

JURISDICTION IN THE SUCCESSION MATTERS UNDER THE REGULATION (EU) NO 650/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 4 JULY 2012 IN THE FACE OF POLISH INTERNATIONAL CIVIL PROCEDURE

Marta Lewandowska-Mroczkowska

*Adam Mickiewicz University in Poznań, Poland
mlewandmrocz@gmail.com*

Abstract

Purpose – The aim of the article is to present the impact of EU Regulation no. 650/2012 on determination of jurisdiction in succession matters. The paper presents the distinction between Polish and European system of admitting jurisdiction and its consequence.

Design/methodology/approach – Paper is based on the legal-comparative and legal-historical methods of law research. The chosen methods provide a complete picture of the situation, which should be consider from the Member States perspective as well as from EU ones.

Finding – Todays reality encourage people to travel or move to another country and the European Union Treaty treats freedom of movement as one of the protected rights. Over the time, this possibility has evolved into a difficulty. Lack of unified succession procedure meant that each Member States has its own regulation regarding to the succession. As an outcome of above, foreign people, especially successors met a great difficulty to obtain their inheritance. Hence, the unification of procedure, which took place in 2012, facilitates it, but it also brought new practical problems and questions, which are resulted using the state law.

Research limitations/implications – For the purpose of this paper, the core of research has been limited to the issue of jurisdiction in Regulation (EU) no 650/2012 and its juxtaposition with jurisdiction in matters succession in polish civil procedure code and Regulation (EU) 1215/2015 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. For the purpose of this speech, the issues regarding to recognition and enforcement of judgments on the territory of European Union have not been included.

Practical implications – Establishing the proper jurisdiction in matters of succession will help successors in resolving those cases in more efficiently and effectively way. Additionally, this issue will provide more stable principles of inheritance in cases with a foreign element. **Originality/Value** – The issue of European successor law is not popular agenda and the problems concerning the jurisdiction for cases is extremally invisible for the doctrine. In the light of the foregoing the is a need to develop this aspect of law and introduced them to the wider public.

Keywords: European Law, European procedure law, jurisdiction, succession law, polish civil procedure.

Research type: research paper.

Introduction

European Regulation No. 650/2012 on succession matters begins the long-awaited process of unification of the European Succession law. The main purpose of this Regulation was to facilitate the succession matters within EU countries which became very important

implication of freedom of movement established by Title IV of the Treaty on the functioning of European Union.

One of the basic assumptions was to find the proper jurisdiction (the legal system which applies to particular succession case) (Rodríguez-Uría Suárez, 2013). Consequently, the Succession Regulation was aimed to establish the new standards which help to avoid the divided jurisdiction. Pursuant to the recital 27 of Succession Regulation the rules of Regulation were devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law. Owing the above, we should consider the Regulation no. 650/2012 as the outcome of long-term works, done by the EU members, in order to make *forum* (competency of hearing the case) and *ius* (succession State) coincide. As the result, the court which have jurisdiction in particular succession case should, in principle, follow the law of respective State. However, the assumptions of the Succession Regulation require from the Member State to unify the national law in order to comply with its provisions.

In this paper, the author will signalize part of the problems related with determination of jurisdiction after introduction of the Succession Regulation in Poland. Nevertheless, the subject matter taken up in this article is very broad, as the result the author will concentrate on the main problems connected with determination of jurisdiction in succession matters on the basis of EU regulations and the Polish Civil Procedure Code. The problems in question raised mostly from the fact that the Regulation has extended its scope to cover procedural law, which in principle falls within the competence of the Member State (Załużcki, 2015).

The genesis of constructing the EU regulation on the succession matters

First ideas on unification of the European Union regulation in scope of succession appeared at the beginning of the 90's, along with the creation of the European group of Private International Law. The above – mentioned group started working on the family and succession law for all EU members. Nevertheless, these have never been enforced. Consequently, various groups within EU structures, working on this project but none of them have achieved their goals¹. The first draft of succession regulation was published in October 2009, which was widely commented² on by the EU members. These opinions led to the integration of changes in current regulations' (not the introduction of the current regulation). The level of cooperation has resulted in investments throughout the European Union. Consequently, the Regulation no 650/2012³, issued in 2012, should have been considered as the popularization of the cross-border investments.

The main difference between the Succession Regulation and the previous international agreement was its character. Contrary to the previous international legislation, the Regulation no. 650/2012 is universal because it is used in every succession case recognized by the States

¹ In 1998, The European Community adopted so-called "The Vienna action plan" which together with Tampere's Program, resulted in the publication of a rapport in 2002 on the unification of international succession law. Later time, in 2004, at the meeting of the European Council in Hague ended with establishing Hague's Program which provided for the development of green book. This book has been published in 2005. Above mentioned actions started the new dialogue on succession matter, so in 2008 EU issued *Documet de reflexion sur les successions à cause de mort*.

