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European Certificate of Inheritance

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ABSTRACT: This paper aims to analyze the intricate matters surrounding the succession of deceased persons who have their nationality and last residence in one of the countries of the European Union, but have assets (e.g., real estate) located in Romania. It is important to determine which law applies to the succession, which court or notary public is qualified to settle a succession case with a foreign element. For a succession with an element of foreignness within the European Union to be effectively managed, heirs, legatees, executors of wills or administrators of the estate must be able to easily prove their status and/or competences in another Member State, such as the Member State where the succession assets are located. The proper functioning of the internal market is facilitated by removing obstacles to the free movement of persons who might face difficulties in exercising their rights in the context of a succession with foreign elements. In the European area of justice, citizens must be able to organize their succession in good time. The rights of heirs and legatees, other persons close to the deceased and creditors of the succession must be effectively guaranteed.

KEYWORDS: Romanian Civil Code, European Certificate, inheritance

Introduction

The legal definition, in Romanian domestic law, of the concept of inheritance is provided by Article 953 of the Romanian Civil Code, which states that "Inheritance is the transmission of the estate of a deceased natural person to one or more living persons." Unlike the Civil Code of 1864, which used both the notion of "Inheritance" and that of "succession", the preference of the new Civil Code (Law No. 287/2009) is for the predominant use of the notion of "inheritance", without, however, removing the term "succession". Thus, it is found in terms such as 'inheritance assets', 'succession representation' and 'succession reserve'.

Romanian civil law has two types of inheritance: legal and testamentary. Legal inheritance can also be designated by the notion of "intestate" succession (Stănciulescu 2012, 1), borrowed from Roman law. The original term of intestate inheritance no longer retains the meaning and dimension of Roman law, which enshrined it (in the sense that, in our law, it no longer constitutes an exception) (Marin 2023b 124-130). Inheritance is legal when the transmission of the estate takes place in accordance with the law (Hamangiu, Rosetti-Bălănescu, Băicoianu 1928, 364), to the persons, in the order and in the shares strictly determined by law (Cadariu-Lungu 2012, 4) ; it is testamentary, when the transmission of the estate takes place in accordance with the will of the testator, materialized by the will (Chirică 2003, 31). Testamentary provisions referring to the transfer of property are known as legacies. It is the testator, the person whose inheritance is in question, who designates by his will the persons who will inherit it.

Legal inheritance may coexist with testamentary inheritance, a rule enshrined by the legislator in Article 955 para. (2). Thus, the two types of inheritance (legal and testamentary) are not mutually exclusive. The place where the inheritance is opened is the deceased's last place of residence (Marin 2023a, 171-175). Proof of the last place of residence shall be furnished by the death certificate or, where applicable, by a final court order declaring the death. If the last domicile of the deceased is not known or is not in Romania, the inheritance is opened at the place in the country within the jurisdiction of the notary public first notified, provided that there is at least one immovable property of the person leaving the inheritance in this jurisdiction. If there is no immovable property in the inheritance, the place of opening the inheritance shall be in the district of the notary public first notified, provided that there is

movable property of the person leaving the inheritance in this district. When there are no assets located in Romania in the estate, the place of opening the inheritance is in the district of the notary public first notified. The provisions cited apply accordingly where the court is the first body to be seised for the purposes of the inheritance procedure.

In accordance with the powers conferred on the European Union by Article 81(2)(c) of the Treaty on the Functioning of the European Union, and with a view to adopting measures relating to judicial cooperation in civil matters having cross-border implications, in particular where necessary for the proper functioning of the internal market, EU Regulation No 650/2012 was adopted. In the preamble to the Regulation, the need to adopt measures to ensure the compatibility of the conflict-of-law and jurisdiction rules applicable in the Member States is reaffirmed. Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of judgments and the acceptance and enforcement of authentic instruments in matters of succession and the creation of a European Certificate of Succession, published in the Official Journal of the European Union No 201/107/27.7.2012.

