Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

20 March 2025 *

(Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in civil matters – Enhanced cooperation in the area of the law applicable to divorce and legal separation – Regulation (EU) No 1259/2010 – Article 8(a) and (b) – Concept of 'habitual residence' of the spouses – Status of diplomatic agent of one of the spouses – Vienna Convention on Diplomatic Relations)

In Case C-61/24 [Lindenbaumer], [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 20 December 2023, received at the Court on 29 January 2024, in the proceedings

DL

v

PQ,

THE COURT (Third Chamber),

composed of C. Lycourgos, President of the Chamber, S. Rodin, N. Piçarra, O. Spineanu-Matei (Rapporteur) and N. Fenger, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– PQ, by V.O.G. Vorwerk, Rechtsanwalt,

– the German Government, by J. Möller, M. Hellmann and J. Simon, acting as Agents,

– the Greek Government, by G. Karipsiadis and T. Papadopoulou, acting as Agents,

* 'Language of the case: German.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.

– the Finnish Government, by H. Leppo, acting as Agent,

– the European Commission, by C. Vollrath and W. Wils, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 8(a) and (b) of Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (OJ 2010 L 343, p. 10).

2 The request has been made in proceedings between DL and PQ concerning the determination of the law applicable to their divorce.

Legal context

International law

3 Under Article 31(1) of the Vienna Convention on Diplomatic Relations, concluded in Vienna on 18 April 1961 and entered into force on 24 April 1964 (*United Nations Treaty Series*, Vol. 500, p. 95; 'the Vienna Convention'):

'A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.'

4 Article 37(1) of that convention provides:

'The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 29 to 36.'

European Union law

Regulation No 1259/2010

5 Recitals 9, 10, 14, 21 and 29 of Regulation No 1259/2010 state:

‘(9) This Regulation should create a clear, comprehensive legal framework in the area of the law applicable to divorce and legal separation in the participating Member States, provide citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility, and prevent a situation from arising where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests.

(10) The substantive scope and enacting terms of this Regulation should be consistent with [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)]. However, it should not apply to marriage annulment.

This Regulation should apply only to the dissolution or loosening of marriage ties. The law determined by the conflict-of-laws rules of this Regulation should apply to the grounds for divorce and legal separation.

Preliminary questions such as legal capacity and the validity of the marriage, and matters such as the effects of divorce or legal separation on property, name, parental responsibility, maintenance obligations or any other ancillary measures should be determined by the conflict-of-laws rules applicable in the participating Member State concerned.

…

(14) In order to allow the spouses to choose an applicable law with which they have a close connection or, in the absence of such choice, in order that that law might apply to their divorce or legal separation, the law in question should apply even if it is not that of a participating Member State …

…

(21) Where no applicable law is chosen, and with a view to guaranteeing legal certainty and predictability and preventing a situation from arising in which one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he considers more favourable to his own interests, this Regulation should introduce harmonised conflict-of-laws rules on the basis of a scale of successive connecting factors based on the existence of a close connection between the spouses and the law concerned. Such connecting factors should be chosen so as to ensure that proceedings relating to divorce or legal separation are governed by a law with which the spouses have a close connection.

…

(29) Since the objectives of this Regulation, namely the enhancement of legal certainty, predictability and flexibility in international matrimonial proceedings and hence the facilitation of the free movement of persons within the Union, cannot be sufficiently achieved by the Member States and can therefore, by reasons of the scale and effects of this Regulation be better achieved at Union level, the Union may adopt measures, by means of enhanced cooperation where appropriate, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.'

6 Article 5(1) of that regulation, entitled 'Choice of applicable law by the parties', provides:

'The spouses may agree to designate the law applicable to divorce and legal separation provided that it is one of the following laws:

(a) the law of the State where the spouses are habitually resident at the time the agreement is concluded; or

(b) the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or

(c) the law of the State of nationality of either spouse at the time the agreement is concluded; or

(d) the law of the forum.'

