

Anonymised version

Translation

C-301/20 — 1

Case C-301/20

Request for a preliminary ruling

Date lodged:

7 July 2020

Referring court:

Oberster Gerichtshof (Austria)

Date of the decision to refer:

27 May 2020

Appellants in the appeal on a point of law:

UE

HC

Respondent in the appeal on a point of law:

Vorarlberger Landes- und Hypothekenbank AG

The Oberster Gerichtshof (Supreme Court, Austria), sitting as the court ruling on appeals on points of law [...] in the court deposit (*‘Erlag’*) case of the depositor, Vorarlberger Landes- und Hypotheken-Bank AG, 6900 Bregenz, [...] versus the first opponent to the court deposit, estate of VJ, and second opponent to the court deposit, UE, [...] concerning the appeal on a point of law brought by the second opponent to the court deposit and HC [...] against the order of the Landesgericht Feldkirch (Feldkirch Regional Court, Austria), sitting as the court ruling on appeals on the merits, of 28 January 2019, [...] by which the decision of the Bezirksgericht Bregenz (Bregenz District Court, Austria) of 17 September 2018 [...] was confirmed, has made, in closed session, the following

Order: [Or. 2]

I. The following questions are referred to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 TFEU:

1. Is Article 70(3) of Regulation (EU) No 650/2012 of the European Parliament and of the Council 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 ('EU Succession Regulation') to be interpreted as meaning that a copy of the certificate issued for an indefinite duration without indicating an expiry date, contrary to that provision,

- a. is valid and effective indefinitely, or
- b. is valid only for a period of six months from the date of issue of the certified copy, or
- c. is valid only for a period of six months from another date, or
- d. is invalid and unsuitable for use within the meaning of Article 63 of the EU Succession Regulation?

2. Is Article 65(1) read in conjunction with Article 69(3) of Regulation (EU) No 650/2012 of the European Parliament and of the Council 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 ('EU Succession Regulation') to be interpreted as meaning that the certificate produces effects in favour of all persons who are mentioned on the certificate by name as heirs, legatees, executors of wills or administrators of the estate, with the result that even those who have not applied for the issue of the certificate themselves can use that certificate pursuant to Article 63 of the EU Succession Regulation? **[Or. 3]**

3. Must Article 69 read in conjunction with Article 70(3) of the EU Succession Regulation be interpreted as meaning that the legitimising effect of the certified copy of a certificate of succession must be recognised if it was still valid when it was first submitted but expired before the requested decision of the authority, or does that provision not preclude national law if the latter requires the certificate to be valid even at the time of the decision?

II. [...] [Stay of proceedings]

Grounds:

A. Facts

The subject matter of the main proceedings is the application of the opponents to the court deposit for the release of a deposit accepted into the custody of the courts. The depositor, a bank, had applied to have the deposit consisting of money and securities transferred into the custody of the courts because the parties opposing the deposit had made competing claims for it and their entitlement was unclear.

The assets in the custody of the courts may be released only by way of a joint written application by the opponents to the court deposit or on the basis of a final court decision — which has not been issued.

The first opponent to the court deposit, who was the father of the second opponent to the court deposit, died on 5 May 2017. His last place of habitual residence was in Spain. The administration of his estate was carried out before a notary public in accordance with Spanish law.

B. Arguments of the parties [Or. 4]

The applicants, HC and UE, jointly request, as the legal successors of their father, the first opponent to the court deposit, that the court deposit be released to them. In order to prove that they were heirs each entitled to half of the estate of the first opponent to the court deposit, they submitted a certified copy of a European Certificate of Succession issued by the Spanish notary public in accordance with Article 62 et seq. of Regulation (EU) No 650/2012 of the European Parliament and of the Council 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 ('EU Succession Regulation'), issued on a Form V in accordance with Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 ('the Implementing Regulation'). This official document was issued on the application of the first applicant, HC, and has the note 'unlimited' entered in the 'Valid until' field. The second applicant, UE, is mentioned by name, in addition to the first applicant, as an heir entitled to half of the estate in Annex IV to Form V.

C. Previous proceedings

The court of first instance refused the application for release of the court deposit.

