



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

9 September 2021 *

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Succession – Regulation (EU) No 650/2012 – Article 3(1)(b) – Concept of ‘agreement as to succession’ – Scope – Contract transferring ownership *mortis causa* – Article 83(2) – Choice of applicable law – Transitional provisions)

In Case C-277/20,

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 24 June 2020, in the proceedings brought by

UM,

other parties:

HW, as administrator of the estate of ZL,

Marktgemeinde Kötschach-Mauthen,

Finanzamt Spittal Villach,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader (Rapporteur), M. Safjan and N. Jääskinen, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted and the responses to the questions put by the Court on behalf of:

- UM, by A. Wittwer, Rechtsanwalt,
- the German Government, by J. Möller, M. Hellmann and U. Bartl, acting as Agents,

* Language of the case: German.

– the Spanish Government, by J. Rodríguez de la Rúa Puig, acting as Agent,
– the European Commission, by M. Heller and M. Wilderspin, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 1 July 2021,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(1)(b) and of Article 83(2) 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; ‘the Succession Regulation’).
- 2 The request has been made in proceedings brought by UM, a German national, concerning an application for registration in the Land Register of title to immovable property located in Austria.

Legal context

EU law

- 3 Recitals 9, 11, 14 and 49 of the Succession Regulation state:

‘(9) The scope of this Regulation should include all civil-law aspects of succession to the estate of a deceased person, namely all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession.

...

(11) This Regulation should not apply to areas of civil law other than succession. For reasons of clarity, a number of questions which could be seen as having a link with matters of succession should be explicitly excluded from the scope of this Regulation.

...

(14) Property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts, should also be excluded from the scope of this Regulation. ...

...’

- (49) An agreement as to succession is a type of disposition of property upon death the admissibility and acceptance of which vary among the Member States. In order to make it easier for succession rights acquired as a result of an agreement as to succession to be accepted in the Member States, this Regulation should determine which law is to govern the admissibility of such agreements, their substantive validity and their binding effects between the parties, including the conditions for their dissolution.’
- 4 Article 1 of the Succession Regulation, entitled ‘Scope’, provides:
- ‘1. This Regulation shall apply to succession to the estates of deceased persons. ...
2. The following shall be excluded from the scope of this Regulation:
- ...
- (g) property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts, joint ownership with a right of survivorship, pension plans, insurance contracts and arrangements of a similar nature, without prejudice to point (i) of Article 23(2);
- ...
- (l) any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.’
- 5 Article 3 of that regulation, entitled ‘Definitions’, states in paragraph 1 thereof:
- ‘For the purposes of this Regulation:
- (a) “succession” means succession to the estate of a deceased person and covers all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession;
- (b) “agreement as to succession” means an agreement, including an agreement resulting from mutual wills, which, with or without consideration, creates, modifies or terminates rights to the future estate or estates of one or more persons party to the agreement;
- ...
- (d) “disposition of property upon death” means a will, a joint will or an agreement as to succession;
- ...’
- 6 Chapter III of the Succession Regulation, entitled ‘Applicable law’, contains Articles 20 to 38 thereof.

7 According to Article 21 of that regulation, entitled ‘General rule’:

‘1. Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.

2. Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State.’

8 Article 22 of that regulation, entitled ‘Choice of law’, provides in paragraphs 1 and 2 thereof:

‘1. 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. The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition.’

9 Article 83 of that regulation, entitled ‘Transitional provisions’, provides in paragraph 2 thereof:

‘Where the deceased had chosen the law applicable to his succession prior to 17 August 2015, that choice shall be valid if it meets the conditions laid down in Chapter III or if it is valid in application of the rules of private international law which were in force, at the time the choice was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed.’

Austrian law

10 Paragraph 956 of the Allgemeines Bürgerliches Gesetzbuch (Civil Code), in the version applicable in the main proceedings, is worded as follows:

‘A donation to be completed only after the donor’s death is valid as a legacy subject to compliance with the prescribed formalities. It can only be regarded as a contract if it is accepted by the donee, the donor has expressly renounced the power to revoke it and a written deed of donation is handed to the donee.’

11 Paragraph 1(1)(d) of the Notariatsaktsgesetz (Law on notarised acts) states that a contract of donation without actual transfer must be recorded in a notarised act.

12 Paragraph 26 of the Grundbuchsgesetz (Law on the Land Register) provides:

‘(1) Registrations and preliminary remarks can only be authorised based on a valid deed prepared in the prescribed form.

(2) Deeds concerning the acquisition or variation of a right *in rem* must include a valid legal reason.’

- 13 According to Paragraph 2 of the Rechtspflegergesetz (Law on judicial administrators):
- ‘A court officer may be appointed as a judicial administrator for one or more of the following fields of work: ...
3. Matters related to the Land Register and Shipping Register;
- ...’
- 14 Paragraph 16(2) of that law provides:
- ‘The following shall always remain the preserve of the judge:
- ...
6. Decisions in cases in which foreign law applies.’