7 Under Article 8 of that regulation, entitled 'Applicable law in the absence of a choice by the parties':

'In the absence of a choice pursuant to Article 5, divorce and legal separation shall be subject to the law of the State:

(a) where the spouses are habitually resident at the time the court is seised; or, failing that

(b) where the spouses were last habitually resident, provided that the period of residence did not end more than [one] year before the court was seised, in so far as one of the spouses still resides in that State at the time the court is seised; or, failing that

(c) of which both spouses are nationals at the time the court is seised; or, failing that

(d) where the court is seised.'

Regulation No 2201/2003

8 Regulation No 2201/2003 was repealed with effect from 1 August 2022 by Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ 2019 L 178, p. 1), which, in accordance with Article 100(1) thereof, provides that it is to apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements registered on or after 1 August 2022.

9 Article 3 of Regulation No 2201/2003, entitled 'General jurisdiction', provided, in paragraph 1(a) thereof:

'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'.

German law

The Introductory Law to the Civil Code

10 Paragraph 17(4) of the Einführungsgesetz zum Bürgerlichen Gesetzbuch (Introductory Law to the Civil Code) of 21 September 1994 (BGBl. 1994 I, p. 2494, and corrigendum BGBl. 1997 I, p. 1061), in the version applicable at the time of the facts in the main proceedings, provides:

'The apportionment of pension rights is governed by the law applicable to the divorce under Regulation … No 1259/2010; it shall be enforced only if German law is applicable under that legislation and such apportionment is recognised by the law of one of the States of which the spouses are nationals at the time when the petition for divorce is filed. Otherwise, the apportionment of pension rights shall be carried out pursuant to German law on application of a spouse, where one of the spouses has acquired, during the marriage, entitlement with a domestic pension provider, provided that the apportionment of pension rights is equitable, in particular in light of the economic circumstances of both parties during the entire period of the marriage.'

The Law on proceedings in family matters and in matters of non-contentious jurisdiction

11 The Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (Law on proceedings in family matters and in matters of non-contentious jurisdiction) of 17 December 2008 (BGBl. 2008 I, p. 2586), in the version applicable to the dispute in the main proceedings, provides, in Paragraph 137:

'(1) Divorce and ancillary proceedings are to be heard and decided on together …

(2) Ancillary proceedings are

'1. Proceedings concerning the apportionment of pension rights,

…'

12 The first sentence of Paragraph 142(1) of the Law on proceedings in family matters and in matters of non-contentious jurisdiction, in the version applicable to the dispute in the main proceedings, is worded as follows:

'In the case of divorce, all related family matters are to be decided by a single order.'

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

13 DL and PQ, who are German nationals, married in 1989. There are two adult children of the marriage. In 2006, the spouses rented accommodation in Berlin (Germany) in which they lived together for more than 10 years ('the family home').

14 In June 2017, the couple moved to Sweden following the transfer of PQ to the German Embassy in Stockholm (Sweden). On that occasion, the spouses made, in accordance with the obligation imposed by German law on civil servants transferred abroad, a declaration stating that they were leaving their domicile in Germany.

15 In September 2019, the couple moved to Moscow (Russia) to accommodation located in the compound of the German embassy, within which PQ, who, unlike DL, speaks Russian, performs the duties of an Embassy Counsellor. DL, as a member of the family of a staff member of the embassy, was also declared to be resident in that accommodation and had a diplomatic passport. DL's vehicle was registered in Russia.

16 With a view to returning to Germany, the spouses kept their family home, in which one of their children has resided since September 2019. Some parts of that accommodation were sublet under contracts which ended in May and June 2020.

17 In January 2020, DL returned to Berlin to undergo surgery and remained in the family home until February 2021. PQ also travelled to Berlin, in August and September 2020, where he stayed in that accommodation, the couple having met friends there during that period. PQ spent the end-of-year holiday period with one of his children in Koblenz (Germany).

18 On 26 February 2021, DL returned to Moscow in the accommodation attached to the German embassy. It is apparent from the order for reference that, according to PQ, the spouses informed their children, on 17 March 2021, of their intention to divorce and that, during her stay in Moscow, DL stored in a room of that accommodation the items which she wished to take to Berlin.

19 On 23 May 2021, DL returned to Berlin and now lives in the family home, while PQ continues to live in the accommodation attached to the German Embassy in Moscow.

