

GoInEU seminar, Budapest – 12 April 2019 Cases

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1. Gábor- the weekend father

1. Variation no.1: Gábor is a 47 year old Hungarian-Austrian double citizen. Gábor has worked in Vienna on four working days of the week from Monday to Thursday at a technology-development firm since 2013. With the approval of his employer, on Fridays he works from home-office from Győr, where he lives with his wife and two children and he spends the weekends in Győr too with his family, where they have their family house. Gábor's property includes apart from the family house in Győr three further real properties, which are located in Vienna. Out of these, one is used by him on the four working days of the week when he works in Vienna, and the other two are let out by lease. In December 2018 while driving from Vienna to Győr on a Thursday evening he becomes a victim of a fatal road accident. In his life Gábor didn't choose a state's law, which shall be applied regarding the governance of the succession procedure at the event of his death.

- Which state has jurisdiction to rule on succession?
- Which state's law shall be applied?

2. Variation no.2.: Gábor who is the owner of the properties mentioned in variation 1. besides his family in Győr has a girlfriend in Vienna too, and he has an underage child with her. Gábor was always a really prudent and law-abiding person in his life, and as such a person, he had known well his legal status and his rights. After their child was born with his girlfriend in Vienna, he decided that the best would be, if he made a disposition on his property upon death. Gábor made his disposition in a form which is appropriate according to Hungarian law and he chose the Hungarian law to be applied concerning the succession procedure. This was made possible for him by Article 22 (1) of the Regulation.

- Which state has jurisdiction to rule on succession?
- Which state's succession law shall be applied?
- Does it change the outcome of this case if there is no explicit choice of law in the disposition, but it contains the following: „According to 7:58 (1) of the Civil Code my spouse shall be entitled to life-estate on our house which is located at.....”?

3. Variation no.3.: Gábor who is the owner of the assets described under variation 1., has a girlfriend in Vienna besides his family in Győr, and he has an underage child with her. He lives with them from Monday to Thursday in their apartment in Vienna. During his life Gábor did not make a choice of law which would be applicable to govern the succession procedure at the event of his death, and which state's law shall be applied to the succession in the event of his death. His assets are the family house in Győr and the three apartments in Vienna.

- Which state has jurisdiction to rule on succession?
- Which state's succession law shall be applied?

(De Negri Laura, Fuglinszky Ádám, Szeibert Orsolya, Tőkey Balázs)

2. Elemér the Hungarian wanderer

Elemér is a 64 years old Hungarian citizen, who has lived an adventurous life. When he was 27 years old, he was the famous Hungarian, who won the lottery which made his financial status safe for a life-long period. Elemér made good use of the pleasures that life had to offer him based on his financial status. He devoted a big part of his life to his biggest passion - travelling. He travelled not only across Europe, but he went to America, Asia and Africa too, and he visited Australia as well. When he turned 55 his adventurous spirit came to its end, and he spent his last years in his two favourite places alternately: the summers in Sicily, Italy and the winters in his home-town Budapest. Elemér was not an owner of any real estate, neither had he any valuable property. -He was renting a luxury house during his stays in both places via a long-term rental contract. Elemér had arrived to Budapest on 30 September 2018 from Sicily for the usual 6-month winter period, and by the end of March he had already planned his summer in Sicily. After a very short serious illness, on 8 November 2018 he died. He does not have family or any relatives. His estate consists of only money on bank accounts held at Hungarian and Italian banks.

- Which state has jurisdiction to rule on succession?
- Which state's succession law shall be applied?