The proper functioning of the internal market is facilitated by removing obstacles to the free movement of persons who might face difficulties in exercising their rights in the context of a succession with foreign elements. In the European area of justice, citizens must be able to organize their succession in good time. The rights of heirs and legatees, other persons close to the deceased and creditors of the succession must be effectively guaranteed. To achieve these objectives, the Regulation brings together provisions on jurisdiction, applicable law, recognition - or, where applicable, acceptance - enforceability and enforcement of judgments, authentic instruments and court settlements, and the creation of a European Certificate of Succession.

Chapter VI of the Regulation, entitled "European Certificate of Succession", creates, in Articles 62 to 73, the legal framework for both the definition of the concept and the purpose, use, drawing up and use of this legal document. The basic principle of the Regulation is that the use of the certificate of inheritance is optional. Once issued, however, in accordance with the legal provisions, the European Certificate of Succession is automatically recognized in each Member State without any special procedure being required. Thus, it is presumed that the certificate accurately proves the elements established under the law applicable to the succession or under any other law applicable to the specific elements. The person named in the certificate as heir, legatee, etc., is presumed to have the status stated in the certificate and/or to be the holder of the rights or powers stipulated in the certificate without any conditions and/or restrictions attached to those rights or powers other than those stipulated in the certificate.

Article 62 of Regulation No 650/2012 provides that "(1) This Regulation creates a European Certificate of Succession (hereinafter referred to as "the Certificate"), which shall be issued for use in another Member State and shall have the effects listed in Article 69.(2) Use of the Certificate shall not be compulsory. (3) The certificate shall not replace internal documents used for similar purposes in the Member States. However, a certificate issued for use in another Member State shall also produce the effects listed in Article 69 in the Member State whose authorities issued the certificate under this Chapter."

Article 63 of the same Regulation, entitled "Purpose of the certificate", provides in paragraphs 1 and 2 that "(1) The certificate is intended for use by heirs, legatees with direct rights of succession and [...] who have to prove in another Member State their status or exercise their respective right as heir or legatee [...] (2) The certificate may be used, in particular, to prove one or more of the following:

(a) the status and/or rights of each heir or, as the case may be, of each legatee mentioned in the certificate and the respective shares in the estate;

(b) the attribution of a specific asset or certain assets forming part of the estate to the heir(s) or, as the case may be, the legatee(s) mentioned in the certificate; [...]"

As regards the content of the certificate, Art. 68 of the Regulation states that it concerns: [...] (f) information concerning the deceased: name (name before marriage, if applicable), surname, sex, date and place of birth, marital status, nationality, personal number code (if applicable), address at the date of death, date and place of death; [...(h) information concerning a marriage settlement entered into by the deceased or, as the case may be, concerning a settlement entered into by the deceased relating to a relationship which, under the law applicable to it, produces effects similar to marriage, and information concerning the property aspects of the matrimonial property regime or other equivalent property regime; [...] (l) the share to which each heir is entitled and, where applicable, the list of rights and/or property to which a particular heir is entitled; [...]"

Some provisions of the Regulation have been subject to interpretation in the preliminary reference procedure, with the European Court of Justice of the European Union giving, through its rulings, clarifying its scope, the character of the European Certificate of Succession issued by the notary public to be an authentic act; the validity of the declaration of renunciation of succession - in the case of an heir residing in a Member State other than that of the court competent to rule on the succession.

As regards the scope of the provisions of the Regulation:

By Judgment No C-558/16/2018 of 01-Mar-2018, the Court of Justice of the European Union reaffirms that the purpose of Regulation No 650/2012 is to create a European Certificate of Succession, which must enable each heir, legatee or successor mentioned in that certificate to prove in another Member State his or her status and inheritance rights (see to that effect Judgment of 12 October 2017, Kubicka, C-218/16, EU:C:2017:755, paragraph 59; Judgment of 1 March 2018, Mahnkopf, C-558/16, EU:C:2018:138). In the case under consideration, Mr Mahnkopf died on 29 August 2015. At the time of his death, he was married to Mrs Mahnkopf. Both spouses, who held German nationality, were ordinarily resident in Berlin (Germany). The deceased, who left no provision for the cause of death, had only his wife and the couple's only son as heirs. The spouses were subject to the regime of legal community limited to the growth of assets and had not concluded a marriage contract. In addition to the deceased's assets in Germany, the inheritance also included a 50% share in the ownership of a property in Sweden.

