GoInEu seminar, Budapest – 12 April 2019 Cases (with solutions – amended 6th June 2019)

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?

According to the main rule both the jurisdiction and the applicable law is determined on the basis of the habitual residence of the deceased (at the time of death) Article 4, Article 21 (1).

1) From the case it can't be determined without a doubt which state is considered as the habitual residence of the deceased at time of death.

-The case becomes even more complicated due to the fact that the deceased had the citizenship of both states.

- According to the first section of the Preamble (24) of the Regulation, and taking into consideration the first phase of this section if the deceased for professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a close and stable connection with his State of origin, in such a case, *the deceased could, depending on the circumstances of the case, be considered still to have his habitual residence in his State of origin in which the centre of interests of his family and his social life was located.*

-Although this aspect of the evaluation is quasi countered by the fact, that the major part of the deceased's assets aren't located in the state where the deceased had his center of family and social life, the appropriate solution is considering Hungary as Gábor's habitual residence, because his family connections were concentrated there. Besides this, the location of the assets is less relevant.

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2) Another deduction is possible
-In this case because of the principle of the „succession as a whole" the proceeding authority must take into consideration that the assets of the deceased are located mainly in Austria. Hereby again according to the Preamble (24) of the Regulation-this time the second phase of this section- while the main part of the assets were located in one of these states ,,*his nationality or the location of those assets could be a special factor in the overall assessment of all the factual circumstances*".
- If we consider this aspect with more weight, than in this case presumably the Austrian authority will govern on the succession, applying the Austrian law, because the main part of the assets are located in Austria.
-At the same time it can not be forgotten that the quoted text of the Preamble (24) is based on another type of situation, namely it concerns the situation when the deceased lived alternately in more states, as for example the so-called ,,Mallorca-pensioners", who are spending nearly the same amount of time in Germany and Spain per year. These are the cases when the determination role is filled with those special circumstances like the location of the main part of the assets or the citizenship of the deceased.
-The case mentioned in the example is not like this however, but rather concerns the first section of Preamble (24) (the deceased had gone to live abroad for professional or economic reasons). With this type of deceased person -as we saw before- the center of the family and social connection system has more relevance, and in this case he is connected to Hungary. According to this, we consider the solution number 1. as appropriate.

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 explicite 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....."?

- In this case the dispositionon property upon death made by the deceased should be kept in mind, which refers to the applicable law.
- Given that the deceased had chosen the Hungarian material law as the law applicable to the succession, this material law will be applied.

- In these casesAccording to Article 5 (1) of the Regulation the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction to rule on any succession matter. If they do so, the Hungarian authority (notary) will have exclusive jurisdiction to rule on succession. (see Article 7 b)

- If they don't agree, then those mentioned under variation 1. are applicable, but the applicable material law will be the Hungarian law.
- In the case according to which Gábor refers to 7:58 (1) of the Civil Code, the question is if such a reference can be considered as a concludent choice of law. The answer to this is presumably yes according the Preamble (39) ,,A choice of law should be made expressly in a declaration in the form of a disposition of property upon death or be demonstrated by the terms of such a disposition. A choice of law could be regarded as demonstrated by a disposition of property upon death where, for instance, the deceased had referred in his disposition to specific provisions of the law of the State of his nationality or where he had otherwise mentioned that law." Therefore, the solution doesn't change compared to the explicit choice of law.

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?

- In this case, as the habitual residence of the deceased can't be determined without a doubt, using Preamble (24) will help.
- *Prima facie* it seems: given that the assets are mainly located in Vienna, and according to Preamble (24) this should be considered as a special factor, and according to this, the Austrian proceeding authority will govern the succession, what's more, Gábor's family connections are ,,shared" as well. This way pro Austria is not only the fact that the main part of the assets are located there, but a part of his family and social life too, further he spent more time in Austria.
- At the same time it can be reasoned that Gábor has the main point of his family life in Hungary, even despite the fact, that he has a child in Austria too. However, because he went to Austria „for professional or economic reasons", rather this i.e. the main point of his family connections are relevant, as compared to the location of the main part of the assets. (see the mentioned variation 1., which explains that Preamble (24) either ,,handles" two type of cases).
-The question of the applicable law is similarly complicated and is solved in the same manner. *(De Negri Laura, Fuglinszky Ádám, Szeibert Orsolya, Tőkey Balázs)*

Amendment as the Result of Discussions during the Seminar

Addendum ad "habitual residence":

- There were vivid discussions on the habitual residence of Gábor, with special regard to variation No. 3. Some participants highlighted that Gábor had died in Hungary and this could be also a factor to be considered. The instructors replied that this factor was not relevant in the light of the Succession Regulation, with special regard to Preamble no. 23, wherein the factors to be taken into account are specified.
- Other participants were the view that in the 3rd variation the habitual residence of Gábor was definitely Vienna (Austria), since he had a family there too and there were more valuable assets than in Hungary.
- One of our instructors underlined that besides Preamble No. 24 also Preamble No. 23 shall be taken into consideration while identifying the deceased person's last habitual residence. She quoted the 2nd sentence of Preamble No. 23: "*In order to determine the habitual residence, the authority dealing with the succession should make an overall assessment of the circumstances of the life of the deceased during the years preceding his death and at the time of his death, taking account of all relevant factual elements, 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 determined should reveal a close and stable connection with the State concerned taking into account the specific aims of this Regulation.*"

Addendum ad "dual citizenship":

