



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

1 July 2021 *

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 650/2012 – European Certificate of Succession – Validity of a certified copy of the certificate not having an expiration date – Article 65(1) – Article 69 – Effects of the certificate as regards the persons who are designated on it but have not requested it to be issued – Article 70(3) – Date to take into account for the assessment of the validity of the copy – Evidential effects of the copy)

In Case C-301/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 27 May 2020, received at the Court on 7 July 2020, in the proceedings

UE,

HC

v

Vorarlberger Landes- und Hypothekenbank AG,

intervening parties:

Estate of VJ,

THE COURT (Sixth Chamber),

composed of L. Bay Larsen, President of the Chamber, C. Toader (Rapporteur) and N. Jääskinen, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: German.

after considering the observations submitted on behalf of:

- the Austrian Government, by J. Schmoll and E. Samoilova, and A. Posch, acting as Agents,
- the German Government, by J. Möller, M. Hellmann and U. Bartl, acting as Agents,
- the Spanish Government, by J. Ruiz Sánchez, acting as Agent,
- The Hungarian Government, by M.Z. Fehér and K. Szíjjártó, acting as Agents,
- the European Commission, by M. Wilderspin and M. Heller, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 April 2021,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 63, of Article 65(1), of Article 69 and of Article 70(3) 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 (OJ 2012 L 201, p. 107, and corrigenda OJ 2012 L 344, p. 3; OJ 2013 L 60, p. 140; and OJ 2019 L 243, p. 9).
- 2 The request has been made in proceedings between UE and HC, son and daughter of VJ, deceased, who had his last habitual residence in Spain, and Vorarlberger Landes- und Hypothekenbank AG, a bank established in Austria, concerning an application for repayment of a sum of money and securities paid into court by that bank.

Legal context

- 3 Recitals 7, 67, 71 and 72 of Regulation No 650/2012 state:
 - ‘(7) The proper functioning of the internal market should be facilitated by removing the obstacles to the free movement of persons who currently face difficulties in asserting their rights in the context of a succession having cross-border implications. In the European area of justice, citizens must be able to organise their succession in advance. The rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession must be effectively guaranteed.
- ...
- (67) In order for a succession with cross-border implications within the Union to be settled speedily, smoothly and efficiently, the heirs, legatees, executors of the will or administrators of the estate should be able to demonstrate easily their status and/or rights and powers in another Member State, for instance in a Member State in which succession

property is located. To enable them to do so, this Regulation should provide for the creation of a uniform certificate, the European Certificate of Succession (hereinafter referred to as “the Certificate”), to be issued for use in another Member State. ...

- (71) 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, such as the substantive validity of dispositions of property upon death. ... Any person who makes payments or passes on succession property to a person indicated in the Certificate as being entitled to accept such payment or property as an heir or legatee should be afforded appropriate protection if he acted in good faith relying on the accuracy of the information certified in the Certificate. The same protection should be afforded to any person who, relying on the accuracy of the information certified in the Certificate, buys or receives succession property from a person indicated in the Certificate as being entitled to dispose of such property. The protection should be ensured if certified copies which are still valid are presented. ...
- (72) The competent authority should issue the Certificate upon request. The original of the Certificate should remain with the issuing authority, which should issue one or more certified copies of the Certificate to the applicant and to any other person demonstrating a legitimate interest. ...’
- 4 Under Article 62 of that regulation, entitled ‘Creation of a European Certificate of Succession’:
- ‘1. This Regulation creates a European Certificate of Succession (hereinafter referred to as “the Certificate”) which shall be issued for use in another Member State and shall produce the effects listed in Article 69.
2. The use of the Certificate shall not be mandatory.
3. The Certificate shall not take the place of internal documents used for similar purposes in the Member States. However, once issued for use in another Member State, the Certificate shall also produce the effects listed in Article 69 in the Member State whose authorities issued it in accordance with this Chapter.’
- 5 Article 63 of that regulation, entitled ‘Purpose of the Certificate’, provides:
1. The Certificate is for use by heirs, legatees having direct rights in the succession and executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise respectively their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate.
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;
- ...’

