

# **EU Succession Regulation: First Decade of Application, Strengths, Challenges, Future Outlooks**

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## **NATIONAL REPORT**

### **POLAND**

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## Introduction

This National Report was prepared within the *EU Succession Regulation: First Decade of Application, Strengths, Challenges, Future Outlooks* (EUSuccess) project. EUSuccess is focused on the assessment of the practical functioning of the EU Succession Regulation<sup>1</sup> during the first decade of its application in selected Member States: Poland, Italy, Germany, Spain, Lithuania, Greece and Finland.<sup>2</sup> Each National Report was prepared on the basis of a detailed Questionnaire and thorough research into case-law of domestic courts in a given Member State. EUSuccess has a practical focus on law in action, however when needed the research of EUSuccess Team was supplemented by findings presented in the legal literature, decisions of domestic authorities other than courts, conclusions resulting from the case-law of the Court of Justice of the European Union (CJEU) and data collected during National Seminars aimed at the exchange of experiences with legal professionals.

## Summary

The important majority of decisions identified are the outcome of the proceedings initiated by the application for the confirmation of inheritance, which are dealt with by common courts (district courts acting as first instance and regional courts acting as second instance). There is no general obligation for these courts to publish their decisions, and therefore we suspect that there is a substantive volume of cases which are not published and consequently remain unnoticed for us. One of the reasons might be that often the justification of these decisions is not written (if none of the parties applied for it in contemplation of an appeal).

Given above, for the purposes of this study, we have gathered and analysed 64 decisions. Some of them mention the existence of the Succession Regulation, but it is not applied in these cases due to its temporal scope (the deceased died prior to 17 August 2015). Important part of the identified cases end up being dismissed by the court due to lack of jurisdiction (as the deceased was clearly habitually resident in another EU Member State). We have identified some cases where the question whether the deceased was habitual residence in Poland give rise to doubts (in case of sick and elderly persons or a very mobile citizen residing in different states and having assets all over Europe). Cases concerning application of the rules of subsidiary jurisdiction and limitation of proceedings were also identified. Cases where the rules of applicable law were discussed were much less frequent. Cases concerning jurisdiction of Polish courts to accept declaration on waiver of succession were discussed. Only one case concerning recognition / enforcement is included in this National Report. No court cases on ECS were found.

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<sup>1</sup> 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, OJ L 201, 27.7.2012, p. 107–134. See also Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the Forms referred to in Regulation (EU) No 650/2012 of the European Parliament and of the Council 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, OJ L 359, 16.12.2014, p. 30–84.

<sup>2</sup> National Reports on Poland, Italy, Germany, Spain, Lithuania, Greece and Finland can be found on EUSuccess website at <https://eusuccess.project.uj.edu.pl>.

## Setting the scene

### *Succession cases in your Member State*

**Please describe shortly how succession cases are dealt with in your MS. Which authorities are competent and to what extent? Is it possible to handle a succession case without recourse to any public authority? Which legal professionals (e.g. notaries, legal advisors, attorneys, tax authorities, land registrars, civil status registrars) and at which stage (planning, liquidating, recognizing foreign decisions, etc.) might interpret or apply the Succession Regulation? Which authorities and legal professionals are considered ‘courts’ within the meaning of Article 3(2) Succession Regulation? Are there any other authorities, which are not ‘courts’, but do intervene in succession matters? How do such authorities establish their jurisdiction? Please explain shortly which authorities in your MS are competent to issue an ECS? What kind of authentic instruments<sup>3</sup> within the meaning of Article 3(1)(i) Succession Regulation may authorities of your MS produce? What are their effects?**

Notaries are involved in succession planning as one of the form of a disposition of property upon death under Polish succession law is a notarial will (*testament notarialny*), which is drawn up by a notary (*notariusz*) in the form of a notarial deed. Theoretically, Polish succession law provides also for an allographic will (*testament allograficzny*) made in the presence of two witnesses before certain officials, for instance civil status registrars. As we were informed during the National Seminar, such wills are drafted very rarely. At this stage a person wishing to make a disposition of property upon death can be advised by a notary, attorney-at-law (*adwokat* or *radca prawny*) and a tax advisor (*doradca podatkowy*).

Once the succession opens, a person who wishes to obtain a document confirming their status of an heir may apply to the court for the confirmation of inheritance (*postanowienie o stwierdzeniu nabycia spadku*) or to a notary for a certificate of succession (*akt poświadczenia dziedziczenia*). If the proceeding takes place in front of the court, each participant may (and sometimes is) represented by attorneys-at-law. For the purpose of these proceedings, an applicant must submit certain civil status documents (a death certificate, a birth certificate, a marriage certificate) to demonstrate the fact of the death of the deceased and their relationship with the deceased. At this stage, civil status registrars are involved by issuing such documents at a request of a person having a legal interest (*interes prawny*) in receiving these documents or at a request of the court. A disposition of property upon death, if made by the deceased, must also be submitted.

It is presumed that a person who has obtained a confirmation of inheritance or a certificate of succession is an heir (Article 1025 § 2 Civil Code). With regard to a third party who does not claim rights to the estate by virtue of inheritance, the heir may prove their rights arising from inheritance only by a confirmation of inheritance or a registered certificate of succession (Art. 1027 Civil Code). If a person who has obtained a confirmation of inheritance or a certificate of succession but is not an heir disposes of a right belonging to the estate in favour of a third party, the person in whose favour the disposal is made acquires the right or is released from the obligation, unless they act in bad faith (Article 1028 Civil Code).

An ECS to be used in another EU Member State may be drawn by either a court or a notary.<sup>4</sup>

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<sup>3</sup> See case C-658/17 *WB* ECLI:EU:C:2019:444.

<sup>4</sup> See information on Poland in the European Judicial Atlas In Civil Matters at e-Justice Portal.

Here it should be noted that CJEU's judgement in *WB* (C-658/17) concerns the status of a Polish notary and a (domestic) certificate of succession, which can be drawn by a Polish notary. In this case, the CJEU stated that

a notary who draws up a deed of certificate of succession at the unanimous request of all the parties to the procedure conducted by the notary, such as the deed at issue in the main proceedings, does not constitute a 'court' within the meaning of that provision and, consequently, Article 3(1)(g) of that regulation must be interpreted as meaning that such a deed does not constitute a 'decision' within the meaning of that provision.

Hence, a certificate of succession as opposed to confirmation of inheritance is not a 'decision' subject to recognition / enforcement in another EU Member States in accordance with provisions of Chapter IV Succession Regulation. Such certificate of succession constitutes an 'authentic instrument', which can be accepted / declared enforceable in another Eu Member State in accordance with provisions of Chapter V Succession Regulation.

In accordance with CJEU's judgement in *EE* (C-80/19) 'notaries of a Member State, who are not classed as 'courts' for the purposes of that regulation, can issue national certificates of succession without applying the general rules of jurisdiction laid down by that regulation.' Please note however, that domestic law does require the existence of jurisdiction for a notary to be able to draw a certificate of succession. In accordance with Article 95e § 2(4) Notarial Law<sup>5</sup> a notary shall refuse to draw up a certificate of inheritance if there is no national jurisdiction in the matter.

In accordance with Polish succession law, an heir may accept succession with unlimited liability for debts, accept succession with the so-called benefit of inventory or waive the succession. Hence, Polish succession law provides that declarations concerning the acceptance / waiver of a succession (or legacy by vindication) can be made either before a court or before a notary.

At the request of the heirs, the estate may be divided either by the court in proceedings for the winding-up of the estate or in front of a notary by way of an agreement (in the form of a notarial deed).

In their will, a testator may appoint the executor (*wykonawca*), who will administer the estate. This appointment becomes effective once the succession opens (at the death of the testator). The executor should manage the estate, pay the debts of the estate, in particular execute legacies by damnation and instructions, and then distribute the estate to the heirs in accordance with the testator's will and the law, and in any case immediately after the division of the estate. The executor may sue and be sued in matters arising from the administration of the estate, may also sue in matters concerning rights belonging to the estate and be sued in matters concerning debts of the estate. The executor should deliver the object of the legacy by vindication to the legatee. If no executor has been appointed or if the appointed executor has refused to accept the appointment, the estate is administered by the heirs.