20 On 8 July 2021, PQ filed a divorce petition with the Amtsgericht (Local Court, Germany), claiming that he had lived separately from DL since January 2020 and that the separation had become final in March 2021, a month in which DL had briefly stayed in Moscow.

21 DL opposed that petition on the ground that the couple had not been separated until May 2021 at the earliest when she returned to Berlin. Until that date, she had participated in the upkeep of the household in Moscow. DL stated that her stay in Berlin from 15 January 2020 to 26 February 2021 was motivated by her state of health and by restrictions on movement due to the COVID-19 pandemic, so that a return to Moscow before 26 February 2021 was impossible.

22 By order of 26 January 2022, the Amtsgericht (Local Court) dismissed that petition on the ground that the period of one year of separation, required by German law, had not expired and that there were no sufficiently serious reasons for pronouncing the divorce immediately.

23 PQ lodged an appeal against that order before the Kammergericht (Higher Regional Court, Germany). That court pronounced the divorce under Russian law, which it held to be applicable in accordance with Article 8(b) of Regulation No 1259/2010. To that end, that court found that PQ's '[habitual residence]', within the meaning of that article, was in Moscow and that DL's residence in that city had ended only as from her departure to Germany, namely on 23 May 2021, that is to say, less than one year before the case was brought before the Amtsgericht (Local Court), on 8 July 2021.

24 DL brought an appeal on a point of law before the Bundesgerichtshof (Federal Court of Justice, Germany), which is the referring court, against that decision of the Kammergericht (Higher Regional Court), by which she requested that the divorce be pronounced under German law and that, at the same time, a decision be made by the referring court of its own motion on the apportionment of pension rights.

25 The referring court specifies that, under German law, the apportionment of pension rights is governed by the law applicable to the divorce, which is determined in accordance with Regulation No 1259/2010. If the divorce at issue in the main proceedings were subject to Russian law, it would have to be pronounced as a divorce by mutual consent without a finding of grounds for divorce and that apportionment would have to be made, pursuant to the second sentence of Paragraph 17(4) of the Introductory Law to the Civil Code, in the version applicable at the time of the facts in the main proceedings, on application by one of the spouses. If, on the other hand, German law were to apply, it would be necessary to find that the marriage has broken down, since the spouses have not lived together for more than a year. In that case, that apportionment would be effected by the court of its own motion as part of the divorce settlement.

26 That court states that the merits of the appeal on a point of law before it depend on the answer to the question whether the Kammergericht (Higher Regional Court), which has jurisdiction to pronounce the divorce at issue in the main proceedings under Article 3(1)(a) of Regulation No 2201/2003, rightly held that the law applicable to that divorce is, in accordance with Article 8(b) of Regulation No 1259/2010 and in the absence of a choice by the spouses of such a law until the close of the oral proceedings at first instance, Russian law.

27 Before the referring court, DL claims that PQ's professional status precludes a finding that the spouses were 'habitually resident' in Russia. She specifies that their stay in Moscow (i) was not the result of a deliberate choice, but was dictated exclusively by professional reasons connected with PQ's posting at the German Embassy in Moscow and (ii) although it was not planned for a specific duration, that stay was, by its nature, temporary, since the spouses had intended to return to Germany, where they had kept the family home and maintained a close connection with that country, after PQ's duties at that embassy ceased. DL also states that, for official

reasons, she was obliged, as well as PQ, to move into accommodation which was part of the compound of that embassy, with the result that they lived de facto in a 'German enclave', which reduces the significance of their physical presence in Russia.

28 PQ states that diplomatic agents who enjoy, under Article 31(1) of the Vienna Convention, inter alia, immunity from the civil jurisdiction of the receiving State cannot be subject, in matters relating to divorce, to the law of the State in which they are posted.

29 In that context, the referring court raises the question of the criteria for determining the '[habitual residence]' of the spouses within the meaning of Article 8(a) and (b) of Regulation No 1259/2010 and, more specifically, of the relevance of the posting of one of the spouses as a diplomatic agent in the receiving State. That court asserts that, if the factors put forward by the parties to the main proceedings were to be taken into consideration as part of an overall assessment, the spouses' habitual residence might not be established in Russia. That court states that it is also necessary to determine whether the establishment of habitual residence in a State requires the physical presence of the spouses for a certain period and a finding of a certain degree of social and family integration in the State concerned.