- One of our instructors drew one's attention to Preamble No. 41, according to which:*"For the purposes of the application of this Regulation, the determination of the nationality or the multiple nationalities of a person should be resolved as a preliminary question. The issue of considering a person as a national of a State falls outside the scope of this Regulation and is subject to national law, including, where applicable, international Conventions, in full observance of the general principles of the European Union."*
- Among the "general principles of the European Union" Art. 18 TFEU shall be highlighted: "*Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.*" The instructor highlighted in this respect the CJEU case C-168/08*Laszlo Hadadi (Hadady) v Csilla Marta Mesko, épouse Hadadi (Hadady)*, wherein the CJEU stated that "Where the court of the Member State addressed must verify, pursuant to Article 64(4) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Council Regulation (EC) No 1347/2000, whether the court of the Member State of origin of a judgment would have had jurisdiction under Article 3(1)(b) of that regulation, the latter provision precludes the court of the Member State addressed from regarding spouses who each hold the nationality both of that State and of the Member State of origin as

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nationals only of the Member State addressed. That court must, on the contrary, take into account the fact that the spouses also hold the nationality of the Member State of origin and that, therefore, the courts of the latter could have had jurisdiction to hear the case."

- This means, that if the deceased had dual citizenship and one of them was the Hungarian, the latter cannot be preferred automatically. If in the course of identifyingthe (last) habitual residence the citizenship of the deceasedis considered, there must be some relevant additional factors and circumstances from the succession's point of view that confirm the preference of the Hungarian citizenship.

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 adventorous 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?

- In this case it is not easy to determine the habitual residence of the deceased at time of death, because in the last years he spent the same amount of time in Italy and in Hungary.
-The subsidiary aspects written in the second part of the Preamble (24) can help again (see Mallorca pensioners).
-According to those mentioned there the question is: in which state did he have the main part of his assets, and which citizenship did he have. Given that according to the example Elemér had assets in both states (bank accounts), his citizenship will be the decesive factor. This means that Hungary is considered rather as his habitual residence.
-Considering that this way the Hungarian material law has to be applied to the succession, in the absence of any relatives the Hungarian state will inherit the assets as the necessary legitimate successor.

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

Amendment as the Result of Discussions during the Seminar

Addendum ad "bank account":
It was remarked during the seminar, that the banks can easily be reluctant in giving information about the account of the deceased. It is important to solicit the attention of the financialmarket authority on this problem.

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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 eachother. 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 eachother. His tragic and sudden death in October 2018 was not only filled with mourning, but it came with suprises 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?

- The habitual residence shall be determined according to Aricle 4 and Article 21 (1). In this case the de facto connection to both states has the same intensity, therefore again the citizenship can be the decisive fact, taking into consideration the aspects of Preamble (24) ,,If the deceased was a national of one of those States or had all his main assets in one of those States, his nationality or the location of those assets could be a special factor in the overall assessment of all the factual circumstances. '' Given that he was a Hungarian citizen, we can consider Hungary as the habitual residence at time of death, and accordingly the Hungarian authorities have jurisdiction and the succession procedure shall be governed by the Hungarian law.
- Furthermore, the question of the successors, the validity of the second marriage and the order of succession arises. In this case the second Spanish marriage is invalid. (see section 26 (1) of the Act XXVIII. of 2017 on Private International Law: ,,A marriage shall be considered valid only if the substantive conditions thereof are satisfied at the time of marriage according to the personal laws of both parties to the marriage.'' Therefore Ferdinánd has two successors in Spain - his two children, and also two children in Hungary and his Hungarian widow, which means he has five successors in total. The assets shall be divided into five equal portions according to the Hungarian Code Civil,except the house where they used to live together with the deceased including the equipments and appliances which shall be inherited to usufruct until her death ont he latter assets.

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?

- As the deceased had the citizenship of both states, the abovementioned subsidiary aspects are not helping in this variation. Furthermore, there are assets in both states.
- While the Spanish marriage is invalid, the Spanish wife shall not be entitled to succession.
- It is hard to tell, to which state the case is more connected. It can raise constitutional and human rights problematics, if we connect the case to the Hungarian law because of the fact that the deceased's first marriage wich was valid while the second marriage was invalid.
- Does the value of assets located in Hungary and in Spain have relevance, or does the difference between the value of these assets have relevance?
- It seems the only thing we can do is to consider the family based on a valid marriage in Hungary as a stronger connection than the family in Spain which was based on an invalid marriage. (With this we don't state that the Spanish child will be not entitled to succession. If Hungarian law will be applied, the Spanish children will be entitled to the same amount as their half-siblings.)
- If we are thinking this way, then our conclusion can't be other than that he had his habitual residence in Hungary. In this case, a Hungarian notary will govern the succession procedure applying the Hungarian material law, dividing the assets into 5 equal portions (variation 1.1), except the house where they used to live together with the deceased including the equipments and appliances which will be inherited only by the children. At the same time, the Hungarian widow is entitled to usufruct until her death on the latter assets.
- Besides these it is highly doubtful, if the Hungarian succession inventory performer and the notary even get to know about the Spanish family. It can easily happen that they will not, since the deceased had put all his efforts to leaving no signs in Hungary of his Spanish wife and children. It can easily happen, that during the Hungarian succession procedure the Spanish real estate remains hidden as the deceased has presumably hidden this too from his Hungarian family,otherwise the fact that he was a marriage swindler might easily have come to surface. In such cases they would get to know about each other due to some fatal coincidence years later which might generate succession lawsuit(s). At the same time, the Spanish wife will presumably learn of Ferdinánd's death, therefore it cannot be excluded that because of the fact that she thinks she is one of the successors she will make the necessary steps in Hungary. Due to this, she and the Spanish assests might come into scope with the Hungarian authorities.

