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

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Regulation 650/2012
Regulation 1103/2016 and 1104/2016

Practical cases on the

CHOICE OF LAW

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CASSA NAZIONALE DEL NOTARIATO

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Notary Chamber of Bulgaria

International Association of Judges
promoting an independent judiciary worldwide

Regulation 650 /2012

Applicable law

General rule- Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.

The EU Succession Regulation determines which nation's law is uniformly applicable to the whole succession. No distinction is made between movable and immovable assets.

Example

If a German national was habitually resident in Bulgaria at the time of death, Bulgarian succession law is applicable.

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Determining the country of habitual residence is not always a clear task

- Habitual residence must be determined by evaluating the overall circumstances of the testator's life.
- Relevant criteria might include the duration and regularity of a person's residence in a particular country, or where the main focus of that person's family or social life is located.
- Someone who spends a few months for vacation at the seaside of each year, living in Bulgaria and the rest of the time in Spain, is generally considered to have his habitual residence in Spain.

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Regulation No. 650/2012

Choice of law

Article 22

- The law of the State whose nationality a person possesses at the time of making the choice or at the time of death.
- If possessing multiple nationalities –he choose the law of any of the States whose nationality he possesses at the time of making the choice or at the time of death.

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•It is well known that the possibility to choose the law offered by Article 22 of the Regulation is not limited to EU nationals.
Citizens of third States may also make use of this possibility – e.g. a US citizen living in England with a holiday home in Bulgaria.
•The possibility to choose the law is not limited to those persons having some form of connection with a Member State at death. This would exclude deceased who have lived a significant part of their lives in a third Member State, even though they may possess the nationality of a Member State or own assets located in such as State. In a similar vein, the Regulation does not limit the possibility to choose the law by requiring that the choice be made in favor of the law of a Member State bound by the Regulation.

•It is clear that the Regulation applies even if it leads to the application of the law of a third State.

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•Someone, whose habitual residence is not in the country of his or her nationality, but who wishes his or her succession to be governed by the law of his or her nationality, can make a choice of law

•If a Greek national living in France wants his succession to be governed by Greek and not French succession law he needs to make a choice of law - Greek law.

•It is clear that the law chosen also governs the validity of the will. This follows automatically from Article 24, without there being any need to include language to that effect.

•A reference to the nationalities of the person making the choice would be relevant if the person making a choice possesses more than one nationalities. Such a reference would indeed show that the testator was aware of the choice possibilities regarging to Article 22.

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•For example “I am a national of Bulgaria and Germany. I choose the law of Germany to govern my succession”.

•Or “ I am a national of Bulgaria . I choose the law of Spain to govern my succession”-that choice of law would be valid if at the time of the death of that person he already possesses Spain nationality.

•Or “ I live and have habitual residence in Spain , but I have Bulgarian nationality and I chose Bulgarian inheritance law to govern my succession”.

At that case it is clear for notary in Bulgaria that Bulgarian law is applicable and his will would be in the form and with all requirements for the validity of the will according to articles 25 -29 of Bulgarian inheritance law.

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Practical case 1

- Ivan , Bulgarian citizen, habitually resident in England, owns an apartment in Pleven, Bulgaria. He possesses bank accounts in both countries.
- Ivan wants to arrange his succession and prepares a will in which he points the Bulgarian Law to govern his succession of his movable and immovable property in Bulgaria and England.
- He has wife and 2 sons and he wants after his death his wife to become his only hair.
- Bulgarian law provides a reserved share for his sons – according to article 29 of Bulgarian inheritance law, which the English law does not.

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Practical case 1

- It is clear that the law chosen also governs the validity of the will. This follows automatically from Article 24 or The Regulation.
- According to article 25 of Bulgarian inheritance law the form of the will is clear and precisely formulate and if some of the requirements are not fulfilled –the will is not valid and could not give rise to action.
- Notary in Pleven , Bulgaria – could finalize the deal and the wife would be the only owner and the only seller.
- The sons however have the right to submit a statement of claim in a local court and in that case they have reserved share 2/3 of all succession and only for that reason – they do not need more evidence – the court will grant the claim.

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Practical case 2

- Manfred, German citizen, habitually resident in Bulgaria – has an apartment in Berlin and an apartment in Sofia.

  He has a wife a Spain citizen.
- He makes a choice of law to govern his succession at 20.12.2014 and it is Spain law, because of his wife.
- He dies at 15.09.2018 and has German nationality only.

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Practical case 2 –Article 83 of the Regulation

•Where the deceased had chosen the law applicable to his succession prior to 17 August 2015, that choice shall be valid if it meets the conditions laid down in Chapter III or if it is valid in application of the rules of private international law which were in force, at the time the choice was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed.

•A disposition of property upon death made prior to 17 August 2015 shall be admissible and valid in substantive terms and as regards form if it meets the conditions laid down in Chapter III or if it is admissible and valid in substantive terms and as regards form in application of the rules of private international law which were in force, at the time the disposition was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed or in the Member State of the authority dealing with the succession.