At Mrs Mahnkopf's request, the Amtsgericht Schoneberg (Schoneberg District Court, Germany), the court with jurisdiction over Mr Mahnkopf's estate, issued a national certificate of inheritance on 30 May 2016, according to which the surviving wife and the descendant each inherited half of the deceased's assets by virtue of the statutory devolution under German law. The referring court points out that the wife's share of the inheritance results from the application of Paragraph 1931(1) of the BGB, according to which the surviving spouse's legal share of one quarter of the inheritance is increased by a further quarter if the spouses were cohabiting under the marital regime of legal community limited to increases in assets, as referred to in Paragraph 1371(1) of the BGB.

On 16 June 2016, Mrs Mahnkopf also requested a notary to issue her with a European Certificate of Inheritance under Regulation No 650/2012, stating that she and her son are co-heirs, each of whom is entitled to one half of the inheritance in accordance with the national rule of legal devolution. She intended to use this certificate to register their ownership of the property in Sweden. This notary forwarded Mrs Mahnkopf's application to the Amtsgericht Schoneberg (Schoneberg District Court). This court rejected the application for a European Certificate of Succession on the ground that the share of the deceased's wife's estate was based, as regards one quarter of the deceased's estate, on a matrimonial property regime and, as regards another quarter of the deceased's estate, on the matrimonial property regime provided for in Paragraph 1371(1) of the BGB. However, the rule under which that second

quarter was allocated, which concerns a matrimonial regime and not a succession regime, is not covered by Regulation No 650/2012.

Mrs Mahnkopf appealed against that decision to the Kammergericht Berlin (Higher Regional Court of Berlin, Germany), by which she also supplemented her original application by requesting, in the alternative, that the European Certificate of Succession be issued with a statement that her inheritance rights are based, in respect of one quarter of the deceased's estate, on the legal community of property regime limited to increases in assets, for information purposes. The referring court points out that the legal literature is divided as to whether the rule laid down in Paragraph 1371(1) of the BGB is a rule of inheritance law or a rule of matrimonial property law. It takes the view that, in view of its purpose, namely to compensate for the increase in assets which come within the scope of the legal community when the community of property comes to an end as a result of the death of one of the spouses, Paragraph 1371(1) of the BGB is not a rule of succession 'relating to the estates of deceased persons' within the meaning of Article 1(1) of Regulation No 650/2012. In its view, the rule laid down in that provision must always be applied where the effects of marriage, including matters relating to matrimonial property regimes, are governed by German law. Such application would not be guaranteed if that rule were to be classified as a rule of succession law since, in such a case, its scope would be limited to situations in which succession is governed by German law under Articles 21 and 22 of Regulation No 650/2012.

The referring court also considers that, because of the lack of harmonization of the provisions relating to matrimonial property regimes in the European Union, the increase in the surviving spouse's legal share of the estate resulting from the application of a rule relating to matrimonial property regimes, in particular Paragraph 1371(1) of the BGB, cannot be entered, as a general rule, even for purely informative purposes, on the European Certificate of Succession. However, it considers that such an increase could be mentioned in the European Certificate of Succession where the law of succession applicable under Article 21 or Article 22 of Regulation No 650/2012 and the law governing the matrimonial property regime of the spouses are determined under the law of one and the same Member State, irrespective of the conflict rule to be applied. In the present case, the law applicable to the succession and the law applicable to the matrimonial property regime would be determined exclusively under German law. In that regard, the national court states that the terms used in Articles 67(1) and 69(2) of Regulation No 650/2012, according to which the items to be certified have been determined in accordance with the law applicable to the succession 'or under any other law applicable to specific items', would allow such an interpretation. It would also be justified in view of the second sentence of recital (12) of Regulation No 650/2012 and the purpose of the European Certificate of Succession, which is to simplify and speed up the cross-border enforcement of succession rights.

