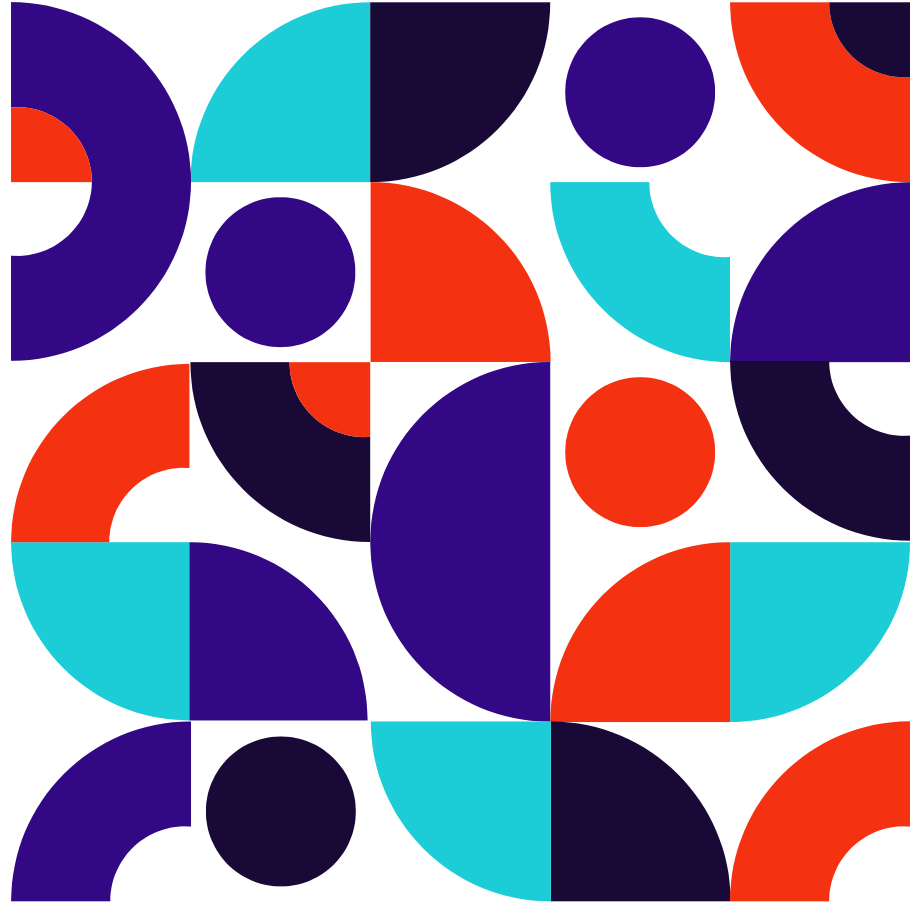


C-80/19
EU Court of Justice

“The importance of being...” Court





C-80/19

In this judgment, the EU Court of Justice interprets **Articles:**

- 3(2),
- 3(1)(g) and (i)
- 4
- 5
- 7
- 22
- 83(2) and (4)

**of Regulation 650/2012
on Successions**

Objective of the Successions Regulation

Concept of cross-border succession.

National Certificates of successions

Concept of Court.

Jurisdiction to rule on disputed facts.

Authentic instruments.



Main connecting factor

The last habitual residence of the deceased.

One State only: unity of the succession.

Transitional provisions

Choice of law.

Choice of court.

1

Objective of the Successions Regulation

Concept of cross-border succession.





The main objective of the Regulation:

- Making easier to plan and manage a cross-border succession.

The concept of cross-border or international succession:

- is a succession with foreign elements/elements from different countries.

In the case at hand:

The author of the succession is **national of Lithuania**; she **dies in Germany, where she lived** with her **husband, of German nationality**, and with **her son, of Lithuanian nationality**, having left an **immovable property in Lithuania**, the country **where she drew up her will** in which she designated her son as universal heir.