² See more: Max Planck Institute for Comparative and International Private Law, *Comments on the European Commission's Proposal for a regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession an the creation of a European Certificate of Succession*, Rabel Journal of Comparative and International Private Law (RabelsZ, Vol. 74, No.3, pp.522-720.

³ Official Journal of the European Union L 2012, No. 201, p. 107 (hereinafter: Succession Regulation or Regulation no. 650/2012).

Members courts'. Consequently, this regulation is being characterized as the *erga omnes* kind (Fallon and Kruger, 2013, p. 21).

The effects of this regulation are widely recognized and have often led to revolutions in legal systems of EU members. Some of them decided to amend their law, other to change its interpretation. The changes in question were made in conjunction with revolutionising the way in which succession cases were considered within the past. Nevertheless, the problems of legal basis, on which the jurisdiction is admitted have not disappeared. Hence, it is difficult to find the applicable scope of European Union law for Polish jurisdiction in the succession cases.

The scope of the Succession Regulation

The implementation of succession regulation by European Union, opened the new chapter in the history of the EU integration. Hitherto, those issues have not been covered by judicial cooperation in the civil matters, so their implementation might be seen as the beginning of the new time in EU integration. One of the reasons of its introduction was a significant discrepancy between succession regulation of the Member States, which caused serious practical problem (Załużki, 2015, p. 6). Over time, these have become a growing challenge for all judicial authorities within EU countries. However, the EU Parliament has drawn a line between old and new order. This decision was a consequence of long-term works on Succession Regulation, which results in Regulation no. 650/2012. One example of a comprise, which is a Regulation, is the restriction on its use (Rath-Bosca, Barrios and Stanescu, 2016, p. 36).

According to Article 83(1) of Succession Regulation, the provisions of this regulation apply only to the people who died on or after 17th August of 2015, i.e. at the moment when this act came into force and therefore restricted to the deceased to whom this regulation applies. Furthermore, cases which might be proceeded under the Succession Regulation are characterized by their cross-border nature. Without those factors, using the Regulation no. 650/2012 would be unsubstantiated¹. However, the determination of jurisdiction, on the basis of the Succession Regulation requires the ascertainment of the main pillar of proceedings. Thereby, the nature of this regulation determines which will apply to these cases. Where succession is only a part of another civil procedure, then regulation no. 650/2012 should not be used.

Jurisdiction under the Regulation no 650/2012

Connecting factors in Succession Regulation

The Succession Regulation includes the rules on determination of the jurisdiction of Member State courts', as proper one on ruling. These rules are based on habitual residence where testator used to live before their death creating the most important factor for allocating the proper jurisdiction under Regulation no. 650/2012. What is more, the scope of general jurisdiction under the succession regulation includes the entirety of testator's succession matters.

Unfortunately, there is no definition of habitual residence², but both doctrine and practice benefit from the definition established in the Court of Justice of the EU (hereinafter:

¹ Recital 67 of the explanatory memorandum to the Regulation.

² Literature underline the compromise between legal systems of common law countries, where there are two kinds of domicile – domicile of choice which is connected with the permanent of indefinite, and the domicile of

CJEU) case law¹ in relation to the Regulation 2201/2003². Therefore, the habitual residence should be understood as the “centre of existence”³. The definition is based on the facts and it is not referred to the person’s will. In consequence, the determination of jurisdiction requires an assessment of the facts about the testator in recent years and on the day of death.

Nevertheless, having the habitual residence within the EU at the time of death does not necessarily mean that the Succession Regulation will apply⁴. It raises two fundamental questions – where and due to which law⁵ these proceedings should take place? The answer, unlike most EU regulations, was emphasised in one of the most important judgments of CJUE C-523/07⁶. Due to this assessment, the physical presence in a particular country is not sufficient to hold the jurisdiction of the State. CJUE pointed out that the integration, including language skills and family and social relations involves a sign of belonging to a national community (Weitz, 2015, p. 54). Therefore, the assignment of the jurisdiction, under the Regulation no. 2201/2003, depends on the above circumstances which were transmitted to the EU succession law.