In those circumstances, the Kammergericht Berlin (Higher Regional Court, Berlin) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling: „Is Article 1(1) of [Regulation No 650/2012] to be interpreted as meaning that the scope of the regulation ('inheritances relating to the estates of deceased persons') also covers national provisions, such as Paragraph 1371(1) of the BGB, which regulate the property aspects of the matrimonial property regime after the death of one spouse by increasing the share of the inheritance to which the other spouse is entitled? If the answer to the first question is in the negative, are Articles 68(l) and 67(1) of Regulation [No 650/2012] to be interpreted as meaning that the surviving spouse's share of the inheritance may be included in full in the European Certificate of Succession, even if that share results in part from an increase pursuant to a rule governing the property aspects of a matrimonial property regime such as that laid down in Paragraph 1371(1) of the Civil Code? If the answer to the above question is in principle in the negative, can the answer be in the affirmative, however, as an exception, in the case of factual situations in which (a) the sole purpose of the certificate of

inheritance is to enable the heirs in a particular Member State to assert their rights in the deceased's assets in that other Member State, and (b) the decision in matters of succession (Articles 4 and 21 of Regulation [No 650/2012]) and - irrespective of the conflict-of-law rules applied - the issues relating to the property rights of the spouses are to be assessed under the same legal order? If the answer to the first two questions is in the negative, is Article 68(l) of Regulation [No 650/2012] to be interpreted as meaning that the surviving spouse's share of the inheritance increased by virtue of a rule relating to matrimonial property regimes may be entered in full - but only for information purposes - on the European Certificate of Succession?"

Furthermore, as is clear from recitals (11) and (12) of Regulation No 650/2012, it should not apply to areas of civil law other than succession, and in particular to the property aspects of matrimonial property regimes, ***including matrimonial property agreements***, as they are known in some legal systems, in ***so far as such regimes do not deal with matters relating to succession***.

The qualification of the surviving spouse's share of the estate under a provision of national law allows the information on that share to be entered in the European Certificate of Succession, with all the effects described in Article 69 of Regulation No 650/2012. According to Article 69(1) of that Regulation, the European Certificate of Succession takes effect in each Member State without any special procedure being required. *Paragraph 2 of that Article provides that the person named in the certificate as legatee shall be presumed to have the capacity specified in the certificate and to be the holder of the rights set out in the certificate, without any conditions and/or restrictions attached to those rights other than those set out in the certificate* (Judgment of 12 October 2017, Kubicka, C-218/16, EU:C:2017:755, paragraph 60). Achieving the objectives of the European Certificate of Succession would be considerably hampered if the certificate did not contain full information on the rights of the surviving spouse in relation to the estate. Article 1(1) of Regulation No 650/2012 must therefore be interpreted as meaning that a national provision such as that at issue in the main proceedings, which provides, on the death of one of the spouses, for flat-rate compensation for the increase in assets covered by the ***legal community by increasing the surviving spouse's share of the estate,*** falls within the scope of that regulation.

The notion of "authentic instrument" and "judgment"

In Judgment No C-658/17/2019 (2019), the Court of Justice of the European Union held that under Article 3(1)(g) of Regulation No 650/2012, the term 'judgment' includes any judgment in matters of succession given by a court of a Member State, whatever the judgment may be called, including a judgment concerning the determination of costs or expenses by a registrar.

In the case under consideration, WB's father, who died on 6 August 2016, was a Polish national who was ordinarily resident in Poland. WB was one of the parties to the proceedings relating to his father's succession, brought before Ms Bac, as a notary established in Poland, with a view to obtaining an inheritance certificate. This document was drawn up by this notary on 21 October 2016 in accordance with Polish law. The deceased was an entrepreneur who carried out an economic activity close to the German-Polish border. WB wanted to know whether capital had been placed in one or more German banks and, if so, to know the amount of this capital that could enter the estate. To this end, WB requested, on 7 June 2017, a copy of the certificate of inheritance drawn up by the notary concerned and the attestation confirming that this certificate constitutes a decision on succession within the meaning of Article 3(1)(g) of Implementing Regulation No 650/2012, in the form set out in Annex 1 to Regulation No 1329/2014. In the alternative, in the event that that application is rejected, the applicant in the main proceedings has requested that she be issued with a copy of the certificate of inheritance and the attestation confirming that that certificate constitutes an authentic instrument in matters of succession within the meaning of Article 3(1)(i) of

Regulation No 650/2012, in the form set out in Annex 2 to Implementing Regulation No 1329/2014.

