



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GOINEU



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# First Experiences on the Application of the EU Succession Regulation in Hungary / Results of the Project

Ádám Fuglinszky

Full Professor of Civil Law  
Eötvös Loránd University, Budapest

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# Relevance

- **Cross-border succession cases:** not more than 2-4% (esteem by the Hungarian Chamber of Civil Law Notaries)
- **Case groups:**
  - Hungarian citizens as beneficiaries of in-kind compensation in Romania;
  - '56-refugees having moved home after 1989 with significant assets abroad (and double citizenship);
  - Retired senior couples from the Netherland and Germany having settled in Hungary;
  - Wealthy Hungarians having a bank account in Austria / an apartment in Spain, etc.



# Issues

## 1. Interpretation of the Regulation

- A) General: Ambiguities and Lacunae
- B) Country-related: the Outlines of Public Policy

## 2. Compatibility of the Regulation with National Law

- A) Substantive Matters
- B) Procedural/PIL Issues

## 3. Feasibility – Accessibility of Information Needed



# 1) Interpretation of the Regulation

## A) Ambiguities and Lacunae (highlighted by T. Szőcs)

### A1) The Applicable Law to the Admissibility of Joint Wills

- **Prohibited:** RO/ IT/ FR
- **Permitted:** DE (Berliner Testament, relevant also in HU) / **Scandinavian countries**

#### • **Notion in Art. 3.1. c) – nowhere referred to**

‘joint will’ means a will drawn up in one instrument by two or more persons;

#### • **Example of the Finnish-Hungarian brothers by T. Szőcs**

#### • **Applicable law? Art. 24 v. 25.**

- **24: “Dispositions of property upon death other than agreements as to succession”**

Hypothetical *lex successionis* on the day the will was drafted... (cumulatively or separately? --- limping/zoppo joint wills...)

- **25: “Agreements as to succession” --- see Art. 3.1.b): “including an agreement resulting from mutual wills”** Art. 25 Para 3: Choice of law (of nationality of any of them) regarding the admissibility, substantive validity and binding effects...



# 1) Interpretation of the Regulation

## A) Ambiguities and Lacunae (highlighted by T. Szöcs)

**A2) Substantive validity of dispositions of property upon death: *lex successioneis* v. “*Errichtungsstatut*” (subsequent change of the habitual residence has no effect on the substantive validity)**

### • **Art. 26: exhaustive or illustrative list?**

- (a) the capacity...
- (b) the particular causes which bar the person making the disposition...
- (c) the admissibility of representation...
- (d) the interpretation of the disposition;
- (e) fraud, duress, mistake and any other questions relating to the consent or intention of the person making the disposition.

### • **Grammatical v. Teleological Interpretation**

- “Expression “in particular” is missing...
- But see. Whereas (7): “organise their succession in advance” / (37): “to know in advance which law will apply to their succession”



# 1) Interpretation of the Regulation

## A) Ambiguities and Lacunae

### A3) Habitual residence – selected illustrations based on the Budapest workshop

• Austrian-Hungarian double citizen has a family and a family house in Hungary; but he works in Vienna from Monday to Thursday; and owns 3 flats in Vienna too; he's got also a girlfriend in Vienna and a common child with her; he dies in a fatal car accident in Hungary.

• Hungarian citizen shares his time between Budapest and Barcelona; has assets in both cities and is married in both (sic!) countries... / Is citizenship crucial? / And if he is a double citizen? Does it matter that the 2nd marriage is invalid? What is the relationship to fundamental values and human rights? Do the values of the assets matter?



# 1) Interpretation of the Regulation

## B) Country-related: the Outlines of Public Policy

- **Public policy is touched upon** 💣: marriages not freely entered into; underage marriages; restrictions due to interreligious marriages; the male child's share is bigger...; discrimination of extramarital children;
- **Public policy is not touched upon** 😊: traditional marriages (cf. *lex loci celebrationis* **BUT: Disagreements / Dissents:**

Issue	Notaries	Judges	Acad.
Polygamous marriages and their succession effects	😊	💣	😊
Repudiation / talaq	😊	💣	💣
Reserved share - disinheritance	😊	💣	💣
Diff. rules on the inheritance of same-sex spouses/registered partners (i.p. none/less...)	😊	💣	💣
Diff. rules on the inheritance of de facto cohabitants (i.p. more/any...)	😊	💣	😊



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## 2) Compatibility of the Regulation with National Law

### A) Substantive Matters

- **Art. 31: Adaptation of rights in rem (HU: numerus clausus)**
  - *fideicomissarische Substitution (AT);*
  - *Dauertestamentsvollstreckung (long term will-executorship, DE, if the child is minor...)*

what is the closest equivalent? “restraint on alienation and encumbrance”

- **Registration of ownership into the land registry based on European Certificate of Succession**

If issued by German courts, only abstract proportions are presented, not the particular identification-data of the premises/immovables (address, land parcel or cadastral no.) --- Act on Land Register was amended

- Missing data to be submitted by the heirs or
- Adaptation procedure to be commenced.





## 2) Compatibility of the Regulation with National Law

### B) Procedural and PIL Issues – Compatibility and Intersections

- **Unity of Succession, Universal Scope:** “the twilight of conflict of laws of the Member States” – avoiding the “double track” PIL within the scope of the Regulation.
- **Risk of confusion:** European Certificate of Succession / Certificate of Succession v. Inheritance Certificate, ???but what is that??? – Cf. Probate Procedure Act (XXXVIII/2010) § 102/D:
  - Deceased is Hungarian citizen and
  - All the estate is in a third country and
  - No member state has jurisdiction according to the ESR (neither the habitual residence nor any assets in any member state).



## 2) Compatibility of the Regulation with National Law

### •B) Procedural and PIL Issues – Compatibility and Intersections

#### •Probate procedure already commenced in a third country...

- *Lis pendens*, Art. 17. ESR.: „are brought in the courts of different Member States”
- If the other country is NOT a member state, ESR does not apply in this respect --- cf. national PIL! *Lis pendens*, if. a.o.t. the recognition of the judgment is not excluded.
- But recognition of the judgement is excluded, if Hungary has exclusive jurisdiction according to the national PIL! (For example: real estate in Hungary).
- Thus, national rules on PIL and jurisdiction though have a significance, in relation to probate procedures in third countries, if it is about the recognition .

To sum it up (simultaneous application of the ESR and of the national PIL):

- ESR applies: whether the Hungarian notary has jurisdiction
- But the Hungarian PIL applies on the recognition of a judgement passed in a third country .



# 3) Feasibility – Accessibility of Information Needed

- Probate in Hungary:
  - *ex officio*, even if the participants are passive
  - Information on the assets (abroad) is needed (reserved share; settlement)
  - Catch 22: foreign bank accounts, safe deposits... the bank requires the ECS, but it comes in the end...
- Art. 66.5 ESR: content and details unclear...
- Solutions
  - Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (notary – court? Time consuming ☹)
  - Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
  - Bilateral treaties...
  - ECS according to Art. 63 (2) c): the powers of the person mentioned in the Certificate to execute the will or administer the estate. But if there is dissent among the “heirs”?
- Open questions:
  - Information on wills abroad? / Reaching the unknown heirs abroad?
  - Lis alibi pendens abroad?

