

**Tibor Szócs**

## **Formal validity of dispositions of property upon death**

### **1. The formal validity of dispositions of property upon death and the scope of the Regulation**

1.1. *Current situation:* Formal validity of dispositions of property upon death wills would not be covered by the scope of Chapter III SuccReg.:

*Article 19*  
*Scope of applicable law*

1. The law determined in Chapter III shall govern the succession as a whole, from its opening to the final transfer of the inheritance to the beneficiaries.

2. This law shall govern in particular:

....

(k) the validity, interpretation, amendment and revocation of a disposition of property upon death, with the exception of its formal validity;

#### 1.2. Existing international conventions

- Hague Convention of 5 October 1961<sup>1</sup> (Hague Conference of PIL) – Harmonisation of the conflicts of law rules
- Washington Convention of 26 October 1973<sup>2</sup> (Unidroit) – (partial) Harmonisation of the substantive law
- Basel Convention of 16 May 1972<sup>3</sup> (Council of Europe) – cross-border registration system of wills

### **2. Possible Solutions for harmonized conflict of law rules concerning formal validity of dispositions of property upon death**

2.1. Ratification of the Hague Convention by the remaining Member States

2.2. Extension of the scope of the SuccReg. to the formal validity questions

a) Pros and Cons (arguments)

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<sup>1</sup> Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions

<sup>2</sup> Washington Convention of 26 October 1973 providing a Uniform Law on the Form of an International Will

<sup>3</sup> Basel Convention of 16 May 1972 on the Establishment of a Scheme of Registration of Wills

*Against:*

- Majority<sup>4</sup> of the Member States are already Contracting States of the Hague Convention of 1961: Duplication of the Conflicts of Law rules for these Member States
- *Reservations*, made by certain Member States to the Convention concerning oral wills

*For:*

- Complete Regulation: Harmonised Conflict of Law rules for all legal questions in the field of Succession Law in the same legal instrument;
- Possibility to regulate the formal validity questions for all kinds of the dispositions of property upon death (also for the agreements as to succession!)
- no general exclusion of questions of formal validity from the scope of the SuccReg.: Other Chapters (Jurisdiction, Recognition, Enforcement) shall be applied also in legal disputes concerning formal validity of a will
- Possibility of the interpretation by the Court of Justice

b) reception of the rules of the Hague Convention – by incorporation

Basic principle: favor testamenti – alternative connecting factors

- place of the making of the will;
- nationality of the testator (at the time when the disposition was made /at the time of his death);
- domicile of the testator (at the time when the disposition was made /at the time of his death);
- habitual residence of the testator (at the time when the disposition was made /at the time of his death);
- location of the immovable property

Completing with further connecting factors (e.g. lex fori) ?

Application of the same connecting factors for the agreements as to succession mutatis mutandis

### **3. Scope of the Conflict of Law rules concerning formal validity – legal qualification (characterisation)**

- legal interpretation of the term „formal validity“ of a disposition of property upon death is unavoidable;
- qualification by lex fori or lex successionis v. uniform, independent (autonomous) qualification ?
- evident issues and problematic issues

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<sup>4</sup> Austria, Belgium, [Denmark], Estonia, Finland, France, Germany, Greece, Ireland, Luxembourg, Nederland, Poland, Slovenia, Spain, Sweden, United Kingdom