In order to update data in the land register (*księgi wieczyste*) with respect to rights in rem concerning immovable property located in Poland, the heir must present documents confirming their status, for instance, a confirmation of inheritance, a certificate of succession or an ECS.

Also tax advisors and tax authorities might be involved at the stage of reporting or paying an inheritance tax. Succession Regulation is applied in order to assess the tax point in inheritance taxation once the applicable law is a foreign one.<sup>6</sup>

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<sup>5</sup> Ustawa z dnia 14 lutego 1991 r. Prawo o notariacie, Dz. U. 2024, poz. 1001.

<sup>6</sup> See wyrok Wojewódzkiego Sądu Administracyjnego z 26 czerwca 2018, sygnatura: I SA/Wr 164/18 (judgement of the Regional Administrative Court, 26 June 2018, I SA/Wr 164/18).

### *State of digitalisation of the succession proceedings*

**Please explain briefly also the state of digitalisation of cross-border succession proceedings<sup>7</sup> in your Member State. May parties or their representatives communicate with competent authorities by means of electronic communication? May they file applications / claims by means of electronic communication? Is service of documents by means of electronic communication possible? Do documents send electronically have legal effects?**

In cross-border succession cases hearings are often held online with use of video-conferencing system. Communication by e-mail with courts is acceptable concerning technical aspects (for instance, the parties may inform the court of their wish to participate in the hearing via a video-conferencing system and the employee of the court will send them the link to the meeting the same way). Filing of applications (for instance for confirmation of inheritance) cannot be done by means of electronic communication. Correspondence from the court (for instance, informing about the date of the hearing) is served via an electronic system only to professional representatives (for instance, attorneys-at-law), who are required to have a special account within this system.

The Succession Register (*Rejestr Spadkowy*) is kept (based on Article 95i of the Notarial Law). It consists of two parts: (1) the domestic part PL, which contains information on domestic certificates of succession (drawn up after 1 March 2009) and court decisions confirming inheritance (given after 8 September 2016); and the EU Part, which contains information on ECSs issued in Poland (after 8 September 2016). This register does not contain the content of documents, but only information on where (in which institutions) such documents can be found. Any interested person may obtain basic information contained in the register free of charge (by completing an e-form providing the ID number of the deceased or basic data identifying the deceased).

### *Methodology of the research*

**Please explain briefly how the research for the purpose of the National Report was made. How was the case law collected? Is it publicly available? How many decisions/cases were identified? What kind of effects, if any, country specific framework had for data collection?**

The purpose of the study was to determine whether, to what extent, and how courts and other authorities in Poland apply the Succession Regulation.

Here it should also be explained how decisions of courts are made available to the public in Poland. Decisions of common courts, after being anonymized, can be published at the publicly accessible platform *Portal Orzeczeń Sądów Powszechnych* (Common Courts Judgment Portal)<sup>8</sup>, which is administered by the Ministry of Justice. The selection of decisions to be published is left to the discretion of the presiding judge or a court official. Common courts are not obligated to publish every decision on this portal, and therefore, the Portal does not constitute a mandatory register of all decisions.<sup>9</sup> Hence, we suspect that often decisions of the

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<sup>7</sup> See Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation PE/50/2023/REV/1 OJ L, 2023/2844, 27.12.2023.

<sup>8</sup> Available at <https://orzeczenia.ms.gov.pl> (accessed 1 August 2025).

<sup>9</sup> See wyrok Wojewódzkiego Sądu Administracyjnego we Wrocławiu z 10.02.2022 r., IV SA/Wr 609/21.

common courts are not published in *Portal Orzeczeń Sądów Powszechnych*. We are not able to access the scale of this challenge or the proportion of cases in which decisions were published versus those in which decisions were not published.

The publication of decisions of the Supreme Court is regulated by the Act on the Supreme Court<sup>10</sup>. Pursuant to its Article 8, the Supreme Court must immediately publish all of its decisions, including its judgments, rulings, resolutions, as well as their justification and any dissenting opinions on its website.<sup>11</sup> These documents are also anonymized before being published.

The publication of administrative court decisions is regulated differently. The Order of the President of the Supreme Administrative Court contains a detailed list of judgments subject to publication and the reasons justifying the exemption from this obligation. Therefore, unlike the publication of decisions by common courts, administrative courts, both provincial administrative courts and the Supreme Administrative Court, are required to make their judgments or decisions available on a special platform - *Centralna Baza Orzeczeń Sądów Administracyjnych* (Central Database of Administrative Court Judgments).<sup>12</sup> Pursuant to § 6 of the Order of the President of the Supreme Administrative Court, the following, among others, are subject to public disclosure: judgments of the Supreme Administrative Court, including decisions to refer legal questions to the CJEU and the Constitutional Tribunal and the rulings of provincial administrative courts concluding proceedings in a case. Due to an important public interest or the legitimate interest of the parties to the proceedings, the judgments of administrative courts or parts thereof may be excluded from public access, in particular in cases concerning refugees, asylum seekers, or persecuted persons.

Decisions are also made available on private paid platforms, for instance Lex (Wolters Kluwer) and Legalis (CH Beck) as well as publicly available free-of-charge platform called *System Analiz Orzeczeń Sądowych - SOAS* (Court Judgment Analysis System - SOAS)<sup>13</sup>. The content of these databases is also based on judgments published officially as described above.

This research was conducted using public, free of charge electronic databases: *Portal Orzeczeń Sądów Powszechnych* and the database on website of the Supreme Court (in February and March 2025). Then, the research was conducted in the paid electronic systems: *Lex* (Wolters Kluwer) and *Legalis* (CH Beck) and in the publicly available, free of charge *SOAS* database and in the public, free of charge database of decisions of administrative courts: *Centralna Baza Orzeczeń Sądów Administracyjnych* (in May 2025). The search was conducted using various keywords (for example, “Regulation (EU) No 650/2012 of the European Parliament and of the Council,” “Succession Regulation,” “650/2012”). In case of LEX and Legalis databases, the judgments assigned in a given system to the Succession Regulation were analysed. On 18 August 2025, a control check was carried out in all the above databases to identify any new judgments. Four new judgments were found.

Some of the decisions found were not related to the Succession Regulation but appeared in the results due to the similarity of some of the keywords entered (e.g., the number or name of the legal act). In many cases, the same decisions pop-uped in different databases. Some of decisions only mentioned the Succession Regulation, and only some contained an analysis of its provisions.

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<sup>10</sup> by the Act of December 8, 2017, on the Supreme Court (i.e., Journal of Laws of 2024, item 622).

<sup>11</sup> Available at <https://www.sn.pl/wyszukiwanie/SitePages/orzeczenia.aspx> (accessed 1 August 2025).

<sup>12</sup> Available at <https://orzeczenia.nsa.gov.pl/cbo/query> (accessed 1 August 2025).

<sup>13</sup> Available at <https://www.saos.org.pl/search> (accessed 1 August 2025).

The anonymization of decisions remains a challenge. In many cases, too much information is removed (e.g., the name of the city and country where the deceased had their habitual residence), which makes it hard to understand the essence of the case and sometimes even to determine whether the case is cross-border in nature.

For the purposes of this study, 64 decisions were identified, including 25 decision of district courts, 11 decisions of regional courts, 1 decision of the court of appeal, 4 judgments of provincial administrative courts, 2 judgments of the Supreme Administrative Court, and 17 decisions of the Supreme Court. The analysis of these judgments enabled the preparation of this national report. Not all of the above-mentioned decisions are included in this National Report. If the Succession Regulation is only mentioned without being applied or discussed, a given decision is not described in this National Report.