The court of appeal dismissed the appeal on the merits brought by the applicants. It based that decision on three main arguments relevant here:

1. Only the party who applied for the issue of the European Certificate of Succession, in this case the first applicant, could use a copy of that certificate to demonstrate his entitlement.
2. The issuing of a Certificate of Succession with indefinite validity was contrary to the requirement to limit its validity pursuant to Article 70(3) of the EU Succession Regulation. It had to be treated as a certificate with a [Or. 5] regular period of validity of six months from the date of issue.
3. Temporal validity had to exist not only at the time of the application but also at the time of the decision of the court of first instance in order for the copy of the certificate of succession to be able to produce its legitimising effect.

D. The Supreme Court is called on to rule on the appeal on a point of law brought by the applicants.

Under Austrian law (without a final decision on the acceptance of the deposit), the release of the court deposit at issue can be granted only on joint written application of both opponents to the court deposit. A decisive factor in the decision is whether the copy of a European Certificate of Succession submitted in the proceedings is suitable, in itself, for demonstrating the legitimacy of the heirs of the first opponent to the court deposit.

The Supreme Court has ordered that the proceedings of the appeal on a point of law be stayed and the questions of EU law material to the decision in the case be referred to the Court of Justice.

E. Applicable provisions

The request for a preliminary ruling concerns the interpretation of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (EU Succession Regulation).

The following provisions of the EU Succession Regulation are relevant in the present case, in particular: **[Or. 6]**

Article 63

Purpose of the Certificate

(...)

2. The Certificate may be used, in particular, to demonstrate one or more of the following:

(a) the status and/or the rights of each heir or, as the case may be, each legatee mentioned in the Certificate and their respective shares of the estate; (...)

Article 65:

Application for a Certificate

1. The Certificate shall be issued upon application by any person referred to in Article 63(1) (hereinafter referred to as ‘the applicant’). (...)

Article 69:

Effects of the Certificate

1. The Certificate shall produce its effects in all Member States, without any special procedure being required.

2. The Certificate shall be presumed to accurately demonstrate elements which have been established under the law applicable to the succession or under any other law applicable to specific elements. The person mentioned in the Certificate as the heir, legatee, executor of the will or administrator of the estate shall be presumed to have the status mentioned in the Certificate and/or to hold the rights or the powers stated in the Certificate, with no conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate. [Or. 7]

3. Any person who, acting on the basis of the information certified in a Certificate, makes payments or passes on property to a person mentioned in the Certificate as authorised to accept payment or property shall be considered to have transacted with a person with authority to accept payment or property, unless he knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence.

Article 70:

Certified copies of the Certificate

(...)

3. The certified copies issued shall be valid for a limited period of six months, to be indicated in the certified copy by way of an expiry date. In exceptional, duly justified cases, the issuing authority may, by way of derogation, decide that the period of validity is to be longer. Once this period has elapsed, any person in possession of a certified copy must, in order to be able to use the Certificate for the purposes indicated in Article 63, apply for an extension of the period of validity of the certified copy or request a new certified copy from the issuing authority.

F. Grounds for the questions referred

1. Question 1:

The original copy of the European Certificate of Succession remains in the custody of the issuing authority after it has been issued. Applicants receive certified copies of the certificate, which are to be issued in accordance with Form V in Annex 5 to Implementing Regulation (EU) 1329/2014. On the first page, the form contains an introductory note stating that it is valid until [Or. 8] the date indicated in the appropriate box at the end of the form.

Based on the wording of Article 70(3) of the EU Succession Regulation, it is assumed that, in principle, a copy of the European Certificate of Succession produces its effects only within the period of validity indicated [...]. The European legislature clearly intended to ensure that the issuing authority always

retains control of circulating certificates of inheritance by virtue of the fact that only certified copies that are limited in time are available for use in legal relationships. The purpose of limiting the validity of the copies was to prevent the circulation of copies that no longer correspond to the certificate of succession remaining in the custody of the issuing authority, that is to say that reflect incorrect facts or are invalid [...].

The EU Succession Regulation makes no provision whatsoever for a copy of a European Certificate of Succession having a period of validity of unlimited duration, such as that submitted in the present case.

As far as can be seen, the case-law has not yet addressed the question of what effect an expressly unlimited period of validity has on the validity of a copy of a European Certificate of Succession.

