Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

23 January 2025 *

(Reference for a preliminary ruling – Article 267 TFEU – Concept of 'court or tribunal' – Judicial cooperation in civil matters – European Certificate of Succession – Regulation (EU) No 650/2012 – Article 67(1) – Decisions taken by the issuing authority – No exercise of a judicial function – Inadmissibility)

In Case C-187/23 [Albausy], [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Amtsgericht Lörrach (Local Court, Lörrach, Germany), made by decision of 21 March 2023, received at the Court on 23 March 2023, in the proceedings brought by

E.V.G.-T.

other interested parties:

P.T.,

F.T.,

G.T.,

THE COURT (Fifth Chamber),

composed of I. Jarukaitis (Rapporteur), President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Gratsias and Z. Csehi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: N. Mundhenke, Administrator,

having regard to the written procedure and further to the hearing on 31 January 2024,

after considering the observations submitted on behalf of:

– E.V.G.-T., by T.C. Pfeiffer, Rechtsanwalt,

– the German Government, by J. Möller and M. Hellmann and by J. Simon, 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 party to the proceedings.

– the Spanish Government, by I. Herranz Elizalde, acting as Agent,

– the European Commission, by J. Vondung and W. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 April 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of point (a) of the second subparagraph of Article 67(1) 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).

2 The request has been made in proceedings, brought by E.V.G.-T. following the death of her husband, seeking the issue of a European Certificate of Succession designating her as sole heir.

Legal context

European Union law

Regulation No 650/2012

3 Recitals 7, 8, 67 and 71 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.

(8) In order to achieve those objectives, this Regulation should bring together provisions on jurisdiction, on applicable law, on recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements and on the creation of a European Certificate of Succession.

…

(67) In order for a succession with cross-border implications within the [European] 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. The evidentiary effect of the Certificate should not extend to elements which are not governed by this Regulation, such as questions of affiliation or the question whether or not a particular asset belonged to the deceased. …'.

4 Article 3 of that regulation, entitled 'Definitions', provides:

'1. For the purposes of this Regulation:

…

(c) "joint will" means a will drawn up in one instrument by two or more persons;

…

(g) "decision" means any decision in a matter of succession given by a court of a Member State, whatever the decision may be called, including a decision on the determination of costs or expenses by an officer of the court;

…

2. For the purposes of this Regulation, the term "court" means any judicial authority and all other authorities and legal professionals with competence in matters of succession which exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate:

(a) may be made the subject of an appeal to or review by a judicial authority; and

(b) have a similar force and effect as a decision of a judicial authority on the same matter.

…'.

5 Chapter VI of Regulation No 650/2012, entitled 'European Certificate of Succession', comprises Articles 62 to 73 of that regulation.

6 Article 63 of that regulation, entitled ‘Purpose of the Certificate’, provides, in paragraph 2 thereof:

‘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;

(b) the attribution of a specific asset or specific assets forming part of the estate to the heir(s) …

…’.

7 Article 66 of Regulation No 650/2012, entitled ‘Examination of the application’, provides:

‘1. Upon receipt of the application the issuing authority shall verify the information and declarations and the documents and other evidence provided by the applicant. It shall carry out the enquiries necessary for that verification of its own motion where this is provided for or authorised by its own law, or shall invite the applicant to provide any further evidence which it deems necessary.

…

4. The issuing authority shall take all necessary steps to inform the beneficiaries of the application for a Certificate. It shall, if necessary for the establishment of the elements to be certified, hear any person involved and any executor or administrator and make public announcements aimed at giving other possible beneficiaries the opportunity to invoke their rights.

…’.

8 Article 67 of that regulation, entitled ‘Issue of the Certificate’, provides:

‘1. The issuing authority shall issue the Certificate without delay in accordance with the procedure laid down in this Chapter when the elements to be certified have been established under the law applicable to the succession or under any other law applicable to specific elements. It shall use the form established in accordance with the advisory procedure referred to in Article 81(2).

