



INTEGRATION, MIGRATION,  
TRANSNATIONAL RELATIONSHIPS,  
GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATIONS.



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# Latest problems in the application of the European Succession Regulation

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# 1. Determining the habitual residence

## 1.1. General connecting factor

- for determining jurisdiction and applicable law
- in line with the EU legislative trend
- farewell to the exact and clear connecting factor of nationality
- requires an overall assessment by the authority dealing with the case → recital 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.*



# 1. Determining the habitual residence (cont.)

## 1.2. The tasks of the authorities dealing with the succession have increased and become more complex

- **Johnny Hallyday case:** relevance of the modern technology (instagram)
  - **new challenges for the authorities:** can be very difficult, in particular, to obtain sufficient data and information
  - **Hungarian regulation:** it is/should be the task of the clerk of the municipality to obtain the relevant data and send them to the notary
- **there is no sufficient assistance for the authorities dealing with the succession (mainly notaries)**

## 2. Risk of parallel involvement of the authorities

### 2.1. Principle of the unity of the estate

- **One of the main purposes of the Regulation is:**
  - to avoid the „division” of the estate and the irreconcilable decisions**
- **Oberle case (C-20/17):**
  - harmonization of the rules of jurisdiction of the courts both in contentious and non-contentious proceedings
  - Article 4 determines the jurisdiction of the courts as regards the procedures for issuing national certificate of successions → reducing the risk of parallel proceedings and of contradictions that may arise as a result

## 2. Risk of parallel involvement of the authorities (cont.)

### 2.2. Notaries and jurisdiction

- Regulation shall not affect the competence of the authorities of the Member States to deal with matters of succession (Article 2)
  - **mainly notaries** deal with succession matters
- **rules of jurisdiction apply only to notaries that are deemed to be courts for the purposes of the Regulation!**
- term „court”: exercising judicial functions [Article 3 (2)]

**broad interpretation of the notion of court**  
Recital 20

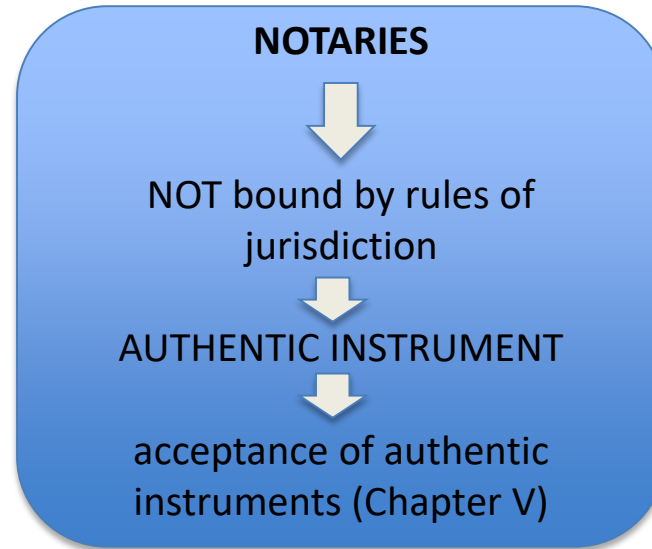
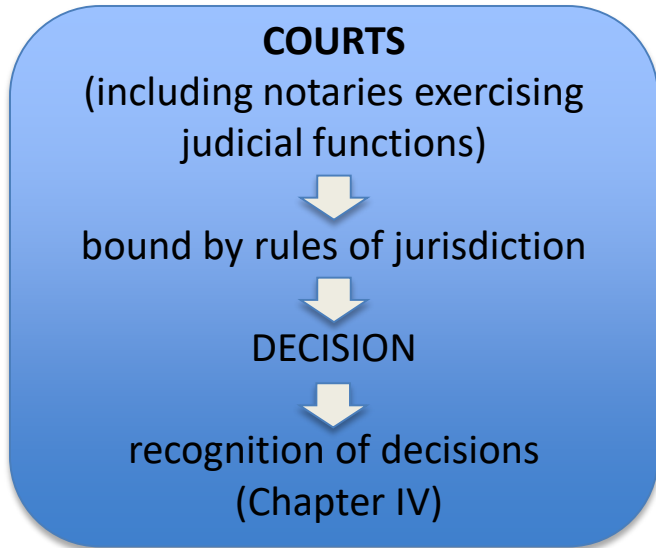