General jurisdiction

Established by Article 4 of Succession Regulation, general jurisdiction creates the general rule according to which jurisdiction of the State are usually determined. The base of its determination is habitual residence (Weitz, 2015, p. 49) which has excluded the previously used citizenship factor, which until the entry into force the rules of the Succession Regulation, was the most important connecting factor determining the jurisdiction of a particular State. According to Article 4 jurisdiction in cross-border cases should be determine if a deceased has, at the time of death, his/her habitual residence on the territory of particular country. The principle under Article 4 forms the backbone of the succession legislation of the European Union and its based on the principle of the unity of the succession conflict of laws. This rule has been always supported by the doctrine (Rzewuski, 2018; Rebel, 1958, p. 251; Ferid, 1976, p. 96; Lein, 2009, p. 116).

In results, Recital 37 of Succession Regulation indicates that for the reasons of legal certainty and in order to avoid fragmentation of the succession, the law should govern the succession as whole. Owing above under consideration, Article 4 establishes general

origin. This dualism imposes introduction of the new category – habitual residence into European law. See: M. Rzewuski, [in:] *Unijne Rozporządzenie spadkowe nr 650/2012. Komentarz.*, M. Załucki (eds.), Warsaw 2015, p. 78.

¹ See: Judgment of ECJ, 13 October 2016, Mikołajczak, C-294/15, pt. 48; Judgment of ECJ, 16 July 2009, Hadadi, C-168/08, pt. 50.

² Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJL EU 338, 28.12.2003, p. 1-29).

³ Likewise: Judgment of ECJ, 2 April 2009, Kokein hallintooikeus, C-523/07, pt. 44; Against the background of the Regulation no 2201/2003: K. Weitz, *Jurysdykcja krajowa w sprawach małżeńskich oraz sprawach dotyczących odpowiedzialności rodzicielskiej w prawie wspólnotowym*, „Kwartalnik Prawa Prywatnego” 2007, z. 1, p. 96-97; and also see: H. Haladová, *Habitual Residence in Brussels II bis*, «https://www.law.muni.cz/sborniky/cofola2011/files/normotvorba/Haladova_Hana_6294.pdf », [access: 05.14.2019].

⁴ See Article 10 of the Regulation. In this case the only requirements are to have another connection with the EU.

⁵ The issue of material law is not the subject of this article, but it should be underlined that the according to Article 20 of the Succession Regulation, the possibility to choose the applicable law is not limited to the legal orders of the Member States.

⁶ Judgmental of the Court of Justice of 2 April 2009 pt. 44« <http://curia.europa.eu/juris/document/document.jsf?text=&docid=73639&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8549436>», [access: 2019.05.18]

jurisdiction which concern all succession cases. Nevertheless Article 4 does not distinguish between litigation and non-litigation cases. Lack of this distinction was deliberate action of the EU legislator¹. Therefore, it is not necessary to give a statement in order to determine the jurisdiction of particular State².

Consequently, Article 4 establish *a principle of unity of forum* which becomes the general rule of succession within EU member countries. As the result the court recognized under Article 4 of Regulation no. 650/2012 is legitimized to rule on succession propriety as whole. This solution excludes diversification of the jurisdiction because of its placement or subject. In consequence, the court of the State, where a testator had his/her habitual residence, could rule on the succession proprieties located on the territory of different member country. Therefore, establishing the jurisdiction on the above-mentioned basis excludes double ruling on the same issue. The derogation of this rule concerns very limited number of cases, mainly in order to exercise the authority of third-party State where the descant had the last habitual residence. Thus, the jurisdiction on the basis of Succession Regulation is detached from the location of succession property.

Jurisdiction in the event of choice of law

Under the regime of Succession Regulation, the European legislator provided two additional mechanism aimed at providing coincidences between *ius* and *forum* – using the direct (Article 7 letter c) or silent form (Article 9) of prorogation of the jurisdiction. Both of these forms are strictly connected with procedural position of the sides. While Article 6 of the Regulation indicates situations in which a particular court should decline the jurisdiction, then Article 7 enumerate the events when the courts of a chosen State have the jurisdiction to rule on this succession matter case. The first case concerns the situation of declining the jurisdiction on the basis of Article 6 of Succession Regulation. The situation is related with relinquishing of jurisdiction by the State which law has been chosen by a testator³. The consequence of declining the jurisdiction due to Article 6 results in determination of the necessary jurisdiction of another Member State. The absence of such regulation might be seen as the great obstacle which results in the impossibility of obtaining judicial protection against the parties to the succession proceedings. As a result, disclaiming of the jurisdiction of the State whose law has been chosen by the testator shall have the effect of conferring jurisdiction of the State based on the general rules (Bonomi, 2016, p. 203).

One of the situations indicated in Article is determining the jurisdiction of courts of the particular State is jurisdiction agreement. Such a choice results not only in the indication of, applicable to the succession, material law but also in determination of jurisdiction of this State. This rule is connected with an assumption of better knowledge about the own State's law than the foreign one, which should be evaluate as the most rational solution.