The issuing authority shall not issue the Certificate in particular if:

(a) the elements to be certified are being challenged; or

(b) the Certificate would not be in conformity with a decision covering the same elements.

2. The issuing authority shall take all necessary steps to inform the beneficiaries of the issue of the Certificate.’

9 Article 69 of Regulation No 650/2012, entitled ‘Effects of the certificate’, provides:

‘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 … 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.

…'.

10 Article 72 of that regulation, entitled 'Redress procedures', provides:

'1. Decisions taken by the issuing authority pursuant to Article 67 may be challenged by any person entitled to apply for a Certificate.

…

The challenge shall be lodged before a judicial authority in the Member State of the issuing authority in accordance with the law of that State.

…'.

Implementing Regulation (EU) No 1329/2014

11 Article 1(5) of Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the Forms referred to in 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 (OJ 2014 L 359, p. 30), provides:

'The form to be used for the European Certificate of Succession referred to in Article 67(1) of Regulation [No 650/2012] shall be as set out in Annex 5 as Form V.'

12 Form V in that annex contains, on its final page, a statement according to which 'the authority certifies that it has taken all necessary steps to inform the beneficiaries of the application for a certificate and that, at the time of establishing the certificate, none of the elements contained in it were contested by the beneficiaries.'

German law

The FamFG

13 Paragraph 26 of the Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (Law on proceedings in family matters and in matters subject to non-contentious jurisdiction) of 17 December 2008 (BGBl. 2008 I, p. 2586), in the version applicable in the main proceedings ('the FamFG'), provides:

'The court shall of its own motion conduct the inquiries necessary to establish the facts that are relevant for the purpose of adjudicating the dispute.'

14 Paragraph 352e of the FamFG, entitled 'Decision on applications for a certificate of inheritance', provides:

'(1) The certificate of inheritance shall be issued only if the court having jurisdiction in matters of succession considers the facts necessary to substantiate the application to be established. Decision shall be given by way of an order. The order shall take effect upon its adoption. Notification of the order shall not be required.

(2) If the order is contrary to the declared wishes of an interested party, it shall be notified to the interested parties. In that case, the court shall suspend the immediate effect of the order and postpone the issue of the certificate of inheritance until the date on which the order becomes final.

(3) If the certificate of inheritance has already been issued, an appeal against the order shall be admissible only to the extent that withdrawal of the certificate of inheritance is requested.'

Law on international succession law and amending the provisions governing the certificate of inheritance and other provisions

15 Paragraph 35(1) of the Gesetz zum Internationalen Erbrecht und zur Änderung von Vorschriften zum Erbschein sowie zur Änderung sonstiger Vorschriften (Law on international succession law and amending the provisions governing the certificate of inheritance and other provisions) of 29 June 2015 (BGBl. 2015 I, p. 1042), provides:

'Unless otherwise provided by Regulation [No 650/2012] and the provisions of this section, the [FamFG] shall apply.'

16 Paragraph 39 of that law, entitled 'Nature of the decision', provides:

'(1) If the requirements for the issue of a European Certificate of Succession are met, the court shall give its decision by issuing the original of such a certificate. If the requirements for the issue of a certified copy or for the extension of the period of validity of such a copy are met, the court shall give its decision by issuing a certified copy or by extending the period of validity of such a copy. The court shall give its decision on any other matters by way of an order.

(2) The form referred to in the second sentence of Article 67(1) of Regulation [No 650/2012], read in conjunction with Article 81(2) thereof, shall be used for the purpose of issuing a European Certificate of Succession and a certified copy.'

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

17 P.M.J.T., a French national who was last domiciled in Germany, died on 15 September 2021.

18 On 23 November 2021, E.V.G.-T., the surviving spouse, represented by her representative *ad litem*, submitted an application for a European Certificate of Succession before the referring court, the Amtsgericht Lörrach (Local Court, Lörrach, Germany), in order that she may be designated as the sole heir of the deceased. To that end, she produced a joint will dated 23 July 2020, handwritten by the surviving spouse and signed both by her and by the deceased, by which the two spouses designated each other as sole heirs.

