WORKING SESSION: Exchange of best practice among national judges

Case 1:

Legal context

1. European Union law

Recitals 23 and 30 of Regulation No 650/2012 read as follows:

(23) In view of the increasing mobility of citizens and in order to ensure the proper administration of justice within the [European] Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised, this Regulation should provide that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the habitual residence of the deceased at the time of death.

...

(30) In order to ensure that the courts of all Member States may, on the same grounds, exercise jurisdiction in relation to the succession of persons not habitually resident in a Member State at the time of death, this Regulation should list exhaustively, in a hierarchical order, the grounds on which such subsidiary jurisdiction may be exercised.'

b. Chapter II of that regulation, entitled 'Jurisdiction', includes, inter alia, Articles 4 to 10 and 15 thereof.

***Article 4 of Regulation No 650/2012**, entitled 'General jurisdiction', provides:*

'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.'

***Article 5 of that regulation**, entitled 'Choice-of-court agreement', provides, in paragraph 1 of that article:*

'Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction to rule on any succession matter.'

***Articles 6 to 9 of Regulation No 650/2012** specify the circumstances in which Article 5(1) of that regulation is applicable.*

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***Article 10 of Regulation No 650/2012**, entitled 'Subsidiary jurisdiction', provides:*

'1. Where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as:

(a) the deceased had the nationality of that Member State at the time of death; or, failing that,

(b) the deceased had his previous habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed.

2. Where no court in a Member State has jurisdiction pursuant to paragraph 1, the courts of the Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on those assets.'

***Article 15 of that regulation**, entitled 'Examination as to jurisdiction', reads as follows:*

'Where a court of a Member State is seised of a succession matter over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.'

*In **Chapter III of Regulation No 650/2012**, entitled 'Applicable law', Article 22 of that regulation, itself entitled 'Choice of law', provides, in paragraph 1 thereof:*

'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.…'

2. Polish law

***Article 386(6) of the ustawa – Kodeks postępowania cywilnego** (Law on the Code of Civil Procedure) of 17 November 1964, in the version applicable to the main proceedings, provides:*

'The legal assessment set out in the grounds of the judgment of the court of second instance shall be binding on both the court to which the case has been remanded and on the court of second instance where the case is being reconsidered. However, this shall not apply to cases where there has been a change in the legal or factual position, or where, following the delivery of the judgment by the court of second instance, the Sąd Najwyższy [(Supreme Court, Poland)], in a resolution disposing of the legal issue, adopted a different legal assessment.'

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3. The main proceedings

1 Jurek Karol, who was of Polish nationality, died on 9 May 2020 in Hamburg.

2 Bernadeta, the sister of the deceased, made an application to a District Court in Poland, for the purposes of determining the heirs of the deceased.

3 In her application, Bernadeta stated that her brother's last habitual residence was located in Hamburg, that he owned immovable property in Poland, and that he had not chosen any law to govern his succession. She also stated that the deceased's son, his wife, his mother, his niece and she herself had declared before a German court that they waived the succession.

4 By order of 31 September 2022, the District Court of Poland dismissed Bernadeta's application on the ground that the Polish courts did not have jurisdiction to rule on the succession of a deceased whose last habitual residence was located in a Member State other than the Republic of Poland. The District Court of Poland appreciated that the rule of subsidiary jurisdiction laid down in *Article 10(1)(a) of Regulation No 650/2012* concerned only deceased persons whose last habitual residence was not located in a Member State.

5 By order of 15 December 2022, the Regional Court of Poland, before which an appeal was brought, set aside the order of 30 August 2022, holding that the first court's interpretation of Article 10(1)(a) of Regulation No 650/2012 was incorrect. According to the this Regional Court, that provision confers subsidiary jurisdiction on the Member State in which the deceased left behind assets and of which he or she was a national, even if the deceased's habitual residence was not located in that Member State.