It should also be mentioned here that the important majority of decisions identified are the outcome of the proceedings initiated by the application for the confirmation of inheritance, which are dealt with by common courts (district courts acting as first instance and regional courts acting as second instance). In these cases the justification of the decision is drafted by the court on the application filed by a participant to the proceedings within a prescribed deadline. If, for one of many different reasons, none of the participants applied for this justification, the justification is not drafted. Consequently, in such cases it is very challenging or even impossible to understand if and how the court applied the Succession Regulation. Also, there is not much sense in publishing a decision in *Portal Orzeczeń Sądów Powszechnych* if there is no justification to it. Hence, we suspect that there are many proceedings in which the Succession Regulation was applied, but which remain unnoticed because the justification was not drafted and the decision was not published in *Portal Orzeczeń Sądów Powszechnych*.

## Questions

### *General*

#### **1. Were there any doubts in your MS as to the scope of application<sup>14</sup> (substantive– Article 1(1), temporal – Article 83(1), territorial – Recitals (82), (83)) of the Succession Regulation?**

Concerning temporal scope, the Succession Regulation applies to the succession (Article 1(1)), of a person who died on or after 17 August 2015 (Article 83(1)). The date of 17 August 2015 establishes a clear temporal boundary. Hence, if the deceased died before 17 August 2015, a Polish court would determine its jurisdiction in the succession case based on the jurisdictional rules of the Code of Civil Procedure<sup>15</sup> while the applicable law should be determined in accordance with Private International Law Act<sup>16</sup>. Alternatively, the relevant international agreement which takes precedence over the domestic law, should be applied. Conversely, if the deceased died on or after 17 August 2015 a Polish court would determine jurisdiction and applicable law on the basis of the Succession Regulation (or again on the basis of the international agreement that takes precedence over the Succession Regulation in accordance with its Article 75). In general, courts are aware of these distinction.<sup>17</sup>

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<sup>14</sup> See case C-98/24 *Koda* (pending), case C-618/24, *Isergartler* (pending).

<sup>15</sup> Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego, Dz. U. z 2024 poz. 1568.

<sup>16</sup> Ustawa z dnia 4 lutego 2011 r. Prawo prywatne międzynarodowe, Dz.U. z 2023 poz. 503.

<sup>17</sup> See, for instance, Postanowienie Sądu Okręgowego w Gdańsku z 27 marca 2017, sygnatura akt: XVI Cz 249/17 (order of the Regional Court in Gdańsk, 27 March 2017, XVI Cz 249/17).

Analysis of the case law shows that courts often refer to the Succession Regulation, acknowledging its existence, while simultaneously clarifying that it does not apply in cases where the testator died before 17 August 2015<sup>18</sup>. In one of the cases identified<sup>19</sup>, there was a doubt as to substantive scope of the Succession Regulation. The case concerned an application for approval of a settlement concerning division of joint property and sharing out of estate, which was located outside of Poland (in Monaco and in the Netherlands). The deceased passed away in 2010. The applicant claimed that the Succession Regulation is applicable in the case since sharing out of estate is not covered by the notion of “succession” included in Article 83(1) and therefore this transitional provision does not apply to the case at hand. In view of the applicant Polish courts have jurisdiction based on the Succession Regulation to approve the settlement on sharing out of estate, which was located outside of Poland (in Monaco and in the Netherlands). The Supreme Court explained that the concept of succession in the Succession Regulation covers all civil law aspects of a succession case, from the drafting of wills, through the acceptance and waiver of succession, to proceedings concerning sharing out of estate and judgments concerning inheritance rights. Similarly Article 83(1) of the Succession Regulation applies to all these succession matters. As a result, the Succession Regulation does not apply to the sharing out of the estate of persons who died before 17 August 2015, even if the proceedings were initiated after that date.

Some cases were identified in which the court applied (or ordered lower instance court to apply) the Succession Regulation to cases not covered by its temporal scope. An example of such case is the Order of the District Court in Olsztyn of 11 November 2014 concerning an application for confirmation of inheritance<sup>20</sup>. In determining its jurisdiction, the court referred to Article 1108 Code of Civil Procedure and the provisions of the Succession Regulation. Since the testator died in 2013, jurisdiction should have been determined solely on the basis of the Code of Civil Procedure pursuant to Article 83(1) of the Succession Regulation. Similar doubts as to the temporal scope of application of the Succession Regulation appeared even in the order of the Supreme Court<sup>21</sup>. This order was criticized soon after in the legal literature<sup>22</sup>.

## **2. Are there any challenges caused by the fact that Ireland and Denmark (and the UK – before its withdrawal from the EU) are not applying the Succession Regulation?**

No specific challenges caused by the fact that Ireland and Denmark are not applying the Succession Regulation were identified. No cases concerning specifically a succession case lined to these Member States were identified.

## **3. Are there any international agreements binding your MS, the application of which Succession Regulation ‘shall not affect’ (Article 75(1), Succession Regulation)? Were there any challenges caused by the interplay between**

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<sup>18</sup> Ruling of the Supreme Court of 19 March 2021, III CSKP 69/21, OSNC 2021, No. 11, item 76; Order of the Supreme Court of 11 July 2023, II CSKP 1481/22, LEX No. 3580317; Order of the Supreme Court of 8 November 2024, II CSKP 179/23, LEX No. 3779019; Order of the Regional Court in Gdańsk of 27 March 2017, XVI Cz 249/17, LEX No. 2282714; Order of the Supreme Court of 14 June 2023, II CSKP 1140/22, LEX No. 3569705; Order of the Supreme Court of 1 December 2022, I CSK 1717/22, LEX No. 3437896; Order of the Supreme Court of 18 November 2021, I CSKP 183/21, LEX No. 3527280.

<sup>19</sup> Postanowienie Sądu Najwyższego z 1 grudnia 2022, sygnatura: 1 grudnia 2022 (Order of the Supreme Court), 1 December 2022, I CSK 1717/227).

<sup>20</sup> Order of the District Court in Olsztyn of 22 November 2017, I Ns 756/14, LEX No. 2432244.

<sup>21</sup> Order of the Supreme Court of 11 March 2016, I CSK 64/15.

<sup>22</sup> See Paweł Czubik, *Głosa do postanowienia SN z dnia 11 marca 2016 r., I CSK 64/15* (2017) 1 Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego 168-175.

**international agreements and the Succession Regulation (Article 75(1), Article 75(3) Succession Regulation)<sup>23</sup>? Please outline the main problematic issues briefly.**

As we understand, Article 75(1) Succession Regulation concerns international agreements to which at least one third state (or EU Member State, which does not apply the Succession Regulation) is party to. Poland has numerous bilateral agreements on judicial cooperation concluded with such states, some of which do contain rules on international successions, for instance with Algeria (1976)<sup>24</sup>, Belarus (1994)<sup>25</sup>, Cuba (1982)<sup>26</sup>, North Korea (1986)<sup>27</sup>, Russia (1996)<sup>28</sup>, Ukraine (1993)<sup>29</sup>, Vietnam (1993)<sup>30</sup> and in the agreement concluded with Yugoslavia (1960)<sup>31</sup>, which applies nowadays in relations with Bosnia and Herzegovina, North Macedonia, Serbia and Montenegro.

The interplay of between bilateral agreement with Ukraine and the Succession Regulation was the main aspect of the case underlying CJEU's judgment in *OP* case, which originates from Poland.<sup>32</sup> (Previously, the very same matter was referred to the CJEU in *OKR* case<sup>33</sup>, but the CJEU found the preliminary question inadmissible as originating from a notary, and therefore not a 'court'.) Hence, bilateral agreement with Ukraine is best fit to be used as example while explaining the challenges caused by the interplay between international agreements and the Succession Regulation.

Poland-Ukraine Bilateral Agreement dates back to 1993. It entered into force on 14 August 1994.<sup>34</sup> It covers rules on legal aid, rules on jurisdiction, applicable law, recognition and enforcement of decisions in civil, family and commercial matters, including in succession cases.

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<sup>23</sup> See case C-21/22 *OP* ECLI:EU:C:2023:766.

<sup>24</sup> Umowa między Polską Rzeczpospolitą Ludową a Algierską Republiką Ludowo-Demokratyczną dotycząca obrotu prawnego w sprawach cywilnych i karnych, podpisana w Algierze dnia 9 listopada 1976 r., Dz.U.1982.10.73.