(De Negri Laura, Fuglinszky Ádám, Szeibert Orsolya, Tókey Balázs)

3. Ferdinánd – the lucky bastard (?)

1. Variation no.1.: Ferdinand is a 47 years old Hungarian citizen with a lot of professional experience, a businessman, managing director, husband and dad. The seat of Ferdinánd's firm is located in Sopron, Hungary, while a subsidiary firm is in Spain (Catalonia), Barcelona. Due to his job, Ferdinánd commutes a lot between the two cities, however he is trying to perform well in his father role too, in both cities. Ferdinánd is not accidentally called a lucky bastard by those who really know him, and know about him that he has two families in two countries but these two families don't know about each other. Ferdinánd was already engaged with the young Odett from Sopron in 2003, and he married her in March 2004, but two months after this, during his business travel he got to know the spanish María, whom he met in Barcelona, and in a sudden passionate moment of his, he married her as well, in the summer of 2004 in front of a Spanish registrar. He has two-two children from both marriages, and during 15 years he succeeded to hide the two families from each other. His tragic and sudden death in October 2018 was not only filled with mourning, but it came with surprises too, when it came to the question of succession by the persons who were interested in the succession. His assets are two family houses, one in Hungary and one in Spain.

- Which state has jurisdiction to rule on succession?
- Which state's succession law shall be applied?
- Who will be the successor(s) and what will they inherit?

2. Variation no.2.: Besides his Hungarian citizenship Ferdinánd is a Spanish citizen as well.

- Which state has jurisdiction to rule on succession?
- Which state's succession law shall be applied?
- Who will be the successor(s) and what will they inherit?

(De Negri Laura, Fuglinszky Ádám, Szeibert Orsolya, Tókey Balázs)

4. Margaretha, who's will is the law

Margaretha is an 83 year old pensioner, Hungarian-German double citizen, who lives in Berlin, but she has an immovable property in Austria and Budapest too. Margaretha has three children, she is a widow. She was never really interested in making a disposal, she loved her three children equally, so she thought the statutory portions of inheritance will be the best solution if she closed her eyes forever one day. She passed away aged 83 in her apartment in Berlin. Her assets: one apartment in Berlin, one apartment in Salzburg and 2 apartments in Budapest.

- Which state has jurisdiction to rule on succession?
- Which state's succession law shall be applied?

(De Negri Laura, Fuglinszky Ádám, Szeibert Orsolya, Tókey Balázs)



GOVERNING INHERITANCE STATUTES
AFTER THE ENTRY INTO FORCE
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5. Konrád and Géza – Dutch marriage, Hungarian registered partnership

Konrád and Géza are a same sex married couple, who had made their marriage in the summer of 2010 in the Netherlands according to the Dutch law. Since 2012 they lived in Hungary, and their common apartment is also located here. Both of them are Hungarian citizens. Konrád has an adult child from his ex life-partner. Konrád died in december of 2018.

- Which state has jurisdiction to rule on succession?
- Which state's succession law shall be applied?
- Who will be the successor(s) and what will they inherit?

(De Negri Laura, Fuglinszky Ádám, Szeibert Orsolya, Tókey Balázs)

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Partners

6. Katalin from Komárom

Katalin died in 2017 in Komárom, Hungary at the age of 84. The only citizenship she had was Hungarian. From her first marriage made in 1955 in Komárom she had three children who currently all live in Hungary. She made her second marriage in 1991 with her second husband who was a Slovakian (at that time Czecho-Slovakian) citizen. Subsequently she moved to Révkomárom (Komárno) in Slovakia. She received a residential permission in Czechoslovakia, but her registered address in Hungary remained until her death.

Based on her active years in employment, Katalin received a retirement pension in Hungary. She regularly received medical treatment in Hungary in Komárom, and she often visited Hungary in general as well. Nevertheless, when her second husband died in 2007, she became entitled to a widow's pension after him in Slovakia.

From her second husband she inherited two real properties in Slovakia, one of which is an apartment in Révkomárom where she used to live with her husband, and after his death in 2007 she continued to live there alone. Katalin did not speak Slovakian. With her Slovakian citizen husband they did not have any common descendants.

In May of 2015 Katalin, who by that time needed continuous care was moved to Hungary by her children. From this point onwards, one of her children took care of her in his own apartment until her death in 2017.

The assets remaining after Katalin besides the two real properties in Slovakia (which she herself inherited from her second husband) is an apartment real property in Hungary and a bank account held at a Hungarian bank with an approximate balance of HUF 4,000,000.