6 Article 65 of that regulation, entitled ‘Application for a Certificate’, provides:

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

...

3. The application shall contain the information listed below, to the extent that such information is within the applicant’s knowledge and is necessary in order to enable the issuing authority to certify the elements which the applicant wants certified, and shall be accompanied by all relevant documents either in the original or by way of copies which satisfy the conditions necessary to establish their authenticity, without prejudice to Article 66(2):

...

(e) details of other possible beneficiaries under a disposition of property upon death and/or by operation of law: surname and given name(s) or organisation name, identification number (if applicable) and address;

...’

7 Under Article 68 of Regulation No 650/2012, entitled ‘Contents of the Certificate’:

‘The Certificate shall contain the following information, to the extent required for the purpose for which it is issued:

...

(g) details concerning the beneficiaries: surname (if applicable, surname at birth), given name(s) and identification number (if applicable);

...’

8 Article 69 of that regulation, entitled ‘Effects of the Certificate’, states:

‘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.

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.

4. Where a person mentioned in the Certificate as authorised to dispose of succession property disposes of such property in favour of another person, that other person shall, if acting on the basis of the information certified in the Certificate, be considered to have transacted with a person with authority to dispose of the property concerned, unless he knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence.
5. The Certificate shall constitute a valid document for the recording of succession property in the relevant register of a Member State, without prejudice to points (k) and (l) of Article 1(2).'
- 9 Article 70 of that regulation, entitled 'Certified copies of the Certificate', provides:
- '1. The issuing authority shall keep the original of the Certificate and shall issue one or more certified copies to the applicant and to any person demonstrating a legitimate interest.
2. The issuing authority shall, for the purposes of Articles 71(3) and 73(2), keep a list of persons to whom certified copies have been issued pursuant to paragraph 1.
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.'
- 10 Article 71 of the same regulation, entitled 'Rectification, modification or withdrawal of the Certificate', provides in paragraph 3:
- 'The issuing authority shall without delay inform all persons to whom certified copies of the Certificate have been issued pursuant to Article 70(1) of any rectification, modification or withdrawal thereof.'

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

- 11 Vorarlberger Landes- und Hypothekenbank placed a sum of money and securities under judicial receivership, after HC and UE and their father, VJ, applied for the return of those assets, relying on the existence of competing rights, the merits of which were disputed.
- 12 VJ, who had established his last habitual residence in Spain, died on 5 May 2017. Following that death, the succession procedure was followed before a Spanish notary, in accordance with Spanish law.
- 13 HC and UE requested the release of the sequestered object and submitted to the Bezirksgericht Bregenz (District Court, Bregenz, Austria) a certified copy of a European Certificate of Succession, issued by that Spanish notary at HC's request, in order to prove their status as VJ's heirs, in accordance with Article 62 et seq. of Regulation No 650/2012. That copy, which takes the form of a Form V ('Form V'), as provided for in Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the forms referred to in Regulation No 650/2012 (OJ 2014 L 359, p. 30), contains the entry 'unlimited' in the section 'valid until'. UE is mentioned on that certificate, alongside the name of his sister, as being the beneficiary of half of the inheritance concerned.