In a conclusion dated 7 June 2017, a representative of the notary exercising his functions in the office headed by Ms Bac rejected these requests. He essentially found that the certificate of inheritance was a 'judgment' within the meaning of Article 3(1)(g) of Regulation No 650/2012 and that, in the absence of the notification to the Commission by the Republic of Poland provided for in Article 3(2) of that Regulation, it was impossible for him to carry out the certification in the form of the form set out in Annex 1 to Implementing Regulation No 1329/2014. With regard to WB's subsidiary application, the notary's representative indicated that the qualification of the certificate of inheritance as a 'judgment' prevented its qualification as an 'authentic instrument', so that, although it fulfilled the conditions laid down in Article 3(1)(i) of Regulation No 650/2012, it was not possible to issue the corresponding certificate in the form of the form set out in Annex 2 to Implementing Regulation No 1329/2014.

On 7 June 2017, WB brought an action before the referring court, claiming, first, that the certificate of inheritance fulfilled all the conditions necessary to qualify as a 'judgment' within the meaning of Article 3(1)(g) of Regulation No 650/2012 and, second, that the failure of the Republic of Poland to notify the Commission of notaries drawing up certificates of inheritance, in accordance with the last subparagraph of Article 3(2) and Article 79 of that regulation, did not affect the legal nature of the certificate of inheritance.

The referring court considers that, in order to rule on the action brought by WB, it needs to know whether the certificate referred to in Annex 1 to Implementing Regulation No 1329/2014 may also be issued for procedural instruments which are not enforceable. In that regard, the referring court considers that the conjunction of Article 46(3)(b) and Article 39(2) of Regulation No 650/2012 argues in favour of the use of that certificate for any judgment, including those which are not enforceable. In addition, the Court considers that the definition of 'judgment' and 'court' for the purposes of Regulation No 650/2012 should be clarified. It takes the view that Polish notaries who issue certificates of inheritance exercise 'judicial powers similar to those of courts of law' within the meaning of recital 20 in the preamble to Regulation No 650/2012 as regards the legitimation of heirs. It also points out that the certificate of inheritance has the same effects as a final order of succession made by a court and must therefore be qualified as a 'judgment' within the meaning of Article 3(1)(g) of Regulation No 650/2012. However, that court raises the question whether the concept of 'judgment' requires that it be delivered by an authority competent to settle matters in dispute between the parties concerned.

In those circumstances, the Sad Okregowy w Gorzowie Wielkopolskim (Regional Court of Gorzow Wielkopolski, Poland) decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

"Is Article 46(3)(b) [of Regulation No 650/2012] in conjunction with Article 39(2) [thereof] to be interpreted as meaning that the issue of a certificate concerning a judgment in matters of succession, the form of which forms Annex 1 to [Implementing Regulation No 1329/2014], is also permissible in the case of judgments attesting to heirship which are not (in part) enforceable?

Article 3(1)(g) of Regulation No 650/2012 must be interpreted as meaning that a deed of confirmation of succession drawn up by a notary on the basis of a concordant request by all the parties to a succession proceeding, which has the same legal effects as those of a final order as to succession - such as a deed of confirmation of succession drawn up by a Polish notary - constitutes a judgment within the meaning of that provision [...] and, consequently, the first subparagraph of Article 3(2) of Regulation No 650/2012 must be interpreted as meaning that the first subparagraph of Article 3(2) of Regulation No 650/2012 is not applicable. 650/2012 be interpreted as meaning that the notary who draws up such a deed of confirmation of succession must be classified as a court within the meaning of that provision?

Is the second subparagraph of Article 3(2) of Regulation No 650/2012 to be interpreted as meaning that the notification made by a Member State pursuant to Article 79 of that regulation is for information purposes and does not make it a condition for a legal professional competent in matters of succession who exercises judicial powers within the meaning of the first subparagraph of Article 3(2) of that regulation to be classified as a court if he fulfils the conditions resulting from the latter provision?

If the answer to the first, second or third question is in the negative: Is Article 3(1)(i) of Regulation No 650/2012 to be interpreted as meaning that a classification of a national procedural instrument certifying the status of heir such as the Polish certificate of inheritance as a judgment within the meaning of Article 3(1)(g) of Regulation No 650/2012 precludes its classification as an authentic instrument?

