

**Case C-354/21****Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date of receipt:**

4 June 2021

**Referring court:**

Lietuvos vyriausiasis administracinis teismas (Lithuania)

**Date of the decision to refer:**

2 June 2021

**Appellant:**

R.J. R.

**Respondent:**

Valstybės įmonė Registrų centras

**Subject matter of the action in the main proceedings**

Refusal to register, in the real property register, the appellant's ownership of real property, that is to say, a land parcel, situated in Lithuania, on the basis of a European Certificate of Succession issued in Germany.

**Subject matter and legal basis of the request for a preliminary ruling**

Interpretation of provisions of Regulation (EU) No 650/2012 of the European Parliament and of the Council; third paragraph of Article 267 TFEU.

**Question referred**

Must point (1) of Article 1(2) and Article 69(5) 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 be interpreted as not precluding legal

rules of the Member State in which the immovable property is situated under which the rights of ownership can be recorded in the Real Property Register on the basis of a European Certificate of Succession only in the case where all of the details necessary for registration are set out in that European Certificate of Succession?

### **Provisions of EU law cited**

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, 27.7.2012, p. 107; hereinafter ‘Regulation (EU) No 650/2012’): recitals 7, 8, 18, 67 and 68, point (1) of Article 1(2), points (a) and (b) of Article 63(2), point (1) of Article 68, and Article 69(1), (2) and (5).

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, 16.12.2014, p. 30; hereinafter ‘Regulation (EU) No 1329/2014’): Article 1(5), point (9) of and footnote 13 to Annex IV to Form V set out in Annex 5.

### **Provisions of national law cited**

The Lietuvos Respublikos nekilnojamojo turto registro įstatymas (Law of the Republic of Lithuania on the Real Property Register; hereinafter ‘the Law on the Real Property Register’; the version of Law No XII-1833 of 23 June 2015 is relevant in the present case):

#### Article 5

‘...

2. The keeper of the Real Property Register shall, in accordance with the procedure established by legislation, be responsible for the correctness and protection of data collected in the Real Property Register. The keeper of the Real Property Register shall be responsible only for the consistency of the data entered in the Real Property Register with the documents on the basis of which those data were entered’.

#### Article 22

‘The documents confirming the emergence of rights to immovable property, any encumbrances affecting those rights, and the legal facts on the basis of which those rights are registered in the Real Property Register, are as follows:

...

(5) a certificate attesting to the right of succession;

...

(10) other documents provided for by law.’

#### Article 23

‘...

2. The application must be submitted together with documents confirming the emergence of the rights in respect of which registration is sought, any encumbrances affecting those rights, and associated legal facts....

3. The documents on the basis of which rights to immovable property are confirmed, arise, cease, are assigned or encumbered, ... must comply with the requirements of legislative acts and must contain the data necessary for registration in the Real Property Register.

4. The documents on the basis of which the registration is requested must be written legibly and must contain the full forenames, surnames, legal names, addresses, identification numbers of the persons related to the registration as well as the unique number of the immovable property to which the registration relates, which is assigned in accordance with the procedure established by the Real Property Cadastre....

...’

#### Article 29

‘The keeper of the Real Property Register shall refuse to register rights to immovable property ... if any one of the following facts is established during the examination of the application:

...

(2) the document on the basis of which registration is requested fails to comply with the requirements of this Law;

...

(6) the application or the document submitted to the keeper of the Real Property Register does not contain the data provided for in the rules governing the Real

Property Register which are necessary to identify the immovable property and the persons acquiring rights thereto ...’