- 14 The applicants' claim was dismissed by the Bezirksgericht Bregenz (District Court, Bregenz). The Landesgericht Feldkirch (Regional Court, Feldkirch, Austria) dismissed the appeal brought against the decision at first instance. It held, first, that only the person who applied for the issue of the European Certificate of Succession is in a position to establish his or her rights by submitting that certificate, second, that the issue a copy of such a certificate without a limit of validity is contrary to the requirement to provide for a period of validity limited to six months for the processing of that copy and, third, that the certificate must be valid on the date on which the court of first instance delivered its decision.
- 15 An appeal on a point of law, '*Revision*', was brought before the referring court, the Oberster Gerichtshof (Supreme Court, Austria), against the decision of the Landesgericht Feldkirch (Regional Court, Feldkirch). The referring court points out that, under Austrian law, the release of assets under sequestration requires a written request from all the parties ('the opposing parties'), so long as a final judgment has not been delivered. Thus, in order to give its decision, the referring court asks whether the copy of the European Certificate of Succession could be used to establish the rights of the heirs.
- 16 In particular, the Oberster Gerichtshof (Supreme Court) expresses doubts, in the first place, as to the validity of a certified copy which does not contain an expiry date. It observes that that situation is not provided for by Regulation No 650/2012 and that there is no case-law of the Court in that regard. The referring court refers, first, to the possibility that that document does not produce any effects because of that irregularity and, second, to the fact that the 'unlimited' reference could constitute an extension of the period of validity, if it could be regarded as an 'exceptional case' within the meaning of Article 70(3) of that regulation. However, the wording of that provision could also be interpreted as meaning that that document has a period of validity limited to six months and, in such a case, the referring court questions the date from which that period must be calculated.
- 17 In the second place, that court asks whether, given that Regulation No 650/2012 does not provide for a situation where only one of the heirs applies for the issue of the European Certificate of Succession, the effect of that certificate concerns solely the 'applicant' or also all the persons mentioned therein.
- 18 In the third place, the referring court raises the question of the possible consequences of the expiry of the period of validity of a copy of the European Certificate of Succession. In that regard, it refers to the existence of differences between the various academic positions in the field, and between the case-law of the Austrian courts and that of the German courts, as to whether it is sufficient for that copy to be valid on the date on which the application is lodged with the authority hearing the case or whether that copy must still be valid at the time when the decision is given.
- 19 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 70(3) of Regulation No 650/2012 to be interpreted as meaning that a copy of the certificate issued, in disregard of that provision, without indicating an expiry date, for an unlimited period,

– is valid and effective indefinitely, or

- is valid only for a period of six months from the date of issue of the certified copy, or
- is valid only for a period of six months from another date, or
- is invalid and unsuitable for use within the meaning of Article 63 of Regulation No 650/2012?

- (2) Is Article 65(1) read in conjunction with Article 69(3) of that 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 regulation No 650/2012?
- (3) Must Article 69 read in conjunction with Article 70(3) of that 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?’

Consideration of the questions referred

The first and third questions

- 20 By its first and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 70(3) of Regulation No 650/2012 must be interpreted as meaning that a certified copy of the European Certificate of Succession, bearing the words ‘unlimited duration’, is valid, and that its effects, within the meaning of Article 69 of that regulation, must be recognised for an unlimited period, since that copy was valid at the time of its original presentation.
- 21 As a preliminary point, it should be noted that the period laid down in Article 70(3) of Regulation No 650/2012 does not affect the period of validity of the European Certificate of Succession, but only that of the certified copies thereof. In addition, as is apparent from Article 70(1), read in the light of recital 72 of that regulation, the European Certificate of Succession must be retained by the issuing authority, which issues copies thereof.
- 22 It is clear from the wording of Article 70(3) of Regulation No 650/2012 that certified copies of that certificate are valid for a limited period of six months, which must be indicated in the copy concerned by way of the expiry date. In exceptional, duly justified cases, the issuing authority may extend the period of validity. Once that period of six months has elapsed, any person in possession of a certified copy of a European Certificate of Succession must, in order to be able to use that certificate for the purposes indicated in Article 63, apply for an extension of the period of validity of that copy or request a new certified copy from the issuing authority.
- 23 The limitation of the period of validity of the copies was provided for by reason of the fact that the European Certificate of Succession produces its effects in all the Member States and is presumed to accurately demonstrate the existence of elements which have been established under the law

applicable to the succession or under any other law applicable to specific elements and the status and rights of persons designated as heirs, legatees, executors of will or administrators of the estate, in accordance with Article 69(1) and (2) of that regulation.