<sup>25</sup> Umowa między Rzeczpospolitą Polska a Republika Białorusi o pomocy prawnej i stosunkach prawnych w sprawach cywilnych, rodzinnych, pracowniczych i karnych, sporządzona w Mińsku dnia 26 października 1994 r., Dz. U. 1995 r. nr 128 poz. 619.

<sup>26</sup> Umowa między Polska Rzeczpospolitą Ludową a Republika Kuby o pomocy prawnej w sprawach cywilnych, rodzinnych i karnych podpisana w Hawanie dnia 18 listopada 1982 r., Dz. U. 1984 r. nr 47 poz. 247.

<sup>27</sup> Umowa między Polską Rzeczpospolitą Ludową a Koreańską Republiką Ludowo-Demokratyczną o pomocy prawnej w sprawach cywilnych, rodzinnych i karnych, podpisana w Phenianie dnia 28 września 1986 r., Dz. U. 1987 r. nr 24 poz. 135.

<sup>28</sup> Umowa między Rzeczpospolitą Polska a Federacją Rosyjską o pomocy prawnej i stosunkach prawnych w sprawach cywilnych i karnych, sporządzona w Warszawie dnia 16 września 1996 r, Dz. U. z 2002 r., nr 83, poz. 750.

<sup>29</sup> Umowa między Rzeczpospolitą Polska a Ukraina o pomocy prawnej i stosunkach prawnych w sprawach cywilnych i karnych sporządzona w Kijowie dnia 24 maja 1993 r., Dz. U. z 1994 r., nr 96, poz. 465.

<sup>30</sup> Umowa między Rzeczpospolitą Polska a Socjalistyczna Republika Wietnamu o pomocy prawnej i stosunkach prawnych w sprawach cywilnych, rodzinnych i karnych, sporządzona w Warszawie dnia 22 marca 1993 r., Dz. U. z 1995 r., nr 55, poz. 289.

<sup>31</sup> Umowa między Polską Rzeczpospolitą Ludową a Federacyjną Ludową Republiką Jugosławii o obrocie prawnym w sprawach cywilnych i karnych, podpisana w Warszawie dnia 6 lutego 1960 r., Dz. U. 1963 r. nr 27 poz. 162.

<sup>32</sup> Maksymilian Pazdan, *Sprawy spadkowe w umowie polsko-ukraińskiej z 1993 r.* (2022) 3 Problemy Prawa Prywatnego Międzynarodowego 131-161; Mateusz Pilich, *Polsko-ukraińska umowa o pomocy prawnej i stosunkach prawnych w sprawach cywilnych i karnych. Komentarz do przepisów o sprawach cywilnych*, (Wolters Kluwer 2023).

<sup>33</sup> Case C-387/20 *OKR* ECLI:EU:C:2021:751.

<sup>34</sup> Oświadczenie rządowe z dnia 16 czerwca 1994 r. w sprawie wymiany dokumentów ratyfikacyjnych Umowy o pomocy prawnej i stosunkach prawnych w sprawach cywilnych i karnych między Rzeczpospolitą Polską a Ukrainą, sporządzonej w Kijowie dnia 24 maja 1993 r., Dz.U. z 1994 r., nr 96, poz. 466.

At the same time, the provisions of this agreement are not very clear as to their scope of application. One may try to delineate their scope of application by analysing their respective provisions on jurisdiction and applicable law.<sup>35</sup> Article 41 Poland-Ukraine Bilateral Agreement concerns jurisdiction in succession matters. It divides jurisdiction between the two Contracting Parties (Poland and Ukraine) by allocating jurisdiction to the Contracting Party of the deceased nationality for movable property and to the Contracting Party of the location of assets for immovable property. Similarly, succession to movable property is governed by the national law of the deceased (Article 37(1)) and succession to immovable property is governed by the law of this Contracting Party where the property is located (Article 37(2)).<sup>36</sup>

The factual background of the case, which resulted in the CJEU's judgment in *OP*, is as follows. *OP* is a Ukrainian national who resides in Poland and co-owns an immovable property there. *OP* wanted to draw up a notarial will in Poland choosing Ukrainian law as applicable to her future succession. The notary refused to do so on the ground that Article 37 Poland-Ukraine Bilateral Agreement does not provide for any party autonomy.

*OP* brought an action before a court in Poland against the notary's refusal. She argued that Poland-Ukrainian Bilateral Agreement is silent on party autonomy, and therefore, choice of applicable law by the future deceased is admissible under Article 22(1) Succession Regulation. Moreover, Article 75(1) Succession Regulation does not prevent such choice provided that Poland-Ukraine Bilateral Agreement does not regulate party autonomy in succession matters. The view submitted by *OP* was simply that Article 21(1) Succession Regulation corresponds to Article 37 Poland-Ukraine Bilateral Agreement, whereas Article 22 Succession Regulation, which allows for the choice of national law of the deceased, does not have any counterpart in the Poland-Ukraine Bilateral Agreement. As a result, Article 22 Succession Regulation can be applicable (and enables the person concerned to make a choice of applicable law in a will). The domestic court, having doubts on the above view, submitted two questions to the CJEU.

The first preliminary question concerned whether Article 22 Succession Regulation means that a third-country national residing in a Member State of the EU may choose the law of that third State as the law governing future succession case, which the CJEU answered in the affirmative. It was the answer to the second preliminary question, which was of particular importance.

The Regional Court in Opole asked whether Article 75(1) Succession Regulation, read in conjunction with Article 22 means that, where a Member State of the EU has concluded, before the adoption of the Succession Regulation, a bilateral agreement with a third State which designates the law applicable to succession and does not expressly provide for the possibility of choosing another law, a national of that third State, residing in the Member State in question, may choose the law of that third State to govern their succession as a whole. In other words, the Polish court wanted to know whether *OP* may choose Ukrainian law as applicable to her succession in accordance with Article 22 Succession Regulation, while drafting her will in front of a notary public in Poland, even though 1993 Poland-Ukrainian Bilateral Agreement does contain conflict of law rules relating to succession and does not provide for any party autonomy to that respect.

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<sup>35</sup> See Anna Wysocka-Bar, *The Application of the Succession Regulation to Third State Nationals Remarks on the judgement of the Court of Justice of the EU in OP case (C-21/22) (2024)* Lex & Forum 21.

<sup>36</sup> Imagining that the deceased was a Ukrainian national with domicile in Poland owning property in Germany, it becomes visible that Poland-Ukraine Bilateral Agreement does not provide for any solution as to jurisdiction and applicable law with respect to succession to the immovable property owned by the deceased. There is no jurisdictional rule and applicable law rule in the Poland-Ukraine Bilateral Agreement, which could be applied. This might suggest that the rules contained in bilateral agreements apply to succession cases, which are completely "closed" within the territory of the two Contracting Parties only.

The CJEU answered that Article 75(1) Succession Regulation read in conjunction with Article 22, in circumstances such as those of the case examined, does not exclude that a national of a third State, residing in the EU Member State, may be barred from choosing the law of that third State to govern his or her succession as a whole. The above is true provided that the Member State of the EU in question has concluded (before the adoption of the Succession Regulation) a bilateral agreement with that third State which designates the law applicable to succession and does not expressly provide for the possibility of choosing another law. Consequently, the Succession Regulation does not preclude a situation in which a Ukrainian citizen might not be able to choose Ukrainian law as applicable while drafting a will in front of a notary public in Poland. It is for the domestic court to decide whether this is in fact the case of the Poland-Ukraine Bilateral Agreement, namely that it indeed provides that choice of applicable law in succession matters is excluded.

After the CJEU judgment in *OP*, the case returned to Regional Court in Opole. The Regional Court referred the matter to the Polish Supreme Court asking for the issuance of a resolution (*uchwała*). The case was registered with the Supreme Court on 19 February 2024 under the signature: III CZP 11/24. Here it might be explained that a resolution of the Supreme Court is aimed at resolving a legal doubt encountered by a common court in its adjudication. A resolution is binding only in the specific case. Therefore, other courts are not formally bound by such a resolution. However, despite the lack of formal binding force, resolutions of the Supreme Court are respected by other courts to ensure uniformity of jurisprudence. As a result, they have an impact on the judicial practice of common courts.