The rules governing the Real Property Register approved by Resolution No 379 of the Government of the Republic of Lithuania of 23 April 2014:

‘... 14.2.2. Data identifying the immovable property:

14.2.2.1. Cadastral area, cadastral block, and cadastral number of the land parcel;

14.2.2.2. Unique number (identification code) of the land parcel;

14.2.2.3. Unique number (identification code) of the structure;

14.2.2.4. Unique number (identification code) of the apartment or premises ...’

### **Brief summary of the facts and procedure**

- 1 R.J. R., the appellant, holds Lithuanian and German nationality and is resident in Germany. J.M. R., the mother of R.J. R., died on 6 December 2015; at the time of her death, she had her place of habitual residence in Germany. The appellant, the sole heir of his mother, accepted her entire estate in Germany without reservation in accordance with the procedure and time limits laid down in German law. As the estate consisted not only of property owned by his mother in Germany but also of property situated in Lithuania, the appellant filed an application for a European Certificate of Succession in accordance with Regulation (EU) No 650/2012 with the competent German court. On 24 September 2018, the Amtsgericht Bad Urach (District Court, Bad Urach) in the Federal Republic of Germany issued the appellant with Certificate of Succession No 1 VI 174/18 (‘the Certificate of Succession’) which stated that G. R., who had died on 10 May 2014, left the estate to J.M. R., the sole heir, and with European Certificate of Succession No 1 VI 175/18, which stated that J.M. R., who had died on 6 December 2015, left the estate to R.J. R. and that the latter was the sole heir and accepted the estate without reservation.
- 2 On 15 March 2019, the appellant submitted to the VĮ [Valstybės įmonė] Registrų centras (State Enterprise Centre of Registers) an application for registration of his ownership rights to the immovable property registered in the name of his mother. Together with the application, the appellant submitted the Certificate of Succession and European Certificate of Succession No 1 VI 175/18 issued on 24 September 2018, copies of translations of those documents, and copies of passports of the Republic of Lithuania issued to J.M. R., G. R. and R.J. R. On 20 March 2019, the appellant’s request was refused by Decision No SPR4-340 of the VĮ Registrų centro Turto registrų tvarkymo tarnybos Nekilnojamojo turto registro departamento Tauragės skyrius (Tauragė Division of the Real Property Register Department of the Property Registers Management Service of the State Enterprise Centre of Registers) (‘the Division’), which stated that European

Certificate of Succession No 1 VI 175/18 did not contain the data provided for in the Law of the Republic of Lithuania on the Real Property Register which were necessary to identify the immovable property, that is to say, that that certificate did not indicate the property inherited by the appellant. The appellant appealed against the decision of the Division to the VĮ Registrų centro Centrinio registratoriaus ginčų nagrinėjimo komisija (Disputes Commission of the Central Registrar of the State Enterprise Centre of Registers) ('the Commission'). By Decision No CSPR-147 of 9 May 2019, the Commission upheld in full the original decision of the Division.

- 3 As he disagreed with those decisions of the Division and the Commission, the appellant contested them before the Regionų apygardos administracinis teismas (Regional Administrative Court). By decision of 30 December 2019, the appellant's action was dismissed as unfounded. The appellant brought an appeal against that decision before the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) and, *inter alia*, requested that the matter of the interpretation of Regulation (EU) No 650/2012 be referred to the Court of Justice of the European Union for a preliminary ruling.

#### **Principal arguments of the parties in the main proceedings**

- 4 The appellant states that he accepted the entire estate without reservation; therefore, in accordance with the German law applicable to the entire estate, including that in Lithuania, there is no basis on which to specify in the European Certificate of Succession the rights possessed by the heir or to make a list of the assets. According to the appellant, the German law of succession provides for a universal succession to the rights of a deceased person; therefore, as he is the sole heir, the entire assets owned by the deceased are to pass to him and, in accordance with the German law of succession, succession property cannot be indicated or otherwise specified; in such a case, German courts, according to settled case-law, do not apply point (1) of Article 68 of Regulation (EU) No 650/2012, which provides that the Certificate must indicate the share for each heir and, if applicable, the list of rights and/or assets for any given heir, and those courts do not include in a European Certificate of Succession any details identifying the inherited immovable property. Regulation (EU) No 650/2012 does not contain any such requirement; nor is there any requirement to specify the inherited property or to provide details identifying such property when an application is made for such a certificate. Referring to recital 18 and Article 69(5) of Regulation (EU) No 650/2012 and to point 67 of the Opinion of the Advocate General in *Kubicka*, C-218/16, EU:C:2017:387, the appellant states that he provided those details in his application for registration and that this should have been sufficient. The non-inclusion of those details in the European Certificate of Succession cannot, he argues, constitute an obstacle to the registration of the immovable property inherited by him, in particular in the case where he is the sole heir to that property. The details required for registration may be indicated by providing additional documentation or information. According to the appellant, any interpretation to

the contrary would run counter to the objective of Regulation (EU) No 650/2012, which is to simplify the exercise of the rights of heirs.

