Certificate of inheritance as authoritative document of legitimacy in a German estate

Topic: **Legitimation** Case number: **2020/22**

> According to notarised wills, the complainant was a co-heir to her parents' estate and represented the other heirs identified in these wills. She demanded from the bank the acquisition data of securities which had been kept by her parents in a custody account with the bank. The custody account had been dissolved in 2011 and the shares transferred to a bank in Germany. In the course of the settlement of the estate, the shares had been sold. The bank insisted on the submission of a certificate of inheritance. The complainant claimed that the notarised wills would suffice as proof of the heirs' legitimacy. After failing to reach an agreement with the bank, she submitted the case to the Ombudsman.

From time to time, the Ombudsman is confronted with cases in which the heirs in a German estate disagree with a Swiss bank about the necessity of obtaining a certificate of inheritance as a document of legitimacy for the disclosure and disposal of assets. Experience has shown that obtaining a certificate of inheritance in Germany incurs considerable fees, which are determined according to the value of the estate. The heirs regularly refer to a judgement of the German Federal Supreme Court from 2005, according to which a will opened by a notary suffices as a document of legitimation. In the present case, the representative of the heirs also argued that a will opened by a notary public should be accepted on the basis of Article 96 of the Swiss Federal Act on Private International Law.

The bank took the view that Swiss contract law determined the standard of care to be applied when verifying the legitimacy of heirs. According to the bank, due diligence required that the heirs present a certificate of inheritance, as the identification of the heirs was only done officially for the purpose of issuing such a document. A will opened by a notary did not enjoy public faith in this matter. The judgement of the German Federal Supreme Court mentioned by the representative of the heirs had no precedential effect in Switzerland. It was also questionable whether a will opened by a notary would be recognised as a certificate of inheritance on the basis of the Swiss Federal Act on Private International Law. A certificate of inheritance clearly states who are the heirs. In an opening of will, on the other hand, it was merely recorded which testamentary dispositions were opened, without a statement on the question of who were the heirs. The bank therefore insisted on the production of a certificate of inheritance.

The Ombudsman agreed with the bank that the legitimacy of heirs must be carefully examined and that the relevant standard of care is determined by Swiss contract law. However, the Ombudsman pointed out that the bank was only asking for information about a banking relationship that had long since been settled, and that the question of whether the heirs could validly dispose of assets did not arise. The bank's risk was thus limited to providing information to an unauthorised person and thus breaching its duty of confidentiality, which could have civil and criminal consequences. In the Ombudsman's view, however, this risk was extremely low in the present case, given the circumstances. The bank finally could be convinced of this and provided the heirs' representative with the requested information.