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

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Amendment as the Result of Discussions during the Seminar

Addendum ad "constitutional and human rights problematics, if we connect the case to the Hungarian law because of the fact thatthe deceased's first marriage wich was valid while the second marriage was invalid":

- According to the view of an instructor, the reference to the constitutional context is not convincing. As far as the reference to human rights is concerned, there is indeed a point of reference thereto in the Succession Regulation itself, namely Preamble No. 81: "This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. This Regulation must be applied by the courts and other competent authorities of the Member States in observance of those rights and principles."- It was vividly discussed whether the personal/marital status of someone can be controlled by the court/notary or not. On the other side also some ethic issues emerged.

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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 statutary 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?

- In this case, regardless of the fact that the assets are located in more states, moreover, the main part of the assets are located not in the state where the deceased had her habitual residence at time of death, the principle of succession as a whole shall be applied. According to Article 4 of the Regulation: "*The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.*"
- Therefore the German authority will rule on the succession as a whole according to the general rule defined in Article 4.
- The applicable law is the German law according to the general rule again defined in Article 21. (1) of the Regulation.

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

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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?

- In Hungary the marriage of same sex couples made abroad (at least according to a legally-binding court decision, against which we don't know if there was a revisory request, but this solution is familiar in those states, where the registered partnership of same sex couples is known, but their marriage is not recognized) has to be considered as a registered partnership. Therefore, according to Hungarian law, it has the same succession law effects as the marriages of different sex couples.
- In this case, the habitual residence of the deceased at time of death was in Hungary, therefore the Hungarian notary has jurisdiction to govern the succession and hand out the assets, and he will proceed on the basis of the Hungarian law as Article 4 of the Regulation determines that ,,The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.'' The question of the applicable law will be solved according to Article 21 (1) of the Regulation, which also determines that the law applicable is the law of the state in which thedeceased had his habitual residence at the time of death.
-In this case, the deceased has two successors, the surviving partner from the Dutch marriage, which is considered as a registered partnership in Hungary and his adult child. The two are sharing the assets in equal portions, except the apartment where Konrád lived together with his partner which shall be inherited only by the child but at the same time the wodow is entitled to usufruct until his death on the latter assets.

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

Amendment as the Result of Discussions during the Seminar

Addendum ad "recognition of same-sex marriages as registered partnerships in Hungary":

- It is represented above that: "In Hungary the marriage of same sex couples made abroad (at least according to a legally-binding court decision, against which we don't know if there was a revisory request, but this solution is familiar in those states, where the registered partnership of same sex couples is known, but their marriage is not recognized) has to be considered as a registered partnership. Therefore, according to Hungarian law, it has the same succession law effects as the marriages of different sex

couples." This statement was made and based on a published judgment on a landmark case (Budapest Capital Administrative and Labour Court 27.K.32.541/2016/6 and in the 2nd instance Tribunal Budapest 1.Kf.650.054/2017/4), according to which same-sex marriages entered into abroad must be recognised in Hungary as registered partnerships. - However, after the distribution of the seminar materials and elaboration of the solution of the case above, it came out that revisory request was submitted against the judgment of 2nd instance; and the Curia (i.e. the highest court) changed the judgments of 1st and 2nd instance and dismissed the lawsuit (Kfv.VI.37.558/2018/5). The Curia explained in the reasons that there had not been any request to transform the same-sex marriage into a registered partnership in the administrative (register) procedure, but the claimants insisted on getting their marriage registered in Hungary as a marriage. The registrar was right in rejecting the latter request and could not decide for the transformation into registered partnership in lack of an appropriate request. A request not submitted in the administrative procedure cannot be rectified later during the court procedure. Thus, the Curia circumvented the question on the merits: whether a same-sex marriage entered into abroad has to be converted into a registered partnership according to Hungarian law or not.

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6. <u>Katalin from Komárom</u>

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?

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1. Is it the Hungarian or the Slovakian notary public (or court competent in inheritance matters) that has jurisdiction to conduct the probate process?

- For determining the habitual residence of the deceased, the life circumstances at the time of death and in the period directly before death shall be taken into account, and the decision shall be made based on deliberation.
- Without any doubt, Katalin habitually lived in Slovakia for a long time (more than two decades) and during that time it was her Slovakian citizen husband who had the closest relationship with her until his death.
- However, by the last period of her life this connection to Slovakia weakened significantly, given that in this period- after her husband's death- she moved back to Hungary and habitually lived here in the apartment of one of her children.
- Everything seems to indicate – considering her old age and dependence on nursing and care – that her moving back to Hungary happened with the intention of staying here permanently.
- The closer connecting factor to Hungary in her old age is supported by her Hungarian citizenship and furthermore the fact that her closest relatives (following her husband's death, her children) also live in Hungary.Taking all the above into consideration, Hungary shall be considered as the habitual residence of the deceased at the time of her death.

2. Does the Slovakian court competent in succession matters have jurisdiction based solely on the fact that Katalin had a residential permission in Slovakia?

- No. The facts determining the habitual residence can vary greatly (facts related to the family connections of the deceased, facts related to the work or other earning activity of the deceased - for example business ventures - the place of receiving medical treatments, spoken languages, cultural affiliation to a given society, etc.) These facts can't be listed exhaustively at all.
- Data from official registers and the residential permissions might be aspects to be considered, but this does not mean that such factors alone could determine the existence of habitual residence in a given state (neither can other considered facts).
- Nevertheless, in the case of Katalin the connecting factor to Slovakia might supported by the residential permission she had there, but this is quasi countered by the fact that her registered Hungarian address remained until the end

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?

