



EULawInEN

EU LAW TRAINING IN ENGLISH LANGUAGE:
BLENDED AND INTEGRATED CONTENT AND LANGUAGE TRAINING
FOR EUROPEAN NOTARIES AND JUDGES



This Project is funded
by the European Union's
Justice Programme 2014-2020

Choice of law - Practical cases

Ivaylo Ivanov

Civil law notary in the District of Sofia, Bulgaria

This Project is implemented by Coordinator



Fondazione
Italiana
del Notariato

Partners



Magyar Országos
Közjegyzői Kamara



Notary Chamber of Bulgaria



Difficulties in determining the habitual residence

George is a Bulgarian citizen and he is a keen yachtsman. He adores to stay on his yacht, to travel around the world and to enjoy new places. That's why he has organised his life in a way to make his passion to become a reality. He has bought an ocean sailing yacht and spends most of the time on it. For some economic reasons, the yacht is registered under the flag of the Marshall Islands, but George doesn't have any other connection with this State. George is self-employed IT specialist. He works from distance for different projects in different countries. His work is going well, so he has bought property in several countries, including Bulgaria, Italy and UK. He is married. His wife is an Italian. She shares her time between the yacht, Italy and UK, where their lovely children attend a prestigious school. Despite all this international mess, George feels closely connected with his national country – Bulgaria.

George would like to organise his succession and is asking for advice.



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Choice of law – Practical case 1 – Part 1

Kiril, a Bulgarian national, is habitually resident in UK. He has been married to a Hungarian woman, but now he is divorced. He owns an apartment in Sofia, a share of an apartment in Budapest and a house in the suburbs of London. He has two children - a son and a girl, who are already mature. He is in good connection with his daughter and in very bad one with his son. He wants after his death the daughter to become his only heir. As the Bulgarian law provides the children with reserved share right, which the English law doesn't, Kiril wants to choose the English law to govern his succession.

Is it possible?



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Choice of law – Practical case 1 – Part 2

Kiril cannot choose the English Law as he is not a national of this state.

However, his choice will be valid if at the time of his death he already possesses English nationality.

The acquisition of English nationality only for the purpose to exclude the son from the succession can be regarded as fraud in law.



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Choice of law – Practical case 1 – Part 3

What will happen with the succession of Kiril if no choice of law is made?

- Bulgaria and Hungary will apply the Succession regulation and the English law will be applicable as Kiril has his habitual residence there.
- UK is a third state under the meaning of the SR and according art.34, par.1 of SR the rules of PIL in force in that state will apply.
- English PIL rules provides that the law of the state where the real estate is situated are to govern the succession of this real estate (*lex rei sitae*). Thus the English law will make a renvoi to Bulgarian and to Hungarian law and they have to accept it.
- The succession of the real estate in Bulgaria will be governed by the Bulgarian law, that of the real estate in Hungary - by the Hungarian law, and that of the real estate in UK – by the English law.



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Choice of law – Practical case 2 – Part 1

Petar, a Bulgarian citizen habitually resident in Hungary, owns an apartment in Budapest, Hungary, and a holiday house in Bansko, Bulgaria. He possesses bank accounts in both countries. Petar wants to arrange his succession and prepares a will in which he points the Bulgarian Law to govern the succession of his movable and immovable property in Bulgaria and the Hungarian Law to govern the succession of his movable and immovable property in Hungary.

What do you think about the validity of the choice?



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Choice of law – Practical case 2 – Part 2

- As at the time of making the choice Petar is only a Bulgarian national, the choice of the Hungarian law wouldn't be valid, unless Petar subsequently acquires a Hungarian nationality and still possesses it at the time of his death (art 22, par. 1 SR).
- Even if Petar had dual citizenship – Bulgarian and Hungarian, he couldn't chose different laws to be applied to different elements of his succession. The law chosen has to govern the succession as a whole (art.23, par.1 SR).
- How in the case of only a Bulgarian citizenship, the choice of the Bulgarian law, which is limited in the will to the elements of the succession situated in Bulgaria, will be considered? As no choice at all or as a valid choice to the succession as a whole, regardless where its elements are situated?



Choice of law – Practical case 3 – Part 1

- Bilyana, a Bulgarian national, who resides in Germany, possesses a movable and immovable property in Germany and in Bulgaria. She is married to Hans - a German citizen.
- With her husband they intend to enter into an agreement as to succession in which they intend to choose the German law as the law to govern the agreement, the Bulgarian law as the law to govern the succession of Bilyana and the German law as the law to govern the succession of Hans.
- Will be such a choice valid and admitted?



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Choice of law – Practical case 3 – Part 2

- The agreement as to succession is considered to be a disposition of property upon death under the meaning of SR (art.3, par.1 (d) of SR).
- According art.25, par.2 of SR the agreement shall be admissible only if it is admissible under all the laws which would have governed the succession of all the person involved if they had died on the day on which the agreement was concluded.
- The Bulgarian law doesn't admit agreements as to succession.
- Notwithstanding, art.25, par.3 allows the parties to choose as the law to govern their agreement the law which one of the persons whose estate is involved could have chosen as applicable to his/her succession according to art.22 of SR.
- Hans is a German citizen and the German law allows such agreements.



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020