30 The referring court states that there is a debate in legal literature in Germany on the definition of the concept of '[habitual residence]' within the meaning of Article 8(a) and (b) of Regulation No 1259/2010. Some academic writers, whose position is shared by the Kammergericht (Higher Regional Court), advocate, on the basis of the wording of recital 10 of Regulation No 1259/2010, an interpretation which corresponds to that of the same concept in Regulation No 2201/2003.

31 Other academic writers take the view that the definitions of the concept of 'habitual residence' in Regulations No 1259/2010 and No 2201/2003 are not exactly the same, since the former requires, in order to characterise that concept, a closer connection with the State of residence than the latter, which is intended, in general, to offer an applicant the choice between several alternative jurisdictions.

32 According to the referring court, it cannot be ruled out that the concept of 'habitual residence' in Regulations No 1259/2010 and No 2201/2003 may give rise to different interpretations, in so far as it is apparent from recitals 14 and 21 of Regulation No 1259/2010 that the characterisation of such a concept presupposes the existence of close links between the spouses and the applicable law, which may entail a higher degree of social and family integration in the State concerned than that required by Regulation No 2201/2003.

33 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Which criteria should be used to determine where the spouses are habitually resident within the meaning of Article 8(a) and (b) of [Regulation No 1259/2010]? In particular:

– does a posting as a diplomat affect or even preclude the assumption of habitual residence in the receiving State?

– must the physical presence of the spouses in a State be of a certain duration before it can be assumed that habitual residence had been established there?

– does the establishment of habitual residence require a certain degree of social and family integration in the State in question?'

Consideration of the question referred

34 By its question, the referring court asks, in essence, whether Article 8(a) and (b) of Regulation No 1259/2010 must be interpreted as meaning that, in order to determine the spouses' '[habitual residence]', referred to in that provision, the posting in a State of one of the spouses as a diplomatic agent, the duration of the spouses' physical presence in that State and the degree of social and family integration in that State constitute relevant, or even decisive, factors.

35 As regards, in the first place, the interpretation of the concept of '[habitual residence]' within the meaning of Article 8(a) and (b) of Regulation No 1259/2010, it should be observed that, as stated in recital 21 of that regulation, that regulation provides, in the absence of a choice, in accordance with Article 5 of that regulation, of the law applicable to the divorce by the spouses, harmonised conflict-of-law rules on the basis of a scale of successive connecting factors based on the existence of a close connection between the spouses and the law concerned.

36 Article 8(a) and (b) of Regulation No 1259/2010 thus makes divorce and legal separation subject to the law of the State where the spouses are 'habitually resident' at the time the court is seised or, failing that, where they were last 'habitually resident', provided that the period of residence did not end more than one year before that court was seised, in so far as one of the spouses still resides in that State at the time that court is seised.

37 Regulation No 1259/2010 does not contain a definition of the concept of 'habitual residence' and makes no reference to the law of the Member States for the purpose of determining the meaning and scope of that concept.

38 According to the Court's settled case-law, it follows from the need for uniform application of EU law and from the principle of equality 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; that interpretation must take into account the wording of that provision, its context and the objectives pursued by the rules of which it forms part (see, to that effect, judgments of 22 December 2010, *Mercredi*, C-497/10 PPU, EU:C:2010:829, paragraph 45, and of 24 October 2024, *Kwantum Nederland and Kwantum België*, C-227/23, EU:C:2024:914, paragraph 56 and the case-law cited).

39 As regards, first of all, the literal interpretation, it should be noted that, in its usual meaning, the expression 'habitual residence' refers to the place where a natural person resides on a stable basis.

40 As regards, next, the context of Article 8(a) and (b) of Regulation No 1259/2010, it follows from recital 10 of that regulation that its substantive scope and enacting terms should be consistent with the provisions of Regulation No 2201/2003 laying down, inter alia, the general criteria for jurisdiction with respect to divorce, legal separation and marriage annulment.