This is not a possibility. According to Article 4 of the Regulation, the jurisdiction applies to the succession as a whole. This also means that the legal fate of the assets must be determined in one single, concentrated procedure.

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 they kept visiting her regularly?

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- In this case, out of Katalin's life circumstances at the time of her death the Slovakian connection could be considered as far stronger than the Hungarian connection.
- As a starting point, it could be considered that she intends to stay in her apartment in Révkomárom even after her husband's death as she got used to it during more than two decades.
- The stronger Slovakian connection would not be weakened by the lack of speaking the Slovakian language, taking into consideration the fact that in the smaller geographical region one can manage with Hungarian too.

*5.*Katalin made a will in 2009 in Révkomárom and placed it in escrow at a Slovakian notary public.*Which law would govern the succession*
-as regards to the substantive validity of the will?
-as regards its formal validity?
- As regards the substantive validity of the will, based on Article 24 (1) of the Regulation the "hypothetical succession law" effective at the time of making the will shall be applied (that is the law which "under this Regulation, would have been applicable to the succession of the person who made the disposition if he had died on the day on which the disposition was made.")This law is no other, than the law effective at the time of making the will in the habitual residence of the testator.

Therefore, to examine the substantive validity of the will it has to be examined where Katalin had her habitual residence in 2009. At this time, Katalin's connection to the Slovakian environment can be deemed stronger and accordingly Slovakia shall be deemed her habitual residence. As a result, the Slovakian law will govern the substantive validity ofthe will.

- The applicable law related to the formal validity of the will is determined by Article 27 of the Regulation, according to which – on the basis of the *favor testamenti* principle – as many as eight different connections can be considered when determining the law governing formal validity. In the present case, the following are relevant:
  - Slovakian law (the applicable law based on the place of making the will, the applicablelaw according to the habitual residence of the deceased at the time of making the will)
  - Hungarian law (the law of the deceased's citizenship and the law of the deceased's habitual residence at the time of her death).

The will is therefore formally valid if it fits the formal requirements of either the Slovakian or the Hungarian law.

(Szőcs 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."

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1. In the system of the European regulation on succession how does the agreement made between Nikolett and Domenico qualify?

- An agreement in which the parties mutually waive succession claims against each other qualifies as an "agreement as to succession" in the autonomous conceptual system of the Regulation based on Article 3 (1) b).The concept of „agreement as to succession" according to the Regulation includes agreements resulting from mutual wills, which, with or without consideration, create, modify or terminate rights relating to the future asset or assets of one or more persons party to the agreement; (from this aspect, it is irrelevant that the Hungarian substantive law considers waiving succession claims as a legal institution regulated within the field of succession law, but not a succession contract per se).

2. If Nikolett deceased now, which law would be applicable for the determination of the admissibility of this agreement? Is the agreement admissible?

- The conflict of laws rule regarding the admissibility and substantive validity is governed by Article 25 of the Regulation on succession.
- The starting point here is the fact that Nikolett and Domenico had mutually waived the right to succession against each other, so the agreement has an impact on the legacy of them both.
- Accordingly, Article 25 (2) is applicable, which prescribes cumulative consideration "An agreement as to succession regarding the succession of several persons shall be admissible only if it is admissible under all the laws which, under this Regulation, would have governed the succession of all the persons involved if they had died on the day on which the agreement was concluded."
- It has to be examined which law would have been the hypothetical law of succession of the contracting parties (whose succession rights are impacted by the cancellation agreement). This law would be in the case of both parties the law applicable based on the habitual residence at the time of making the agreement.
- In the case of Domenico this would be without any doubt the Italian law. On the contrary, in the case of Nikolett the starting point would be that in 2016 her habitual residence is already in Hungary. (She moved back to Hungary years before, and here at home she has a relationship. Her only connection to Italy is the marriage, which now exists only formally). Her hypothetical applicable law at the time of making the agreement is Hungarian law.
- The agreement regarding the mutual cancellation of succession rights would be considered as admissible only if it was admissible based on Hungarian and Italian law too.
- Taking this into consideration, the agreement on cancellation of succession is questionable because according to Italian law (considering the prohibition in Article 458. of CC), it would be invalid.

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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?

- Yes. There is a possibility to choose a law also in the case of agreements on succession (including the agreements on cancelling succession).
- According to Article 25 (3), the parties may choose as the law to govern their agreement as to succession, as regards its admissibility, its substantive validity and its binding effects between the parties, including the conditions for its dissolution, the law which the person or one of the persons whose estate is involved could have chosen in accordance with Article 22 on the conditions set out therein. (As we know, Article 22 describes that the law might be chosen based on nationality.)
- According to article 25 (3), if the agreement has an impact on the legal fate of the legacy of more parties of the agreement, which is the case, it suffices to choose the law based on the nationality of only one of them. With this the cumulative consideration rule can be dissolved, and the agreement will be governed only by one law in relation to its admissibility. In this case, logically it is the Hungarian law, which can work taking into consideration the prohibition in Italian law.

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?

- In this case the difference would be that both in the case of Nikolett and Domenico the Italian law would be the "hypothetical succession law" at the time of making the agreement. (As both of them have their habitual residence in Italy, it would be the Italian law which is applicable if any of them died on the day on which the agreement was concluded. Regarding the question of admissibility, it wouldn't come to cumulative consideration, but instead it would only be considered based on the Italian law. (This does not change the result; the agreement would still be questionable).
- Nevertheless, there would be a chance to choose a law in this case too, namely, they could choose an applicable law based on the nationality of either one of them. As a result, they could evade the prohibition of the Italian law by choosing Hungarian law as the applicable law.

