CJEU in Albausy on (in)admissibility of questions for a preliminary ruling under Succession Regulation



In a recent ruling, the CJEU adds another layer to the ongoing discussion on which national authorities can submit questions for preliminary rulings under the Succession Regulation, and its nuanced interpretation of what constitutes a 'court.'

Albausy (Case C-187/23, ECLI:EU:C:2025:34, January 25, 2025) evolves around the question of competence to submit a request for preliminary ruling under the Succession Regulation (Regulation 650/2012 on matters of succession and the creation of a European Certificate of Succession).

Although the CJEU finds that the request in that case is inadmissible, the decision is noteworthy because it confirms the system of the Succession Regulation. Within the regulation, the competence to submit questions for preliminary ruling is reserved for national courts that act as judicial bodies and are seized with a claim over which they have jurisdiction based on Succession Regulation's rules on jurisdiction.

The opinion of Advocate General Campos Sánchez-Bordona is available here.

Essence

Under the Succession Regulation, national courts resolve disputes by issuing a decision; the decisions circulate in the EU following the regulation's Chapter IV rules on enforcement. Meanwhile, a broader number of national authorities apply the regulation and may have the competence to issue a European Certificate of Succession (see primarily Recitals 20 and 70). A European Certificate of Succession circulates in the EU based on the regulation's Chapter VI. It has primarily an evidential authority as one of an authentic act.

In *Albausy,* the CJEU confirms that if a national court's task in a specific case is confined to issuing a European Certificate of Succession, this court (within this task) has no competence to submit questions for preliminary ruling to the CJEU. This is so even if the court has doubts relating to the regulation's interpretation, and this is so despite the fact that a court is, in principle, part of a Member State's judicial system in the sense of art. 267 TFEU.

Facts

The facts of this case are as follows. A French national, last domiciled in Germany, died in 2021. The surviving spouse applied for a European Certificate of Succession. The deceased's son and grandchildren challenged the validity of the will. They questioned the testamentary capacity of the deceased and the authenticity of their signature. The referring German court (Amtsgericht Lörrach) found these challenges unfounded.

However, given the challenges raised, the court had doubts about the way to proceed. It has submitted four questions to CJEU. The questions have remained unanswered, because the CJEU considered the request inadmissible. Still, several points regarding the Court's considerations are noteworthy.

'Challenge'

In the motivation part of the ruling, the CJEU addresses the concept of 'challenge' under art. 67(1) of the Succession Regulation. The CJEU defines it broadly. It can be a challenge raised during the procedure for issuing a European Certificate of

Succession. It can also be a challenge raised in other proceedings. The concept includes even challenges that 'appear to be unfounded or unsubstantiated', as was the case in the view of the referring court. The court warned in particular against frivolous challenges that might impede legal certainty in the application of the regulation.

According to the CJEU, any challenge to the issuing a European Certificate of Succession raised during the procedure for issuing it precludes the issuance of that certificate. In the event of such a challenge, the authority must not decide on their substance. Instead, the authority should refuse to issue the certificate.

Meanwhile, the CJEU reminds that the concept of 'challenge' within the meaning of art. 67(1) of the Succession Regulation does not cover those that have already been rejected by a final decision given by a judicial authority in (other) court proceedings. If and when a decision to reject a challenge becomes final (in proceedings other than the issuing of a European Certificate of Succession), this challenge does not preclude the issuing of a European Certificate of Succession.

Redress

The CJEU elaborates on one option available in the situation where the issuing of the certificate is refused because of a challenge. One can use the redress procedure provided for in Article 72 of the Succession Regulation. It allows to dispute the refusal of the issuing authority before a judicial authority in the Member State of the issuing authority. Within the redress procedure, the judicial authority handling the redress procedure may examine the merits of the challenges that prevented the certificate from being issued. If the challenge is rejected through this redress procedure, and the decision becomes final, it no longer precludes the issuance of the European Certificate of Succession.

The ruling and earlier case law

In *Albausy,* the CJEU follows the line of its earlier case law. This is namely not the first time the CJEU has dealt with cognate questions, as reported inter alia here. The Court has already clarified that although various authorities in Member

States apply the Succession Regulation, not any authority may submit a question for a preliminary ruling regarding the interpretation of the regulation. For instance, a notary public may in most cases not submit questions for preliminary ruling. Notaries are not part of the judicial system in most Member States within the meaning of the art. 267 TFEU (possible complications or deviations admitted by the Succession Regulation being addressed in Recital 20 of the Succession Regulation).

The Court's reasoning in *Albausy* confirms that this bar also covers requests for preliminary rulings from national courts that act only as 'authority,' not as judicial body in the regulation's application. Thus, a double test is to be performed: the test of the Succession Regulation's system and definitions (authority or judicial body, without forgetting the Recitals 20 and 70, still somewhat puzzling in this context) and the test of art. 267 TFEU.