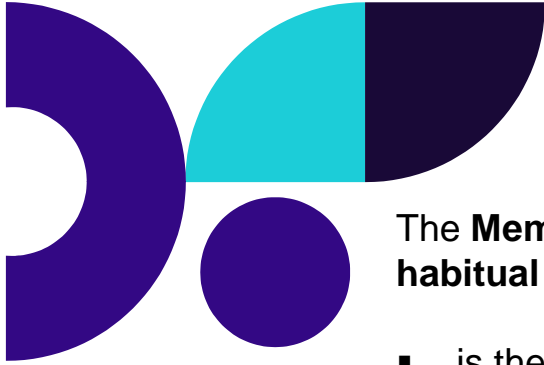
2

Main connecting factor

The last habitual residence of the deceased.

One State only: unity of the succession.



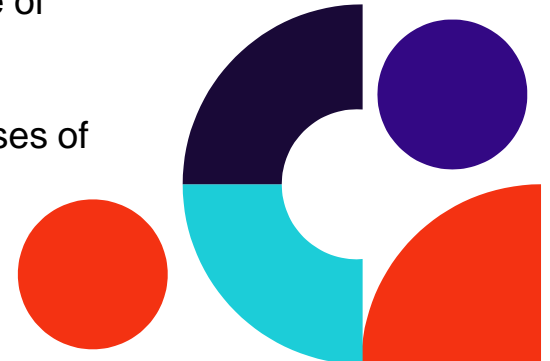


The **Member State** in which the deceased had his **habitual residence** at the time of death:

- is the general connecting factor for the purposes of determining jurisdiction – Article 4.

The **State** (Member State or third State) in which the deceased had his **habitual residence** at the time of death:

- is the general connecting factor for the purposes of determining applicable law – Article 21(1)



Autonomous interpretation of the concept of “last habitual residence”

Main criteria

The elements mentioned in recitals (23) and (24).

Stability

Close and stable connection with the State concerned.

Assessment

Overall assessment of the circumstances of life.

Family/personal

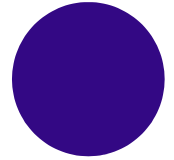
Personal and family connections should prevail over professional activity.

Center of interests

Location where the deceased fixed his permanent centre of interests.

Single Member State?

Yes. It must be established in a single Member State by the authority to which the succession is subject. Unity of the succession (Article 23).



3

National certificates of successions

Concept of “Court”.
Jurisdiction to rule on disputed facts.
Authentic instruments.



“The Importance of being...” Court



- **Recital (20):** the term ‘Court’ or judicial authority must be given a broad meaning so as to cover not only Courts but also notaries, registry officers and legal professionals who, in certain matters of succession, exercise judicial functions like Courts or by delegation of power by a Court.
- **Recital (21):** notaries are bound by the [rules of jurisdiction set out in this Regulation](#) only when they act as a ‘Court’.
- **Recital (22):** when notaries exercise judicial functions their decisions benefit from the [provisions on recognition, enforceability and enforcement of decisions](#) set out in Chapter IV.
- **Paragraph 51 of the ruling:** an authority exercises [judicial functions](#) when it has jurisdiction to rule on [disputed facts](#) regardless the contentious or non-contentious nature of the process.



When are notaries equated to “Courts”?

Equated to courts

When their activity **falls under the provisions of Article 3(2)** of the Regulation.
When they rule on disputed facts.

Cumulative requirements

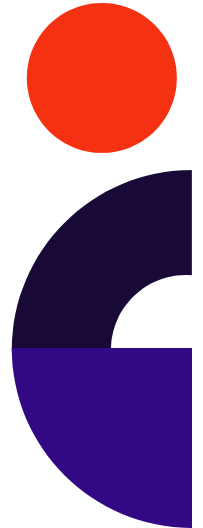
- Competence** in matters of succession.
- Exercise judicial functions** or act pursuant to a delegation of power by a Court or act under the control of a Court.
- Offer guarantees** with regard to impartiality.
- Guarantee the right** of all parties to be heard.
- Decisions subject of an appeal** to or review by a Court.
- Decisions with a similar force** and effect as a decision of a Court on the same matter.