In this case, the Supreme Court, by its order of 9 October 2024 (III CZP 11/24) refused to adopt a resolution, concluding that the issue did not meet the requirements of Article 390 § 1 Code of Civil Procedure, as it did not give rise to any genuine or serious interpretative doubts. In view of the Supreme Court, the Regional Court failed to demonstrate the existence of discrepancies in case law or legal doctrine and did not present arguments supporting alternative interpretations of the relevant provisions. Moreover, in view of the Supreme Court, the matter had already been resolved by the CJEU, which further eliminated the need for the resolution. Consequently, the Court found that the question merely amounted to the formulation of a legal issue, without an in-depth substantive analysis or demonstration of the seriousness of the doubts necessary to justify the adoption of a resolution.

Consequently, the Regional Court had to decide the case itself. In its decision<sup>37</sup>, the Regional Court noted that there are two possible interpretations of the provisions of the Poland-Ukraine Bilateral Agreement. Based on the first view, the silence of the Bilateral Agreement on the choice of applicable law in successions leaves this matter outside the scope of the agreement, and therefore, the provisions of Polish and Ukrainian laws regulating these issues should apply in this matter. In such case choice of applicable law is possible in accordance with the Succession Regulation. Based on the opposite view, due to the wording of the agreement, Poland and Ukraine have excluded the possibility of choosing law applicable to successions.

The Regional Court noted that in proposed answers to second preliminary question in *OP*, the opinions of the Hungarian government and the European Commission differed from those of the Polish government and, it seems, the Spanish government. The Hungarian government and the European Commission took the view that choice of law was unacceptable, since the Bilateral Agreement did not provide clearly for party autonomy. On the other hand, the Spanish and Polish governments took the position that since the Agreement does not exclude the choice of law, but merely fails to regulate this issue, such choice would be possible. Hence, Article 22

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<sup>37</sup> Postanowienie Sądu Okręgowego w Opolu z dnia 10 czerwca 2025 r., sygnatura II Cz 438/21 (decision of the Regional Court in Opole, 10 June 2025, II Cz 438/21).

of the Succession Regulation could be applied, allowing for the choice of applicable law, which in their opinion would be most consistent with the rules of interpretation of international agreements contained in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.

In view of the Regional Court, when interpreting the above provisions, it should be borne in mind that the CJEU gave primacy to the Polish-Ukrainian agreement over the Succession Regulation, based on the wording of Article 75 Succession Regulation, as it found that the right to choose the applicable law is not a principle of EU law that would override the primacy of an international agreement. However, as the Advocate General pointed out in her opinion, the above ruling will apply to the Agreement only on the assumption that it excluded the choice of applicable law. If it did not, then this issue remains unregulated and the provisions of private international law of both countries will apply. In the case of Poland, this will be Article 22 of the Regulation, and in the case of Ukraine, Articles 70 and 71 of the Ukrainian Private International Law.

The Regional Court considered all the indicated positions and opinions and decided to refer to the concept of historical interpretation, emphasizing that at the time of the conclusion of the Poland-Ukraine Bilateral Agreement, the institution of party autonomy in international successions was unknown to both Polish and Ukrainian law. For this reason, the Court ruled that the admissibility of choice of applicable law must be derived directly from the bilateral agreement. Consequently, the Court held that in the absence of an appropriate provision on admissibility of choice of applicable law, the choice of law is not permissible.

**4. Were there instances in your MS where the notion of ‘habitual residence of the deceased at the time of death’<sup>38</sup> was interpreted for the purpose of the application of the Succession Regulation? What factors were considered? Are there any factors to which more weight is given than to the others? Is this expression understood the same way as for the purpose of establishing jurisdiction and designating applicable law? Please outline the main problematic issues briefly?**

The notion of habitual residence of the deceased at the time of death is discussed in majority of cases identified. As the court explained in one of the identified cases<sup>39</sup>, the place of habitual residence of the deceased plays a crucial role under the Succession Regulation. Determining the place of habitual residence of the deceased is indispensable for establishing jurisdiction in accordance with Article 4 Succession Regulation. It also corresponds to Article 21(1), which provides that, in general, the law applicable to all matters relating to succession is the law of the country in which the deceased had their habitual residence.

The courts are often explaining that the concept of habitual residence is an autonomous concept of the EU law. Although the Succession Regulation does not contain a legal definition of this term, Polish courts refer to the interpretative guidelines contained in its Recitals (23) and (24)<sup>40</sup>. In this context, the habitual residence of the deceased is understood as the place where

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<sup>38</sup> See case C-80/19 *EE*, ECLI:EU:C:2020:569.

<sup>39</sup> Postanowienie Sądu Rejonowego w Słupcy z 2 grudnia 2020, sygnatura: I Ns 254/20 (Order of the District Court in Słupca, 2 December 2020, I Ns 254/20).

<sup>40</sup> The recitals of the Succession Regulation were referred to in: postanowienie Sądu Rejonowego w Mrągowie z 13 czerwca 2024, sygnatura: I Ns 159/24 (order of the District Court in Mrągowo, 13 June 2024, I Ns 159/24); postanowienie Sądu Okręgowego w Gliwicach z 5 maja 2020 (Order of the Regional Court in Gliwice, 5 May 2020, III Cz 1578/19); postanowienie Sądu Rejonowego w Słupcy z 2 grudnia 2020, sygnatura: I Ns 254/20 (Order of the District Court in Słupca, 2 December 2020, I Ns 254/20); postanowienie Sądu Rejonowego w Sopocie z 26 października 2022, sygnatura: I Ns 180/22 (Order of the District Court in Sopot, 25 October 2022, I Ns 180/22); postanowienie Sądu Rejonowego w Biskupcu z 18 lipca 2027, sygnatura: I Ns 148/17 (Order of the District Court

the center of the deceased's family, social and professional life is located, considering all personal and professional circumstances.<sup>41</sup> When analyzing the habitual residence of the deceased, Polish courts have often referred to the case law of the CJEU<sup>42</sup>. In this context, emphasis is placed on to the criteria relevant for determining habitual residence, such as the family situation of the person concerned, the reason for the move to another state, the length of that residence, the stability of the residence, and the existence of stable employment in a given state<sup>43</sup>. The Polish courts also examined other decisive factors highlighted by the CJEU, which are auxiliary tools in the process of determining the place of habitual residence, such as duration, regularity, and conditions of residence, as well as the strength of social and family ties. The courts seem to understand that where the centre of the deceased's life interests was divided between several countries and no permanent settlement could be established in any of them, additional considerations such as the deceased's citizenship or the location of the main components of their estate in one of those countries became relevant<sup>44</sup>.

Equally important as referring to CJEU case law is the consideration given by Polish courts to the views expressed in legal doctrine. It has thus been established that the place of habitual residence corresponds to the location of the centre of a person's ties and life relations, i.e., the centre of their existence. Factual circumstances, including the degree of integration into a given social and family environment, are decisive in determining this place, so the element of will (intention, *animus*) – which is important in determining the place of residence within the meaning of the Polish Civil Code – is not required in this context<sup>45</sup>.

The following examples of Polish court decisions illustrate factors that have been decisive in practice when determining the habitual residence of the deceased.

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in Biskupiec, 18 July 2017, I Ns 148/17); postanowienie Sądu Okręgowego w Gliwicach z 31 stycznia 2017, sygnatura: III Cz 1996/16 (Order of the Regional Court in Gliwice, 31 January 2017, III Cz 1996/16). The recitals of the Succession Regulation – erroneously due to the lack of identity between the concepts of domicile and habitual residence – were referred to in the resolution of the Supreme Court of 3 December 2019, I DO 53/19, LEX No. 2746897, in a case concerning permission to hold a judge criminally liable in order to determine the meaning of the concept of domicile.

<sup>41</sup> Postanowienie Sądu Rejonowego w Słupcy z 2 grudnia 2020, sygnatura: I Ns 254/20 (Order of the District Court in Słupca, 2 December 2020, I Ns 254/20).