41 Article 3(1)(a) of Regulation No 2201/2003, in which the concept of '[habitual residence]' appears, confers jurisdiction to rule on matters relating to the dissolution of matrimonial ties on the courts of the Member State in whose territory the current or former habitual residence of the spouses or of one of them is, as the case may be, located.

42 The Court has held that the concept of '[habitual residence]' within the meaning of Article 3(1)(a) of Regulation No 2201/2003 is characterised, in principle, by two factors, namely, first, the intention of the person concerned to establish the habitual centre of his or her interests in a particular place and, second, a presence which is sufficiently stable in the Member State concerned (judgment of 1 August 2022, *MPA (Habitual residence – Third State)*, C-501/20, EU:C:2022:619, paragraph 44 and the case-law cited).

43 In the light of the necessary consistency between the provisions of Regulations No 1259/2010 and No 2201/2003, which is referred to in paragraph 40 of the present judgment, those factors are required in order to characterise the concept of '[habitual residence]' within the meaning of Article 8(a) and (b) of Regulation No 1259/2010. Such a unitary conception reflects the close relationship between those two regulations governing, inter alia, divorce and legal separation. Regulation No 1259/2010 designates the law which a court, whose jurisdiction is based on the provisions of Regulation No 2201/2003, must apply, in the absence of a choice of such law by the spouses, in accordance with Article 5(1) of Regulation No 1259/2010.

44 That unitary conception of the concept of 'habitual residence' is consistent with the case-law of the Court relating to other instruments of private international law which, like Regulations No 1259/2010 and No 2201/2003, are based on a common connecting factor, namely 'habitual residence', and have close links. In that regard, the Court has held that the definition of that connecting factor in Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ 2009 L 7, p. 1) and in the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, approved on behalf of the European Community by Council Decision 2009/941/EC of 30 November 2009 (OJ 2009 L 331, p. 17), must be guided by the same principles and characterised by the same elements, although the specific assessment of habitual residence depends on circumstances which are specific to each individual case (see, to that effect, judgment of 1 August 2022, *MPA (Habitual residence – Third State)*, C-501/20, EU:C:2022:619, paragraph 53).

45 Lastly, the interpretation of the concept of 'habitual residence' in paragraph 43 of the present judgment is consistent with the objectives pursued by Regulation No 1259/2010.

46 It is apparent from recitals 9, 21 and 29 of that regulation that it seeks to create a clear and complete legal framework in the area of the law applicable to divorce and legal separation in the participating Member States, to ensure legal certainty, predictability and flexibility in international matrimonial proceedings and, accordingly, to facilitate the free movement of persons within the European Union and to prevent a situation in which one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a law which he or she considers more favourable to his or her own interests (judgment of 16 July 2020, *JE (Law applicable to divorce)*, C-249/19, EU:C:2020:570, paragraph 30).

47 A definition of the concept of the '[habitual residence]' of spouses within the meaning of Article 8(a) and (b) of Regulation No 1259/2010 which is characterised, in principle, by two factors, namely (i) the intention of the persons concerned to establish the habitual centre of their

interests in a particular place and (ii) a sufficiently stable presence in the territory of the Member State concerned ensures both that objective of legal certainty and predictability and the necessary flexibility in matrimonial proceedings, while preventing any abuse as regards the choice of the applicable law.

48 In the second place, the question whether the status of diplomatic agent of one of the spouses in the receiving State, the duration of the spouses' physical presence in that State and the degree of social and family integration in that State constitute relevant, or even decisive, factors for the purposes of determining their '[habitual residence]' within the meaning of Article 8(a) and (b) of Regulation No 1259/2010 is essentially a question of fact [see, by analogy, judgment of 25 November 2021, *IB (Habitual residence of a spouse – Divorce)*, C-289/20, EU:C:2021:955, paragraph 52 and the case-law cited). It is therefore for the referring court to examine all the factual circumstances specific to the present case in order to determine whether the two factors set out in the preceding paragraph, which characterise the concept of 'habitual residence', are present in the case in the main proceedings.