6 Rehearing the case in the main proceedings, the District Court of Poland does not agree with the interpretation of Article 10(1)(a) of Regulation No 650/2012 adopted by the Regional Court, which, in it's view, is contrary to the literal meaning of that article and to the objectives of Regulation No 650/2012.

View the fact that, under Polish national law, a court seised is bound by an interpretation, even incorrect, of EU law adopted by a higher court, and that no provision of national law expressly states that an answer of the CJEU to a potential preliminary reference would permit it to depart from the higher court's interpretation,

a) You, acting as the District Court of Poland, would you address CJEU a preliminary reference? Briefly motivate your answer.

b) Considering, in theory, an affirmative answer to point a), try to sketch the question(s) for the preliminary reference.

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WORKING SESSION: Exchange of best practice among national judges

Case 2

Legal context

1. European Union law

Article 47 Charter of fundamental rights of the European Union

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Second subparagraph of Article 19(1) TEU

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

Article 2 TUE

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 6(1) of the European Convention of Human Rights

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

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2. *Slovak law*

Law n° 432/2021 introducing the disciplinary regime of the Supreme Administrative Court of the Slovak Republic and amending and supplementing certain laws, has governed, since December 2021, disciplinary proceedings concerning judges, prosecutors, bailiffs and notaries.

In accordance with Article 3 of this Law, the Disciplinary Chamber of the Supreme Administrative Court of the Slovak Republic rules on the disciplinary liability of those professionals and imposes any disciplinary measures on them.

That Law provides that the Disciplinary Chamber is to consist of five members, namely a President, two judges and two non-professional judges. Furthermore, according to the provisions of that Law, a disciplinary complaint against a judge may, inter alia, be made by the Minister for Justice.

The main proceedings

1. On 27 June 2020, the applicant, Radovan Z., brought a civil action before District Court, Bratislava II, Slovakia.

2. The single judge making up the court considers that the case in the main proceedings may be described as 'politically sensitive'. The defendant in the main proceedings, X., is an important political person in Slovakia.

3. In view of the political context of the case in the main proceedings, the single judge making up the district court expresses fears that disciplinary proceedings may be brought against him.

4. Furthermore, the judge states that he has already been the subject of disciplinary proceedings following a request from the then Minister for Justice, on the basis of a report drawn up by an employee of the Ministry of Justice. According to that report, that judge made inappropriate comments concerning that employee following a hearing which she had attended as a member of the public. These disciplinary proceedings are, at the moment of speaking, pending before the Supreme Administrative Court of the Slovak Republic.

5. The concerns of the judge that he would be faced with new disciplinary proceedings are caused, in essence, by the fact that, following the reform of the disciplinary regime for judges, which entered into force on December 2021, the objectivity and impartiality of disciplinary proceedings against judges would no longer be guaranteed and the independence of the Slovak courts would be affected. According to the judge, the Disciplinary Chamber does not meet the requirements of an independent and impartial tribunal.

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The judge is thinking to stay the proceedings and to refer to the Court of Justice for a preliminary ruling asking:

1) If Article 47 of the Charter, read in conjunction with the second subparagraph of Article 19(1) TEU, Article 2 TEU and Article 6(1) of the European Convention of Human Rights, sincere cooperation and legal certainty, are to be interpreted as permitting a Disciplinary Chamber of judges to be regarded as an independent court within the meaning of EU law even if according to the national legislation, five members are professional judges and two are non-professional judges sitting as 'other persons appointed by the Council of the Judiciary?

2) If the first question is answered in the negative, must Article 2 TEU, the second subparagraph of Article 19(1) TEU and Article 47 of the Charter, and the principles of primacy of EU law, sincere cooperation and legal certainty be interpreted as meaning that they impose on all national authorities, including judicial and administrative authorities, the obligation to nullify the unlawful consequences of the decisions of the Disciplinary Chamber and not to comply with such decisions?

You are the Court of Justice, what's the solution to these questions? Briefly state the reasons.

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