<sup>42</sup> References were made to: the judgment of the CJEU of 22 December 2010, C-497/10, *Barbara Mercredi v. Richard Chaffe*, ECLI:EU:C:2010:829; interestingly also to the judgment of the CJEU of 25 February 1999, C-90/97, *Robin Swaddling v. Adjudication Officer*, ECLI:EU:C:1999:96 – appeared in the justification of postanowienie Sądu Rejonowego w Sopocie z 26 października 2022, sygnatura: I Ns 180/22 (Order of the District Court in Sopot, 25 October 2022, I Ns 180/22); judgment of CJEU of 21 January 2010, C-444/07, *MG Probud Gdynia sp. z o.o.*, ECLI:EU:C:2010:24 and again the judgment of the CJEU 25 of February 1999, C-90/97, *Robin Swaddling v. Adjudication Officer*, EU:C:1999:96 – appeared in the justification of postanowienie Sądu Rejonowego w Człuchowie z 12 maja 2022, sygnatura: I Ns 47/22 (decision of the District Court in Człuchów, 12 May 2022, I Ns 47/22).

<sup>43</sup> Order of the District Court in Sopot of 25 October 2022, I Ns 180/22, LEX No. 3581626.

<sup>44</sup> Postanowienie Sądu Rejonowego w Człuchowie z 12 maja 2022, sygnatura: I Ns 47/22 (decision of the District Court in Człuchów, 12 May 2022, I Ns 47/22)

<sup>45</sup> Postanowienie Sądu Rejonowego w Człuchowie z 12 maja 2022, sygnatura: I Ns 47/22 (decision of the District Court in Człuchów, 12 May 2022, I Ns 47/22) – in the context of habitual residence, reference to M. Kuchnio in O. M. Piaskowska (ed), *Kodeks postępowania cywilnego. Postępowanie nieprocesowe. Postępowanie w razie zaginięcia lub zniszczenia akt. Postępowanie zabezpieczające. Komentarz* (Warszawa 2022) comments to Article 628, Karol Weitz, *Jurysdykcja krajowa w sprawach spadkowych w świetle rozporządzenia spadkowego* in Maksymilian Pazdan, Jacek Górecki (eds) *Nowe europejskie prawo spadkowe* (Warszawa 2015) 49, Olga Bobrzyńska, Piotr Mostowik, *Zwykły pobyt dziecka jako podstawa jurysdykcji krajowej a łącznik kolizyjny*, (2014) 6 Zeszyty Naukowe Uniwersytetu Szczecińskiego 509.

The District Court in Szczecin<sup>46</sup> examined whether it had jurisdiction to hear the case. The Court emphasized that the habitual residence of the testator is defined as the place where the personal interests of a natural person are centered, where the main center of that person's existence is located, considering both personal and professional circumstances, with the duration of stay being of lesser importance. In this case, the Court noted that the deceased had been working as a caregiver for the elderly in D. (Germany) for 20 years. Her sister and two nieces lived in the same town, while her nephew (the son of the testator's sister) lived approximately 100 km away. The deceased spent her holidays in D. and did not maintain close contact with her family residing in Poland. During her illness with lung cancer, she continued to live in D. receiving care from her nieces. The Court concluded that the testator's stay in Germany was not temporary. In addition to her professional commitments in D., her closest family resided there. Furthermore, the fact that the testator decided to undergo treatment there, remaining under the care of her nieces, testified to her particularly close relationship with D.

In the context of determining the place of habitual residence, it is worth noting the Order of the District Court in Gdańsk<sup>47</sup>. Prior to joining her son in Germany, the deceased rented an apartment in G. (Poland). She initially travelled to Germany for vacation, to rest and see her son, as they had not been in contact for many years. Over time, however, her stay in H. was extended. She began to suffer from diabetes and, together with her son, decided that she would remain in Germany until she recovered. She lived continuously in H. for the next five to six years, until her death with the centre of her life clearly located in Germany. By that time, the testator no longer had any property or apartment in Poland and had become dependent on her son for support, experiencing difficulties with basic household activities. Questions regarding her habitual residence arose due to her Polish citizenship, long-standing ties with Poland and the fact that she received her husband's pension in Poland, which was paid into her bank account in a Polish bank. The Court concluded, however, that neither citizenship nor the receipt of a pension in Poland was sufficient to establish her habitual residence in Poland, as the overall circumstances showed that her strongest personal and social ties were with Germany for many years.

The mere fact of moving to another country due to marriage and the subsequent death of a spouse or holding a share in the jointly owned real estate in a given state does not establish a permanent connection with that state if the deceased continued to reside abroad. This issue was addressed by the District Court in Sopot, which found that the deceased maintained a permanent connection with Germany. Her family and personal life were centered in Germany, where she had resided for a long period of time, including time immediately preceding her death<sup>48</sup>.

A detailed analysis of the circumstances determining habitual residence was presented also by the District Court in Warsaw<sup>49</sup>. The court identified the following factors as key: residence in the United Kingdom since July 2020, i.e., more than a year prior to death; living in his own home in L. (UK), which became the centre of his life interests; reliance on the services of a trusted doctor, whose advice prompted the relocation to the UK; British citizenship; the declared intention to remain in the UK until death; the presence of his son in the country, which indicated stronger family ties in the UK than in Poland. To a lesser extent, the fact that the will

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<sup>46</sup> Postanowienie Sądu Rejonowego w Szczecinie z 3 grudnia 2020, sygnatura: III Ns 356/20 (Order of the District Court in Szczecin, 3 December 2020, III Ns 356/20).

<sup>47</sup> Postanowienie Sądu Rejonowego w Gdańsku z 31 maja 2022, sygnatura: XII Ns 66/22 (Order of the District Court in Gdańsk of May 31, 2022, XII Ns 66/22).

<sup>48</sup> Postanowienie Sądu Rejonowego w Sopocie z 25 października 2022, sygnatura: I Ns 180/22 (Order of the District Court in Sopot, 25 October 2022, I Ns 180/22).

<sup>49</sup> Postanowienie Sądu Rejonowego w Warszawie z 8 grudnia 2022, sygnatura: VI Ns 191/22 (Order of the District Court in Warsaw, 8 December 2022, VI Ns 191/22).

was drawn up in accordance with the law of England and Wales also supported his connection with the UK. In the will itself (drawn up in 2019), the testator listed W. (Poland) as his place of residence. Ownership of real estate and shares in a Polish limited liability company could at most suggest that his last place of residence was in Poland. However, this could not be decisive, as the testator also owned of a house in L. (UK), and possibly property in Israel (there was a reference to real estate in that country in a cohabitation agreement concluded with his partner before his death). The deceased could not have had habitual residence in all these places simultaneously, and equating the country of greatest property ownership with habitual residence would be an oversimplification. The referred court concluded that upon moving to the UK, the deceased no longer intended to return to Poland permanently, although complete disconnection was impossible due to retained assets. Therefore, both the testator's physical presence in the United Kingdom during the last months of his life and his clearly stronger ties with that country led the court to conclude that the testator's habitual residence was in the United Kingdom.

It is also worth noting the Order of the District Court in Tczew, which emphasized that mere residence registration alone is insufficient to determine person's habitual residence<sup>50</sup>.

It should be noted that the understanding of the place of habitual residence under the Succession Regulation is also crucial for determining the territorial competence of the probate court as domestic rules on territorial competence were amended as of 17 August 2015 to be in line with the Succession Regulation. As emphasized by the Regional Court in Krakow<sup>51</sup>, habitual residence, as an autonomous concept of EU law, corresponds to the place where the principal centre of a person's ties and life relations is located, i.e., the centre of their existence. On this basis, referred court concluded that a temporary stay of a few months in a nursing home due to age or health does not determine habitual residence if the testator had been connected with Krakow and the apartment that had been the centre of her life for over 80 years throughout her life. Consequently, the indicated court affirmed its local jurisdiction to hear the case referring also to the Succession Regulation.

Our analysis of the identified case law reveals that sometimes assessment of the habitual residence of the deceased is overly superficial and fragmentary. Courts sometimes overlook important aspects of the case, reducing their reasoning to a simple assertion that the testator had "lived" in a given country, without explaining the factors that led to the conclusion that the deceased has habitual residence in that state<sup>52</sup>.