Third situation where jurisdiction of the particular State is determined under Article 7 is its adjustment by the parties of the proceedings. As opposed to Article 9, the adjustment must be explicit by the State and the jurisdiction should be approved by all of the parties. Moreover, the regulation does not specify the date of the proceedings to which such recognition may take place leaving this issue to the procedural legislation of the particular State⁴. Part of

¹ Recital 57 of Succession Regulation.

² Judgement of ECJ, 21 June 2018, Vincet Pierre Oberle, C-20/17, pt. 44.

³ Article 6 mentions only cases where applicable law was chosen by the testator on the basis of Article 22 of Succession Regulation, Opt. cit. M. Rzewuski, Comment for the Article 6 of the (EU) Regulation No. 650/2012, [in:] *Unijne Rozporządzenie spadkowe Nr 650/2012 (...), E/Legalis*.

⁴ Ibidem.

doctrine thinks that interpretation of Article 7(c) amounts to the conclusion of a prorogation agreement during the succession proceeding.

Additional jurisdiction

The Succession Regulation foresees only one habitual residence. This has been reinforced by Article 10 which establish additional jurisdiction. According to the above-mentioned regulation, auxiliary jurisdiction requires fulfilling at least one of two conditions in order to determine the jurisdiction in one of the Member States. Due to the Regulation if the habitual residence at time of death is not in a Member State, the courts of a Member State, in which the assets, including real-estate, are located, should gain jurisdiction to rule on succession of whole property. However, this exception could be used if testator, at time of his/her death, held citizenship of this particular Member State. If this condition fails, then the court may rule on the whole succession whether the deceased had his previous habitual residence in that Member State or not. Nevertheless, the change of his/her habitual residence should take place in the period not longer than five years before factor has elapsed. However, this regulation is subsidiary to determination of the general jurisdiction in art. 4 of Succession Regulation. Consequently, the usefulness of Article 10 of Regulation arises if the general jurisdiction or other jurisdiction imposed by this law could not be applied.

Connecting factors

Polish Civil Procedure Code (also: the Act) imposes domestic jurisdiction and determinates it through the connecting factors. These connecting factors are perceived as factual circumstances which are binding the case with the territory of the territory of a particular country. The representatives of Polish doctrine indicated two types of connecting factors – subjective and objective.

Until 2008¹, there were two most popular connecting subjective factors in the Polish civil procedure law – the citizenship and domicile². The citizenship factor is connected with the international public law problem related with jurisdiction established over citizens residing outside the State if there is no other link. However, on signing the Lisbon Treaty³, which grants second citizenship to the citizens of the Member States, this connector has been reduced and at the moment is not being applied to EU citizens or entities⁴.

A similar change has appeared in relation to the place of residence. The main modification refers to habitual residence which responds to factual state and does not require willingness of person or entity. The reason for implementing this rule was to introduce the same rule in the legal orders of the Member States, which ensured intensification of their cooperation.

¹ Act of 5 December 2008 amending the Act – Civil Procedure Code and certain other acts, (Journal of Laws of 2008, No. 234, item 1571).

² Domicile in polish civil law (art. 25 of Polish Civil Law; Journal of Laws of 2019, item 1145 as amended) should not be understand as a synonym of habitual residence in EU law. Contrary to the concept of habitual residence domicile requires the willingness of the person to stay in the place when the habitual residence responds only to factual circumstances.

³ The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (implemented in Poland in Journal of Laws of 2009, No 203, item 1569).

⁴ The order of the Polish Supreme Court of 30 June 2017, I CSK 668/16 which underlying the supervision of European Union Law over the Polish Civil Procedure Code, «<http://sn.pl/sites/orzecznictwo/Orzeczenia3/I%20CSK%20668-16-1.pdf>» [access: 2019.05.21].

Jurisdictions under Polish Civil Procedure Code

Polish Civil Procedure Code provides two kinds of jurisdiction – alternate and exclusive (which are part of direct jurisdiction), indirect jurisdiction and necessary jurisdiction.

The first allows one to determine the jurisdiction of Polish court but does not exclude the possibility of its overlapping with jurisdiction of other States. The situation is different if one's wants to determine the case, according to Polish procedure Code. In order to determine the exclusive application to the code, one should prevent recognition or enforcement of the foreign State statement in Poland. The above-mentioned jurisdictions are subtypes of direct jurisdiction, whereas the indirect jurisdiction appears as a connection factors adopted in the similar cases. Practically, it is used to control the competence of foreign state courts during the proceedings intended to result in a decision of recognition or enforcement on the territory of Poland.

