

# ELRN Workshop

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***“JUDGMENT OF 1 MARCH 2018  
Case 518/16, Mahnkopf”***

**Francisco Martín Mazuelos**

francisco.martin@poderjudicial.es

Judge – Member of the Judicial Network

# THE FACTS

- Mr and Mrs Mahnkopf had German nationality and habitual residence.
- They had a son.
- They had not entered into a contract on the matrimonial regime.
- Mr Mahnkopf died on 29 August 2015.
- He had not made any disposition on property upon death.

# THE RULES ON CONFLICT

SUCCESSION		MATRIMONIAL	PROPERTY
- German law § 25 EGBGB	- Reg. 650/2012 Art. 21	- German law § 14 EGBGB	- Reg. 2016/1103 Art. 26
Nowadays →	General rule: Habitual residence at time of death (not before 17 Aug. 2015)	General rule now: <b>Last</b> common habitual residence	General rule: <b>First</b> common residence after marriage (not before 29 Jan. 2019)
Before: Nationality		Before: Nationality	
The Mahnkopfs had	habitual residence	in Germany and	were German:
Rules on conflict of succession and to	laws determine the matrimonial property.	German law as the	law applicable to

# GERMAN PROVISIONS ON MATRIMONIAL PROPERTY

- \* Statutory regime: community of accrued gains, the difference between
  - a) final assets + gratuitous dispositions – liabilities
  - b) initial assets + assets received by succession or donation – liabilities
- \* At the end of the regime, half of the difference between the accrued gains of one and the other spouse is due as equalisation.

**Exception, if the regime is ended by the death of a spouse**  
**1371(1) BGB,**

the equalisation of the accrued gains is effected by **the share of the inheritance on intestacy** of the surviving spouse being **increased by one quarter of the inheritance**; it is irrelevant here whether the spouses in the individual case have made accrued gains.

# THE CASE

- Mrs Mahnkopf applies for a national ECS designating her share  $\frac{1}{4}$  (intestacy) +  $\frac{1}{4}$  according to § 1371(1) BGB.
- The Local Court rejects the application.
- The Appeal Court asks the Court of Justice if Regulation 650/2012 covers the provisions of § 1371(1) BGB.

# THE JUDGMENT OF 1 MARCH 2018

“§1371(1) BGB does not concern the division of assets between the spouses but the share of the surviving spouse on the assets already counted as part of the estate. Its main purpose is not the allocation of assets or liquidation of the matrimonial property regime, but rather determination of the share of the estate to be allocated to the surviving spouse as against the other heirs” (40).

**“Article 1(1) of Regulation (EU) No 650/2012 [ ... ] must be interpreted as meaning that a national provision, such as that at issue in the main proceedings, which prescribes, on the death of one of the spouses, a fixed allocation of the accrued gains by increasing the surviving spouse’s share of the estate falls within the scope of that regulation.”**

# Thank you

## Any questions?

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