litem* to represent the minor children.

10. In July 2011 the heirs concluded an agreement on the sharing-out of the estate, with the minor children being represented by their guardian *ad litem*.

11. In August 2012 new facts were introduced in the succession proceedings by the surviving spouse: at the time of her death the deceased's place of residence was in reality in the Netherlands and not, as previously assumed, in the Czech Republic. In addition, he submitted a Netherlands certificate of succession dated 14 March 2011 which had been issued in the context of succession proceedings in the Netherlands.

12. In light of this, the agreement on the sharing-out of the estate concluded in July 2011 was amended to correspond to the outcome of the succession proceedings which had already taken place in the Netherlands.

13. In August 2012 the court commissioner requested the Městsky soud Brno to approve the agreement on the sharing-out of the estate on behalf of the minor children.

14. The Městsky soud Brno did not allow the court commissioner's application on the merits because the minor children were long-term residents outside the Czech Republic, nor was it prepared to declare that it had no jurisdiction or to refer the matter to the Nejvyšší soud (Supreme Court of the Czech Republic) for the purpose of designation of jurisdiction.

15. In view of this, on 10 July 2013 the court commissioner applied directly to the Nejvyšší soud, requesting it to designate the court with local jurisdiction to approve the agreement on the sharing-out of the estate.

16. The Nejvyšší soud stayed its proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'If an agreement on the sharing-out of the estate concluded on behalf of a minor by his or her guardian *ad litem* requires the approval of a court in order to be valid, is that decision on the part of the court a measure within the meaning of Article 1(1)(b) or a measure within the meaning of Article 1(3)(f) 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?'

IV – **Legal assessment**

17. The situation described by the referring court and the national procedural process leave many questions unanswered, which is why the admissibility of the question referred must be examined first.

A – *Admissibility of the request for a preliminary ruling*

18. Based on the information provided by the referring court, it is not possible for the Court of Justice to gain a complete overview of the succession at issue. This is particularly true of the succession proceedings in the Netherlands, the procedural course of which remains largely unclear.

19. The Court has not learnt why succession proceedings were commenced not only in the Czech Republic but also in the Netherlands, nor is it clear from the order for reference whether the minor children were represented in the proceedings in the Netherlands. Moreover, the question whether the certificate of succession issued in the Netherlands governs only the rights of the father or also those of the children remains unanswered, as does the question whether, after completion of the succession proceedings in the Netherlands, further action by the Czech court commissioner or by the Městsky soud Brno is even required.

20. However, notwithstanding these uncertainties, the Court of Justice has sufficient information to decide the question referred by the national court.

21. The question referred relates solely to whether the court approval applied for, which relates to the agreement on the sharing-out on the estate concluded in the Czech succession proceedings, falls within the scope of the Brussels IIa Regulation and therefore does not affect the succession proceedings in the Netherlands.

22. The Czech succession proceedings, which are alone at issue, are comprehensively described by the referring court, so that the factual and legal context of the request for a preliminary ruling is sufficiently clear for the Court.

23. Although questions concerning the legal force of the agreements at issue are not discussed in this context, they can remain open because at the stage of the proceedings involved, the referring court has only to make a decision on jurisdiction. For this it needs to know whether it can rely on the Brussels IIa Regulation or whether this is not applicable. [4]

24. There is therefore no doubt as to the relevance of the question referred, which is, moreover, ultimately a matter for the national court to assess.

25. The admissibility of the request for a preliminary ruling is also not precluded by the fact that the dispute in the main proceedings falls within the ambit of 'non-contentious jurisdiction'.

26. It is true that non-contentious proceedings of a non-judicial nature, such as where a national court exercises administrative authority, [5] do not, in principle, provide grounds for a request for a preliminary ruling. However, a request for a preliminary ruling in the field of non-contentious jurisdiction can none the less be admissible if, in the context of such proceedings, which are actually non-contentious in structure, the application is not granted and a dispute arises in relation to this. [6]

27. Having regard to the negative decision by the Městsky soud Brno, that may be assumed to be the situation in the present case and the request for a preliminary ruling is therefore admissible.