(Szőcs Tibor)

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Amendment as the Result of Discussions during the Seminar

Addendum ad Q. No. 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?":

We suggested in the solution that (also) Hungarian law could be chosen, based on Art. 25 Para 3. One of the instructors represented a slightly different view in part:

- She is the view that the solution as presented above is highly problematic, since if they choose Hungarian law, their agreement will be valid, but the rest of the succession of Domenico will be governed by Italian law, which considers that agreement as to succession as null and void.
- A solution could be to say that there is a valid succession agreement according to Italian law too, because the Succession Regulation in fact is part of the Italian Sources of Law.
- With regard to the case it is important to consider that according to Italian law the spouses can decide to separate without divorce. The separation is a diverse proceeding, usually in advance respect to the divorce. In case of separation there is no dissolution of the marriage and the general rule is that the separated spouses maintain their rights in succession. Only in case of separation due to the fault of one of the spouses, the "wrongdoer"looses her/his rights in succession. So if Nikolett and Domenico separated without divorce, they maintain their rights in succession.

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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)

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1. Does any of the European Union member states have jurisdiction to conduct the inheritance procedure, and if yes, which one?

- Yes. It can serve as a starting point that Joseph Szabo's habitual residence, (the central place of his life) was in the USA at the time of death; although he came to Europe regularly, he only did so with the purpose of visiting, travelling for a relatively short period per year.
- Taking thisinto consideration, the jurisdiction is not determined by Article 4, but by Article 10 of the Regulation on succession (the so-called supplementary jurisdictional rule). Out of the hierarchical supplementary jurisdictional rules, the first rank is occupied by the one that says that the court having competence in inheritance matters may act in the given member state if
  - there are any assets located in the given member state (even if only partially);
  - provided that the legator was a citizen of the given member state (Article 10 paragraph (1) point a).
- Of the three member states potentially coming into consideration (Hungary, Austria, Germany) the above two conditions are simultaneously met only in the case of Hungary. As a result, out of the EU member states, it will be the Hungarian notary public that has jurisdiction to conduct the inheritance procedure.

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)?

*a)*Yes. The Hungarian notary public's jurisdiction extends to assets located in other member states (apartment in Austria, bank account in Germany). The jurisdiction based on Article 10 paragraph (1) point a) extends to so-called „governing the succession as a whole" that is, settling the legal issues related to the entire pool of inheritance assets.

*b)*Yes. The jurisdiction based on Article 10 paragraph (1) point a) extends to „govern the succession as a whole" meaning (as well) that it extends to assets located either in the European Union or a third country without geographical restrictions. It is a separate issue that including the assets located in the USin the Hungarian inheritance procedure conducted by the notary public would be pointless, as the Hungarian ruling on giving over the inheritance assets could most likely not be enforced regarding the US-citizen legator's assets located in the US.

3. Supposing that Joseph was not a Hungarian citizen at the time of his death, what effect would this circumstance have on jurisdiction?

- In this case, the jurisdiction could not be based on Article 10, paragraph (1) point a).
- It should be examined further whether any of the supplementary jurisdictional rules of inferior ranking could serve as the basis of a member state's jurisdiction.
- Article 10 paragraph (1) point b) cannot be considered as such given that Joseph did not have a habitual residence in the EU atthe time of death or in the five years preceding his death.

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- However, the jurisdictional rule stipulated in paragraph (2) of Article 10 can be applied. This states that should none of the preceding jurisdictional rules lead to any of the member states, then all member states may act in relation to the assets located in their territory.
- Consequently, if Joseph had only US citizenship at the time of death (and did not have a habitual residence in the EU in the five years preceding his death), then territorially restricted procedures are to be conducted in Hungary, Austria and Germany, each limited to the assets located in the given country (as an exception to the principle of one heritage).

4. What law will govern the inheritance? Does the location of specific assets have any importance from this aspect?

- We've seen that Joseph's habitual residence at the time of death was in Illinois, USA. Based on Article 21 paragraph (1) of the Regulation on succession it is the law of the USA that would potentially govern the inheritance. In light of this, it is a question which partial legal system of the USA would be applicable, given that each state of the USA has its own inheritance law rules.
- According to the conflict of laws rules applied in the USA (and in general in the common law jurisdictions) the law governing the inheritance is to determine as follows:
  - Movable assets: the law of the country (or US state) in which the domicile of the legator was located at the time of death (lex domicilii);
  - Real property: contrary to the above, it is the location of the given property that determined the applicable law (lex rei sitae).
- Thus, according to the conflict of laws rules of the given legal system (that of the USA), the law applicable to the inheritance in this case is as follows:
  - in case of the bank account in Hungary and in Germany, it is the laws of Illinois that apply (as Joseph had domicile there);
  - in case of the Vienna real property, it is the laws of Austria to apply (as Austria is the place of location).
  - So as regards the real property, the conflict of laws rules of the USA refer back (renvoi)to a specific EU member state law, namely, Austrian law. This referral is to be considered because of Article 34 paragraph (1) a) of the Regulation on Succession!
- The effect of this is if the Hungarian notary public carries out the procedure on the entire inheritance (located within the EU) based on the jurisdictional rules of Article 10 paragraph (1) point a), the notary public will have to apply different substantive inheritance laws in the case of the bank accounts and the real property! This is yet another exception from the principle of one heritage.

(Szőcs Tibor)

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9. <u>The Finno-Ugric married couple</u>

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?