**narrow interpretation of the notion of court**  
WB case (C-658/17): „power to decide a legal dispute”



Is there a Member State at all where the notaries are deemed to be courts?

## 2. Risk of parallel involvement of the authorities



## 2. Risk of parallel involvement of the authorities (cont.)

### 2.3. Unavoidable parallel involvement of authorities

- Recital 36:

It can not be excluded that parallel involvement of authorities take place in different Member States relating to the same succession.

- Advocate General of E.E. case (C-80/19): this unavoidable possibility is **accepted in the Regulation** → it results in the division of the estate as regards the management of the succession
- the purpose of the unity of the estate is linked with the purpose of **facilitating the situation of the heirs**
- **Solution in the Regulation:**
  - no need to divide the estate in terms of substance as **all authorities shall apply the same law to the succession**
  - **it should be for the parties involved**, once they become aware of the parallel proceedings, **to agree among themselves** how to proceed (Recital 36)

→ if they cannot agree, the court having jurisdiction decides

## 2. Risk of parallel involvement of the authorities (cont.)

### 2.4. Problems encountered in practice

It happens that notaries, especially in Latin legal systems, issue authentic instruments in respect of the estate located in their own Member State

- without examining whether there is a procedure pending in another Member State relating to the same succession;
- without examining whether there are assets left after the deceased in another Member State;
- without exploring full range of the potential heirs in other Member States,
- without examining which law is applicable to the succession: they apply their own succession law

→ Regulation anticipated this problem: it will be the central issue of the **revision** (Article 82)

### 2.5. Possible solutions

- **register of succession cases/procedures** in all Member States and their interconnection at EU level
- **creating channels of communication** amongst notaries of different Member States
- **mechanism to obtain data, information and documents from abroad**
  - to determine the habitual residence of the deceased at the time of his death and
  - to verify the existence of the assets located abroad and the fact that they belong to the estate of the deceased



## 2. Risk of parallel involvement of the authorities (cont.)

### 2.6. Significance of the European Certificate of Succession

- provides guarantee: **issuing authority shall examine its jurisdiction**
- **uniform legal effects**
- standard forms
- may also help to obtain data and documents from abroad
  - mechanism under Article 66 (5)
  - Annex VI of the ECS (verification for the estate administrator)
- **Problems:**
  - not used enough
  - sometimes the authorities of the Member State where the assets are located require additional documents

# 3. Certain questions of the choice of law

## 3.1. Significance of the choice of law

- **one of the most important tool of estate planning**
- **predictability: applicable law to the succession as a whole is fixed**
- may also affect jurisdiction (Articles 5-9)
- **explicit** and **implicit** choice of law
- only the law of nationality can be chosen
  - it would be reasonable to allow to choose the law of the habitual residence at the time of making the disposition of property upon death

## 3. Certain questions of the choice of law (cont.)

### 3.2. Fictitious choice of law

- „Article 83 (4): If a disposition of property upon death was made prior to 17 August 2015 in accordance with the law which the deceased could have chosen in accordance with this Regulation, that law shall be deemed to have been chosen as the law applicable to the succession.”
  - when the disposition of property upon death was made prior to 17 August 2015
  - if it was made in accordance with the law, which could have been chosen (= law of nationality)
    - this law is deemed to be the *law applicable to the succession as a whole*
- What will be the legal fate of the choice of law if the disposition of property upon death containing it becomes invalid?

# Thank you for the attention!



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