4 — Whether the court approval applied for is even legally necessary and which law is applicable in this respect is also not the subject of the request for a preliminary ruling; this matter can be left open at this stage of the proceedings and therefore does not need to be discussed by the Court of Justice.

5 — For example, judgment in *Job Centre* (C-111/94, EU:C:1995:340, paragraphs 9 to 11) in respect of confirmation of a company's articles of association with a view to its registration under the Italian *giurisdizione volontaria* procedure.

6 — See the aforementioned judgment in *Job Centre*, paragraph 11 of which states: 'Only if the person empowered under national law to apply for such confirmation seeks judicial review of a decision rejecting that application — and thus of the application for registration — may the court seised be regarded as exercising a judicial function … in respect of an application for the annulment of a measure adversely affecting the petitioner …'

B – *Substantive analysis of the question referred*

28. By its question, the referring court is asking essentially whether the Brussels IIa Regulation applies to approval of the Czech agreement on the sharing-out of the estate or whether the exclusion set out in Article 1(3)(f) of the Regulation, which states that 'succession' does not fall within the scope of that regulation, is applicable.

29. At first sight, this provision militates against the Brussels IIa Regulation being considered applicable to the main proceedings.

30. This is particularly so as succession, which is taken out of the scope of the Brussels IIa Regulation, is the subject-matter of the Succession Regulation, which, subject to specified exceptions, aims to deal with '*all*[7] civil-law aspects of succession to the estate of a deceased person'.[8]

31. The conceptual structure of the two regulations is complementary: as succession is excluded from its scope of application, the Brussels IIa Regulation should not conflict with the Succession Regulation. Conversely, what is already exhaustively regulated in the Brussels IIa Regulation does need to be regulated by the Succession Regulation.

32. Although the Succession Regulation does not yet apply *ratione temporis* to the main proceedings in the Czech Republic, its scope of application *rationae materiae* does permit conclusions to be drawn regarding the scope that the legislator ascribes to the exclusion criterion of 'succession' in the Brussels IIa Regulation.

33. With regard to the Czech agreement on the sharing-out of the estate in question, it should first of all be pointed out in this connection that this is not an agreement as to succession within the meaning of the Succession Regulation.

34. Under Article 3(1)(b) of the Regulation, an agreement as to succession means 'an agreement … which … creates, modifies or terminates rights to the future estate or estates of one or more persons party to the agreement'. However, the Czech succession proceedings do not concern a *future* estate but rather the administration of an estate that has *already accrued* by way of a contractual agreement by the heirs.

35. However, in accordance with Article 23 of the Succession Regulation, the Regulation covers not only agreements as to succession but generally 'the succession as a whole', including the 'sharing-out of the estate'.

36. As far as can be ascertained, the Czech agreement in question concerns such a sharing-out of an estate. This immediately suggests that the requirement of approval affecting the agreement could also be classified as succession related and be taken out of the scope of the Brussels IIa Regulation under Article 1(3)(f) of that regulation.

37. However, the succession law context of the Czech approval requirement does not permit the premature and general conclusion to be reached that the Brussels IIa Regulation would not be applicable to it.

7 — Emphasis added.

8 — See recital 9 in the preamble to the Succession Regulation.

38. According to Article 1(2)(b) of the Succession Regulation, 'the legal capacity of natural persons' is excluded from the material scope of the Regulation,[9] that is to say the very area of law with which the main proceedings are concerned, in which a guardianship *ad litem* of minors and the court approval of the agreement concluded by their representative is at issue.

39. There is, accordingly, no risk of a conflict between the content of the Brussels IIa Regulation and the Succession Regulation. On the contrary, there is a need, as far as the legal capacity of natural persons is concerned, to fill a lacuna that has emerged in the scope of application of the Succession Regulation.

40. Recourse to the Brussels IIa Regulation is appropriate for filling this lacuna. By this means, the subject-matter of the main proceedings, on a more restrictive interpretation of the 'succession' exclusion in Article 1(3)(f), permits a complementary and coherent set of rules shaped by EU law to be produced.