19 It is, moreover, common ground that there was an earlier will, dated 31 May 2001, handwritten and signed by P.M.J.T., by which he had designated his two grandchildren as heirs and entrusted his son with the organisation of his funeral service in Spain.

20 The son and grandchildren of the deceased maintain that the will of 23 July 2020 is invalid. In that regard, they argue before the referring court that the deceased no longer had the capacity to make a disposition of property upon death at the time when that will was drawn up and that the signature on the will is not his own.

21 The referring court has found that the claims of the deceased's son and grandchildren are unfounded. First, it observes that their assertion that the deceased was sometimes in a state of confusion is not sufficient to justify a finding of such incapacity or a further examination of that challenge by means of a supplementary measure of inquiry. Second, it has established the authenticity of the deceased's signature on the joint will after comparing it with previous specimen signatures that were available to the court. Therefore, that court considers that the surviving spouse is the sole heir of the deceased.

22 As regards the referring court's doubts, first, it is unsure as to whether the challenges referred to in paragraph 20 of the present judgment are capable of precluding the issue of the European Certificate of Succession. In that regard, it states that point (a) of the second subparagraph of Article 67(1) of Regulation No 650/2012 could be interpreted as covering not only challenges raised in the course of proceedings distinct from the procedure for issuing a European Certificate of Succession, but also challenges raised in the course of the latter procedure. It considers that, in that case, the challenges raised by the deceased's son and grandchildren before the referring court could, in this instance, preclude the issue of the certificate for which the surviving spouse has applied.

23 In that context, the referring court is uncertain as to whether the issuing authority may examine challenges raised in the course of the procedure for issuing a European Certificate of Succession, or whether any such challenge necessarily precludes the issue of that certificate. It also states that that matter is the subject of debate in German law.

24 Second, according to the explanations provided by the referring court, the representative *ad litem* of the surviving spouse intends to submit an application for a certificate of inheritance as referred to in Article 352e of the FamFG, in the event that the main proceedings are stayed, in which case the challenges raised by the deceased's son and grandchildren will have to be examined under national law in the context of those other proceedings. In this respect, that court is unsure as to whether point (a) of the second subparagraph of Article 67(1) of Regulation No 650/2012 is to be interpreted as meaning that challenges which have been rejected in the context of proceedings

other than the procedure for issuing a European Certificate of Succession, such as the proceedings relating to a certificate of inheritance, nevertheless preclude the issue of the European Certificate of Succession.

25 Third, given that the challenges raised by the deceased's son and grandchildren are unfounded in the main proceedings, the referring court considers that the state of the proceedings permits final judgment to be given, even without a formal investigation. That court is uncertain as to whether such insufficiently substantiated challenges are also covered by point (a) of the second subparagraph of Article 67(1) of Regulation No 650/2012 and, therefore, are capable of precluding the issue of the European Certificate of Succession. The referring court also refers, in that context, to the possibility of frivolous challenges.

26 Fourth, in the event that the referring court is permitted to examine challenges raised in the course of the procedure for issuing a European Certificate of Succession, the question arises as to whether and in what form the reasons for rejecting such challenges must be stated. It notes that the procedural rules contained in Regulation No 650/2012 do not provide that the issue of the European Certificate of Succession is to be accompanied by a decision. In addition, the referring court points out that the form to be used for issuing a European Certificate of Succession, as referred to in Article 1(5) of Implementing Regulation No 1329/2014 and set out in Annex 5 to that regulation, contains a declaration according to which 'the authority certifies that it has taken all necessary steps to inform the beneficiaries of the application for a certificate and that, at the time of establishing the certificate, none of the elements contained in it were contested by the beneficiaries.'