If the answer to the fourth question is in the affirmative: Is Article 3(1)(i) of Regulation No 650/2012 to be interpreted as meaning that an heirship certificate drawn up by a notary on the basis of a non-contentious application made by all the parties to a succession procedure - such as an heirship certificate drawn up by a Polish notary - constitutes an authentic instrument within the meaning of that provision?"

Thus, a judgment, for the purposes of that provision, is characterised by the fact that it emanates from a 'court', so that, in order to answer the question whether a national certificate of inheritance is to be classified as a 'judgment', it is first necessary to determine whether the authority which issued it is to be regarded as a 'court' within the meaning of Article 3(2) of that regulation.

As regards the definition of 'court', according to the first subparagraph of Article 3(2) of Regulation No. 650/2012, it includes any judicial authority and all other authorities and legal professionals competent in matters of succession which exercise judicial powers or act on the basis of a delegation of powers by a judicial authority or act under the control of a judicial authority, provided that such authorities and legal professionals offer guarantees as regards impartiality and the right of all parties to be heard and provided that the decisions given by them under the law of the Member State in which they operate are subject to appeal to or review by a judicial authority and have a similar force and effect as a decision of a judicial authority on the same matters.

According to the first subparagraph of Article 3(2) of Regulation No 650/2012, an extra-judicial authority or a legal professional competent in matters of succession falls within the notion of "court" within the meaning of that provision when it exercises judicial powers or acts on the basis of delegation of powers by a judicial authority or acts under the supervision of a judicial authority, if it fulfils the conditions listed in that provision.

Although judicial and notarial functions are distinct, it follows from recital (20) of Regulation No 650/2012 that the term "court" should be given a broad meaning in this Regulation, including notaries, if they exercise judicial functions in certain succession matters. On the other hand, the same recital specifies that the term "court" should not include extra-judicial authorities in a Member State, competent in matters of succession under national law, such as notaries, who in most Member States, as is usually the case, do not exercise judicial powers. However, an authority must be regarded as exercising judicial powers where it is likely to have jurisdiction in the event of a succession dispute. The notary certifies the inheritance rights of heirs vis-à-vis third parties who are not successors by means of an heirship certificate in the context of non-contentious successions, and the notary may issue an heirship certificate only at the concurrent request of the heirs. The notary verifies the facts ex officio and, pursuant to Article 95e(1) of the Code, issues the certificate only if he has no doubt as to the national jurisdiction, the content of the applicable foreign law, the identity of the heir, the amount of the shares of the estate and, if the deceased has created a legacy 'by claim', the identity of the legatee 'by claim' and the subject-matter of the legacy.In addition, according to Articles 4 and 5 of the Notarial Code, notaries exercise a liberal profession

which involves, as their main activity, the provision of several distinct services in return for remuneration, determined on the basis of an agreement with the parties, within a scale.

Those activities cannot therefore be regarded as participating, in themselves, in the exercise of judicial powers. Consequently, since an inheritance certificate such as that at issue in the main proceedings is not issued by a court within the meaning of Article 3(2) of Regulation No 650/2012, that certificate does not, in accordance with paragraph 32 of this judgment, constitute a 'judgment' in matters of succession within the meaning of Article 3(1)(g) of that regulation.

As regards the classification of the European Certificate of Inheritance as an authentic instrument, the Court of Justice of the European Union held in the present case that, under Article 3(1)(i) of Regulation No. 650/2012, 'authentic instrument' means a document in matters of succession which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which, on the one hand, relates to the signature and content of the authentic instrument and, on the other hand, has been established by a public authority or any authority empowered for that purpose by the Member State of origin. However, the notary carries out checks which may lead to a refusal to draw up the certificate of inheritance, so that the authenticity of this document relates both to his signature and to its content. An inheritance certificate such as that at issue in the main proceedings therefore satisfies the conditions laid down in Article 3(1)(i) of Regulation No 650/2012. It therefore constitutes an authentic instrument, a copy of which may be issued together with the form referred to in the second subparagraph of Article 59(1) of that regulation, which corresponds to the form set out in Annex 2 to Implementing Regulation No 1329/2014.