- 5 The respondent states that, in accordance with recitals 18 and 68, point (1) of Article 1(2), Article 69(5) of Regulation (EU) No 650/2012 and point (9) of Annex IV to Form V set out in Annex 5 to Regulation (EU) No 1329/2014, in the case of succession to immovable properties, the registration of those immovable properties is to be subject to the law of the Member State in which they are situated, irrespective of the country in which the European Certificate of Succession was issued. The legal bases for registration of rights to immovable property (inter alia, a certificate of succession) are listed in Article 22 of the Law on the Real Property Register; therefore, it is not the application submitted by the appellant but the documents indicated in that legal provision which must confirm the emergence of the rights in respect of which registration is applied for and compliance with the requirements of the legal provisions, and it is those documents that must contain the details necessary for registration in the Real Property Register. The respondent does not agree with the position of the appellant that it is clear from Article 29(6) of the Law on the Real Property Register that the relevant details may also be indicated in the submitted application. The respondent also points out that neither of the two documents issued by the Amtsgericht Bad Urach in the Federal Republic of Germany can serve as a basis for recording in the Register the rights to the land parcel which had been owned by G. R. First, Certificate of Succession No 1 VI 174/18, which states that G. R. left the estate to J.M. R., cannot produce the legal effects sought by the appellant in the Republic of Lithuania for two reasons: it fails to comply with the requirements for the content and form of the European Certificate of Succession established in Article 68 of Regulation (EU) No 650/2012 and, therefore, cannot be regarded as being a European Certificate of Succession, nor is it a document issued in accordance with the law of the Republic of Lithuania. Second, European Certificate of Succession No 1 VI 175/18 fails to comply with the requirements of the Law on the Real Property Register because it does not indicate any unique number of the immovable property assigned in accordance with the rules governing the Real Property Cadastre and does not provide the details necessary to identify the immovable property. The respondent also emphasised that the appellant was seeking registration of his property rights to only one land parcel which had been owned by G. R. but no European Certificate of Succession had been issued in respect of that property, nor were any details or information on the estate of G. R. and its acceptance contained in European Certificate of Succession No 1 VI 175/18.

### **Brief summary of the reasons for the referral**

- 6 The referring court, in analysing the relevant provisions of Regulation (EU) No 650/2012 and of Regulation (EU) No 1329/2014, notes first of all that, in order effectively to ensure the rights of heirs and legatees and of other persons close to the deceased as well as of the creditors of the succession, Regulation No 650/2012

provides for the creation of a European Certificate of Succession which must enable every heir, legatee or beneficiary mentioned in the certificate to prove in another Member State his or her status and succession rights (judgment of 1 March 2018, *Mahnkopf*, C-558/16, EU:C:2018:138, paragraph 36; judgment of 12 October 2017, *Kubicka*, C-218/16, EU:C:2017:755, paragraph 59).