<u>1.) Which state has jurisdiction to rule on the succession?</u>
- According to the main rule of the Article 4 of the Regulation on Succession ,,*The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.''*
- According to the circumstances of this case -he had lived for more than 10 years in Hungary with his wife- it can be ascertained that the deceased had his habitual residence in Hungary at the timeof death. Because of this, the Hungarian notary has jurisdiction to rule on the succession as a whole, regarding the assets in Finland as well.

<u>2.) Can the choice of jurisdiction in the will be considered?</u>
- The Regulation allows for the legator's choice of law but does not allow for the choice of the acting authority.

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- Accordingly, the deceased's decision stating that ,,the Finnish courts shall have competence" cannot be taken into consideration when examining the issue of jurisdiction.

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?

- The circumstance alone that the deceased had exercised his right to the choice of law does not have an automatic impact on the jurisdiction according to the rules of the Regulation. The choice of law per se does not automatically mean that the courts or authorities of the state of the chosen law will have jurisdiction.
- As a consequence, even if the deceased made a choice of law, Article 4 of the Regulation will decide the member state having jurisdiction to carry out the succession procedure.
- However, the rules stipulated in Articles 5-9 of the Regulation, under certain circumstances, allow that in case of a choice of law the succession case may be conceded to the authorities of the state, the law of which was chosen by the deceased. To concede the case to the state the law of which was chosen by the deceased a *"legal action of one of the interested parties*" is necessary taking into consideration the following:

According to Article 5 of the Regulation on succession:

(1) Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction to rule on any succession matter.

(2) Such a choice-of-court agreement shall be expressed in writing, dated and signed by the parties concerned. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

- So, if the deceased chose a law, the involved parties may agree, that the succession case shall be handled in the member state of the EU the law of which has been chosen by the deceased (that is the homeland of the deceased).
- If such an agreement on jurisdiction is made between the parties, the court of the state, which has originally commenced the proceedings (in this case the Hungarian notary) shall declare the absence of its jurisdiction and terminate the proceedings according to Article 6 b) of the Regulation.
- One of the ways in this case to rule on the succession in a Finnish procedure instead of a Hungarian one is if the interested parties – the surviving spouse of the deceased and his descendant – make such an agreement. According to Article 5 (2) of the Regulation, such an agreement shall be made in writing.

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?

- Besides the opportunity provided by Article 5, Article 6 a) allows that the court carrying out the original proceedings (in this case the Hungarian notary) declares absence of its jurisdiction and terminates the proceedings on the unilateral motion of one of the parties (even without the consent of the other parties) provided that according to all circumstances

(especially considering the aspects mentioned in Article 6 a) it is more expedient to decide the case in the state the law of which was chosen by the deceased:
Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a member state, the court acting on the basis of Article 4 or Article 10:
a) may, at the request of one of the parties to the proceedings, decline jurisdiction if it considers that the courts of the Member State of the chosen law are better placed to rule on the succession, taking into account the practical circumstances of the succession, such as the habitual residence of the parties and the location of the assets;"
- When applying Article 6 a) it depends on the deliberation of the court competent at the habitual residence of the deceased at the time of death, whether it approves the request and accordingly terminates the proceedings or not.
5.) Which state's law shall be applicable for the succession as a whole?
- Given that the deceased had Finnish citizenship, according to Article 22 he could validly choose the Finnish law to govern the succession as a whole.
- Therefore, Finnish material law has to be applied to the succession.
6.) Could Pekka have chosen Hungarian law as the law applicable to the succession?
- On the contrary, he did not have a Hungarian citizenship, so if he had chosen Hungarian law, such choice of law would have been invalid.
- In case of such an invalid choice of law, the applicable law shall be determined by the main rule of the Regulation, according to Article 21. (1). Therefore, in this case the applicable law will be the law of the habitual residence of the deceased at the time of death, that is, Hungarian law.
- It is notable that the substantive validity of the will shall be decided according to this law as well.
7.) Based on which law shall the formal validity of the will be judged?
- Article 27 of the Regulation stipulates special collision law rules regarding the formal validity of the written will. These connection rules are in alternative relation with each other, which means that the written will shall be deemed formally valid if it suffices to even one of the laws that might be considered based on these rules.
- In this case, the deceased was a Finnish citizen who had his habitual residence in Hungary and also made his will in Hungary and the will concerns a domestic real property and also a real property in Finland. According to the above, the will is formally valid if it suffices to the regulations of *either Hungarian or Finnish law*.

(Balogh Tamás)

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Amendment as the Result of Discussions during the Seminar

Addendum ad Q. No. 6 (Could Pekka have chosen Hungarian law as the law applicable to the succession?)

- During the Seminar the question was raised whether the joint will can be considered as "agreement as to succession"according to Art. 3 Para 1 b): "means an agreement, including an agreement resulting from mutual wills, which, with or without consideration, creates, modifies or terminates rights to the future estate or estates of one or more persons party to the agreement".
- The participants answered this question in the affirmative, since joint will expresses mutual wills, which create rights to the future estate(s).
- Therefore Art. 25 Para 3 applies, according to which: "Notwithstanding paragraphs 1 and 2, the parties may choose as the law to govern their agreement as to succession, as regards its admissibility, its substantive validity and its binding effects between the parties, including the conditions for its dissolution, the law which the person or one of the persons whose estate is involved could have chosen in accordance with Article 22 on the conditions set out therein."
- Since one of the persons whose estate is involved has Hungarian "nationality" (Cf. Art. 22), Pekka could have chosen Hungarian law. However, this choice is a limited one, since it is allowed to cover the scope specified in Art. 25 Para 3 only: namely the admissibility, the substantive validity and the binding effects between the parties.
- If the joint will cannot be considered as an "agreement as to succession", then the original answer elaborated above, applies (Since Pekka did not have Hungarian "nationality", he could not have chosen Hungarian law).