In this regard, it is worth noting the Order of the Regional Court in Gliwice, in which the court decided to overturn the decision of the lower court (District Court in Wodzisław Śląski) and refer the case back for reconsideration. The lower court had failed to clarify where the centre of vital interests of the deceased was located. Specifically, the District Court, had merely stated

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<sup>50</sup> Postanowienie Sądu Rejonowego w Tczewie z 20 listopada 2018, sygnatura: I Ns 499/18 (Order of the District Court in Tczew, 20 November 2018, I Ns 499/18).

<sup>51</sup> Postanowienie Sądu Okręgowego w Krakowie z 20 stycznia 2020, sygnatura: II Cz 3375/19 (Order of the Regional Court in Krakow of 20 January 2020, II Cz 3375/19).

<sup>52</sup> For instance: postanowienie Sądu Rejonowego w Słupcy z 2 grudnia 2020, sygnatura: I Ns 254/20 (Order of the District Court in Słupca, 2 December 2020, I Ns 254/20) the court concluded that the testator had his last place of residence in Germany because he had lived there since 2012 and was permanently employed, which is clearly insufficient. Similarly, postanowienie Sądu Rejonowego w Kłodzku z 2 lutego 2023 r., sygnatura: I Ns 1018/22 (Order of the District Court in Kłodzko, 2 February 2023, I Ns 1018/22) – the court noted that the deceased lived and worked abroad for a very short time. In postanowienie Sądu Okręgowego w Warszawie z 18 czerwca 2021, sygnatura: I Ns 421/19 (Order of the District Court in Warsaw, 18 June 2021, I Ns 421/19) there is a complete lack of justification as to how jurisdiction or applicable law was determined; the same problem arose in postanowienie Sądu Rejonowego w Czulchowie z 20 października 2021, sygnatura: I Ns 59/19 (Order of the District Court in Czulchów, 20 October 2021, I Ns 59/19).

that “before his death, the testator lived in Germany, where his family life was centered in the last years of his life,” without verifying in any way whether he actually had intended to reside permanently in Germany or whether he resided there solely for economic reasons, and without considering other aspects<sup>53</sup>.

In turn, in one of the cases the Supreme Court<sup>54</sup>, while analysing the cassation appeal against the decision of the Regional Court, indicated that the court of second instance had duly considered the circumstances of the case. Most importantly, it examined the factual circumstances established in the case, such as the fact that the deceased was a pensioner, had insurance in Austria, was treated there for his medical conditions, and went there after returning from a vacation in Dubai. The court also considered the sale or donation of real estate in Poland by the testator as indicative of significant weakening of ties with his country of origin. Furthermore, the court considered whether, in the light of the established circumstances, the deceased could still be considered to have his habitual residence in Poland, particularly given that he retained the right to occupy of the sold apartment.

**5. Are there any other decisions / doubts / challenges, which do not fit within any of the above questions, but are related to the application of the Succession Regulation, and therefore, should be signalled within the National Report?**

No, we have not identified any such case.

*Jurisdiction*

**6. Are you aware of any doubts / challenges to the application of the rules on jurisdiction of the Succession Regulation in your MS<sup>55</sup>? Are there any voices suggesting any amendments to these rules?**

The challenge we have identified is the lack of adequate understanding of the exhaustive character of the jurisdictional rules of the Succession Regulation. As mentioned, if the deceased died before 17 August 2015, a Polish court should determine its jurisdiction in the succession case based on the jurisdictional rules of the Code of Civil Procedure (or on the basis of the international agreement that takes precedence before domestic law). If the deceased died on or after 17 August 2015, a Polish court should determine jurisdiction on the basis of the Succession Regulation (or on the basis of the international agreement that takes precedence over the Succession Regulation in accordance with its Article 75). The Succession Regulation leaves no place for the residual jurisdiction resulting from domestic law. However, jurisdictional rules relating to succession matters were not repealed and can still be found in the Code of Civil Procedure, as they are still needed for the purpose of the succession cases of persons who died before 17 August 2015. This however seems to result in uncertainty as to the applicability of these domestic jurisdictional rules to succession cases of persons who died starting from 17 August 2015.

It happens that applicants, even if represented by a professional, while justifying the existence of jurisdiction of Polish courts in cases concerning deceased who died starting from 17 August 2015 still point to jurisdictional rules of the Code of Civil Procedure and factors which are not

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<sup>53</sup> Postanowienie Sądu Okręgowego w Gliwicach z 5 maja 2020, sygnatura: III Cz 1578/19 (Order of the Regional Court in Gliwice, 5 May 2020, III Cz 1578/19).

<sup>54</sup> Postanowienie Sądu Najwyższego z 17 maja 2024 r., sygnatura: I CSK 1778/23 (order of the Supreme Court, 17 May 2024, I CSK 1778/23).

<sup>55</sup> See case C-20/17 *Oberle* ECLI:EU:C:2018:485.

relevant for the assessment of jurisdiction on the basis of the Succession Regulation<sup>56</sup>, for instance, applicants underline the fact that assets are located in Poland, in case it is not contentious that the deceased was actually habitually resident in another EU Member State (and consequently the courts of that other Member State have jurisdiction over the case).

We have also identified cases in which courts erroneously suggested that “under the current legal framework” jurisdictional rules of the Code of Civil Procedure apply “to relations between the Republic of Poland and countries outside the European Union, as well as to all inheritances opened before 17 August 2015”.<sup>57</sup>

**7. Were there instances in your MS where the court or another authority established its jurisdiction based on Article 10(1) Succession Regulation<sup>58</sup>, namely on the basis of location of assets and nationality or previous habitual residence? What were the assets and what was their value? Were there any doubts or challenges to the application of these provisions in practice?**

Yes, a case in which the court assumed jurisdiction based on Article 10(1)(B) Succession Regulation was identified. The case concerned an application for confirmation of inheritance.<sup>59</sup> The deceased was a UK national. For many years, the deceased was in an informal relationship with D.R. and together they have spent several months a year in Poland, several in the UK and some in Israel, but mainly they have resided in the UK. Together with D.R. the deceased moved to Poland in 2017. Starting from 2017 the deceased paid income tax in Poland. Children and their families visited the deceased once a year. In 2019, the testator drew up a will in which he stated that he was living in Poland and planned to eventually settle in Israel. Due to COVID-pandemic, he was unable to carry out this plan. In 2020, while in Poland, the testator was diagnosed with cancer. His doctors in the UK recommended treatment in the UK. In July 2020, the deceased moved with D.R. permanently to his home in the UK with the intention of later moving to Israel. Due to his deteriorating health and prolonged treatment, this plan was not realized. In 2021, the testator entered into a cohabitation agreement with D.R., in which they defined their personal and financial relations, indicating Polish law as applicable. The testator died in 2021 in the UK.

The court found that the habitual residence of the deceased at the time of death was the UK, because he had lived there for over a year in his own home, had moved the centre of his life interests there, used the services of a trusted doctor in the UK, had UK nationality and maintained closer family ties with his son living in the UK. His connection with the UK was also evidenced by the fact that his will was drawn up in accordance with the law of England and Wales.

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<sup>56</sup> See for example postanowienie Sądu Okręgowego w Gliwicach z dnia 31 stycznia 2017 r., sygnatura: III Cz 1996/16 (order of the Regional Court in Gliwice, 31 January 2017, III Cz 1996/16); postanowienie Sądu Rejonowego Szczecin-Centrum w Szczecinie z 3 grudnia 2020 r., sygnatura akt: III Ns 356/20 (order of the District Court for Szczecin Center, 3 December 2020, III Ns 356/20); postanowienie Sądu Rejonowego w Kwidzynie z 3 lutego 2021 r., sygnatura akt: I Ns 544/20 (order of the District Court in Kwidzyń, 3 February 2021, I Ns 544/20).