The last jurisdiction, known to Polish Civil Procedure Code, is necessary jurisdiction¹. The occurrence of this jurisdiction results from the need to ensure judicial protection if there is no other legal basis for the Polish court to hear the case and there is no other court or other authority of the foreign state who could accept it for recognition. In such cases, the jurisdiction of Polish courts ensures the protection of the parties of proceedings rights. However, even in those cases Polish law requires the connection with Polish legal area. The absence of such circumstances affects the inability of establishing the jurisdiction of Polish courts.

Polish jurisdiction in the succession matter

As for national jurisdiction in succession matters, it should be indicated that Polish Civil Procedure provides two kind of proceedings – litigation and non-litigation. Depending on the type of the proceeding we are dealing with, other legal bases will apply. In case of litigation proceedings connecting factors are regulated by Article 1103 of the Polish Civil Procedure and includes the factor of citizenship and habitual residence. As opposed to non-litigation proceedings in succession matters, the litigation ones do not distinguish between a separate regulation applicable only to succession and other regulation. Hence, jurisdiction in all the succession cases is based on Article 1103 or 1103⁷ pt. 6 of The Act, which establishes the general conditions for all cases conducted in the course of litigation.

However, most of succession matters in Polish law are resolved in non-litigation proceedings. In result, as Polish Civil Procedure Code established in Article 1108 separate legal regime to these succession matters giving it an autonomous character. Consequently, the general rules introduced by article 1103 and 1103⁷ pt. 6 of the Polish Civil Procedure Code² have been reintroduced into provisions by virtue of Article 1108 par. 1 and Article 1110² of the Polish Civil Procedure Code and should be understood as self-regulation. Besides, article 1108 extends the general factors by adding the additional one – the place of inherited

¹ Art. 1099¹ §1 of the Polish Civil Procedure Code: If there are no grounds to justify domestic jurisdiction in a given case and it is impossible to conduct proceedings or to request proceedings to be conducted before a court or another authority of a foreign state, the case shall fall under domestic jurisdiction if it is relevant to the Polish legal order. This conception derives from succession case considered by Polish Supreme Court. The equivalent of this provision in the succession regulation is Article 11 which establish *forum necessitates*.

² These rules refer to connection factors of habitual place of residence or usual stay (also a registered office) in Poland, as well as the location of immobility.

property¹. However, jurisdiction of Polish courts is an absolute prerequisite for hearing a case and without it the proceedings should not be conducted in Poland². Nevertheless, the jurisdiction of Polish courts based on Article 1108 of the Polish Civil Procedure Code is limited to cases concluded in non-contentious proceedings i.e. the acquisition of an inheritance or its department³.

The existence of these factors is taken under consideration *ex officio* at any stage of a case. The negative result of this recognition shall result in the rejection of a complaint or a petition⁴, unless the confirmation of jurisdiction can be given by entering an appearance⁵. Thus, the types of succession property may have an impact on the change of national jurisdiction as well as changes in other factors enumerated in Article 1108 of the Act. In result, determination of Polish jurisdiction in the succession matters should take into consideration the location of the property and its nature⁶.

According to the wording of the analysed provision, if the jurisdiction is based on Polish Civil Procedure Code, the existence of at least one of these connecting factors concludes in the conferring jurisdiction to the Polish courts. Thus, the jurisdiction of the Polish courts could be determined even if there the succession property is not placed in Poland. The only exception from this assumption is real estates, in the of which case the applicable of where there is located (Trocha, 2019). On the top of that, determination of jurisdiction on the basis of Article 1108 of the Polish Civil Procedure Code, it does not matter where the place of death is. That circumstance may be of an ancillary nature during the proceedings of establishing the jurisdiction of the Polish courts, but it is not necessary.

Influence of Succession Regulation on the Polish domestic law

Along with introduction of Regulation (EU) no. 650/2012 the basis of trans-border succession within the European Union have changed⁷. Since 17th August of 2015 most of the civil aspects of succession are conducting under the regime of Succession Regulation. The

¹ The jurisdiction of Polish courts could be determined also if significant part of succession property is placed in Poland. In order to assess whether the part is significant or not we should not consider the full amount of succession property, but only this which is place in Poland; See also: A. Wysocka-Bar, *Jurysdykcja krajowa sądów polskich a kolizyjna jednolitość spadku*, "Problemy Współczesnego Prawa Międzynarodowego Europejskiego i Porównawczego" no. 14/2016, p. 95; The Order of Polish Supreme Court of 19 June 2012, I CSK 159/13, Lex no. 1360155.

² Besides the except discussed in the previous part of this Article.