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10. <u>Death in Canada</u>

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?

<u>1.) Is there Hungarian jurisdiction if the deceased had their habitual residence not in Hungary but outside the European Union (Canada)?</u>
- If the deceased had their habitual residence in Hungary at the time of death, the jurisdiction of the Hungarian notary to rule on the succession can be determined according to Article 4. of the Regulation on succession (and the notary can hand over the Canadian assets as well).
- Furthermore, the jurisdiction rules of the regulation cover those cases too in which the deceased had his habitual residence not in the European Union, but in a third country.
- In such cases the rules of the so called subsidiary jurisdiction are applicable according to Article 10. of the Regulation. These rules determine whether any member state of the Union has jurisdiction in case of a deceased who had his habitual residence in a third country, and if yes, which one.
- Considering these regulations if the deceased had his habitual residence at the time of death outside the Union, the state with jurisdiction to rule on the succession will be first and foremost the member state defined in Article 10. (1) a), that is, the state the citizenship of which the deceased held at the time of death, provided, that there are assets after the deceased in the said state (even only partially).

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- Given that the deceased had Hungarian citizenship and they have left assets in Hungary, it can be determined according to Article 10 (1) a) that Hungary has jurisdiction. (Moreover the Canadian assets may be handed over in a Hungarian procedure as well).

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?

There are two regulations among the current rules that serve to eliminate parallel procedures.

a) Article 17. of the Regulation on succession

Article 17. of the Regulation on succession contains rules to eliminate parallel succession proceedings:

Article 17 (1.) Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

(2) Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

- This mechanism defined in Article 17 and aimed to eliminate parallel proceedings is applicable only between the member states of the European Union to coordinate procedures.

This rule doesn't extend to cases when it comes to the relation of procedures involving a member-state and a third country (for example Canada).

b) The regulation according to Article 69 of the Act on Private International Law

In light of the above, the question is whether Article 69 (1) of the Act XXVIII of 2017 on Private International Law (further in text: APIL), with a similar content is applicable in relation to the Canadian procedure:

Article 69 (1) Where proceedings between the parties are pending - at the time the proceedings are instituted - before a foreign court brought for the same subject under the same cause of action, the Hungarian court may suspend its proceedings of its own motion or upon request, provided that recognition of the foreign court's judgment in Hungary is not precluded.

…

(4) If the foreign court has adopted a decision on the merits of the case, and such decision can be recognized in Hungary, the Hungarian court shall terminate its proceedings.

According to this regulation the proceedings before the foreign court serve as a base to suspend the domestic proceedings if

-the proceedings before the foreign court are instituted earlier in time, and

-the recognition of the foreign court's judgment in Hungary is not excluded.

According to the above, to answer the question of whether the legal effects of the Canadian succession proceedings which were possibly commenced earlier in time shall be taken into consideration (namely if based on it the Hungarian succession proceedings might be

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suspended), it has to be examined above all, if the decision to be made in the Canadian proceedings might be recognized in Hungary, or it is excluded.

-The question is, whether the recognition of the decision to be made in the succession proceedings in Canada is excluded in Hungary.

- The Regulation on succession regulates only the recognition of foreign decisions in relation to the member states. These provisions (Regulation on succession Chapter IV.) shall not be applied to decisions made in third countries.
- The conditions under which a foreign decision might be recognized is governed by the national law, namely sections 38-39. (Articles 109-115) of the APIL.
- The recognition conditions laid down in APIL preclude the recognition of the decision on succession of the Canadian court in Hungary for two reasons:

1)Exclusive jurisdiction of Hungary

-In connection with decision made in a foreign country (third country) Article 109 (1) a) of the APIL lays down as a condition (among others) that ,,*the jurisdiction of the foreign court is considered legitimate under this Act";*

- Section 115 of the APIL lays down when in proceedings relating to succession the jurisdiction of the acting foreign court shall be construed legitimate from a Hungarian point of view. According to this, in proceedings relating to succession, jurisdiction of the acting foreign court shall be deemed legitimate if it was based:

a) on the testator's habitual residence at the time of his death, or
b) on the testator's citizenship.

- Therefore, according to Hungarian law the jurisdiction of the Canadian court should be deemed legitimate in proceedings relating to succession if it had proceeded based on the fact that the deceased had a Canadian citizenship as well, or he had his habitual residence there at the time of death.
- However, these provisions are supplemented with those regulations of the APIL, which prescribe the exclusive jurisdiction of the Hungarian courts in some cases. Such an exclusive Hungarian jurisdiction prevails according to section 88 a) and b) (among others) in the following cases:

a) in proceedings pertaining to any right in real estate property situated in Hungary, including the rental or lease of such property;
b) in probate proceedings where the estate is located Hungary and the testator is a Hungarian citizen;

- According to this, the proceedings of the foreign court shall not be deemed legitimate from a Hungarian point of view and based on the Hungarian act, if the said court proceeded in a case in which the Hungarian law defines exclusive Hungarian jurisdiction. The ministerial justification to sections 88-91 APIL reflects on this:

„Exclusive jurisdictional rules have primacy when they collide with other general or special jurisdictional reasons."

- Therefore, the fact that the foreign court proceeded in a case to which exclusive Hungarian jurisdiction applies, a priori precludes the recognition of the foreign judgement in Hungary.
- In the present case, the proceedings of the Canadian court touch upon the exclusive Hungarian jurisdiction even in two points. On one hand, the deceased persons both had a

Hungarian citizenship. As a consequence, there is exclusive Hungarian jurisdiction in relation their assets located in Hungary according to Article 88. b). Besides these, according to section 88 a), regarding the proceeding in connection with the real property in Hungary there is exclusive Hungarian jurisdiction (regardless of the citizenship of the deceased), because the succession proceedings tend to settle the ownership of the real property, thus, these are considered as ,,proceedings pertaining a right in real estate property."