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

- 15 It is apparent from the documents before the Court that, on 22 July 1975, UM’s father entered into a contract to transfer, upon his death and in equal parts to his son and daughter-in-law at the time, his ownership of a plot of land located in Austria, including all the structures erected thereon, subject to certain conditions. When that contract, in respect of which Austrian law was designated as the applicable law, was concluded, all of the parties were habitually resident in Germany.
- 16 The conditions set out in that contract included inter alia the obligation for UM’s father to erect a two-family house within 10 years of the conclusion of the contract, for UM and his wife to remain married and for the latter to still be alive. The contract provided that if these conditions were not met, UM would be the sole beneficiary. UM’s father also authorised the transfer of ownership to be recorded in the Austrian Land Register upon production of an official death certificate and proof that the conditions required to effect the transfer were met. Prior to the death of UM’s father in Cologne (Germany) on 13 May 2018, UM and his wife had divorced and she had subsequently died.
- 17 Succession proceedings were brought before the Amtsgericht Köln (Local Court, Cologne, Germany), the last place of residence of UM’s father.
- 18 UM applied to the Bezirksgericht Hermagor (District Court, Hermagor, Austria), to have his title with respect to the immovable property at issue in the main proceedings recorded in the Land Register, arguing that, at the time of his father’s death, he was the sole beneficiary of the contract. The Rechtspfleger (Judicial Administrator, Austria) of that court, assigned to rule on that application, considered that the applicable law was Austrian law and rejected that application failing any evidence establishing that the conditions required by the contract at issue in the main proceedings had been met.

- 19 The Landesgericht Klagenfurt (Regional Court, Klagenfurt, Austria) upheld that decision on the grounds, first, that the Succession Regulation was not applicable on account of the choice of Austrian law made in that contract and, secondly, that the transfer of the immovable property on the basis of the donation *mortis causa* could not take place without proof that the house had been constructed in accordance with that contract.
- 20 UM brought an appeal on a point of law (*Revision*) before the referring court, the Oberster Gerichtshof (Supreme Court, Austria).
- 21 The referring court stated that the validity of the choice of Austrian law as the law applicable to a contract transferring ownership *mortis causa* and the application of the Succession Regulation to that contract were preliminary questions that it had to raise of its own motion in order to answer the question whether the judicial administrator in the dispute in the main proceedings had the necessary functional authority.
- 22 According to that court, the documents presented to the court having jurisdiction over the Land Register suggested that a contract transferring ownership *mortis causa* for UM's benefit had been concluded in accordance with the criteria of Austrian law. The referring court seeks to ascertain, however, whether that contract falls within the scope of the Succession Regulation and may be qualified as an 'agreement as to succession' within the meaning of Article 3(1)(b) of that regulation.
- 23 If so, as regards the application of Austrian law chosen by the parties to the contract in the main proceedings, the referring court considers that the transitional provisions of the Succession Regulation apply, but it harbours doubts as to the interpretation of Article 83(2) of that regulation, specifically with regard to the choice of applicable law by the parties to the contract.
- 24 In those circumstances, the Oberster Gerichtshof (Supreme Court, Austria) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
 - '(1) Is Article 3(1)(b) of [the Succession Regulation] to be interpreted as meaning that a contract of donation *mortis causa* entered into between two German nationals habitually resident in Germany in respect of immovable property located in Austria, granting the donee a right having the character of an obligation against the estate to registration of his title after the donor's death pursuant to that contract and the donor's death certificate, that is without the intervention of the probate court, is an agreement as to succession within the meaning of that provision?
 - (2) If the answer to the above question is in the affirmative:

Is Article 83(2) of [the Succession Regulation] to be interpreted as meaning that it also regulates the effect of a choice of applicable law made before 17 August 2015 for a contract of donation *mortis causa* that is to be qualified as an "agreement as to succession" within the meaning of Article 3(1)(b) of [the Succession Regulation]?'
- 25 Having decided to give a ruling without holding a hearing, the Court, pursuant to Article 61(1) of its Rules of Procedure, sent the parties and the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union a number of questions to be answered in writing, to which UM, the German and Spanish Governments and the European Commission responded.

