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The Hohenzollern Succession Dispute (1994-present)

Contents

HistoricalBackground

Paul Theroff's Online Gotha has an entry for Prussia.

Wilhelm II (1859-1941), German Emperor and King of Prussia, abdicated in November 1918 and retired to Doorn (Holland). He had seven children (6 sons and 1 daughter). His eldest son Wilhelm (1882-1951), Kronprinz until 1918, had four sons and two daughters. The first, Wilhelm (1906-40), made an unequal marriage on 3 June 1933 to Dorothea von Salviati and renounced his rights the same year (he left two daughters). The second, Louis Ferdinand (1907-94), had four sons. The first, Friedrich Wilhelm (b. 1939) married unequally, twice; the second, Michael (b. 1940), married unequally, also twice; the third, Louis Ferdinand (1944-77) married equally Donata Grafin zu Castell-Rüdenhausen and left a son Georg Friedrich (b. 1976).

At the death of Wilhelm in 1951, his second son Louis Ferdinand succeeded him as head of house and also inherited the family estates under the terms of Wilhelm's will. At the death of Louis Ferdinand (1994), the clauses of Wilhelm's will required that the successor of Louis Ferdinand not be unequally married or born of an unequal marriage: this by-passed Friedrich Wilhelm and Michael, and made Georg Friedrich the heir and head of house. The by-passed uncles filed a suit, claiming that the discrimination against them on the basis of their marriage was unconstitutional. The case was decided in their favor by the regional court of Hechingen (Feb 17, 1997) and the higher regional court of Stuttgart (Aug 19, 1997).

Those decisions were overturned by the Federal Court of Justice (*Bundesgerichthof*) in Karlsruhe on Dec. 2, 1998 and the case sent back to the lower courts. The court in Hechingen ruled on Dec. 7, 2000, and the *Oberlandsgericht* in Stuttgart ruled on November 21, 2001 in favor of prince Georg Friedrich (see *Frankfurter Allgemeine Sonnstagszeitung*, 9 Dec 2001).

But the by-passed princes took their complaint to the Federal Constitutional Court, and on March 22, 2004 obtained a ruling overturning the decisions of 1998, 2000 and 2001. The Court cited among others an instruction of 1943 of the crown prince which stated that "considering the fact that the choice of Protestant women of equal rank according to the house laws of the royal house is extraordinarily small and constantly shrinking, the head of the royal house can in exceptional circumstances declare a marriage as equal even if the

conditions for equality are not met." It said that the lower courts and the Federal Court of Justice had failed to consider whether the equality requirement placed an unreasonable burden on the princes, thereby violating their constitutional right to contract a marriage (paragraph 1, article 6 of the constitution). It sent the case back to the lower court in Hechingen for revision.

The Bundesgerichthof (Federal Court of Justice) Ruling

The original text of the press release (Bundesgerichtshof, Pressemitteilung Nr. 95 vom 17.12.1998) is here. What follows is a rough translation.

The Federal Court of Justice (Civil section) had to decide on the validity of a succession in the house of Prussia as set forth in a succession contract of 1938. At that time, Wilhelm of Prussia, ex-Kronprinz, with the participation of ex-Kaiser Wilhelm II, had named his second son Louis-Ferdinand prince of Prussia (d. 1994) as first heir (Vorerb). After his death his eldest son (unborn in 1938) was to be the next heir (Nacherb), or, should that son not survive Louis Ferdinand, in his stead his eldest male offspring; in the absence of male issue his eldest brother (or in his stead his sons). The contract, however, made one exception to the rule on the succession of the next heir: any son or grandson of Louis-Ferdinand was ineligible to inherit if he were not the issue of a marriage made in accordance with the house laws of the house of Brandenburg-Prussia, or if he was in a marriage not in accordance with said laws (so called ineligibility clause).

The lower courts (regional court *Landesgericht Hechingen*, higher regional court: *Oberlandesgericht Stuttgart*) held that clause to be immoral or in any case incompatible with "good faith" (*Treu und Glauben*). It violates in particular the protection of the freedom to marry (art. 6 of the Constitution) and ran against the prohibition on discrimination based on descent and origin (art. 3, par. 3 of the Constitution). But since the High Court of Bavaria (*Bayerisches Oberstes Landesgericht*), in another case, had held as valid a clause which excluded from the succession of a princely house those who married without the consent of the prince as head of the house, the Stuttgart Court referred the Prussian case to the Federal Court of Justice.