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Practical case 2

- At that case the choice of law that made Manfred- Spain law- is not applicable to his succession.
- The applicable law in accordance with article 21 of the Succession Regulation is Bulgarian law.

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Regulations No.1103 and 1104/2016

- The Regulations do not change national laws on marriage or registered partnerships, and stipulate that the applicable law applies to all assets regardless of where the assets are located, and will be applied whether or not it is the law of an EU country. Issues about the legal capacity of spouses, the recognition or validity of the marriage, maintenance obligations and inheritance are not covered.
- The regulations do not change national laws on marriage or registered partnerships, and stipulate that the applicable law applies to all assets regardless of where the assets are located, and will be applied whether or not it is the law of an EU country.
- Only for some Member States –Recital 11 of the preamble -**Territorial scope**
- Chapter III - applicable law - only for spouses who have married or determined applicable law after 29.01.2019 **- Temporal scope.**

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Choice of the applicable law
Article 22

- the law of the State where the spouses or future spouses, or one of them, is habitually resident at the time the agreement is concluded; or
- the law of a State of nationality of either spouse or future spouse at the time the agreement is concluded.

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- The applicable law pursuant to Article 22 or 26 shall apply to all assets regardless of where the assets are located-art.21.
- Applicable law shall be applied whether or not it is the law of a Member State.
- The existence and validity of an agreement on choice of law -by the law which would govern it pursuant to Article 22 if the agreement or term were valid.

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Matrimonial property agreement

- Shall be expressed in writing, dated and signed by both spouses.
- Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.
- Additional formal requirements shall apply –depends on the law of the Member state in which both spouses have their habitual residence.
- Spouses are habitually resident in different Member States - the agreement shall be formally valid if it satisfies the requirements of either of those laws.
- If only one of the spouses is habitually resident in a Member State and there are formal requirements for matrimonial property agreements, those requirements shall apply.

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Practical case 1

- A French citizen wants to sell a property in Bulgaria with her Greek husband. They live in the last 5 years in Bulgaria and they have concluded matrimonial property agreements - additional formal requirements shell apply – regarding to Bulgarian law and they have made a choice of law – Bulgarian law.
- We should apply Bulgarian law and check if all formal requirements are met.
- Some declarations are required - and spouses have to fill all of them –for example declaration that they are not politicians.

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Bulgarian Family Code

- Spouses have a choice between two regimes of matrimonial estate.
- Separate property regime.
- Community property regime.

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Practical case 2- important to know- legal qualification of legal relationships

- The Maltese case / widow's quarter - two spouses originally lived in Malta, then changed their domicile to Algeria and bought real estate there (Algeria at that time was under French jurisdiction). The husband died and the wife claimed the right to use on ¼ of the properties. The French court should have answered the reserved quarter whether it is an institute of family or inheritance law.

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Practical case 2

- Right decisions is important to be taken.
- If it is qualified as a family law question - the relevant conflict rule indicates the applicable law of its original common domicile (Malta), if it is qualified as an succession law, the applicable law will be that of the last habitual residence- Algeria law, (but at that time under – French jurisdiction- so applicable law is French law). It is logical for the French court to choose French law, and the reserved part qualifies her as an succession law institute.

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Example 3

- Mr. Stavros and his wife are Greek and they are living in London at the time of their marriage (May 2019), where they sign a Greek choice-of-law agreement applicable to their matrimonial property regime in the form of a private agreement. This choice will be valid as regards the form in all the Member States applying the Regulation.
- Material requirements: the existence and validity of the choice-of-law agreement are governed by the law chosen by the spouses as being applicable to the matrimonial property regime (Art. 24).

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Regulation No. 1104 / 2016

- The definition of registered partnership - Art. 3, para. 1, of the regulation defines the registered partnership as the regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation.
- This definition aims at clarifying the material scope of the Regulation.
- This regulation shall apply to matters of the property of registered partnerships.

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Choice of the applicable law-art.22

- New and different criteria – par.1 (c)

  Regulation 1104 adds the possibility to choose.

  The law of the State under whose law the registered partnership was created.

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Choice of law

- Such choice of law should be limited to a law that attaches property consequences to registered partnerships.
- This choice may be made at any moment, before the registration of the partnership, at the time of the registration of the partnership or during the course of the registered partnership.

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Choice of law

- Art. 22 makes clear that the applicable law must recognize property consequences to the registered partnerships. The effects of a wrong choice are not regulated. The designation should be materially invalid and be disregarded;
- art. 26 determines the applicable law.

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Chapter III shall apply only to partners who register their partnership or who specify the law applicable to the property consequences of their registered partnership after 29.01.2019 (Regulation 1104)

Chapter III shall apply only to spouses who marry or who specify the applicable law to the matrimonial property regime after 29.01.2019

(Regulation 1103)

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