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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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Three practical cases on the habitual residence as new connecting factor within the three Regulations

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The Presentation

Introduction the role of habitual residence in Reg. (EU) 650/2012, Reg. (EU) 1103/2016, Reg. (EU) 1104/2016.

Experience and the elements of the Hungarian practice of habitual residence

Practical cases: questions and solutions.



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Introduction I.

New legal Regulations in the European Union:

- Reg. (EU) 650/2012, Reg. (EU) 1103/2016, Reg. (EU) 1104/2016

A major step to facilitate cross-border successions was the adoption, on 4 July 2012, of new Union rules designed to make it easier for citizens to handle the legal aspects of an international succession. - (EU) 650/2012

These new rules apply to the succession of those who die on or after 17 August 2015.

Denmark, Ireland and the United Kingdom do not participate in the Regulations.



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Introduction II.

Two Regulations aimed at determining homogeneous rules applicable to property regimes for **married couples** (Council Regulation (EU) 2016/1103) or **registered partners** (Council Regulation (EU) 2016/1104) in cross border situations were approved by the Members of the European Parliament.

These Regulations entered into force on January 29th, 2019.

The Regulations **are applicable in 18 EU Member States** that joined the enhanced cooperation initiative on this matter.

Belgium, Cyprus, Greece, Croatia, Slovenia, Spain, France, Portugal, Italy, Malta, Luxembourg, Germany, Czech Republic, the Netherlands, Austria, Bulgaria, Sweden and Finland.

Denmark, Ireland and the United Kingdom do not participate in the twins Regulations.



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Habitual residence or nationality?

Where to locate a deceased in private international law?

The centre of private and professional interests of a person.

Unity of succession, habitual residence, nationality?

The advantages of the nationality: stability and certainty.

The habitual residence is the more appropriate connecting factor for EU international succession law.

However, it should be noted that nationality remains a main factor in many practical cases.



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Habitual residence in EU private international law

Is there any uniform notion of habitual residence?

The habitual residence is used as connecting factor in other EU legal instruments.

The ECJ states that the notion of habitual residence has to be construed in the light of the context and the goals of the respective regulation. (Mercredi case)

What about family law and succession law?



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Habitual residence Regulation (EU) No.650/2012

How can we define or decide the habitual residence?

The determination of the last habitual residence of the deceased necessitates a multi-aspect analysis of the situation.

The most important aspects or facts are the following:

- the **actual duration** of the deceased's pure objective presence in the country (how many hours/days a year, how many years)
- the location of the deceased's **family and social life**;
- the location of the deceased's **assets**;
- the location of the deceased's **professional life or economic activities**;
- the **nationality** of the deceased;
- **the intention of the deceased** where accompanied by objective corresponding evidence; the reasons for his presence in a certain State.



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Habitual residence Regulation (EU) No.1103/2016

The main rules of jurisdiction in cases of divorce, legal separation or marriage annulment:

(a) is the court of a Member State in which **the applicant is habitually resident** and the applicant had resided there **for at**

least a year immediately before the application was made, in accordance with the fifth indent of Article 3(1)(a) of Regulation (EC) No 2201/2003;

(b) is the court of a Member State of which **the applicant is a national and the applicant is habitually resident** there and

had resided there **for at least six months** immediately before the application was made, in accordance with sixth indent of Article 3(1)(a) of Regulation (EC) No 2201/2003;

(c) is seised pursuant to Article 5 of Regulation (EC) No 2201/2003 in cases **of conversion of legal separation into divorce**; or

(d) is seised pursuant to Article 7 of Regulation (EC) No 2201/2003 in cases of **residual jurisdiction**.



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Habitual residence Regulation (EU) No.1104/2016

I.

Jurisdiction in cases of dissolution or annulment

1. Where a court of a Member State is seised to rule on the dissolution or annulment of a registered partnership, the courts of that State shall have jurisdiction to rule on the property consequences of the registered partnership arising in connection with that case of dissolution or annulment, where the partners so agree.
2. If the agreement referred to in paragraph 1 of this Article is concluded before the court is seised to rule on matters of the property consequences of the registered partnership, the agreement shall comply with Article 7. (Choice of court)



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Habitual residence Regulation (EU) No.1104/2016

II.

Jurisdiction in other cases

- (a) in whose territory **the partners are habitually resident** at the time the court is seised, or failing that,
- (b) in whose territory **the partners were last habitually resident**, insofar as one of them still resides there at the time the court is seised, or failing that,
- (c) in whose territory **the respondent is habitually resident** at the time the court is seised, or failing that,
- (d) of the partners' common **nationality** at the time the court is seised, or failing that,
- (e) under whose law the registered partnership **was created**.



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Experiences with the concept of habitual residence in Hungary

Status of Hungarian Notaries

Notary has competence in succession (probate) proceedings.

The principle of nationality was easier to establish than habitual residence in notarial succession proceedings.

Hungary do not participate in the twins Regulations. (Reg. (EU) 1103/2016; Reg. (EU) 1104/2016)

Currently there is no Hungarian judicial practice, perhaps some notarial practice.



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Practical Case 1

János (John) – the impostor (?)

János is a 60 years old Hungarian citizen who is a businessman, husband. The seat of János's firm is located in Budapest, Hungary, while a subsidiary firm is in Spain, Madrid. Because of his work, he commutes a lot between two countries.

János is not exactly a model of loyalty, because he has two families in two countries but these two families don't know about each other. János met with the young Katarina from Budapest in 2010, and he married her in August 2011, but two months after this, during his business travel he got to know the Spanish Selena, whom he met in Madrid, and in a sudden passionate moment of his, he married her as well, in the summer of 2012 in front of a Spanish registrar.

He has one child from both marriages, and during 6 years he succeeded to hide the two families from each other. After a very short serious illness, on 8 November 2018 he died. The death came with a lot of surprises and question of succession.

His assets are two family houses, one in Hungary and one in Spain.

Where was his habitual residence at the time of his death?



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Practical Case 2

Francesco, an Italian citizen and Gabriella, a Belgian citizen married in March 2019 in Roma. They settled down in Genova, Italy and lived there until September 2019 when their relationship ceased. Gabriella continued to live and work in Italy for a while but in January 2020 she moved back home to Brussels, Belgium. Ever since then she has lived and worked in Brussels, where she moved in together with her new partner. Francesco still lives in Italy. Francesco and Gabriella did not enter into a matrimonial property agreement.

Gabriella submitted an application for annulment the marriage to the Belgian court.

Which court has jurisdiction for the annulment?

Is there any role of his/her habitual residence?



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Practical Case 3

Dennis is a Dutch citizen and Katarina is a German citizen. They have entered into a registered partnership in the Netherlands in April 2019. After that they live in Amsterdam and they have two children in 2020.

Questions:

- Which is the applicable law if they want to eliminate the registered partnership?
- Which is the court that has jurisdiction?
- What is the role of habitual residence in this case?



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Thank you for your attention



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