It turned out in the case that after the death of her second husband Katalin made a will in 2009 in Révkomárom and placed it in escrow at a Slovakian notary public.

1. Is it the Hungarian or the Slovakian notary public (or court competent in inheritance matters) that has jurisdiction to conduct the probate process?
2. Does the Slovakian court competent in inheritance matters have jurisdiction based solely on the fact that Katalin had a residential permission in Slovakia?
3. Is it possible that the probate process in relation to the real properties in Slovakia is conducted in Slovakia, while in relation to the assets located in Hungary it is conducted in Hungary?
4. How would have the issue of the jurisdiction been solved if the testator had lived in her apartment in Révkomárom until her death, and her children had organized her care and nursing there and visited her regularly?
5. Which law would govern the succession
 - as regards to the substantive validity of the will?
 - as regards its formal validity?

(Szócs

Tibor)

7. Niki and Domi: cross border (passing) love

Domenico, an Italian citizen and Nikolett, a Hungarian citizen married in 2008 in Bologna. They settled down in Ravenna, Italy and lived there until September 2011 when their relationship ceased.

Nikolett continued to live and work in Italy for a while but in 2013 she moved back home to Hungary. Ever since then she has lived and worked in Budapest, where she moved in together with her new partner in 2015. Domenico still lives in Ravenna.

In 2016 Domenico and Nikolett made an agreement, in which they stated that they mutually waive all succession claims against each other. This agreement was made in Italy and they placed it in escrow with a notary public there.

1. In the system of the European regulation on succession how does the agreement made between Nikolett and Domenico qualify?
2. If Nikolett deceased now, which law would be applicable for the determination of the admissibility of this agreement? Is the agreement admissible?
3. Could Nikolett and Domenico have chosen a governing law related to the admissibility and substantive validity of the agreement? If yes, which law (laws) could have they chosen, and which law would be a reasonable choice?
4. What would the situation be if Nikolett still lived in Italy at the time of making the agreement? Which law would be applicable in relation to the admissibility of the agreement in the absence of a chosen law, and would there be a possibility to choose a law?

Background information:

According to article 458 of the Italian Code Civil (Codice Civile):

„Contractual agreements in which someone decides on the succession after themselves is invalid. Also invalid is every legal act by which someone decides on a right or waives a right which they are entitled to based on an unopened legacy.”

(Szócs Tibor)

8. Joe the American Hungarian

Joseph Szabo was born in Hungary in 1936. In 1956 he emigrated and received an immigration permit into the USA where he subsequently acquired citizenship. His Hungarian citizenship remained as well, until his death in 2018. Following his immigration into the USA he lived in Chicago in the state of Illinois until his death.

Since the '90s, Joseph frequently kept visiting Europe, including several journeys to Hungary. He usually spent one month per year travelling around Europe.

When he died he left behind a foreign currency account held at a Hungarian financial institution with an approximate balance of USD 45,000. Furthermore, he left behind an apartment real property in Vienna, Austria, which he purchased in 1998 for investment purposes, as well as an account held at a German financial institution in Munich with a balance of EUR 50,000. Apart from this, he had assets in the USA (movable assets, real properties, investments).

1. Does any of the European Union member states have jurisdiction to conduct the inheritance procedure, and if yes, which one?
2. Does the jurisdiction of the given member state extend to
 - a) Joseph's assets located in a member state different from the one with jurisdiction?
 - b) Joseph's assets located outside the European Union (e.g. in the USA)?
3. Supposing that Joseph was not a Hungarian citizen at the time of his death, what effect would this circumstance have on the jurisdiction?
4. What law will govern the inheritance? Does the location of specific assets have any importance from this aspect?

Background information:

As per the conflict of laws rules of the USA, the law governing inheritance is determined as follows:

- Movable assets: it is the law of the country (or US state) in which the domicile of the legator was located at the time of death that applies (*lex domicilii*);
- Real property: contrary to the above, it is the location of the given real property at the time of death that determines the governing law (*lex rei sitae*)

(Szócs Tibor)

9. The Finno-Ugric married couple

Pekka is a Finnish citizen who has lived in Budapest since 2005. His spouse who is Pekka's second wife is a Hungarian citizen. His child from his first marriage lives in Rovaniemi, Finland.