- *Regarding the relation between the rules of exclusive jurisdiction and the jurisdiction rules of the Regulation on succession:*
    - In every case it shall be examined on the basis of the rules stipulated in the Regulation on succession whether the Hungarian notary has jurisdiction to rule on succession. The rules of the Regulation on succession (considering the rules on subsidiary jurisdiction according to Article 10.) have universal nature, which means they cover the cases as well, where the matter of succession connects to a third country.
    - However, according to the rules on jurisdiction laid down in APIL (especially the exclusive jurisdiction according to Article 88), in the course of Hungarian recognition of decisions made out of the European Union, it has to be examined if ,,the jurisdiction of the foreign court is considered legitimate under this Act" (Article 109. (1) a) of APIL) meaning that from a Hungarian aspect the foreign court can be considered to have jurisdiction because this is one of the conditions set up by law to recognize a judgement from a third country in Hungary (so called indirect jurisdiction).

- Therefore, the rules of exclusive jurisdiction laid downin section 88 of the APIL have significance only in relation to the recognition of decisions made in third countries.
- These rules do not have relevance regarding the recognition of decisions made in other EU member states. To the recognition of decisions on succession made by courts (authorities) of European Union member states, only the provisions laid down in Chapter IV. of the Regulation on succession is applicable.
- The regulations on exclusive Hungarian jurisdiction (in succession related cases) are therefore considered only applicable towards third countries.

2.) Absence of reciprocity

- Article 113 of APIL stipulates the existence of reciprocity between Hungary and the state of the court passing the decision as a condition of Hungarian recognition of foreign decisions in property law cases – beyond the general conditions of recognition stipulated in subtitle 38.
- The existence of reciprocity is determined by the Minister of Justice in a separate regulation according to Article 124 of APIL. Regulation no. 36/2017. (XII. 29.) IM defines the states with which there is reciprocity regarding the recognition of decisions passed in civil cases.
- In this regulation the Minister of Justice did not determine reciprocity regarding Canada, neither in recognizing decisions in succession related cases, nor regarding any other civil cases.
- Taking into consideration these facts, the absence of reciprocity also precludes the Hungarian recognition of the succession related decision eventually made in Canada.

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Summary:

- The legators had Hungarian citizenship at the time of their death, therefore the Hungarian notary has exclusive jurisdiction (i.e. the jurisdiction of other states is precluded) to hand over their domestic assets according to Article 88. b) of APIL.
- According to APIL, the fact that the foreign court had proceeded in a case which falls under exclusive Hungarian jurisdiction precludes per se that the decision passed in such proceeding may be recognized in Hungary, which means that the decision on succession passed by the Canadian court regarding the Hungarian estate shall not be recognized in Hungary.
- According to Article 69 of the APIL, the Hungarian notary should suspend the proceedings in the event the foreign proceedings were commenced earlier in time, and the recognition of the decision to be passed in these proceedings is not precluded in Hungary. In the present case, the recognition of the Canadian decision is precluded, which means that the Hungarian proceedings should not be suspended, the Hungarian notary can hand over the assets located in Hungary.

(Balogh Tamás)

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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 Berlinhe 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?

1.) In which state shall Markus' probate process be conducted?
According to the circumstances of the case it seems that the deceased had a permanent intention when moving to Hungary. He sold his apartment in Berlin, he lived here for aproxx. 3 years, so the conclusion might be that his habitual residence at the time of death was in Hungary. Therefore, according to Article 4 of the Regulation on succession, a Hungarian notary has jurisdiction to conduct the probate process.

2.) According to which state's law should the formal validity of the will be determined?
- Article 27 of the Regulation on succession defines special collision law rules regarding the formal validity of written wills. According to this Article a disposition of property upon death made in writing shall be valid as regards form if its form complies with the law: (a) of the State in which the disposition was made; (b) of a State *whose nationality the testator possessed* either at the time when the disposition was made, or at the time of death; (c) of a State in which the testator, had his domicile either at the time when the disposition was made, or at the time of death; (d) of the State in which the *testator had his habitual residence*, either at the time when the disposition was made, or *at the time of death*; or (e) in so far as immovable property is concerned, of the State in which that property is located.
- These collision law connection rules are in alternative relation with each other, so the disposition has to be considered formally valid if it fits the rules of one of the laws, which can come into consideration according to these rules.
- In this case, the deceased was a German citizen who had his habitual residence in Hungary and he made his will in Austria. Considering this, the will is formally valid if it fits either the German, Austrian or Hungarian regulations.

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3.) <u>Which state's law is applicable to the substantial validity of the will?</u>

- Regarding the substantial validity of the will, based on Article 24 (1) of the Regulation on succession the ,,hypothetical succession law" is applicable (that is "the law which, under this Regulation, would have been applicable to the succession of the person who made the disposition if he had died on the day on which the disposition was made"
- This law is no other than the law according to the habitual residence of the deceased at time of making the disposition.
- The question is therefore, where Markus's habitual residence in 2015 was.
- At this time he lived without a doubt in Germany, there was his habitual residence. As regards to the admissibility and substantive validity of the disposition, German law is applicable.

4.) <u>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?</u>

According to Article 21 (1) of the Regulation on succession, considering the habitual residence of the deceased at the time of death, the Hungarian law will be applicable to the other issues of succession.

(Balogh Tamás)