EU REGULATION ON SUCCESSION AND WILLS

Practical Cases

Case No. 1

- A German Citizen who is also an American citizen has lived together with his wife in Malta for the last 15 years. They had no children. His wife died in Malta in 2013 and regulated her succession in virtue of a will made in Malta nominating her husband as universal heir.
- The husband died in 2016 and regulated his succession in virtue of a will made a few months before his death in 2016 in Malta, in virtue of which:
- He declared that he is habitually resident in Malta

Case No. 1

- He chose Maltese law as the law regulating his succession
- He ordered various legacies
- He nominated his favourite nephew as his universal heir
- The estate comprised real estate and investments in Malta and other investments in South Africa, the United Kingdom and the United States

Case No. 1

- Should the testator's declaration in the will itself that he is habitually resident in Malta convince the authority that this is in fact the case? Therefore, should the testator be advised to make this declaration if it can throw some weight on the final decision by the authority?
- The choice of law is not valid since the chosen law is not the law of the testator's nationality. However should the authority take this into account when determining the habitual residence of the deceased?

Case No. 1

- Although the general maxim is *ubi lex voluit dixit,* should not the authority in all cases be guided by the cardinal principle that the will of the testator is supreme?
- Should not all these clauses point out to the fact that the testator was worried that the authority might encounter a problem in determining his habitual residence and wanted to make sure that his estate be regulated in accordance with Maltese law?

Case No. 2

- A Maltese citizen emigrated with his newly wed wife to the United States in 1964. They have continuously lived in the US for 50 years retaining dual Maltese and US nationality. However they had real estate and bank accounts in Malta and returned to Malta every summer for a month. They also had real estate and investments in the US.
- In 2013 they decided to relocate to Malta. However the wife died in 2015 and in 2016 the husband decided to go back to the United States where he could be taken care of by his children.
- The husband passed away intestate late in 2016 in the United States.

Case No. 2

- The authority might have a practical difficulty in determining if Malta was the place of the habitual residence of the deceased, since the final period of residence before death was very short;
- Should the authority, however not consider that the deceased never severed links with Malta?
- Should the Maltese authority settle the estate in accordance with Maltese Law being the law of nationality of the deceased?
- Should the heirs be advised to settle the non-Maltese estate in the US?

Case No. 3

- A Dutch pilot with a low-cost airline moved to Malta eight years ago when his airline established Malta as its Mediterranean hub.
- He rented an apartment in Malta and owned a car and a bank account in Malta and paid his taxes in Malta.
- He had made a will in the Netherlands prior to the coming into force of the Regulation, where there was no *professio juris* and where he left his entire estate to his wife.

Case No. 3

- He spent all his holidays at home in The Netherlands, where he possessed immovable property and investments and where he had his wife and children and his elderly parents.
- He died in Malta in 2016.
- Can in this case the exception clause established in article 21(2) be invoked?
- Was the deceased more closely and stably connected with Malta or with The Netherlands?
- Should the authority consider his permanence in Malta the fruit of necessity (i.e. Employment) not a free act of volition of relocating to Malta?