In 2012 Pekka and his wife made a joint will, in which they mutually named each other as the other's successor and also disposed about succession after the surviving one out of the two of them.

One of the provisions in the will is as follows: „*regarding succession Finnish law shall be applicable and Finnish courts shall have competence.*”

On 12 April 2016 Pekka dies in Hungary. His assets include an apartment in Budapest, Hungary and a house and various movable assets in Finland (bank account claims, securities).

The municipality competent in Budapest according to his residence has probated the inventory of assets and sent it to the Hungarian notary competent to rule on the issue of succession. Acting through his Finnish legal counsel, the child of the deceased submitted a request to the notary public in order to declare absence of its jurisdiction taking into consideration the fact, that the deceased had chosen the jurisdiction of Finnish courts in his will.

- 1.) Which state has jurisdiction to rule on the succession?
- 2.) Can the choice of jurisdiction in the will be considered?
- 3.) How can the issue of jurisdiction be resolved if the child who lives in Finland requests that the Finnish authorities rule on succession and the surviving spouse agrees to this, so they can agree that the succession procedure will be carried out in Finland?
- 4.) What would be the case if despite the request of the child who lives in Finland the surviving spouse, who lives in Hungary insists that the Hungarian notary rules on the succession?
- 5.) Which state's law shall be applicable to the succession as a whole?
- 6.) Could Pekka have chosen Hungarian law as the law applicable to the succession?
- 7.) Based on which law shall the formal validity of the will be judged?

(Balogh Tamás)

10. Death in Canada

János lives alternately in Hungary and Canada with his wife. Both of them are Hungarian and Canadian citizens. They have apartment both in Budapest and Toronto, as well as bank accounts in both countries.

On 4 February 2017 János dies in Toronto, and three months later, his wife passes away too. They didn't make a will. Out of their two children who are the potential successors, one lives in Hungary and the other in Canada.

According to their pronouncements, there is no agreement between the children on the issue of which state – Canada or Hungary- their parents lived habitually in and where their habitual residence exactly was.

The Hungarian notary having jurisdiction to rule on succession has difficulty maintaining contact with the child living in Canada.

The child who lives in Hungary understands that his sibling in Toronto commenced the succession procedure before the Canadian probate court to decide the legal fate of their parents' assets, but at the same time he has not received any official notification about that.

- 1.) Is there Hungarian jurisdiction if the deceased had their habitual residence not in Hungary but outside the European Union (Canada)?
- 2.) If before the Canadian probate court the succession proceedings commenced beforehand, does this development have an impact on the succession proceedings commenced in Hungary? Does the principle of pre-emption prevail if the succession procedure began earlier in Canada and does this fact constitute an obstacle to the domestic procedure?

(Balogh Tamás)

11. Markus, the Berliner from Balaton

Markus is a German citizen who lived most of his life in Berlin. He divorced from his wife years ago. Having retired, he travelled a lot and made trips with his friends.

During such an excursion in Salzburg, Austria he suddenly became ill and needed to be treated at the local hospital. Before returning to Berlin he decided that he will make a disposal of property upon death and in cooperation with an Austrian attorney he made a will on 6 December 2015 in Salzburg.

In the spring of the next year, 2016, he made an excursion to Hungary, and came to like the landscape of the Balaton so much, that he decided to buy a small house in Szigliget and move to live there for the rest of his life. In the summer of 2016 after he sold his apartment in Berlin, he moved to Hungary to his newly bought house in Szigliget.

He died at the Balaton lakeside on 15th of March 2019.

- 1.) In which state shall Markus' probate process be conducted?
- 2.) According to which state's law should the formal validity of the will be determined?
- 3.) Which state's law is applicable to the substantial validity of the will?
- 4.) Which state's law is applicable to the other issues of succession, for example the reserved share and the liability for the debts of the deceased?

(Balogh Tamás)