Subject to the rules of Jurisdiction

Whenever their activity falls within these prerequisites **notaries, registry officers and other professionals** must apply the rules of international jurisdiction of **Chapter II.**

Recognition and enforcement of decisions

The decisions they give benefit from the provisions on recognition, enforceability and enforcement of decisions set out in **Chapter IV.**





Certificates of succession provided for in national legislation

Notaries or other non-judicial authorities, **when issuing certificates of succession provided for in national legislation**, do not act as “Courts” where, under national law, **they have no jurisdiction to rule on disputed facts** in matters of succession but **are limited to certifying legally uncontested subjective rights**.



In that case **they are not bound by the rules of jurisdiction** laid down in Chapter II of Regulation 650/2012 and **the national certificate of succession they issue is not a decision** for the purposes of Article 3(1)(g) but, if it meets the conditions laid down in Article 3(1)(i), of Regulation 650/2012, **it constitutes an authentic instrument** which enjoys in another Member State the acceptance and enforcement scheme provided for by **Chapter V regarding authentic instruments**.

To that purpose the notary or other non-judicial authority **shall issue Form II** established by the Implementing Regulation 1329/2014 **to describe the evidential value** of the authentic instrument according to national law.

4

Transitional provisions

Choice of Law.

Choice of Court.



Transitional provisions



Choice of Law by the author of the succession



The **author of the succession** made a **will** before the start of the application of Regulation 650/2012 designating her son as universal heir.

The will was drawn up **according to the Lithuanian law** which was the **law of her nationality** at the time and could have been chosen.

In the light of Article 22(1) and of the transitional provisions of Article 83 (2) and (4), of the Regulation, **the Lithuanian law is deemed to be chosen as the law applicable** to the succession.

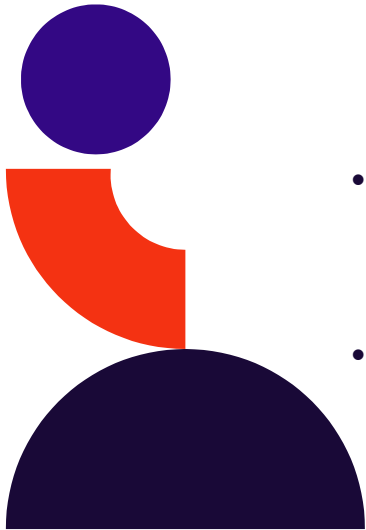
Choice of Court by the successors



As the Lithuanian law shall be deemed to have been chosen as the applicable law, according to Article 83 (4), **the successors can choose the forum of Lithuania** as the one competent to decide the succession, according to Article 5 (1) of the Regulation.

- Whenever their activity falls within the **prerequisites of Article 3(2)** notaries, registry officers and other professionals **must apply the rules of international jurisdiction** set forth in the Successions Regulation.
- An authority exercises **judicial functions** when it has jurisdiction to **rule on disputed facts**, regardless of whether the proceedings before it are contentious or non-contentious.
- **By issuing a national certificate of succession, a notary is not acting as a “Court”** for the purposes of Article 3(2) of Regulation No 650/2012 where, **under national law**, he has no jurisdiction to rule on disputed facts in matters of succession but **is limited to certifying legally uncontested subjective rights**.
- Notaries or other non-judicial authorities, when issuing certificates of succession provided for in national legislation, **are not bound by the rules of jurisdiction laid down in Chapter II** of Regulation 650/2012 when they do not act in a similar manner to courts.
- In that case, **the national certificate of succession is not a decision** for the purposes of Article 3(1)(g) but, if it meets the conditions laid down in Article 3(1)(i) of Regulation 650/2012, **it constitutes an authentic instrument** which has in another Member State the same evidential value as in the Member State of origin or the most comparable possible effects.

Conclusions



The autonomous concept of “last habitual residence”:

**The last habitual residence of the
author of the succession at the time
of death shall be determined in only
one Member State to avoid a
“*dépéçage*” of the succession.**





Thanks !

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November 2020