



Press and Information

Court of Justice of the European Union

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Judgment in Case C-342/15
Leopoldine Gertraud Piringer

Member States may reserve to notaries the power to authenticate signatures appended to the documents necessary for the creation or transfer of rights to real property

This requirement contributes to guaranteeing the legal certainty of real property transactions and the proper functioning of the land register

Ms Leopoldine Gertraud Piringer, who owns of a half share in a property situated in Austria, signed, in the Czech Republic, a request for entry in the Austrian land register of the planned sale of her share in that property. Her signature on that request was authenticated by a Czech lawyer in accordance with Czech law. Czech law permits lawyers to perform such a certification.

Ms Piringer submitted the request for entry to the Bezirksgericht Freistadt (Freistadt District Court, Austria). That court refused her request on the ground that, contrary to the requirements of Austrian law, her signature had not been authenticated by a court or a notary.

Hearing an appeal on a point of law ('Revision'), the Oberster Gerichtshof (Supreme Court, Austria) asks the Court of Justice whether the Directive on the freedom of lawyers to provide services¹, and Article 56 TFEU on the freedom to provide services, allow a Member State to reserve to notaries the power to authenticate signatures appended to the documents necessary for the creation or transfer of rights to real property and thus to exclude the possibility of recognising in that Member State such authentication carried out by a lawyer established in another Member State.

In today's judgment, the Court finds that the directive is capable of applying in circumstances such as those of the case at issue given that its conditions of application, set out in Article 1(1) thereof, are satisfied in the case. In the first place, the notion of 'lawyer's activity' within the meaning of that provision covers not only the legal services typically provided by lawyers, such as legal advice or representing and defending a client in court, but may also cover other kinds of services, such as the authentication of signatures. In the second place, a lawyer's activity consisting in authenticating a signature is subject to the rules on the freedom to provide services since the freedom conferred by Article 56 TFEU on Member State nationals includes the 'passive' freedom to provide services, namely the freedom for recipients of services to travel to another Member State in order to receive a service there, without being hindered by restrictions.

However, the Court notes that the question posed by the Oberster Gerichtshof relates specifically to the interpretation of the second subparagraph of Article 1(1) of Directive 77/249, which authorises a derogation from the freedom of lawyers to provide services by providing that Member States have the option of reserving to 'prescribed categories of lawyers' the preparation of formal documents for, inter alia, creating or transferring rights to real property.

In that regard, the Court finds that that derogation does not cover, in general terms, the various categories of legal professions, with the result that Member States would have the right, relying on that provision, to limit the pursuit of the activity of drafting formal documents for the creation or

¹ Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17).

transfer of rights to property to certain categories of legal professionals — such as notaries — and thus to prohibit foreign lawyers from exercising the activities in question within the territory of those Member States. The Court finds, by contrast, that that provision provides for a derogation with a more limited scope aimed specifically at certain prescribed categories of lawyers, which are, moreover, explicitly identified in Article 1(2) of the directive itself.

In those circumstances, the Court concludes that the derogation introduced by the second subparagraph of Article 1(1) of the directive does not apply in the circumstances of the case at issue.

The Court considers, next, that **the Austrian legislation at issue constitutes a restriction on the freedom to provide services guaranteed by Article 56 TFEU**. First, that legislation prevents lawyers established in the Czech Republic, where they are entitled to certify signatures on the instruments necessary for the creation or transfer of rights to property, from offering that service to clients minded to avail of it in Austria. Second, the Austrian legislation also restricts the freedom of an Austrian national to travel to the Czech Republic in order to avail there of that service, since the certification performed by a Czech lawyer cannot be used in Austria for the purposes of making an entry in the land register.

As regards the question of whether that restriction may be justified, the Court notes that the land register is of crucial importance especially in Member States which operate a system of civil-law notaries, particularly in real property transactions. In particular, each entry in a land register alters rights, in so far as the rights of the person who has requested that entry arise only after the corresponding entry has been made therein. Maintaining the land register thus constitutes an essential component of the preventive administration of justice in the sense that it seeks to ensure proper application of the law and legal certainty of documents concluded between individuals, which are matters coming within the scope of the tasks and responsibilities of the State.

In those conditions, **national provisions which require verification, by recourse to sworn professionals — such as notaries — of the accuracy of entries made in a land register contribute to guaranteeing the legal certainty of real property transactions and the proper functioning of the land register** and relate, more generally, **to the safeguarding of the sound administration of justice**. That latter objective constitutes an overriding reason in the public interest justifying a restriction on the principle of the freedom to provide services.

The Court considers, last, that that restriction is proportionate given that, in Austria, the notary's involvement is important and necessary for the purposes of entry in the land register. In that Member State, the participation of the notary is not limited to confirming the identity of a person who has appended a signature to an instrument, but also involves the notary's becoming acquainted with the content of the instrument in question in order to ensure that the proposed transaction is lawful. The notary must also verify that the person concerned enjoys legal capacity.

In those conditions, the act of reserving activities relating to the authentication of instruments for creating or transferring rights to real property to a particular category of professionals in which there is public trust and over which the Member State concerned exercises particular control constitutes an appropriate measure for attaining the objectives of proper functioning of the land register system and for ensuring the legality and legal certainty of documents concluded between individuals.

The Court points out, moreover, that the certification by Czech lawyers of the authenticity of signatures appended to instruments is not comparable to the authentication activity carried out by notaries. **The certificate of authenticity issued by a Czech lawyer does not constitute a public instrument in the Czech Republic**. Consequently, obliging the Austrian authorities to recognise the certification issued by a Czech lawyer as being equivalent to authentication by a notary would amount to according to that lawyer's certificate a different strength to what it might have even in the Czech Republic.

In those circumstances, the Court finds that **the principle of the freedom to provide services does not preclude national legislation such as the Austrian legislation at issue.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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