- 24 In that regard, as the Advocate General observed, in essence, in point 41 of his Opinion, the six-month period laid down in Article 70(3) of Regulation No 650/2012 makes it possible to ensure that the content of the certified copy of the European Certificate of Succession corresponds to the reality of the succession and, in particular, to verify periodically that that certificate has not been rectified, modified or withdrawn, pursuant to Article 71 of that regulation, or that its effects have not been suspended under Article 73 of that regulation.
- 25 It follows that the validity of such a certified copy is limited, save in exceptional cases, to six months.
- 26 However, the question arises as to whether, where the issuing authority has expressly stated, on Form V, that that copy does not have an expiry date, that Form V must be regarded as being valid for a period of six months or whether the absence of an expiry date precludes the use of that copy, within the meaning of Article 63 of that regulation.
- 27 In that regard, the objective of Regulation No 650/2012, as is apparent from recital 7 thereof, which is to facilitate the proper functioning of the internal market by removing the obstacles to the free movement of persons who face difficulties in asserting their rights in the context of a succession having cross-border implications, would be compromised if the heirs or other persons with a legitimate interest were unable to establish their rights due to a formal error in the certified copy of the European Certificate of Succession which was issued to them, but would have to request a new copy of that certificate, which would lead to longer delays and higher costs.
- 28 Consequently, where a certified copy of the European Certificate of Succession is marked ‘unlimited’, that copy must be regarded as valid for a period of six months.
- 29 As regards the start date of the period of validity of that copy, it should be noted that the issuing authority must indicate, on Form V, after the date of validity of the certified copy, the date of its issue. Thus, the period of validity must be calculated from that date, which ensures the predictability and legal certainty required as regards the use of that copy.
- 30 As regards the referring court’s questions as to the date on which the certified copy of the European Certificate of Succession must be valid in order to produce its effects, within the meaning of Article 69 of Regulation No 650/2012, and, in particular, as to the expiry, during the proceedings, of the validity of that copy, it should be noted that none of the provisions of that regulation directly answers that question.
- 31 However, as the Advocate General observed in particular in point 49 of his Opinion, the effects of that copy must be the same in all the Member States, so that its validity must be governed by Regulation No 650/2012.
- 32 It is apparent from recital 71 of Regulation No 650/2012 that the European Certificate of Succession must produce the same effects in all Member States and that persons relying on the accuracy of the information certified in the certificate should be ensured protection where

certified copies are presented. That ensures, *inter alia*, the protection of third parties who make payments or pass on succession property to a person indicated in the certificate as being entitled to accept such payment or property as an heir.

- 33 If the validity of a certified copy of the European Certificate of Succession was required on the date of adoption, by the authority before which that copy is produced, of the decision sought, or during the judicial proceedings relating to it, and not on the date on which the application was presented, such a requirement would risk adversely affecting the rights of the heirs and other entitled to the succession, who, since they have no influence on the length of the proceedings leading to that decision, would have to, as necessary, request and present such a copy several times.
- 34 As the Advocate General observed in points 58 and 59 of his Opinion, that interpretation would result in additional delays, formalities and efforts, for both the persons concerned in the succession and for the authorities dealing with it, and would be contrary to the objective pursued by Regulation No 650/2012, which is, as noted in paragraph 27 of the present judgment, to settle speedily, smoothly and efficiently a succession having cross-border implications and the rights of the persons concerned to succession, as is apparent from recitals 7 and 67 of that regulation.
- 35 In addition, Article 71(3) of Regulation No 650/2012 states that the issuing authority is to without delay inform all persons to whom certified copies of the certificate have been issued, the validity of which, pursuant to Article 70(2) of that regulation, is to keep a list, of any rectification, modification or withdrawal of the European Certificate of Succession, in order, in accordance with recital 72 of that regulation, to avoid wrongful use of such copies and to limit the risk of a certified copy, the validity of which has expired at the time of the adoption of the decision sought, not corresponding to the content of the European Certificate of Succession.
- 36 In that regard, as the Advocate General observed in point 70 of his Opinion, where the authority before which the certified copy of the European Certificate of Succession was produced has information which could reasonably justify doubts concerning the status of that certificate, it may, exceptionally, request the production of a new copy or a copy the period of validity of which has been extended.
- 37 In the light of all the foregoing considerations, the answer to the first and third questions is that Article 70(3) of Regulation No 650/2012 must be interpreted as meaning that a certified copy of the European Certificate of Succession, bearing the words ‘unlimited duration’, is valid for a period of six months from the date of issue and produces its effects, within the meaning of Article 69 of that regulation, if it was valid when it was presented to the competent authority.

