

# Succession Regulation

by **Paula Pott**

## Regulation N° 650/2012

Judgement of the Court of Justice of the European Union (CJEU) in case C-80/19

Key words: cross border succession; last habitual residence; court; rules of jurisdiction; decision.

In this judgment, the CJEU interprets Articles 3(2), 3(1)(g) and (i), 4, 5, 7, 22 and 83(2) and (4) of Regulation N° 650/2012. The following conclusions, in addition to the previous case-law, can be drawn from this decision, clarifying namely, the notions of cross border succession, last habitual residence, court, decision, and the operation of the transitional provisions regarding the choice of law by the author of the succession, and the subsequent choice of court by the successors.

### THE NOTION OF CROSS BORDER SUCCESSION

When the author of a succession, of Lithuanian nationality, dies with her last habitual residence in Germany, where she resided with her husband, of German nationality, and with her child, of Lithuanian nationality, leaving immovable property in Lithuania where she drew up

her will designating her child as universal heir, such a succession has a cross border impact. Therefore, it is a cross border succession for the purposes of Regulation N° 650/2012.

### THE LAST HABITUAL RESIDENCE OF THE DECEASED MUST BE FIXED IN A SINGLE STATE

The deceased's last habitual residence within the meaning of Regulation N° 650/2012 must be fixed in a single Member State (or in a single State as the case may be) by the authority to which the succession is subject, since fixing it in more than one country would result in a *dépeçage* of the succession contrary to the objectives of the regulation, namely the unity of the succession provided for in Articles 4 and 21 of the regulation. According to these two legal provisions, the last habitual residence of the deceased is the main connecting factor to determine both jurisdiction and the applicable law.

### THE NOTION OF COURT

To be equated to courts for the purposes of the Succession

Regulation notaries and other non-judicial authorities shall rule on disputed facts, in addition to meeting the requirements provided for by Article 3(2) of the regulation. By issuing a national certificate of inheritance, a Lithuanian notary is not equated to a court for the purposes of Article 3(2) of Regulation N° 650/2012 where, under national law, he does not have jurisdiction to rule on disputed facts in matters of succession but is limited to certifying legally uncontested subjective rights. Thus, for the purposes of Article 4 of Regulation N° 650/2012, notaries or other non-judicial authorities, when issuing certificates of inheritance provided for in national legislation, are not bound by the rules of jurisdiction laid down in Chapter II of Regulation N° 650/2012 if they do not act in a similar manner to courts.

### THE NOTION OF DECISION

In the case mentioned above, the national certificate of inheritance 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 N° 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.

In such case, in the light of Article 59 (1), second paragraph, of Regulation N° 650/2012, to use an authentic instrument in another Member State, it is possible to ask the authority which issued the document in the Member State of origin, to fill in the form in Annex 2 to Regulation N° 1329/2014 establishing the forms referred to in Regulation N° 650/2014.

### CHOICE OF LAW AND CHOICE OF COURT

As in the case pending before the referring court, the author of the succession made a will according to the Lithuanian law, which was the law of her nationality at the time, before Regulation N° 650/2012 started to apply, under Articles 22(1) and 83(4) of the regulation, the Lithuanian law is considered to be the applicable law chosen to rule the succession. Additionally, the successors can choose



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the forum of Lithuania as the one competent to decide the succession, according to Article 5 of Regulation N° 650/2012.

### TO CONCLUDE

It seems that the newness of this judgement consists of two additional interpretation factors: firstly, the connecting factor “last habitual residence of the deceased” shall be fixed in a single country; secondly, to be equated to courts, notaries and other non-judicial authorities have to rule on disputed facts in addition to meeting the requirements provided for by Article 3(2) of the Succession Regulation.

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