When asked to rule on the validity of a declaration of waiver of succession where an heir resides in a Member State other than that of the court having jurisdiction to rule on the succession, the Court of Justice of the European Union ruled in its judgment No C-617/20/2022 (2022) that Article 13 of Regulation No 650/2012 forms part of Chapter II of that regulation, which governs all grounds of jurisdiction in matters of succession. According to that provision, in addition to the court having jurisdiction to rule on the succession under that Regulation, the courts of the Member State in which any person who, under the law applicable to the succession, may make, before a court, a declaration of acceptance or waiver of the succession, a legacy or a reserved portion of the estate or a declaration limiting the liability of the person concerned in respect of the duties of the succession is habitually resident are competent to receive such declarations.

It appears from the order for reference that the deceased's grandchildren declared on 13 September 2019 that they renounce the deceased's succession before a court in the Member State of their habitual residence, namely the rechtbank Den Haag (The Hague District Court, the Netherlands). On 13 December 2019, they informed the German court having jurisdiction to rule on the succession, in a letter written in Dutch, of the existence of this declaration, enclosing a copy of the documents drawn up by the Dutch court. On 15 January 2020, they again informed the German court, but in a letter in German, of the existence of the said declaration. However, the German translation and the originals of the documents drawn up by the Dutch court did not reach the German court until 17 August 2020, i.e. after the expiry of the time-limit laid down by the law applicable to the succession.

Article 13 thus provides for an alternative forum of jurisdiction designed to allow heirs who do not have their habitual residence in the Member State whose courts are competent to rule on the succession, in accordance with the general rules of Articles 4 to 11 of Regulation No 650/2012, to make declarations of acceptance or waiver of the succession before a court in the Member State of their habitual residence.

The Court has held that Articles 13 and 28 of Regulation No 650/2012 must be interpreted as meaning that a declaration of waiver of succession made by an heir before a court of the Member State in which he or she is habitually resident is to be regarded as valid

as regards form if the formal requirements applicable before that court have been complied with, without it being necessary, in order for it to be valid, for it to satisfy the formal requirements imposed by the law applicable to the succession.

Conclusion

Regulation No 650/2012 was adopted under Article 81(2) TFEU, which covers only civil matters having cross-border implications. In accordance with recitals (1) and (7), this Regulation aims in particular at facilitating the proper functioning of the internal market by removing obstacles to the free movement of persons who encounter difficulties in exercising their rights in the context of a succession with foreign elements. It aims, according to recital 67, to resolve in a rapid, simple and effective manner a succession with such elements. In order to determine whether a succession has the above elements and therefore falls within the scope of Regulation No 650/2012, it is necessary to determine, firstly, the Member State of the deceased's habitual residence at the time of his death and, secondly, whether this residence can be established in another Member State because of the location of another element relating to the succession in a Member State other than that of the deceased's last habitual residence. In this regard, it should be pointed out that, although no provision of Regulation No 650/2012 defines the concept of 'habitual residence of the deceased at the time of death' for its purposes, recitals (23) and (24) provide useful guidance.

According to recital 23 of that Regulation, the task of establishing the deceased's habitual residence lies with the authority dealing with the succession and, to that end, that authority must take into account both the fact that the general connecting factor is the deceased's habitual residence at the time of death and all the circumstances of the deceased's life during the years preceding his death and at the time of death, taking into account all the relevant facts, in particular the duration and regularity of the deceased's presence in the State concerned and the conditions and reasons for that presence. The habitual residence thus established should demonstrate a close and stable link between the succession and the State concerned. This is because an interpretation of the provisions of Regulation No 650/2012, according to which the habitual residence of the deceased at the time of his death may be established in more than one Member State, would lead to a fragmentation of the succession, since that residence is the criterion for the application of the general rules set out in Articles 4 and 21 of that regulation, according to which both the jurisdiction of the courts to rule on the succession as a whole and the law applicable under that regulation, which is intended to govern the succession as a whole, are determined by reference to that residence. Such an interpretation would therefore be incompatible with the objectives of that regulation.

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