

EUROPEAN PRIVATE INTERNATIONAL LAW
AND MEMBER STATE TREATIES WITH THIRD STATES

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WITH THIRD STATES

The Case of the European Succession
Regulation

Edited by
Anatol DUTTA
Wolfgang WURMNEST



intersentia

Cambridge – Antwerp – Chicago

Intersentia Ltd
Sheraton House | Castle Park
Cambridge | CB3 0AX | United Kingdom
Tel.: +44 1223 370 170 | Fax: +44 1223 370 169
Email: mail@intersentia.co.uk
www.intersentia.com | www.intersentia.co.uk

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NBN International
Airport Business Centre, 10 Thornbury Road
Plymouth, PL6 7PP
United Kingdom
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Intersentia Publishing nv
Groenstraat 31
2640 Mortsel
Belgium
Tel.: +32 3 680 15 50 | Fax: +32 3 658 71 21
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European Private International Law and Member State Treaties with Third States.
The Case of the European Succession Regulation
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FOREWORD

Like many other EU regulations, Article 75 of the Succession Regulation contains rules which clarify the relationship between the Regulation and existing multilateral and bilateral conventions.

The Regulation prevails on existing multilateral and bilateral conventions between the Member States. This solution is understandable because it is the only way to create a uniform international succession law between the Member States. The only exception is the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. The provisions of this Convention apply, instead of Article 27 of the Succession Regulation, with regard to the formal validity of wills and joint wills. The implications of the prevalence of the Regulation are not too significant because, besides some bilateral treaties, the Convention of 1961 is the only important convention on international succession law. The Hague Convention of 2 October 1973 concerning the International Administration of the Estates of Deceased Persons was only ratified by the Czech Republic, Portugal and Slovakia. Other conventions such as the Convention of 16 May 1972 on the Establishment of a Scheme of Registration of Wills and the UNIDROIT Convention of 26 October 1973 providing a uniform law in the form of an international will, deal with substantive succession law which is not covered by the Regulation.

As to treaties between Member States and third States, a distinction is to be made between treaties concerning recognition and enforcement of foreign decisions and treaties concerning jurisdiction and applicable law. Although the first category covers decisions in succession matters, they do not conflict with the Succession Regulation, which is limited to the recognition and enforcement of decisions of the Member States. The second category conflicts with the Succession Regulation, but the Regulation does not affect the application of such treaties. They prevail on the Regulation. This solution is nothing more than the application of an important rule of international law, namely *pacta sunt servanda* as enshrined in Article 351 Treaty on the Functioning of the European Union.

Until now, it has not been easy to get an overview of all the treaties concluded by the Member States with third States. It has been even more difficult to gain an insight into the application of those treaties in the contracting States. These challenges were the driving force behind a working conference

organized in Augsburg on 23 and 24 November 2017 by Prof. Anatol Dutta and Prof. Wolfgang Wurmnest, under the auspices of the Universities of Augsburg and Munich. An important merit of this book is that it includes a compilation of all treaties concluded by selected Member States with third States and their English translations, which provide a very convenient tool to make the treaties themselves accessible to a wider readership. It is surprising to see that some of the selected Member States have no treaties with third States, for example Belgium, as the treaties with Switzerland of 29 April 1959 and with the United Kingdom of 2 May 1934 only deal with recognition and enforcement and therefore do not conflict with the Succession Regulation. Other Member States have very few treaties, such as France and Italy, whereas the Czech Republic and Slovakia have many, since the former Czechoslovakia concluded treaties with a large number of third States.

The scope of this book is much broader than a compilation and translation of those treaties. It includes contributions based on the presentations given by distinguished speakers at the Augsburg conference and it brings the project to fruition with a report by Prof. Dutta, who analyzes the treaties from the perspective of the European Union, and a comparative report by Prof. Wurmnest who offers a policy perspective. The contributions analyze the background of the treaties and we learn that, in some cases, they were meant to end the capitulation regimes. Those treaties introduce equal treatment concerning jurisdiction, but in order to facilitate commerce and to offer some protection to the citizens of the contracting States, the conflict rules use nationality as a connecting factor. Other treaties focus on the establishment of consular relations or regional cooperation.