³ These cases are imposed in Articles 633 to 691 of the Polish Civil Procedure Code.

⁴ Art. 1099 of the Polish Civil Procedure Code: §1 The court takes a lack of domestic jurisdiction at any stage of a case into consideration *ex officio*. If lack of domestic jurisdiction is determined, the court rejects a complaint or petition, subject to Article 1104 §2 or Article 1105 § 6. §2 Lack of domestic jurisdiction constitutes grounds for the nullity of proceedings.

⁵ The order of Polish Supreme Court of 19 June 2013, I CSK 159/13, Lex no. 1360155.

⁶ The order of Polish Supreme Court of 9 August 2000, I CKN 804/00, «<http://www.sn.pl/sites/orzecznictwo/orzeczenia3/i%20csk%20312-16-1.pdf>», [access: 2019.05.22], The order of Polish Supreme Court of 11 March 2016 r., I CSK 64/15, «<http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/I%20CSK%2064-15-1.pdf> », [access: 2019.05.27]; The Order of Polish Supreme Court of 11 April 2014, I CSK 325/13, OSNC – Additional series 2015 No C, item 36, p. 45, Legalis; See also: P. Czubik, *Krytyczna analiza postanowienia Sądu Najwyższego z dnia 11 marca 2016 r.*, I CSK 64/15, "Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego", no.15/2017, p. 168-175.

⁷ The one of the biggest changes took place in regulation concerning the succession matters regulated by Private International Law Act (Journal of Laws of 2015, item 1792 as amended) where the Articles 65 – 66 have been removed and superseded by Article 66a. According to Article 66a the applicable law in the succession matters is regulated by Succession Regulation.

jurisdiction in succession matters are not different. The Succession Regulation replaced Polish regulation and the Article 65-66 of the International Private Law Act. In second case, Polish legislator amended the law by delating the previous existing provisions and replacing them with the regulation of Regulation (EU) no. 650/2012. Nevertheless, that action have not been taken by legislator in case of Polish Civil Procedure Code where the previous provision had not been rescinded.

Consequently, determination of jurisdiction might be different under the provisions of Polish Civil Procedure Code and the Succession Regulation. The biggest changes are related with connecting factors which exclude the previous citizenship

The distinctions between above-mentioned regulations are noticeable, especially in case of determination of jurisdiction in matters of succession which involves the real estate. According the Polish Civil Procedure Code, jurisdiction of Polish courts may apply only to part of a succession's property. Such situation occurs when real estate is located outside Poland¹. Consequently, the scope of Polish regulation is limited and does not occurred immovable property which are not located in Poland. As the result, national jurisdiction in the succession mater under Polish Civil Procedure Code could be partial², which might have been seen as an obstacle. The issues are differently dealt in the Succession Regulation which establish *the principle of unity of forum*. Pursuant to this rule the jurisdiction could not be divided between several Member States, even when one of the objects of proceeding is real estate. In opposition to Polish Civil Procedure Code is the Succession Regulation, which does not connect the existence of national jurisdiction with the location of real estate. Nevertheless, Polish legislator has not excluded Article 41 of Polish Private International Law³ which together with Article 30 of Succession Regulation might have a significant in process of determine the jurisdiction. In face of aforementioned regulations, it is difficult to indicate, according to which regulation the jurisdiction should be adjust, especially when the succession property involves real estate. Article 30 of Succession Regulation should be considered in the light of the concept of mandatory provisions. However, the provisions to which this rule is applying must be connected or have an impact for succession matters. Thus, not every provision will fulfil these requirements (Macierzyńska-Franaszczyk, 2015, p. 184; Contaldi, 2016).

Consequently, the order of Polish court, having the jurisdiction on the basis of Article 4, 10 or 7 of the Succession Regulation, will apply the real estates located in Poland as well as those located in other Member States (and sometimes in third-party countries). However, when the assets of deceased are located in a third State, the party may request the court to

¹ Article 1103⁸ §1 *Cases involving immovable property rights and possession of immovable property located in the Republic of Poland as well as cases arising from a lease or rental relationship or other relationship involving the use of such immovable property, except cases involving rent and other charges related to using or benefitting from such immovable property, fall under exclusive domestic jurisdiction. §2 Moreover, cases other than those listed in § 1 fall under exclusive domestic jurisdiction insofar as their adjudication concerns property rights or possession or use of immovable property located in the Republic of Poland.* (litigation cases) and Article 1110² of Polish Civil Procedure Code: *Domestic jurisdiction in cases adjudicated in non-contentious proceedings is exclusive insofar as adjudication concerns property rights in immovable property or possession of immovable property located in the Republic of Poland* (non-litigation cases).

