



Towards the entry into force of the succession regulation:
building future uniformity upon past divergencies



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Jurisdiction, competence and application of the EU Regulation 650/2012

Application of the EU Regulation 650/2012 in Spain as a pluri-legislative State

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Rectius:
**Application of the Spanish law according to the
Regulation 650/2012**

- The existence of different territorial units on succession matters in Spain is not just an “internal affair”
- Spain: a member state with different legal systems in succession matters
 - From East to West: Balearic islands; Catalonia; Aragon; Navarre; Basque Country; Galicia and Spanish Código Civil (both another territorial unit regarding succession matters and a subsidiary source of law)
- It also matters to European lawyers, notaries and judges

Solutions embodied in art. 36 of the Regulation 650/2012

- How does the Regulation on succession matters deal with that question? The answer is in art. 36, where a rule is provided to determine which law shall be applied when the law specified by the Regulation is that of a State with more than one legal system
- Art. 36 subsidiary-reference model
 - Art. 36.1 indirect-reference model
 - Art. 36.2 direct-reference model

Spanish internal conflict-of-laws rules

- According to article 16 CC: Conflicts of laws which may arise as a result of the coexistence of different civil legislations within national territories shall be resolved according to the rules provided in chapter IV, with the following particularities:
 1. Personal law shall be as determined by *vecindad civil*
- *Vecindad civil* is a mixture, a sort of domicile and a sort of sub-nationality
- The *vecindad civil* is the personal connecting factor that submits Spanish citizens to any of the Spanish Laws. Only Spanish citizens have *vecindad civil*

Spanish internal conflict-of-laws rules

- Article 9.8 CC provides: Succession mortis causa shall be governed by the national law of the deceased at the time of his death, (...)
- Whenever an internal conflict of law arises “national law” shall be superseded by “the law of the *vecindad civil*”, but remember that only Spanish citizens have *vecindad civil*
- Article 36.1 shall be applied when determining the applicable law to the succession of a Spanish deceased
- Art. 36.2 shall be applied when determining the applicable law to the succession of a foreign deceased

Vecindad civil – arts. 14 and 15 CC

- Spanish people have the same *vecindad civil* as their parents when their parents have the same *vecindad civil* as each other.
- If the parents have different *vecindades civiles*, the child shall have the one corresponding to their own place of birth.
- One can only have one *vecindad civil*, but it can be changed over the course of a lifetime
- Marriage does not alter *vecindad civil*. However, either of the spouses may at any time opt for the other's *vecindad civil*.

Vecindad civil

- *Vecindad civil* is acquired by continued residence:
 - Just two years + declaration of the interested party
 - Ten years, without declaration to the contrary
- A foreigner who acquires Spanish nationality must opt for:
 - The *vecindad civil* of the place of residence.
 - The one of the place of birth (if within Spain).
 - The last *vecindad civil* of either of his/her parents
 - The spouse's.
- In case of doubt, the *vecindad civil* corresponding to the place of birth shall prevail.

Unequal treatment

- The applicable law depends on which of art. 36.1 or art. 36.2 of the Regulation on Succession matters is applied.
- Whenever the designated law is the “Spanish law”, it depends on the nationality of the deceased which one of the Spanish laws is going to be applied.
- Different cases will show that the joint implementation of art. 36 and the Spanish internal conflict-of-laws rules system creates some differences that are difficult to justify.
- Does it constitute a discrimination on grounds of nationality?

Cases (I): Habitual residence does not work the same

- The deceased, Ms. Wolff, was a German citizen who had lived in Frankfurt for 20 years, but for the last 8 years she had been living in Navarre where she died. Her husband has the *vecindad civil* of Navarre the same as their children who live in Navarre too. The assets were located in Navarre and in Frankfurt.
- The deceased, Ms. Lobo, was a Spanish citizen with Aragonese *vecindad civil*. She had lived in Frankfurt for 20 years, but for the last 8 years she had been living in Navarre where she died. Her husband has the *vecindad civil* of Navarre the same as their children who live in Navarre too. The assets were located in Navarre and in Frankfurt.

Solutions (I): Habitual residence does not work the same

- The succession of Ms. Wolff shall be governed by the law of Navarre, according to art. 36.2.a) of the Regulation due to the fact that Ms. Wolff was not Spanish.
- The succession of Ms. Lobo shall be governed by Aragonese law because she had the *vecindad civil* of Aragon, according to art. 36.1 of the Regulation and arts. 16.1 CC and 9.8 CC lead to Aragonese law because she had that *vecindad civil*.

Cases (II): Escape Clause does not work the same

- The deceased, Ms. Lupi, was an Italian citizen who had lived in Naples for 20 years, then she moved to Catalonia and settled her habitual residence there, but for the last year she had her habitual residence in Aragon where she died. Her husband has the *vecindad civil* of Catalonia, the same as their children, who live in Catalonia too. The assets were located in Catalonia and in Naples.
- The deceased, Ms. Lobatón, a Spanish citizen with Aragonese *vecindad civil*, had lived in Naples for 20 years, then she moved to Catalonia and settled her habitual residence there, but for the last year she had her habitual residence in Aragón where she died. Her husband and her children have the *vecindad civil* of Catalonia. They live in Catalonia too. The assets were located in Catalonia and in Naples.

