



Extra worksheet: **SUCCESSION REGULATION**

The facts of the case are as follows:

Mr. Trnka (the name has been modified as the case is still pending) was a successful businessman whose parents deceased during his university studies. His wife and son died 12 years ago and he never fully recovered from their tragic loss and never remarried nor established a relationship with another woman.

Mr. Trnka was **Slovak national with permanent residence in Bratislava**. However, he used to **spend most of his time working in Prague**, where his small but very successful company was based and used to go to Bratislava only once a month or every five weeks.

The **only blood relative** he stayed in contact with was **his cousin Beata** who was the only daughter of his mother's sister and who he has always stayed in touch with. Since the death of his family, he maintained the tradition of spending his holiday in Croatia with Beatas family, especially with her three children who Mr. Trnka liked and enjoyed spending time with them.

Apart from the house and a flat in Slovakia he also owned two flats in Slovakia which used to belong to his wife and were passed onto him, a large flat in Prague and a cottage in the Czech Highlands plus three small summer homes in Croatia - his cousin Beata was in charge of maintenance and upkeep of those properties and she was the contact person for the potential holiday makers who rented those homes out on his behalf and managed them.

Although Mr. Trnka's intent was his cousin Beata to inherit his assets, he never thought of organizing his estate or drafting a last will.

He died during one of his weekend visits to Bratislava in Slovakia, **intestate**.

However, should the testator die intestate in Slovakia, **cousins are not recognized as heirs** (they are not in any of the statutory heirs groups designated by the law) and thus all of the property would become **escheat**.

The Slovak notary doesn't seem to accept the argument of the cousin that the habitual residence of the deceased was in the Czech Republic, in that case she will inherit automatically all the assets (according to new Civil Code, act number 89/2012 Coll. that recognized cousins as heirs in the sixth class of heirs) and thus the court will have to decide the case.

Questions

Which court has in your opinion jurisdiction in this case?

What kind of evidence would you find sufficient in establishing that the habitual residence of the deceased was indeed in the Czech Republic? What would you test?

In the position of the Croatian judge, what kind of instrument would you be prepared to recognize in order to enforce it (so that the title to the concerned property would be lawfully transferred)?



EU Regulation on cross-border successions

Regulation No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession

- clarify which EU country's courts will have jurisdiction to deal with the inheritance and which law the courts will apply
- courts of the EU country where the person usually lived at the time of their death will deal with the inheritance and will apply the law of that country.
- however, citizens can choose the law of their country of nationality to apply, whether it is an EU or a non- EU country
- judgments or inheritance given in one EU country will be automatically recognized in other EU countries.
- **European Certificate of Succession** enables people to prove that they are the heirs, legatees, executors of the will or the administrators of the estate anywhere in the EU.

Have you ever seen European Certificate of Succession?

Problems:

1. There is no definition of "habitual residence" in the Regulation although guidance can be taken from the European Court of justice (Rs. C-523/07) and recital 23 of the regulation which states:

Should in order to determine the habitual residence, the authority dealing with the succession 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 reasons for that presence.**

2. **different rules for succession in member states, e.g.:**

- who is to inherit and what share (cousin is recognized as an heir in the Czech Republic X not in the Slovak Republic)
- existence of the forced heir and forced share
- dealing with matrimonial property regimes might influence the succession
- mutual will of spouses

Does your country recognized fixed heirship rules and if so, would it be difficult or easy to disinherit fixed heir?

Would you issue a decision regarding enforcement of a foreign judgement in the matters of succession if the judgement in questions disinherits the forced (necessary) heir?

3. **The choice of law** : The choice of the national law is possible.

Have you talked about choice of the law?

Would be sufficient to choose the law only by referring to the institution known only in foreign country? Or has the choice be expressly mention?