27 In those circumstances, the Amtsgericht Lörrach (Local Court, Lörrach) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must point (a) of the second subparagraph of Article 67(1) of [Regulation No 650/2012] be interpreted as meaning that it also refers to challenges raised in the procedure for issuing the European Certificate of Succession itself, which the court is not permitted to examine, and that it does not refer only to challenges raised in other proceedings?

(2) If the answer to Question [1] is in the affirmative: Must point (a) of the second subparagraph of Article 67(1) of [Regulation No 650/2012] be interpreted as meaning that a European Certificate of Succession may not be issued even if challenges have been raised in the procedure for issuing the European Certificate of Succession, but they have already been examined in the proceedings for the issuance of a certificate of inheritance under German law?

(3) If the answer to Question [1] is in the affirmative: Must point (a) of the second subparagraph of Article 67(1) of [Regulation No 650/2012] be interpreted as covering any challenges, even if they have not been substantiated and no formal evidence is to be taken of that fact?

(4) If the answer to Question [1] is in the negative: In what form must the court state the reasons that led it to reject the challenges and to issue the European Certificate of Succession?'

Admissibility of the request for a preliminary ruling

28 The Spanish Government disputes the admissibility of the request for a preliminary ruling. Although that government accepts that the referring court has the status of a 'court or tribunal' within the meaning of Article 267 TFEU, it nevertheless contends that the activity of issuing a European Certificate of Succession, as governed by Regulation No 650/2012, does not fall within the exercise of a judicial function.

29 The Spanish Government maintains, first of all, that the fact that the issue of a European Certificate of Succession may be entrusted to a court or other competent authority is an indication of its administrative nature. Next, it contends that the procedure for issuing that certificate is not designed to examine and resolve contentious issues between the potential beneficiaries of the succession. Lastly, it argues that the European Certificate of Succession does not produce the binding effects inherent in a judicial decision and is merely informative in nature.

30 According to settled case-law, a national court may refer a question to the Court only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature (judgments of 28 February 2019, *Gradbeništvo Korana*, C-579/17, EU:C:2019:162, paragraph 34, and of 3 May 2022, *CityRail*, C-453/20, EU:C:2022:341, paragraph 42).

31 Therefore, it is appropriate to determine whether a body may refer a case to the Court on the basis of criteria relating both to the constitution of that body and to its function. In that regard, a national body may be classified as a 'court or tribunal', within the meaning of Article 267 TFEU, when it is performing judicial functions, but not when exercising other functions, inter alia functions of an administrative nature (judgment of 3 May 2022, *CityRail*, C-453/20, EU:C:2022:341, paragraph 43).

32 It follows that, in order to establish whether a national body, entrusted by law with different categories of function, must be classified as a 'court or tribunal' within the meaning of Article 267 TFEU, it is necessary to ascertain the specific nature of the functions which it exercises in the particular legal context in which it is called upon to make a reference to the Court (judgment of 3 May 2022, *CityRail*, C-453/20, EU:C:2022:341, paragraph 44).

33 In the present case, it is apparent from the explanations provided by the referring court that it is uncertain as to the powers conferred on it in the specific context of the procedure for issuing a European Certificate of Succession, as governed by Chapter VI of Regulation No 650/2012.

34 It is also apparent from those explanations that, in the course of the main proceedings, a number of challenges have been raised by the deceased's son and grandchildren with a view to precluding the issue of the European Certificate of Succession sought by the deceased's surviving spouse. The referring court is unsure as regards the conclusions that must be drawn from the existence of those challenges.

35 That court states, in this respect, that, under its national law, it has jurisdiction to rule on such challenges, inter alia where they are raised at the time when a certificate of inheritance is issued. It is therefore uncertain as to whether it may also rule on those challenges where they arise in the context of a procedure for issuing a European Certificate of Succession, subject to the rules laid down in Chapter VI of Regulation No 650/2012.