49 That said, in order to give a useful answer to the referring court, the following points should be noted.

50 As regards, first, the status of diplomatic agent of one of the spouses, it should be observed that the referring court raises the question of the determination of the habitual residence of the spouses in so far as, as the parties to the main proceedings have argued, the couple which they formed was required by the applicable legal and official provisions to move into accommodation attached to the compound of the German Embassy in Moscow. According to PQ, a diplomatic agent cannot be subject to the law of the receiving State on account of his or her immunities and privileges, in accordance with the Vienna Convention.

51 The German, Greek and Finnish Governments submit, in essence, that the stay abroad of diplomats is temporary and fortuitous, which precludes any intention to settle permanently in the receiving State.

52 In that regard, it must be observed that the stay of a diplomatic agent in the territory of the receiving State is, in principle, solely for professional purposes, since that stay is directly connected to the performance of his or her duties. As the German Government stated in its written observations, posting in the receiving State is generally determined, first and above all, by the needs of the service of the sending State and not in consideration of the personal wishes and preferences of the diplomatic agent serving in the receiving State.

53 Such a situation differs from that which gave rise to the judgment of 1 August 2022, *MPA (Habitual residence – Third State)* (C-501/20, EU:C:2022:619). While it is true that, in paragraph 58 of that judgment, the Court held that the fact that the spouses' stay in a third State is directly connected with the exercise of their duties is not, in itself, of such a nature as to prevent that stay from being sufficiently stable to establish the habitual residence of the spouses in that State, the fact remains that that statement was made in a context involving members of the contract staff of indefinite duration of the European Union posted to the latter's delegation in a third State, in accordance with the provisions of the Staff Regulations of Officials of the European Union applicable to members of the contract staff who are not subject to rotation to headquarters in Brussels.

54 As PQ and all the intervening governments have argued, in essence, the nature and specificity of the professional activity of a diplomatic agent posted to an external representation in the receiving State militate, in principle, on account of the circumstances inherent in that function, in favour of the absence of habitual residence, within the meaning of Article 8(a) and (b) of Regulation No 1259/2010, of that agent and his or her spouse in that State.

55 Furthermore, as is apparent from Article 31(1) of the Vienna Convention, diplomatic agents are to enjoy immunity from the civil and administrative jurisdiction of the receiving State, subject to the exceptions set out in subparagraphs (a) to (c) of that provision, inter alia, in the case of a real action relating to private property situated in the territory of that State, unless the diplomatic agent holds it on behalf of the sending State for the purposes of his or her mission.

56 Thus, it cannot be ruled out that, in specific factual circumstances, the receiving State may be regarded as being the State in which the spouses concerned wished to establish their habitual residence, within the meaning of Article 8(a) and (b) of Regulation No 1259/2010. That could be the case, in particular, as the Commission has observed, where the diplomatic agent and his or her spouse privately acquire accommodation in the receiving State in order to settle there together after the end of his or her posting.

57 Consequently, although the status of diplomatic agent of one of the spouses constitutes a relevant factor in the examination of the habitual nature of the spouses' residence in the territory of the receiving State, as regards the assessment of the reasons for their presence in that State and the conditions of their stay, that factor is not in itself decisive for the purpose of precluding recognition of the habitual residence of the person concerned and of the members of his or her family in that State. The determination of the spouses' 'habitual residence' must, even in the presence of such a factor, be made on the basis of all the factual circumstances specific to each individual case.

58 As regards, second, the duration of the spouses' physical presence on the territory of a State, that factor is an indication of the 'stability' of the stay which characterises the concept of 'habitual residence'. As stated in paragraph 39 of the present judgment, in order to be classified as 'habitual', a residence must have a certain degree of stability or regularity, as opposed to a temporary or occasional presence.

59 The assessment of that criterion of the concept of 'habitual residence' requires account to be taken of the particular situation of diplomatic agents and their family members, by reason of the nature of their duties. Those persons often retain a close relationship with the sending State to which they regularly travel and, moreover, since diplomatic agents are generally subject to a principle of rotation, the duration of their stay in the receiving State may be perceived as prima facie temporary, even though it may sometimes be of a significant length in practice. In those particular circumstances, the duration of the spouses' physical presence in the territory of the receiving State is not, in itself, a decisive factor as to the habitual nature of their residence in that State. It cannot be ruled out, in that regard, that the spouses may be present in that territory for a significant period of time while retaining the centre of their interests in the sending State, to which they regularly travel.