The second question

- 38 By its second question, the referring court asks, in essence, whether Article 65(1) of Regulation No 650/2012, read in conjunction with Article 69(3) thereof, must be interpreted as meaning that the effects of the European Certificate of Succession are produced with respect to all persons who are named therein, as heirs, legatees, executors of wills or administrators of the estate, even if they have not themselves requested that it be issued.

- 39 Article 63(1) and (2)(a) of that regulation, concerning the purpose of the European Certificate of Succession, lists the persons who may use it, namely heirs, legatees having direct rights to the estate and executors of wills or administrators of the estate, to prove, in another Member State, in particular their status and/or succession rights (see, to that effect, judgment of 1 March 2018, *Mahnkopf*, C-558/16, EU:C:2018:138, paragraph 36 and the case-law cited).
- 40 In accordance with Article 65(1) of Regulation No 650/2012, the European Certificate of Succession is to be issued at the request of any party referred to in Article 63(1) of that regulation. Article 65(3)(e) thereof specifies that the application for a European Certificate of Succession is to contain, inter alia, details of possible beneficiaries under a disposition of property upon death and/or by operation of law, other than the applicant. That information must, pursuant to Article 68(g) of that regulation, be reproduced in that certificate.
- 41 Article 69(3) of Regulation No 650/2012 provides that payments or the passing on of property may be made, on the basis of the information certified in the European Certificate of Succession, to a person designated in that certificate, as heir, legatee, executor or administrator, as being entitled to accept payment or property. Thus, the effects of the European Certificate of Succession may be felt with regard to that person, without that provision specifying whether that person must have the status of an applicant.
- 42 Furthermore, irrespective of the status of the applicant, under Article 70(1) of that regulation, the issuing authority, which keeps the original of the certificate, is to issue one or more certified copies to the applicant and to any person demonstrating a legitimate interest. It follows that an obligation requiring the person relying on the certified copy of a European Certificate of Succession to be compulsorily the person who applied for the certificate originally issued would be contrary to the very wording of Article 70(1) of that regulation.
- 43 None of those provisions requires the person using a certified copy of the European Certificate of Succession in order to benefit from the effects of that certificate to have the status of an applicant for that certificate.
- 44 Moreover, as the European Commission pointed out in its written observations, if any interested party were obliged to request a European Certificate of Succession and its certified copy in respect of a given succession, even though certificates and copies have already been issued for the latter, unnecessary costs would thereby arise. Such an obligation would be contrary to the objective pursued by Regulation No 650/2012, as is apparent from recital 67 thereof, which is to settle a cross-border succession speedily, smoothly and efficiently.
- 45 Having regard to the foregoing considerations, the answer to the second question is that Article 65(1) of Regulation No 650/2012, read in conjunction with Article 69(3) thereof, must be interpreted as meaning that the effects of the European Certificate of Succession are produced with respect to all persons who are named therein, even if they have not themselves requested that it be issued.

Costs

- 46 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 (Sixth Chamber) hereby rules:

- 1. Article 70(3) 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 must be interpreted as meaning that a certified copy of the European Certificate of Succession, bearing the words ‘unlimited duration’, is valid for a period of six months from the date of issue and produces its effects, within the meaning of Article 69 of that regulation, if it was valid when it was presented to the competent authority;**
- 2. Article 65(1) of Regulation No 650/2012, read in conjunction with Article 69(3) of that regulation, must be interpreted as meaning that the effects of the European Certificate of Succession are produced with respect to all persons who are named therein, even if they have not themselves requested that it be issued.**

[Signatures]