From the perspective of the Succession Regulation, the contributions identify many frictions between the harmonized procedural rules of this Regulation and the Conventions with third States. Further, the Regulation and the treaties do not always have the same scope of application, since some treaties are limited to movable or immovable successions. Nationality is used as connecting factor and choice of law is excluded. From a European perspective, there are few arguments to uphold the treaties because they hamper a uniform international succession law. At first sight, the best solution would be to denounce the treaties, or to at least bring them in line with the Succession Regulation. However, the book is not one sided and it discusses the application and interpretation of the treaties in third States. Here we learn that a large number of the treaties in question are still aligned with the private international law of those third States and that denunciation or attempts to renegotiate the treaties could have an impact on the relationship between Member States and third States. It seems that the treaties will be part of international succession law for a long time.

I am very proud to write the foreword for this unique and fascinating book which offers a cosmopolitan perspective. It covers an almost virgin territory and enables a wide readership to gain an insight into an underestimated part of the Succession Regulation. The high quality of the contributions makes this book a work of outstanding scholarship in the field of comparative private international law. It offers guidance for academics and practitioners and will stimulate and facilitate further comparative research.

Walter Pintens

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LIST OF TREATIES AND CONVENTIONS

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¹ Austrian Bundesgesetzblatt No. 45/1966.

² Austrian Bundesgesetzblatt No. 21/1960.

³ Austrian Bundesgesetzblatt No. 224/1955.

⁴ Službeni list Socijalističke Federativne Republike Jugoslavije – Dodatak: Međunarodni ugovori i drugi sporazumi, br. 5/63.

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⁵ Vyhláška ministra zahraničních věcí č. 97/1960 Sb.

⁶ Vyhláška ministra zahraničních věcí č. 80/1981 Sb.

⁷ Vyhláška ministra zahraničních věcí č. 93/1989 Sb.

⁸ Vyhláška ministra zahraničních věcí č. 106/1978 Sb.

⁹ Vyhláška ministra zahraničních věcí č. 95/1983 Sb.

¹⁰ Sdělení Ministerstva zahraničních věcí č. 123/2002 Sb.m.s.

¹¹ Sdělení Ministerstva zahraničních věcí č. 133/2003 Sb.m.s.

¹² Vyhláška ministra zahraničních věcí č. 98/1984 Sb.

¹³ Vyhláška ministra zahraničních věcí č. 207/1964 Sb.

¹⁴ Suomen asetuskokoelman sopimusarja 21/1935, amendments Suomen säädöskokoelman sopimusarja 60/2015.

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¹⁵ Suomen asetuskokoelman sopimussarja 48/1980.

¹⁶ Journal officiel de la République française, 02.02.1958, p. 1266.

¹⁷ Reichsgesetzblatt 1930 II, 1002.

¹⁸ Bundesgesetzblatt 1959 II, 233.

¹⁹ Reichsgesetzblatt 1930 II, 747.

²⁰ Gazzetta Ufficiale del Regno d'Italia, No. 145 of 29.05.1865.

²¹ Gazzetta Ufficiale del Regno d'Italia, No. 265 of 14.11.1930.

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²² Službeni list Federativne Narodne Republike Jugoslavije – Dodatak: Međunarodni ugovori i drugi sporazumi, br. 1/57.

²³ Recueil systématique du droit fédéral 0.142.113.721.

²⁴ Resmi Gazete of 27.12.1939, No. 4395.

²⁵ Službeni list Socijalističke Federativne Republike Jugoslavije – Dodatak: Međunarodni ugovori i drugi sporazumi, br. 3/68.

²⁶ Službeni list Socijalističke Federativne Republike Jugoslavije – Dodatak: Međunarodni ugovori i drugi sporazumi, br. 5/63.

²⁷ Službeni list Federativne Narodne Republike Jugoslavije – Dodatak: Međunarodni ugovori i drugi sporazumi, br. 8/61.