Solutions (II): Escape Clause does not work the same

- The succession of Ms. Lupi shall be governed by the law of Aragon, in principle, as it was the place of her last habitual residence. However, Italian law or Catalan law could be applied if it is proved that the deceased was manifestly more closely connected with one of these laws. Art. 21.2 and art. 36.2.c) create the scenario of considering Italian, Catalan and Aragonese law, laws of a State.
- The succession of Ms. Lobatón shall be governed by the law of Aragon, in principle, as she had the *vecindad civil* of Aragón (and not just because it was the place of her last habitual residence). However, Italian law (and only Italian law) could be applied if it is proved that the deceased was manifestly more closely connected with this law. Art. 21.2 allows to apply Italian law but never the law of Catalonia (art. 36.1).

Cases (III): Escape Clause does not work the same

- The deceased, Mr. Lupei, was a citizen from Romania where he lived his first ten years, then he moved to Catalonia with his parents. When he was older he settled his habitual residence in Madrid, he got married and brought his children up there. Two years ago he moved back to Romania for work where he had his habitual residence. Then he died.
- The deceased, Mr. Llop, was a Spanish citizen with *vecindad civil* of Catalonia where he lived his first ten years, then he moved to Madrid with his parents. Before the expiry of the time-limit period of ten years he made a declaration to keep his Catalan *vecindad civil*. When he was older he still had his habitual residence in Madrid, he got married and brought his children up there. Two years ago he moved to Romania for work where he had his habitual residence. Then he died.

Solutions (III): Escape Clause does not work the same

- The succession of Mr. Lupei shall be governed, in principle, by Romanian law. However, Spanish Código Civil could be applied if it is proved that the deceased was manifestly more closely connected with this law, according to art. 21.2 and art. 36.2.c).
- The succession of Mr. Llop shall be governed, in principle, by Romanian law. However, Spanish Código Civil could never be applied if it is proved that the deceased was manifestly more closely connected with the law of Spain, globally considered, because Mr. Llop has Catalan *vecindad civil*. Therefore Catalan law would be applied according to art. 21.2 and art. 36.2.c).

Cases (IV): Agreements as to successions (regarding the succession of one person)

- Mr. Lobo, a Spanish citizen with *vecindad civil común* (subject to the Spanish Código Civil) having the habitual residence in Catalonia wanted to enter an agreement as to succession in order to leave all the assets to his Romanian wife as universal heir.
- Ms. Lupei, the Romanian wife, having as well her habitual residence in Catalonia wanted to enter into such an agreement as to succession provided in Catalan law in order to leave all the assets to her Spanish husband with *vecindad civil común* as universal heir.

Solutions (IV): Agreements as to successions (regarding the succession of one person)

- Mr. Lobo cannot enter an agreement as to succession because he has *vecindad civil común* and the Spanish Código Civil prohibits that kind of agreement even though he has the habitual residence in Catalonia (that permits it). The joint application of art. 25.1 and art. 36.1 leads to the law of his *vecindad civil*. Consequently, that person will not be allowed to sign the agreement. This will be to the detriment of the Romanian wife.
- Instead, the other way around, his wife from Romania, where agreements as to successions are prohibited, could enter into such an agreement as to succession provided in Catalan law because her habitual residence is located in Catalonia. Application of art. 25.1 and art. 36.2.a) would allow her to enter into an agreement as to succession.

Cases (V): Agreements as to successions (regarding the succession of several persons)

- A French citizen, Ms. Loup, wanted to sign an agreement as to succession with her husband, Mr. Ochoa, Spanish citizen with *vecindad civil común*, both of them having their habitual residence in the Basque Country, in order to leave all assets to each other.
- A French citizen, Ms. Loup, wanted to sign an agreement as to succession with her husband, Mr. Wolf, Dutch citizen, both of them having their habitual residence in the Basque Country, in order to leave all the assets to each other.
 - Art. 25 requires that the agreement as to succession shall be admissible only if it is admissible under all the laws which would have governed the succession of all the persons involved if they had died on the day on which the agreement was concluded.

Solutions (V): Agreements as to successions (regarding the succession of several persons)

- The agreement would not be possible because, even though Basque law permits and regulates agreements, art. 36 considers that the French spouse has her habitual residence in the Basque Country whilst the Spanish spouse “does not have” the habitual residence in the Basque Country but in the territorial unit of his *vecindad civil*. Of course, they both have their habitual residence in the Basque Country. However, art. 36 designates the law in a different way for each spouse.
- The agreement could be entered into given that the spouses have their habitual residence in the Basque Country, even though Dutch and French law prohibit in general agreements as to successions.

Cases (VI): *Professio iuris*

- Ms. Lobo having her habitual residence in Germany chose the Spanish law to govern her succession. When she died she had already lost Spanish nationality. Which Spanish law has to be applied?
- Mr. Wolff, a Spanish citizen who was originally from Germany, had chosen German law as the law governing his succession, but subsequently he acquired Spanish citizenship and the *vecindad civil* of Balearic Islands, where he had been living over the 40 past years, and all the assets are located in different territorial units in Spain. Is it an international succession under the Regulation?

Cases (VI): *Professio iuris*

- Mr. Lobo having his habitual residence in Italy chose Galician law to govern his succession. Is this choice valid?
 - He has indeed the *vecindad civil* of Galicia, both at the time of choice and at the time of death
 - He has indeed the *vecindad civil* of Galicia when he made the choice, but not when he died
 - He will have the *vecindad civil* of Galicia at the time of death, but not when he made the choice
 - He does not have this *vecindad civil* neither at the time of the election nor at the time of the death