41. The fact that legal capacity and the associated representation issues are, in principle, to be assessed in accordance with their own criteria and are not to be regarded as dependent preliminary issues of the legal acts in question has, moreover, already been confirmed by the Court of Justice in *Schneider*.[10] This case was also concerned with problems relating to non-contentious jurisdiction which arose, however, in connection with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.[11]

42. In that case, a national of a Member State who 'lacked full legal capacity' applied in non-contentious proceedings brought before a court in another Member State for authorisation to sell his share of a property situated in that other Member State.

43. The court seised in the Member State in which the property was situated had doubts about its jurisdiction in respect of the non-contentious proceedings, although under Article 22(1) of the Brussels I Regulation, the courts of the Member State in which the property is situated have jurisdiction in proceedings which have as their object rights *in rem* in immovable property.

44. In that context, the Court of Justice held that the Brussels I Regulation does *not* apply to such non-contentious proceedings. Those proceedings are concerned with the 'legal capacity of natural persons' within the meaning of Article 1(2)(a) of Regulation No 44/2001, a matter which falls outside the material scope of the Brussels I Regulation.[12]

45. The same applies in the present case in respect of the Succession Regulation. As this regulation is likewise not applicable in respect of the legal capacity of natural persons, it does not preclude the applicability of the Brussels IIa Regulation and a restrictive interpretation of the 'succession' exclusion as referred to in Article 1(3)(f).

46. This is also suggested by the Explanatory Report by Paul Lagarde[13] on the Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children of 19 October 1996 ('the Child Protection Convention').[14]

9 — This exclusion applies 'without prejudice to point (c) of Article 23(2) and to Article 26'. However, neither of these provisions is relevant in the present case: Article 23 concerns the capacity to inherit and Article 26 deals with, inter alia, 'the admissibility of representation for the purposes of making a disposition of property upon death'.

10 — Judgment in *Schneider* (C-386/12, EU:C:2013:633).

11 — OJ 2001 L 12, p. 1, 'the Brussels I Regulation'.

12 — Judgment in *Schneider* (C-386/12, EU:C:2013:633, para. 31).

13 — The 'Lagarde Report'; English text available at http://www.hcch.net/upload/expl34.pdf.

14 — Also available in English on the homepage of the Hague Conference: http://hcch.e-vision.nl/upload/text34d.pdf.

47. In connection with the interpretation of Regulation No 2201/2003 having regard to its drafting history and its scheme, the Lagarde Report offers guidance to the interpretation of the relevant provisions of the Regulation. The provisions on custody in the Regulation are based on the preparatory work for the Child Protection Convention and are identical in large parts. Furthermore, the provisions of the Regulation and corresponding provisions in other conventions ought, so far as possible, to be interpreted in the same way, in order to avoid different results according to whether a case concerns another Member State or a third country. [15]

48. In relation to the 'succession' exception in Article 4(f) of the Child Protection Convention, which corresponds to the exception in the Brussels IIa Regulation, the Lagarde Report notes at the outset that, in principle, succession cases are to be excluded from the Convention. However, the Report does not exclude that 'if the law governing the succession provides for the intervention of the legal representative of the child heir, this representative would be determined through application of the Convention's rules' and therefore supports the restrictive interpretation of the exception provided for succession.

49. Since, as stated in paragraph 37 et seq., there are no considerations of EU law precluding this, the same should also be applicable in respect of the interpretation of the Brussels IIa Regulation and its exception relating to succession should not apply in respect of the approval of the agreement on the sharing-out of the estate at issue.

50. The approval applied for in the main proceedings, and the designation of the court with jurisdiction in this respect, must, in light of the above, be regarded as a civil matter concerning 'the attribution, exercise [and] delegation … of parental responsibility' as referred to in Article 1(1)(b) and Article 2(7) of the Brussels IIa Regulation.

V – **Conclusion**

51. In the light of the foregoing considerations, I propose that the Court should give the following reply to the question referred for a preliminary ruling:

Court approval of an agreement concluded by a guardian *ad litem* on behalf of a minor for the sharing-out of an estate falls under Article 1(1)(b) and not under Article 1(3)(f) 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.

15 — See my View in *Health Service Executive* (C-92/12 PPU, EU:C:2012:177, No 17).