LIST OF ABBREVIATIONS

ABGB	Allgemeines Bürgerliches Gesetzbuch
AG	Amtsgericht, Attorney General
AJ Famille	Actualité Juridique Famille
Ankara L. Rev.	Ankara Law Review
ANP	Act on non-litigious procedure
ANPRS	Act on non-litigious procedure of the Republic Srpska
Art.	Article(s)
ATF	Arrêts du Tribunal Fédéral Suisse
ATRIO	Archivio dei trattati internazionali online
AÜHFD	Ankara Üniversitesi Hukuk Fakültesi Dergisi
AußStrG	Außerstreitgesetz
B&H	Bosnia and Herzegovina
BBl.	Bundesblatt
BerGesVR	Berichte der Deutschen Gesellschaft für Völkerrecht
BGB	Bürgerliches Gesetzbuch
BGBL.	Bundesgesetzblatt
BGE	Bundesgerichtsentscheidungen
BGer.	Bundesgerichtshof (Schweiz)
BGH	Bundesgerichtshof
BGHZ	Entscheidungen des Bundesgerichtshofes in Zivilsachen
BOA	Başbakanlık Osmanlı Arşivi
br.	broj
Brussels IIbis, IIa	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000
BS	Amtliche Sammlung des Bundesrechts
BVerfG	Bundesverfassungsgericht
BWNotZ	Zeitschrift für das Notariat in Baden-Württemberg
č.	číslo

Cass.	Corte di cassazione
Cass. civ.	Cour de cassation, chambre civile
CC	Civil Code
cf.	confer
Ch.	Chapter
Coll.	Collection
Destatis	Statistisches Bundesamt
DH. EUM. ECB	Dahiliye Nezareti Emniyet-i Umumiye Ecanib Kalemî
DIP	Droit international privé
dir.	director(s)
diss. op.	dissenting opinion
DNotI	Deutsches Notarinstitut
DNotZ	Deutsche Notar-Zeitschrift
DTJV	Deutsch-türkische Juristenvereinigung
EC	European Communities
ECJ	European Court of Justice
ECR	European Court Reports
ed., eds.	edition, editor(s)
e.g.	for example
EGBGB	Einführungsgesetz zum Bürgerlichen Gesetzbuche
ErbR	Zeitschrift für die gesamte erbrechtliche Praxis
esp.	especially
et al.	et alii
et seq., et seqq.	et sequens, et sequentes
etc.	et cetera
EU	European Union
EuErbVO	EU-Erbrechtsverordnung
Eurostat	Statistisches Amt der Europäischen Union
FamFG	Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit
FamRZ	Zeitschrift für das gesamte Familienrecht
Fasc.	Fascicule
FB&H	Federation of Bosnia and Herzegovina
FNRY	Federal National Republic of Yugoslavia
FPRY	Federal People's Republic of Yugoslavia
FRY	Federal Republic of Yugoslavia

GBO	Grundbuchordnung
GP	Gesetzgebungsperiode
GPR	Zeitschrift für das Privatrecht der Europäischen Union
Grdz.	Grundzüge
HE	Hallituksen esitys
i.a.	inter alia
ibid.	ibidem
i.e.	id est
int., int'l	international
IPRax	Praxis des Internationalen Privat- und Verfahrensrechts
IPRspr	Die deutsche Rechtsprechung auf dem Gebiete des Internationalen Privatrechts
Istat	Italian National Institute of Statistics
İÜHFİM	İstanbul Üniversitesi Hukuk Fakültesi Mecmuası
Iž	drugostepeni izvršni predmeti
JABl	Amtsblatt der österreichischen Justizverwaltung
JORF	Journal officiel de la République française
JORT	Journal officiel de la République tunisienne
JT	Journal des Tribunaux
LG	Landgericht
lit.	littera
m.	madde
Mac.	Macedonia
MB	Moniteur belge
MHB	Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni
MittBayNot	Mitteilungen des Bayerischen Notarvereins, der Notarkasse und der Landesnotarkammer Bayern
m.m.	med mera
Mon.	Montenegro
MPI	Max-Planck-Institut
n.	note(s)
NIC	Nordic Inheritance Convention
NJW-RR	Neue Juristische Wochenschrift – Rechtsprechungs-Report
n°	numéro
No., Nos.	number, numbers
OGH	Oberster Gerichtshof