Consideration of the questions referred

The first question

- 26 By its first question, the referring court asks, in essence, whether Article 3(1)(b) of the Succession Regulation must be interpreted as meaning that a contract under which a person provides for the future transfer, on death, of ownership of immovable property belonging to him or her to other parties to the contract is an agreement as to succession within the meaning of that provision.
- 27 As a preliminary point, it should be noted that Article 1(2)(g) of the Succession Regulation excludes from its scope ‘property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts’. By contrast, agreements as to succession, as defined in Article 3(1)(b) of that regulation, constitute ‘dispositions of property upon death’ within the meaning of Article 3(1)(d) of that regulation, as do wills and joint wills.
- 28 Article 3(1)(b) of the Succession Regulation defines an ‘agreement as to succession’ as ‘an agreement, including an agreement resulting from mutual wills, which, with or without consideration, creates, modifies or terminates rights to the future estate or estates of one or more persons party to the agreement’.
- 29 According to settled case-law of the Court, 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 not only its wording but also its context and the objective pursued by the legislation in question (judgment of 1 March 2018, *Mahnkopf*, C-558/16, EU:C:2018:138, paragraph 32 and the case-law cited).
- 30 As regards the wording of Article 3(1)(b) of the Succession Regulation, it should be noted that that provision refers generally to any agreement which, inter alia, creates rights to the future ‘estate or estates’.
- 31 To that end, pursuant to Article 3(1)(a) of that regulation, ‘succession’ means ‘succession to the estate of a deceased person’, that term covering ‘all forms of transfer of assets ... whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession’.
- 32 It follows that a contract under which a person provides for the future transfer, on death, of ownership of immovable property belonging to him or her and which confers rights in his or her future estate on other parties to that contract, constitutes an ‘agreement as to succession’ within the meaning of Article 3(1)(b) of the Succession Regulation.
- 33 That interpretation is supported by the objective pursued by that regulation, which is to avoid the fragmentation of the succession, in accordance with the principle of a single estate, and to establish a uniform regime applicable to all civil-law aspects of a succession to the estate of a deceased person with cross-border implications and, in particular, to ‘all forms of transfer of assets ... by reason of death’, as can be seen from recital 9 of the regulation (see, to that effect, judgment of 21 June 2018, *Oberle*, C-20/17, EU:C:2018:485, paragraphs 55 and 56).

- 34 In that regard, it should be recalled that although, under Article 1(2)(g) of the Succession Regulation, assets including those transferred otherwise than by succession, for instance by way of gifts, are excluded from its scope, that exclusion must be interpreted strictly.
- 35 It follows that, where a disposition of property contained in an agreement relating to a succession consists, like a gift within the meaning of Article 1(2)(g) of that regulation, in a donation, but does not take effect until the death of the deceased, it falls within the scope of that regulation.
- 36 In the light of all the foregoing considerations, the answer to the first question is that Article 3(1)(b) of the Succession Regulation must be interpreted as meaning that a contract under which a person provides for the future transfer, on death, of ownership of immovable property belonging to him or her to other parties to the contract is an agreement as to succession within the meaning of that provision.

The second question

- 37 By its second question, the referring court asks, in essence, whether Article 83(2) of the Succession Regulation must be interpreted as meaning that it applies to the examination of the validity of a choice of applicable law, made before 17 August 2015, governing an agreement as to succession within the meaning of Article 3(1)(b) of that regulation.
- 38 It should be noted that Article 83 of that regulation, entitled ‘Transitional provisions’, provides in paragraph 2 thereof that ‘where the deceased had chosen the law applicable to his succession prior to 17 August 2015, that choice shall be valid if it meets the conditions set out in Chapter III or if it is valid in application of the rules of private international law which were in force, at the time the choice was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed’.
- 39 In that regard, it must be held that, as is apparent from the very wording of that provision, read in conjunction with Articles 21 and 22 of the Succession Regulation, Article 83(2) governs the validity of the choice of law applicable to the succession as a whole. In the present case, it is apparent from the documents before the Court, and subject to verification by the referring court, that the choice of Austrian law concerned only the agreement as to succession concluded by the deceased in the main proceedings in respect of one of his assets and not the succession as a whole, with the result that the condition for applying Article 83(2) of that regulation cannot be considered satisfied in such circumstances.
- 40 Having regard to all of the foregoing considerations, the answer to the second question is that Article 83(2) of the Succession Regulation must be interpreted as meaning that it does not apply to the examination of the validity of a choice of applicable law, made before 17 August 2015, to govern only an agreement as to succession within the meaning of Article 3(1)(b) of that regulation, in respect of a particular asset of the deceased, and not the latter’s succession as a whole.

Costs

- 41 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 (First Chamber) hereby rules:

- 1. Article 3(1)(b) 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 contract under which a person provides for the future transfer, on death, of ownership of immovable property belonging to him or her to other parties to the contract is an agreement as to succession within the meaning of that provision.**
- 2. Article 83(2) of Regulation No 650/2012 must be interpreted as meaning that it does not apply to the examination of the validity of a choice of applicable law, made before 17 August 2015, to govern only an agreement as to succession within the meaning of Article 3(1)(b) of that regulation, in respect of a particular asset of the deceased, and not the latter's succession as a whole.**

[Signatures]