60 As regards, third, the relevance of the degree of social and family integration in the State concerned for the purposes of determining the habitual residence of the spouses within the meaning of Article 8(a) and (b) of Regulation No 1259/2010, it should be noted that, in interpreting the provisions of Regulation No 2201/2003 relating to parental responsibility, the

Court has treated the social and family environment of the parents of the child, in particular at a young age, as an essential criterion for determining the child's place of habitual residence (see, to that effect, judgment of 25 November 2021, *IB (Habitual residence of a spouse –Divorce)*, C-289/20, EU:C:2021:955, paragraph 53 and the case-law cited).

61 While it is true that the particular circumstances characterising the habitual residence of a child are not identical to those which make it possible to determine the habitual residence of the spouses, social integration in a State, whether the receiving State or the sending State, is a relevant factor for the purposes of determining that residence, since it is such as to give concrete expression to the subjective element relating to the intention of the persons concerned to establish the habitual centre of their interests in a particular place.

62 Family ties maintained in the sending State or, on the contrary, those created in the receiving State may also be relevant in the context of the analysis of all the factual circumstances specific to the present case, which it is for the referring court to carry out.

63 Furthermore, it should be recalled that, as the Court has held in relation to Regulation No 2201/2003, case-law which can be transposed to the interpretation of the concept of '[habitual residence]' within the meaning of Article 8(a) and (b) of Regulation No 1259/2010, a spouse who divides his or her time between two Member States may have his or her habitual residence in only one of those States (judgment of 25 November 2021, *IB (Habitual residence of a spouse – Divorce)*, C-289/20, EU:C:2021:955, paragraph 62].

64 In the present case, it is apparent from the order for reference that the parties to the main proceedings resided in Russia, at the headquarters of the German Embassy in Moscow, from September 2019. DL returned to Germany on 23 May 2021. In his written observations submitted to the Court, PQ stated that on 1 November 2023 he was assigned to another post in Germany. Their stay in the receiving State thus appears to have been limited to the framework provided by that embassy.

65 It is also apparent from the information available to the Court that, throughout their residence in the receiving State, the spouses continued to maintain a close relationship with the sending State, having retained property interests and social and family ties there. Thus, they retained their accommodation in Berlin, with a view to returning to Germany after PQ ceased to exercise his duties in the receiving State, accommodation in which their adult daughter resided and where they appeared to stay when they visited Germany.

66 Subject to more extensive checks to be made by the referring court on the basis of all the factual circumstances specific to the present case, those factors suggest that the spouses, despite the length of their stay in Russia, did not intend to establish the habitual centre of their interests there, since that centre of interests remained in the sending State from which they moved only temporarily, with the result that German law appears to be that of the State of the habitual residence of the spouses.

67 In the light of the foregoing considerations, the answer to the question referred is that Article 8(a) and (b) of Regulation No 1259/2010 must be interpreted as meaning that the status of diplomatic agent of one of the spouses and his or her assignment to a post in the receiving State preclude, in principle, the 'habitual residence' of the spouses from being considered to be established in that State, unless it is determined, following an overall assessment of all the circumstances specific to the case, including, in particular, the duration of the spouses' physical presence and their social

and family integration in that State (i) that the spouses intend to establish in that State the habitual centre of their interests and (ii) that there is a sufficiently stable presence in the territory of that State.

Costs

68 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 (Third Chamber) hereby rules:

Article 8(a) and (b) of Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation

must be interpreted as meaning that the status of diplomatic agent of one of the spouses and his or her assignment to a post in the receiving State preclude, in principle, the 'habitual residence' of the spouses from being considered to be established in that State, unless it is determined, following an overall assessment of all the circumstances specific to the case, including, in particular, the duration of the spouses' physical presence and their social and family integration in that State (i) that the spouses intend to establish in that State the habitual centre of their interests and (ii) that there is a sufficiently stable presence in the territory of that State.

[Signatures]