

## Legal Newsletter

### Interpretation of Applicable Jurisdiction and Choice of Law in Cross-border Succession Matters

The Supreme Court of Latvia ("**Court**") provided (Case: SKC-815/2018) further interpretation on matters related to applicable jurisdiction and choice of law in cross-border succession matters in view of the provisions of European Union (EU) Regulation 650/2012 On Succession ("**Regulation**").

The case under the Court's consideration involved the appeal brought in Latvia by the parents ("**Claimants**") of the Russian national who has died in Munich, Germany ("**Deceased**") intestate.

The succession proceedings have been initially commenced in Moscow, Russia under the laws of Russia, in which the Claimants and four children of the Deceased ("**Children**"), as first ranking heirs, filed applications claiming their succession rights to the estate of the Deceased.

Thereafter, the Children commenced separate succession proceedings with a sworn notary in Latvia ("**Notary**") with respect to assets of the Deceased located in Latvia and in another EU country (Spain). Pursuant to the request of the Children the Notary issued to them European Certificate of Succession ("**Certificate**") with respect to the estate assets located in EU.

Notary declined application of the Claimants as to the succession rights to the Deceased estate in Latvia and Spain on the grounds that under Latvian law the parents are not deemed first ranking heirs and in this case only the Children can be included as the legal heirs in the Certificate.

The Claimants appealed the decision that denied their succession rights to the estate assets located in Latvia and issuance of the Certificate to the Children.

The Court determined that since estate assets are located both inside and outside EU, the case involves cross-border succession matter to which the Regulation shall apply. Application of the Regulation means that its provisions shall apply both as to determination of the jurisdiction and the choice of law.

Upon consideration of the Claimant's appeal, the Court addressed the following principal matters in view of the provisions of the Regulation:

### **Applicable Jurisdiction**

Generally the courts of the EU Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole (Article 4).

However Article 10 "*Subsidiary Jurisdiction*" provides that where the habitual residence of the deceased at the time of death is not located in an EU Member State ("**Member State**"), the courts of a Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as:

- (a) the deceased had the nationality of that Member State at the time of death; or failing that,
- (b) the deceased had his previous habitual residence in that Member State, provided that, at the time court the court is seized, a period of not more than 5 years have elapsed since the habitual residence changed (Paragraph 1).

Where no court in Member State has jurisdiction pursuant to Paragraph 1, the court of the Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on those assets (Paragraph 2).

In view of the foregoing, if the jurisdiction is based Article 4 or Paragraph 1 of Article 10, the Member State court has the jurisdiction to rule on the succession as a whole (also with respect to assets located in another Member State), but if the jurisdiction is based on Paragraph 2 of Article 10, jurisdiction to rule applies only to assets located in this Member States.

In the current case Court determined that the Paragraph 2 of Article 10 shall apply and the Notary had the jurisdiction to rule only with respect to assets located in Latvia and thus did not have authority to issue Certificate that covers also assets of the estate located in Spain.

### **Choice of Law**

The Court noted that applicable rules as to the choice of law are set by Chapter III of the Regulation that contains Article 20 providing any law specified by the Regulation shall be applied whether or not it is the law of a Member State.

In view of the foregoing, if administering cross-border succession matter that may involve issuance of the Certificate, a notary of any Member State, including Latvia, has not only the right but also the obligation to apply laws of the third country that is not Member State.

In the situation where the judiciary authority of a Member State applies foreign law, to the succession shall apply substantive laws of the respective foreign country, but the judiciary authority shall still apply procedural rules of its own country.

Article 21 sets general rule applicable to the choice of law, providing that unless otherwise provided in the Regulation, the law applicable to the succession as a whole shall be the law of the country in which the deceased had his habitual residence at the time of death.

The Court notes that the Regulation does not contain definition of the term "*habitual residence at the time of death*", therefore this term shall be interpreted in view of its context and the purpose of the Regulation that is outlined in Considerations of its Preamble.

With respect to term "*habitual residence*" Consideration No 23 of the Preamble provides that:

"In view of the increasing mobility of citizens and in order to ensure the proper administration of justice within the European Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised, this Regulation should provide that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the habitual residence of the deceased at the time of death. 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."

Furthermore, consideration No 24 of the Preamble 24 states:

"In certain cases, determining the deceased's habitual residence may prove complex. Such a case may arise, in particular, where the deceased for professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a close and stable connection with his State of origin. In such a case, the deceased could, depending on the circumstances of the case, be considered still to have his habitual residence in his State of origin in which the centre of interests of his family and his social life was located. Other complex cases may arise where the deceased lived in several States alternately or travelled from one State to another without settling permanently in any of them. If the deceased was a national of one of those States or had all his main assets in one of those States, his nationality or the location of those assets could be a special factor in the overall assessment of all the factual circumstances."

The Court noted that in order to determine habitual residence of the deceased at the time of his death, shall be ascertained conditions and facts that evidence close and stable links of the person with the respective country, namely, where the centre of interests of his family, his social, cultural, financial and business life was located.

Regulation itself does not afford priority to any of those facts, and each of those taken separately does not constitute sufficient proof of the habitual place of the

residence of the deceased. The relevance (irrelevance) of any fact arises in combination and in the context of other facts.

In the reviewed case it was established that the Deceased over the time has lived in various countries, including Russia, Latvia, Spain, Germany and Principality of Andorra. However, the Notary in the course of the succession proceedings had not made proper and substantiated assessment for determination of the habitual residence of the Deceased at the time of his death.

The Court came to the conclusions that in this case the Notary has violated provisions of the Regulation on jurisdiction and choice of law in the succession proceedings and had issued the Certificate covering estate assets in Spain without proper legal justification.

June, 2018

Author: **Armands Skudra**

[armands.skudra@su.lv](mailto:armands.skudra@su.lv)