The 4th civil chamber holds the clause in question to be valid. Given the testator's freedom protected by art. 14, par. 1, sentence 1 of the Constitution, only in exceptional cases can infringements of the rights of offspring in testamentary dispositions lead to the disposition being immoral and therefore void. This can happen, when there is a serious assault on the protected area of basic rights of the offspring, and when the dispositions aim to restrict the freedom of the concerned in their most personal decisions or to demean their human dignity.

The Federal Court of Justice could not establish that the disputed clause had as goal to intervene in the choice of a specific marriage partner or to demean the children of a marriage deemed unequal in the eyes of the nobility. Rather, a suitable successor had to be found for an inheritance shaped by family traditions. The testator saw that successor in the eldest male offspring who represented the family tradition, as it involves descent, by his descent and (if he was already married on the death of the first heir) by his marriage. Such a goal is protected by the freedom to testate. Against it the infringement of rights is not so important as to make the clause immoral and thereby void. The legitimate rights of the offspring are already protected through the reserve portion which by law secures half of the inheritance for them.

The case was sent back to the Hechingen court for clarification of certain facts which are material to the case as a consequence of the clause.

Decision of 2 December 1998, IV ZB 19/97

See the full text of the ruling (in German).

Comments

Nacherbschaft

The case hinges around a peculiar institution in German civil law, *Nacherbschaft*.

Wilhelm (the ex-Kronprinz) by his will instituted Louis-Ferdinand as his primary heir (*Vorerbe*), and also instituted a reversionary heir (*Nacherbe*). Both Vorerbe and Nacherbe are heirs of the testator (*Erblasser*), the Vorerbe is the first to enjoy ownership of the estate (*Erbschaft*), but he is under the obligation to preserve it for the Nacherbe. The Nacherbe takes over at some point in time or under some circumstance specified by the testator (if none is specified, it is the death of the Vorerbe). The Nacherbe can be someone who isn't conceived at the time of the testament, and the testator has some freedom in designating who is the Nacherbe.

This mechanism, by which an inheritance becomes a kind of trust, with an obligation to pass it on to another person, derives from Roman Law (it's a form of *fideicommissum*; in French law, they were called *substitution*). It was used by noble families to prevent the fragmentation of the family estate and to impose a sort of house law. In some parts of France they could run forever, but their duration was progressively restricted to 4 successive heirs and later to 2 in the 18th century. They have become unenforceable in French law since the Revolution (with minor exceptions), and also, I believe, in Dutch and Belgian law. They still exist in German law, in this form. Under British law succession can be prescribed for three generations plus 21 years.

It does not seem to me, from a brief glance at the Bürgerliches Gesetzbuch (book 5, chapter 3, title 3, §§ 2100 to 2146) that the testator can appoint a second Nacherbe after a first one. Furthermore, there seems to be a statute of limitation on the rights of a Nacherbe (30 years).

This suggests that Georg-Friedrich, the present heir, is under no obligation to perpetuate the Ebenbuertigkeit requirement, and could dispose of his estate as he pleases.

Did German courts enforce the Prussian succession laws?

That is certainly the way the case has been portrayed in the press. But it is apparent that the case is only a matter of inheritance law and enforcement of a specific type of testamentary clause.

In this instance, Wilhelm designated as Nacherbe the eldest male descendant of Louis-Ferdinand who met the equal-marriage requirement. The legal question, which was a pure question of civil or private law, was whether the designation was valid, and the exclusion of unequally-married or -born offspring was valid. The matter decided was not "headship of the house" but inheritance of a certain estate; indeed, the phrase "head of house" or

some equivalent doesn't even appear in the press release. The issue was a contract which set up a specific rule of transmission. The court decided a case of inheritance, and decided that the clause which Wilhelm had created in his testament was valid, because of the right to dispose of one's estate. Had Wilhelm decided to impose a religious requirement, or a height requirement, or to leave his estate to his janitor or his dog, the court might well have upheld it as well, because of the right to dispose of one's estate without grievious infringement of the personal rights of one's offspring.

It has thus nothing to do with the courts of the German Federal Republic somehow upholding the house laws of the Hohenzollern, which have ceased to exist in German law.

The Federal Constitutional Court ruling (2004)

see the full text (BVerfG, 1 BvR 2248/01 vom 22.3.2004).

Comments

Higher Regional Court of Stuttgart (2005)

decision OLG Stuttgart 8 W 10/05 (21 Apr 2005) *To be completed.*

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