OJ	Official Journal of the European Union
OLG	Oberlandesgericht
p., pp.	page, pages
para.	paragraph(s)
PIL	Private international law
PILA	Private International Law Act
prop.	proposition
PŽ	Drugostepeni parnični predmeti
RCDIP	Revue critique de droit international privé
R.D.C.	Revue de droit commercial
RDIPP	Rivista di diritto internazionale privato e processuale
Rép not.	Répertoire notarial
Rev. Dopr. be.	Revue de droit international privé
RGBl.	Reichsgesetzblatt
RNotZ	Rheinische Notar-Zeitschrift
RS	Recueil systématique du droit fédéral
RS	Republika Srpska
SAFBH	Succession Act of the Federation of Bosnia and Herzegovina
Sb.	Sbírka zákonů
Sb.m.s.	Sbírka mezinárodních smluv
Sec.	Section(s)
SFRY	Socialist Federal Republic of Yugoslavia
SopS	Suomen asetuskokoelman sopimussarja, Suomen säädöskokoelman sopimussarja
SOU	Statens offentliga utredningar
spec.	specifically
SR	Succession Regulation [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 decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession]
SSSR	Savez Sovjetskih Socijalističkih Republika
SÜHFD	Selçuk Üniversitesi Hukuk Fakültesi Dergisi
supp.	supplement
t.	tome

TFEU	Treaty on the Functioning of the European Union
TPA	Treaty between the Republic of Finland with the Union of Soviet Socialist Republics Concerning the Provision of Legal Protection and Legal Assistance in Civil, Family and Criminal Cases of 11 August 1978
Trib.	Tribunale
UK	United Kingdom
UNIDROIT	International Institute for the Unification of Private Law
US	United States
USSR	Union of Soviet Socialist Republics
v.	versus
vol.	volume
vp	valtiopäivät
YbPIL	Yearbook of Private International Law
ZErB	Zeitschrift für die Steuer- und Erbrechtspraxis
ZEV	Zeitschrift für Erbrecht und Vermögensnachfolge

LIST OF CONTRIBUTORS

Davor Babić

Prof. Dr., University of Zagreb, Croatia

Andrea Bonomi

Prof. Dr., University of Lausanne, Switzerland

Slavko Đorđević

Prof. Dr., University of Kragujevac, Serbia

Anatol Dutta

Prof. Dr., M. Jur. (Oxford), Ludwig Maximilians University of Munich, Germany

Stéphanie Francq

Prof. Dr., LL.M. (Berkeley), Catholic University of Louvain, Belgium

Pietro Franzina

Prof. Dr., University of Ferrara, Italy

Samuel Fulli-Lemaire

Dr., (now) Maître de conférences, Panthéon-Assas (Paris II) University, France

Biset Sena Güneş

LL.M. (London), University of Ankara Yıldırım Beyazıt, Turkey

Markku Helin

Prof. em. Dr., University of Turku, Finland

Tena Hoško

Assistant Prof. Dr., University of Zagreb, Croatia

Dirk Looschelders

Prof. Dr., University of Düsseldorf, Germany

Julie Mary

LL.M. (Vienna), Research Assistant, Lawyer, Catholic University of Louvain, Belgium

Zlatan Meškić

Prof. Dr., University of Zenica, Bosnia and Herzegovina

Magdalena Pfeiffer

Associate Prof. Dr., Charles University, Prague, Czech Republic

Walter Pintens

Prof. em. Dr., Catholic University of Leuven, Belgium

Claudia Rudolf

Associate Prof. Dr., University of Vienna, Austria

Wolfgang Wurmnest

Prof. Dr., LL.M. (Berkeley), University of Augsburg, Germany

Nadjma Yassari

PD Dr., LL.M. (SOAS), Max Planck Institute for Comparative and International Private Law, Hamburg, Germany