

Iranian inheritance law and Austrian public policy

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Facts

Decisions

Earlier in 2019, the Supreme Court held that in light of a bilateral treaty, the Austrian courts must apply Iranian law in inheritance matters concerning Iranian nationals (OGH | 2 Ob 170/18s). However, provisions of Iranian law that differentiate between heirs on the basis of gender must be treated as violations of the fundamental values of Austrian law and should thus be exempt from application.

Facts

The case centred on an invalid testament made in favour of a widow. According to Iranian law, such invalidities can be remedied by way of an acknowledgement. This was the fundamental issue of the disputed appeal proceedings.

Pursuant to Article 10(3) of the Friendship and Settlement Agreement Between the Republic of Austria and the Empire of Iran (BGBl 1966/45), matters of estate must be dealt with under Iranian law. However, Iranian law is predicated on gender-based distinctions between widowers and widows, as well as sons and daughters. While widowers are entitled to one-quarter of their deceased spouse's inheritance, widows are entitled only to one-eighth. Further, sons of a deceased are entitled to inherit twice as much as daughters.

The appeal thus centred on the fundamental question of whether quotas should be determined under Iranian law or whether the discriminatory treatment of family members of different genders infringed Austrian public policy.

Decisions

While the first-instance court held that the above distinction stands in stark contrast with Austrian public policy, the appeals court adopted the opposite position. The appeals court held that there was no public policy violation as the unequal inheritance rates were remedied by the fact that under Iranian custom, sons must provide the necessary support and maintenance to both of their parents and, if necessary, their siblings.

According to the appellant, the appeals court had erred by basing its decision on the unequal treatment of men and women in violation of the basic values of Austrian law. She argued that claims to maintenance under Iranian law fall short of providing sufficient justification in light of their invalidity pursuant to the forum's long-established public policy framework.

The Supreme Court confirmed the ruling of the first-instance court. In establishing that foreign law cannot apply if it contravenes the values on which Austrian law is predicated, the Supreme Court called for a two-fold examination:

- First, does the application of foreign law precipitate a difference in treatment in light of the factual context?
- Second, to what extent does the underlying controversy exhibit a sufficient level of domestic relationship (ie, a close nexus to Austria)?

Comment

The Supreme Court's departure from a consideration of content was pivotal in its decision that maintenance claims cannot offset the draconian effect that would accompany such unequal treatment. Pursuant to Section 6 of the Private International Law Act, foreign law provisions which contravene public policy are thus rendered ineffective. However, these circumstances may differ if the application of foreign law corresponds to the stated will of a testator.

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