36 By the first three questions which it has referred to the Court of Justice, the referring court seeks inter alia to ascertain whether that regulation, as such, confers on the authority to which an application for a European Certificate of Succession is submitted jurisdiction to decide disputes arising from challenges raised in the course of the procedure for issuing that certificate. Where relevant, the referring court asks, by its fourth question, in what form that authority must state the reasons that led it to reject the challenges and to issue the European Certificate of Succession.

37 It follows from the foregoing that the purpose of the interpretation of Regulation No 650/2012 sought by the referring court is to assess whether that court exercises judicial functions, within the meaning of the case-law referred to in paragraph 31 of the present judgment, in the specific context of the procedure for issuing a European Certificate of Succession. Since the fact of being a 'court or tribunal', within the meaning of Article 267 TFEU, is a condition for the admissibility of a request for a preliminary ruling (see, to that effect, judgment of 9 July 2020, *Land Hessen*, C-272/19, EU:C:2020:535, paragraph 42), it is necessary to make that interpretation in order to rule on the admissibility of the request for a preliminary ruling.

38 Under the first subparagraph of Article 67(1) of Regulation No 650/2012, the issuing authority is to issue the European Certificate of Succession when the elements to be certified have been established under the law applicable to the succession or under any other law applicable to specific elements. In accordance with point (a) of the second subparagraph of Article 67(1) of that regulation, the issuing authority is not to issue that certificate in particular 'if the elements to be certified are being challenged'.

39 When interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 12 October 2023, *KBC Verzekeringen*, C-286/22, EU:C:2023:767, paragraph 32).

40 As regards, in the first place, the wording of point (a) of the second subparagraph of Article 67(1) of Regulation No 650/2012, it must be observed that that provision applies without distinction to any situation in which the elements to be certified are being 'challenged'. It is thus apparent that that provision covers any challenge, irrespective of whether it was raised in the course of the procedure for issuing a European Certificate of Succession or in the course of other proceedings.

41 It must also be pointed out, in that regard, that none of the language versions of point (a) of the second subparagraph of Article 67(1) of Regulation No 650/2012, inter alia the German ('*wenn Einwände gegen den zu bescheinigenden Sachverhalt anhängig sind*'), Spanish ('*si los extremos que se han de certificar son objeto de oposición*'), English ('if the elements to be certified are being challenged'), French ('*si les éléments à certifier sont contestés*'), Italian ('*gli elementi da certificare sono oggetto di contestazione*'), Lithuanian ('*jei ginčijami patvirtintini faktai*') and Swedish ('*om ett klagomål har riktats mot de uppgifter som ska styrkas*') language versions, formally requires that the elements to be certified have been challenged in the context of proceedings other than the procedure relating to the issue of the European Certificate of Succession.

42 It follows that a challenge to the elements to be certified, raised in the course of the procedure for issuing a European Certificate of Succession, must, in principle, preclude the issue of that certificate.

43 As regards, in the second place, the context in which point (a) of the second subparagraph of Article 67(1) of Regulation No 650/2012 occurs, it should be noted, first, that, according to the first subparagraph of Article 67(1) of that regulation, the issuing authority is to issue the Certificate without delay 'when the elements to be certified have been established'.

44 It may be inferred, *a contrario*, from that requirement that the issuing authority must refuse to issue that certificate when the elements to be certified cannot be regarded as 'established', inter alia following challenges raised during the procedure for issuing that certificate.

45 Second, Article 66 of Regulation No 650/2012 lays down, in paragraph 1 thereof, the issuing authority's obligation to verify the information and declarations and the documents and other evidence provided by the applicant.

46 In addition, Article 66(4) of that regulation imposes on the issuing authority the obligation to take all necessary steps to inform the beneficiaries of the application for a Certificate. That authority must also, if necessary for the establishment of the elements to be certified, hear any person involved and any executor or administrator and make public announcements aimed at giving other possible beneficiaries the opportunity to invoke their rights.

47 In laying down those obligations to hear and to inform, the EU legislature necessarily envisaged the possibility that challenges might be raised during the examination of the application for a European Certificate of Succession and, where appropriate, preclude the issue of that certificate.