- 7 According to Article 69(5) of Regulation (EU) No 650/2012, the certificate is to constitute a valid document for the recording of succession property in the relevant register of a Member State. However, according to the referring court, it is apparent from the provisions governing the effects of the certificate that the possession thereof does not in itself mean that the legal conditions governing registration of immovable property laid down by the law of the Member State in which the property is situated are not to apply. This conclusion is also confirmed by the explanation in recital 18 [of Regulation (EU) No 650/2012] that ‘the European Certificate of Succession ... should constitute a valid document for the recording of succession property in a register of a Member State. This should not preclude the authorities involved in the registration from asking the person applying for registration to provide such additional information, or to present such additional documents, as are required under the law of the Member State in which the register is kept’.
- 8 As is apparent from point 67 of the Opinion delivered by Advocate General Yves Bot on 17 May 2017 in *Kubicka*, C-218/16, EU:C:2017:387, the scope of Regulation No 650/2012 must be limited to the specific requirements for the recording of rights in a register; therefore, in practice, other documents or information may be required in addition to the European Certificate of Succession where, for example, the information in the certificate is not specific enough to identify the asset the ownership of which must be registered as having been transferred.
- 9 Against that background the referring court emphasises that, under the rules of national legislation relevant to the present case, the details necessary for registration in the Real Property Register may be provided only in the documents listed in Article 22 of the Law on the Real Property Register, and, if the keeper of the register receives incomplete information, that person does not have the discretion to be guided by the details which are submitted in accordance with that provision in a document which is not regarded as constituting a basis for lawful registration.
- 10 The impact of such national rules on the rights of heirs must be assessed against the background of the provisions of Regulation (EU) No 650/2012 and of Regulation (EU) No 1329/2014 governing the content of the certificate. Article 68 of Regulation (EU) No 650/2012 states that ‘the Certificate shall contain the following information, to the extent required for the purpose for which it is issued’. Point (1) of that article states that the certificate must indicate ‘the share for each heir and, if applicable, the list of rights and/or assets for any given heir’. The purpose of point (9) of Annex IV to Form V set out in Annex 5 to Regulation

(EU) No 1329/2014 (which is mandatory when its purpose is to confirm the status and rights of the heir) is to specify ‘asset(s) attributed to the heir and for which certification was requested (please specify asset(s) and indicate all relevant identification details)’. Footnote 13 to that point explains that it is necessary to ‘indicate if the heir acquired the ownership or other rights on the assets’ and states that, ‘in case of a registered asset, please indicate the information required under the law of the Member State in which the register is kept so as to permit the identification of the asset (e.g. for immovable property exact address of the property, land register, land parcel or cadastral number, description of the property)’. Thus, if the details specified in those provisions of the regulations are provided, the certificate is to constitute a valid document in the Republic of Lithuania for the recording of succession property in the Real Property Register as provided for in Article 69(5) of Regulation (EU) No 650/2012.

- 11 The Court of Justice has made clear in its case-law that Article 67(1) of Regulation No 650/2012 lays down an obligation on the part of the issuing authority to use Form V, provided in Annex 5 to Regulation No 1329/2014, for the purposes of issuing a certificate (judgment of 17 January 2019, *Brisch*, C-102/18, EU:C:2019:34, paragraph 30). The Amtsgericht Bad Urach in the Federal Republic of Germany issued European Certificate of Succession No 1 VI 175/18 using Form V provided in Annex 5 to Regulation No 1329/2014; it is appended with Annex IV confirming the status and rights of the heir. However, no details are provided in point (9) of Annex IV to Form V, the purpose of which is to specify asset(s) attributed to the heir and for which certification was requested. It is apparent from the arguments put forward by the appellant in his appeal and from the case-law of German courts cited that the omission of such details is not a mistake on the part of the authority which issued the certificate.
- 12 According to the referring court, recital 68 of Regulation (EU) No 650/2012 is relevant in this regard. It states *expressis verbis* that ‘The authority which issues the Certificate should have regard to the formalities required for the registration of immovable property in the Member State in which the register is kept’. However, it must also be borne in mind that, when formulating that position in the preamble to the regulation, the EU legislature did not introduce a mandatory legal provision applicable to the authority which issues the certificate; furthermore, the legislature specifically did not repeat that position in the articles of Regulation (EU) No 650/2012.
- 13 In those circumstances, in the light of the objectives pursued by the creation of the European Certificate of Succession and ‘in order for a succession with cross-border implications within the Union to be settled speedily, smoothly and efficiently’ as sought by the EU legislature [in the first sentence of recital 67 of Regulation (EU) No 650/2012], the referring court has doubts as to the interpretation of point (1) of Article 1(2) and Article 69(5) of Regulation No 650/2012 and for that reason requests the Court of Justice to answer the question referred for a preliminary ruling.