² Resolution of Polish Supreme Court of 2nd April 1982, III CZP 8/82, OSNC 1982, No 10, item 14; The Order of Polish Supreme Court of 14 February 2013, II CSK 294/12, « <http://www.sn.pl/sites/orzecznictwo/Orzeczenia2/II%20CSK%20294-12-1.pdf>» [access: 2019.06.01].

³ 1. *Ownership and other rights in rem shall be governed by the law of the State in which their object is located. 2. The acquisition and loss of property, as well as the acquisition and loss and alteration of the content or priority of othe rights in rem, shall be governed by the law of the country in which the object of those rights was situated when the event giving rise to the aforementioned legal effects occurred.*

exclude the particular asset, or the wider scope of them, if it is a chance that the rule would not be recognized by third State¹.

Conclusions

Connection between international private law with the International Civil Procedure was underlined by doctrine which indicated that Polish jurisdiction provisions determine the scope of the conflict-of-laws rules (Czeplak, 2008, p. 164; M. Pazdan, 1972, p. 191). Consequently, the introduction of Regulation no. 650/2012 polarises the institution of jurisdiction determination by making the application of national rules subject to the absence of any circumstances giving rise to the application of the European Union law (Wysocka-Bar, 2017, p. 90 - 109; Pazdan, 2015).

Additionally, Polish Civil Procedure Law provides situations where the jurisdiction of Polish courts is only partial, giving the other State the jurisdiction to rule on the rest of the assets. Undoubtedly, the discrepancy between Polish national regulation and the European Union laws is easily to see and it has the real impact on succession proceedings concluded in Member States, of which also in Poland. As the result, The Succession Regulation offers more favourable solutions than Polish Civil Procedure Code. The main reason is, implicated by Succession Regulation, the principle of unity of forum which, in principle, ensures that proceedings take place in only one State, irrespective of the character of the inheritance assets². Furthermore, the application of national law may give rise to a conflict of jurisdiction resulting application of different law to certain assets (mostly real estates). In consequence, the authorities of the State, in which proceedings are pending, will apply their domestic material law on those assets. In result, it is difficult to determine to what extent the Polish and European rules apply. The importance of this problem is even greater taking under consideration the fact that it has a practical dimension for the application of the law in Poland.

Nevertheless, the Succession Regulation still does not pertain to all succession cases, but only to that one, where the death of testator took place after 17th August of 2015. In that case, the national law is needful in various cases where there is no connection with EU law, or the object of succession does not apply to the Regulation no. 650/2102. In the view of the above, it is considered that at the time of the entry into force of the Succession Regulation, the Polish jurisdiction rules, concluded in Civil Procedure Code, have been marginalised and currently only address situations which are not covered by the Regulation.

References

- Act of 17 November 1964 – Civil Procedure Law, Journal of Laws of 2018, item 1360 as amended
 Act of 23 April 1964 - Polish Civil Law; Journal of Laws of 2019, item 1145 as amended;
 Act of 4th February 2011 - Private International Law, Journal of Laws of 2015, item 1792 as amended.
 Act of 5 December 2008 amending the Act – Civil Procedure Code and certain other acts, Journal of Laws of 2008, No. 234, item 1571);
 Bonomi, P. Wautelet, 2016, Le droit européen des successions. Commentaire du Règlement (UE) no 650/2012 du 12 juillet 2012, Brussels.
 Contaldi G, 2016, *The EU Succession Regulation. A Commentary*, A.-L. Calvo Caravaca (eds.), A. Davi (eds.), H.-P. Mansel (eds.), Cambridge, <<https://doi.org/10.1017/CBO9781316422311>>.

¹ Article 12 of Succession Regulation.

² With the exception established in Article 12 of the Succession Regulation.

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJL EU 338, 28.12.2003, p. 1-29),

Czeplak M., 2008, *Umowa międzynarodowa jako źródło prawa prywatnego międzynarodowego*, Warsaw.

Czubik P., 2017, Krytyczna analiza postanowienia Sądu Najwyższego z dnia 11 marca 2016 r., I CSK 64/15, "Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego", no.15/2017, p. 168-175

Fallon M., Kruger T., 2013, The special scope of the EU's rules on jurisdiction and enforcement of judgments: from bilateral modus to unilateral universality, *Yearbook of Private International Law 2012-2013*, p. 21.