It would be possible for the order of unlimited validity by the issuing authority to be regarded as a permissible special case of extension under Article 70(3) of the EU Succession Regulation. [**Or. 9**]

However, the wording of that provision also leaves open the possibility of ascribing to such a document limited validity for the regular maximum period of six months, raising the further question as to the date from which that period should be calculated.

Ultimately, however, a further possibility that comes into consideration is that a copy of a certificate of succession issued for an indefinite period of time does not meet the requirements of Article 70(3) of the EU Succession Regulation and, owing to that deficiency, does not produce any legitimising effect whatsoever.

2. Question 2:

Pursuant to Article 63(1) of the EU Succession Regulation, the European Certificate of Succession is for use by heirs who, in another Member State, need to invoke their status or to exercise their rights as heirs. It is to be issued by the competent authority upon application by any person referred to in Article 63(1) of the regulation.

Pursuant to Article 69(1) and (2) of the EU Succession Regulation, the Certificate of Succession is to produce its effects in all Member States, without any special procedure being required. The Certificate is to be presumed to accurately demonstrate elements which have been established under the law applicable to the succession or under any other law applicable to specific elements.

The person mentioned in the Certificate as the heir is presumed, in particular, to have the status mentioned in the Certificate and/or to hold the rights or the powers stated in the Certificate, with no conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate. Pursuant to recital 71 of the EU Succession Regulation, [**Or. 10**] the Certificate should

produce the same effects in all Member States. It should not be an enforceable title in its own right but should have an evidentiary effect and should be presumed to demonstrate accurately elements which have been established under the law applicable to the succession or under any other law applicable to specific elements.

The question of whether the application for a European Certificate of Succession can be made by only one of several entitled heirs and whether, in this case, it will only produce effects for the applicant, or whether other persons mentioned in the application may also rely on that certificate to demonstrate their legal status in a given procedure, is not expressly regulated in the EU Succession Regulation.

In the literature, it is considered that an independent application is permissible by virtue of Article 65(1) of the EU Succession Regulation and in view of the different needs of those entitled to submit an application.

With regard to the question of whether the legitimising effect of the certificate also extends to every person mentioned in the certificate of succession other than the applicant, it is generally considered in the literature, albeit without further reasoning, that each person entitled to submit an application (with the exception of the executor of the will or the administrator of the estate) can only request a certificate that certifies his own legal status [...]. It is true that Article 70 of the EU Succession Regulation presumes that persons other than the **[Or. 11]** applicant may also have a legitimate interest in having a copy issued to them. However, it is not clearly explained whether those other persons are also covered by the effects within the meaning of Article 69(3) of the EU Succession Regulation even if they do not themselves request to have a copy issued to them. It should also be borne in mind in this respect that persons who were not applicants do not generally have the opportunity to participate in the issuing procedure.

3. Question 3:

The question regarding the continuing effects that a certified copy of a European Certificate of Succession may produce after its stated period of validity has expired is particularly important in cases where a valid copy has been submitted but the authority does not take its decision based on that copy within the period of validity and the submitting party cannot exert any influence on the duration of the decision-making process.

In this respect, it is considered, on the one hand, that it should be sufficient for the legitimising effect of the European Certificate of Succession if the period of validity of the copy was still running when the application was submitted and, on the other hand, that — the contrary view — the period must still be running at the time of the authority's decision. These two views are also both expressed in the case-law. The Supreme Court has previously found, in three decisions [...], that the continuing validity of the certificate when the application was submitted was sufficient. These decisions all concerned land register matters and were based on a

special procedural provision of the Austrian Grundbuchsgesetz (Law on the land register).

By contrast, in Germany, the Kammergericht Berlin (Higher Regional Court of Berlin) [Or. 12] [...] recently ruled that the certificate of succession still had to be valid at the time of the entry in the land register based on that certificate. The issuing authority's control function intended by the limitation of the period of validity of the copies of the certificate would be rendered devoid of purpose if land register entries could still be based on the certificate even after the expiry date.

This divergent starting point raises the fundamental question of whether the problem of the expiry of the validity of a certified copy of the certificate of succession during ongoing proceedings should be resolved autonomously under EU law, or whether that assessment should be made in accordance with the national law of the court seised, in so far as the application of that law does not affect the practical effectiveness of the regulation.

4. [...] [national procedure]

Supreme Court,

Vienna, 27 May 2020

[...]