48 Therefore, the content of the examination obligation laid down in Article 66 of Regulation No 650/2012, in particular in paragraph 4 of that article, also confirms the interpretation adopted in paragraph 42 of the present judgment.

49 Third, that interpretation is borne out by the content of Form V, as set out in Annex 5 to Implementing Regulation No 1329/2014. In accordance with the first subparagraph of Article 67(1) of Regulation No 650/2012, the issuing authority must use that form for the purpose of issuing the European Certificate of Succession (see, to that effect, judgment of 9 March 2023, *Registrų centras*, C-354/21, EU:C:2023:184, paragraph 46). That form contains, on its final page, a declaration by which the issuing authority certifies that, 'at the time of establishing the certificate, none of the elements contained in it were contested by the beneficiaries.'

50 In the third place, that interpretation is also supported by the objectives of Regulation No 650/2012 which is intended, as is apparent from recitals 7 and 8 thereof, to help heirs and legatees as well as other persons close to the deceased and creditors of the estate to assert their rights in the context of a succession with cross-border implications and to enable EU citizens to prepare their succession (judgment of 9 March 2023, *Registrų centras*, C-354/21, EU:C:2023:184, paragraph 41 and the case-law cited).

51 It is apparent from recital 67 of that regulation that the European Certificate of Succession was created to enable heirs, legatees, executors of the will or administrators of an estate 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, in order for cases of succession with cross-border implications within the European Union to be settled speedily, smoothly and efficiently.

52 It should also be noted, as is confirmed by recital 71 of Regulation No 650/2012, that the European Certificate of Succession produces its effects in all Member States, without any special procedure being required, and is 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 and the status and rights of persons designated as heirs, legatees, executors of the will or administrators of the estate, in accordance with Article 69(1) and (2) of that regulation (see, to that effect, judgment of 1 July 2021, *Vorarlberger Landes- und Hypotheken-Bank*, C-301/20, EU:C:2021:528, paragraph 23).

53 In that context, an interpretation of Article 67(1) of Regulation No 650/2012 that authorises the issue and use of a European Certificate of Succession, even where the elements to be certified are being challenged, would be liable to give rise to disputes concerning the legal acts in respect of which the certificate was used as evidence, thereby frustrating the objective of facilitating the settlement of cases of succession with cross-border implications.

54 Accordingly, the objective which justified the creation of the European Certificate of Succession, namely that of facilitating the settlement of cases of succession with cross-border implications, also supports an interpretation of point (a) of the second subparagraph of Article 67(1) of Regulation No 650/2012 to the effect that that certificate cannot be issued where challenges have been raised in the course of the issue procedure and where it emerges from those challenges that the elements to be certified cannot be regarded as established.

55 That being so, the fact that no power is conferred on the issuing authority to rule on challenges in the context of the procedure for issuing the European Certificate of Succession does not prohibit that authority from finding that judgment has already been given, by way of a final judicial decision having the force of *res judicata*, on a challenge raised before it. In that regard, it is apparent from the explanations provided by the referring court that that court is uncertain as to whether that provision must be interpreted as meaning that any challenge necessarily precludes the issue of the European Certificate of Succession, or whether Regulation No 650/2012 confers on the issuing authority the power to examine and reject an unfounded or unsubstantiated challenge and, where appropriate, to issue the certificate notwithstanding the presence of such a challenge.

56 As regards challenges already examined in the context of other proceedings, which are the subject of the second question, it is apparent from the request for a preliminary ruling that the referring court refers, more specifically, to cases where challenges raised in the course of the procedure for issuing a European Certificate of Succession have already been rejected in the context of other proceedings. That court asks, in essence, whether, in that situation, the issuing authority has the power to issue such a certificate notwithstanding the formal presence of challenges.

57 It must be observed, as a preliminary point, that that situation is not expressly governed by Article 67(1) of Regulation No 650/2012. In particular, point (b) of the second subparagraph of Article 67(1) of that regulation refers to the situation where a decision given in the context of other proceedings and concerning the elements to be certified precludes the issue of the certificate sought.