Ferid, Murad, Boston 1972, "Le rattachement autonome de la transmission successorale en droit international privé, *Collected Courses of the Hague Academy of International Law. The Hague Academy of International Law*, « http://dx.doi.org/10.1163/1875-8096_pplrhc_ej.9789028605350.071_202»

Haladová H., *Habitual Residence in Brussels II*, «https://www.law.muni.cz/sborniky/cofo1a2011/files/normotvorba/Haladova_Hana_6294.pdf»,

Judgement of European Court of Justice, 21 June 2018, Vincet Pierre Oberle, C-20/17.

Judgment of European Court of Justice, 13 October 2016, Mikołajczak, C-294/15,

Judgment of European Court of Justice, 16 July 2009, Hadadi, C-168/08,

Judgment of European Court of Justice, 2 April 2009, Kokein hallintooikeus, C-523/07,

Lein E., 2009, A further step towards a European code of private international law. The Commission proposal for regulation on succession, *YPIL*, vol. 11, p. 107 -141.

Macierzyńska-Franaszczyk E., 2015, Prawo właściwe dla odpowiedzialności za długi spadkowe, *Nowe europejskie prawo spadkowe*, M. Pazdan (eds.), J. Górski (eds.), Warsaw.

Max Planck Institute for Comparative and International Private Law, *Comments on the European Commission's Proposal for a regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession*, *Rabel Journal of Comparative and International Private Law (RabelsZ, Vol. 74, No.3)*.

Pazdan M., 1972, Zasięg jurysdykcji krajowej w sprawach spadkowych, „*Studia Cywilistyczne*”, Cracow, p. 191

Pazdan M. (red.), J. Górecki (red.), *Nowe europejskie prawo spadkowe*, Warsaw 2015.

Rath-Bosca L.D, Barmos L.M., Stanescu I.A., 2016, The need to harmonize the laws of the European Union regarding the succession law, "Agora International Journal of Economical Sciences" vol. 10, p. 36.

Rebel E., 1958, The conflicts of laws. A comparative study. Volume four. Property Bills and Notes: Inheritance: Trusts: Application of Foreign Law: Intertemporal Relations, Michigan, p. 251, «<https://pdfs.semanticscholar.org/df7f/e1aa2d75afca7f1cfaebf40a3c3edbdb14de.pdf>».

Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decision and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJL EU L 2012, No. 201, p.107).

Resolution of Polish Supreme Court of 2nd April 1982, III CZP 8/82,

Rodríguez-Uría Suárez I. ,2013, *La ley aplicable a las sucesiones mortis cause en el Reglamento (UE) 650/2012*, "InDret", No. 2, p. 2-58.

Rzewuski M., 2018, Komentarz do art. 4, *Unijne Rozporządzenie spadkowe Nr 650/2012. Komentarz*, M. Załucki (eds.), E/Legalis, Warsaw.

The Order of Polish Supreme Court of 11 April 2014, I CSK 325/13

The order of Polish Supreme Court of 11 March 2016 r., I CSK 64/15,

The Order of Polish Supreme Court of 14 February 2013, II CSK 294/12,

The Order of Polish Supreme Court of 19 June 2012, I CSK 159/13,

The order of Polish Supreme Court of 9 August 2000, I CKN 804/00,

The order of the Polish Supreme Court of 30 June 2017, I CSK 668/16.

The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (implemented in Poland in Journal of Laws of 2009, No 203, item 1569),

Trocha B., 2019, Komentarz do art.1108, *Kodeks postępowania cywilnego. Tom II. Komentarz. Art. 730-1217*, J. Jankowski (red.), Warsaw, p.1593-1594.

Weitz K., 2015, Jurysdykcja ogólna w sprawach spadkowych, *Nowe europejskie prawo spadkowe*, M. Pazdan (red.), J. Górecki (red.) Warsaw.

Weitz K., 2007, Jurysdykcja krajowa w sprawach małżeńskich oraz sprawach dotyczących odpowiedzialności rodzicielskiej w prawie wspólnotowym, „*Kwartalnik Prawa Prywatnego*”, p. 96-97

Wysocka-Bar A., 2016, Jurysdykcja krajowa sądów polskich a kolizyjna jednolitość spadku, "Problemy Współczesnego Prawa Międzynarodowego Europejskiego i Porównawczego" no. 14, p. 90-109.

Załucki M., 2015, Adaptacja prawa polskiego do wymogów unijnego rozporządzenia spadkowego (Nr 650/212), "Studia Prawnicze", No 2, p. 5-18.

Załucki M., Adaptacja prawa polskiego do wymogów unijnego rozporządzenia spadkowego (Nr 650/212), [in:] "Studia Prawnicze" 2015, No 2, <http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.mhp-20cf368c-479d-4bf2-8c26-1ee55c2c4562/c/SP_2015_2_02_Zalucki.pdf>.



This work is licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/).