58 That said, the concept of a challenge, for the purposes of point (a) of the second subparagraph of Article 67(1) of Regulation No 650/2012, must necessarily be interpreted as not covering challenges that have already been rejected by way of a final decision given by a judicial authority in court proceedings. Otherwise, any challenge could preclude the issue of the European

Certificate of Succession indefinitely, even where that challenge has already been examined and finally rejected in the context of court proceedings, whether such proceedings are those referred to in Article 72 of that regulation, which concerns redress procedures challenging a decision relating to the issue of a European Certificate of Succession, or whether they are governed solely by national law.

59 The requirement, in that context, of a final decision stems from the need to preserve the reliability of the European Certificate of Succession, in accordance with the objectives recalled in paragraphs 50 and 51 of the present judgment, as the European Commission has correctly argued. The issue of that certificate, while challenges concerning the elements to be certified are the subject of proceedings that are still pending, would necessarily entail the risk that the content of that certificate might be inconsistent with a decision given subsequently in the context of those proceedings.

60 Consequently, it is only when, in the context of proceedings other than the procedure relating to the issue of the European Certificate of Succession, the decision rejecting a challenge becomes final that that challenge ceases to preclude the issue of that certificate under point (a) of the second subparagraph of Article 67(1) of Regulation No 650/2012.

61 In addition, it must be noted that Article 72 of Regulation No 650/2012 provides for a means of redress, before a judicial authority in the Member State of the issuing authority in accordance with the law of that State, against decisions taken by that issuing authority pursuant to Article 67 of that regulation.

62 It follows that any decision taken by the issuing authority at the end of the procedure for issuing a European Certificate of Succession, in accordance with Article 67(1) of Regulation No 650/2012, is, by definition, not final. Thus, the issue of such a certificate, despite the presence of challenges which the issuing authority has rejected as unfounded or unsubstantiated, would necessarily entail a risk similar to that identified in paragraph 59 of the present judgment, namely the risk that the content of that certificate might be called into question by a decision given subsequently in the context of the procedure referred to in Article 72 of that regulation.

63 Consequently, the need to preserve the reliability of the European Certificate of Succession, in accordance with the objectives recalled in paragraphs 53 and 54 of the present judgment, requires that point (a) of the second subparagraph of Article 67(1) of Regulation No 650/2012 be interpreted as meaning that any challenge – even one that appears to be unfounded or unsubstantiated – raised in the course of the procedure for issuing a European Certificate of Succession precludes the issue of that certificate, with the exception of challenges finally rejected in the context of other proceedings, as indicated in paragraph 61 of the present judgment.

64 In order to maintain the confidence of EU citizens in the European Certificate of Succession, it is imperative that that instrument – which has the evidentiary effects laid down in Article 63(2) of Regulation No 650/2012 and produces the effects set out, inter alia, in Article 69(2) and (3) of that regulation – be issued only where there is no challenge to the elements to be certified.

65 In the event of such a challenge, the issuing authority, which does not have the power to rule on it, is required to refuse to issue the European Certificate of Succession sought, it being understood that that refusal may be the subject of the redress procedure provided for in Article 72 of Regulation No 650/2012. The judicial authority seised of such a redress procedure may, where appropriate, examine the merits of the challenges that prevented the certificate from being issued.

66 In the light of all the foregoing considerations, it must be held that, in taking, as the issuing authority with respect to the European Certificate of Succession, decisions pursuant to Article 67(1) of Regulation No 650/2012, the referring court does not exercise a judicial function and, therefore, may not make a reference to the Court of Justice under Article 267 TFEU.

67 The request for a preliminary ruling is therefore inadmissible.

Costs

68 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fifth Chamber) hereby rules:

The request for a preliminary ruling from the Amtsgericht Lörrach (Local Court, Lörrach, Germany), made by decision of 21 March 2023, is inadmissible.

[Signatures]