<sup>57</sup> See for example postanowienie Sądu Rejonowego w Kwidzynie z 3 lutego 2021 r., sygnatura akt: I Ns 544/20 (order of the District Court in Kwidzyń, 3 February 2021, I Ns 544/20); Postanowienie Sądu Rejonowego w Kłodzku z 2 lutego 2023 r., sygnatura akt: I Ns 1018/22 (Order of the District Court in Kłodzko, 2 February 2023, I Ns 1018/22).

<sup>58</sup> See case C-645/20 *VA, ZA*, ECLI:EU:C:2022:267, case C-55/23 *Jurtukala* ECLI:EU:C:2023:599, case 291/23 *Hantoch*, ECLI:EU:C:2024:938.

<sup>59</sup> Postanowienie Sądu Rejonowego dla Warszawy-Śródmieścia w Warszawie z 8 grudnia 2022 r., sygnatura akt: VI Ns 191/22 (Order of the District Court Warszawa-Śródmieście, 8 December 2022, VI Ns 191/22).

Due to the fact that the UK is a third state, the court determined jurisdiction on the basis of Article 10(1)(b) of the Succession Regulation, as the testator had his habitual residence in Poland before leaving for the UK in 2020. Consequently, the court had jurisdiction to rule on the succession as a whole (but limited the scope of the proceedings on the basis of Article 12(1)). The assets in Poland consisted of shares in a limited liability company and an immovable property.

In another cases identified<sup>60</sup>, the Court stressed the requirement that assets of the estate are located within the territory of a Member State so that it may assume jurisdiction based on Article 10 Succession Regulation. In this case, the deceased – a Polish national - was habitually resident in the UK and left no assets in Poland. The applicant claimed that jurisdiction of Polish courts can be derived solely from the Polish nationality of the deceased. The Court explained that under the Succession Regulation, jurisdiction over matters relating to the succession lies with the courts of the Member State in which the deceased had their habitual residence at the time of death. If the deceased did not have habitual residence in any Member State, jurisdiction may be assumed - pursuant to Article 10(1) - by the courts of the Member State in which the assets of the estate are located if the deceased was a national of that State or had their previous habitual residence there. Otherwise, pursuant to Article 10(2) of the Succession Regulation, the courts of the Member State in which the assets of the estate are located have jurisdiction only with respect to these assets. The court found that the deceased had their habitual residence in the UK, which is a third country within the meaning of the Succession Regulation. Polish courts could have jurisdiction based on Article 10 only if there were “assets” located in Poland. However, no existence of such assets was established and therefore the case was dismissed due to lack of jurisdiction.

**8. Were there instances in your MS where the court or another authority established its jurisdiction based on Article 10(2) Succession Regulation, namely on the basis of the location of assets / asset? What were the assets / asset and what was their / its value? Were there any doubts or challenges to the application of this provision in practice?**

During the EUSuccess National Seminar organized in Poland, practitioners drew attention of the EUSuccess Team to the doubts concerning the notion of “assets” within the meaning of Article 10 Succession Regulation suggesting that this notion should cover also civil law claims (for instance, claims for restitution of the nationalized property). In a decision brought to attention of the EUSuccess Team (which is not publicly available, and therefore, not cited in this National Report), the District Court and later the Regional Court concluded that such a claim cannot constitute an “asset” within the meaning of Article 10 Succession Regulation as it cannot be perceived as “located” in a Member State. The cassation appeal from the decision of the former court is currently pending before the Supreme Court.

**9. Were there instances in your MS where the court exercised jurisdiction or declined jurisdiction based on one of the mechanisms provided for in Articles 5 – 9 Succession Regulation?<sup>61</sup> If yes, could you please explain which mechanism was used and whether there were any doubts or challenges to their application in practice?**

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<sup>60</sup> Postanowienie Sądu Rejonowego dla miasta stołecznego Warszawy z 1 grudnia 2021, sygnatura akt: I Ns 348/21 (Order of the District Court for the capital city of Warszawa, 1 December 2021, I Ns 348/21).

<sup>61</sup> See case C-422/20 RK ECLI:EU:C:2021:718.

No case where jurisdiction was assumed by Polish courts based on one of the mechanism described in Articles 5-9 Succession Regulation was identified. Similarly, no case where the court would decline jurisdiction based on these mechanisms was identified.

**10. Were there cases in your MS where the court exercised jurisdiction based on Article 11 Succession Regulation on *forum necessitatis*? If yes, what were the reasons justifying the need of exercising jurisdiction? What circumstances were considered to justify the sufficient connection with your MS?**

No case where the court would exercise jurisdiction based on Article 11 Succession Regulation on *forum necessitatis* was identified.

One case where the court discussed this provision and refused to apply it was identified<sup>62</sup>. In this case, the deceased, a Polish national, died in 2020 in the UK where he was habitually resident. The deceased has left no assets in Poland. The applicant claimed that jurisdiction of Polish courts can be derived from the Polish nationality of the deceased.

The Court explained that if the deceased was habitually resident in the UK and has left no assets in Poland, jurisdiction can only arise from the so-called *forum necessitatis* in accordance with Article 11. While a sufficient connection of the case with Poland might be presumed (as the potential heirs reside there), it is impossible – in view of the Court - to consider that proceeding cannot be properly initiated or conducted in the UK. As Recital (31) Succession Regulation explains this requirement could be fulfilled in case of – for instance - a civil war. As the Court explained, Article 11 can be applied on exceptional basis, and therefore, it cannot be used to establish jurisdiction only for the convenience of the applicant or participants to the proceedings. The court also added that English law is one of the most familiar foreign legal orders in Poland and that the UK is among third states, which are the most integrated with the EU. There is no special rationale justifying the exceptional need of conducting the succession proceedings in Poland. Hence, the court dismissed the application due to lack of jurisdiction.

**11. Were there cases in your MS where the court limited its jurisdiction based on Article 12 Succession Regulation? If yes, please explain which third state was considered and how the need of limiting jurisdiction was justified?**

Yes, a case where Article 12 Succession Regulation was applied by the court was identified.

The case concerned an application for confirmation of inheritance.<sup>63</sup> The deceased was a UK national, with the last habitual residence in the UK. He left some assets in Poland (shares in a limited liability company and an immovable property) and assets in the UK. The court determined jurisdiction on the basis of Article 10(1)(b) Succession Regulation, as the testator had his previous habitual residence in Poland (before moving to the UK in 2020). Consequently, the court had jurisdiction to rule on the succession as a whole.

The Court decide to limit the scope of the proceedings on the basis of Article 12(1)) by excluding assets located in the UK. It explained that the applicant and the other participant to the proceedings requested that the Court rule only on the assets located in Poland. This request was admissible only to the extent that it meant not ruling on the assets located in the UK. The Court explained that this property (and no other) is covered by the disposition of property upon death (a will) left by the deceased. In accordance with the testimony of the applicant and the

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<sup>62</sup> Postanowienie Sądu Rejonowego dla miasta stołecznego Warszawy z 1 grudnia 2021, sygnatura akt: I Ns 348/21 (Order of the District Court for the capital city of Warszawa, 1 December 2021, I Ns 348/21).

<sup>63</sup> Postanowienie Sądu Rejonowego dla Warszawy-Śródmieścia w Warszawie z 8 grudnia 2022 r., sygnatura akt: VI Ns 191/22 (Order of the District Court Warszawa-Śródmieście, 8 December 2022, VI Ns 191/22).

participant, this will be to be executed by English lawyers in accordance with the law in force in England and Wales. The Court underlined that this UK procedure is radically different from that applicable in Poland and involves the distribution of the estate by the appointed executor of the will among the testamentary heirs. The deceased appointed lawyers from the law firm where he drew up his will to perform this function. Due to the fact that this procedure is already taking place in the UK and the lack of an institution in English and Welsh law, which function would correspond to the Polish institution of “confirmation of inheritance”, it is to be expected that the decision of the Polish court on the confirmation of inheritance will not be recognised or declared enforceable by institutions operating under the law of England and Wales, especially with regard to the immovable property located in the UK. For these reasons, the Court decided to limit the proceedings.

**12. Are courts in your MS competent to receive a declaration mentioned in Article 13 Succession Regulation (namely, ‘a declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person concerned in respect of the liabilities under the succession’)? Are any other authorities competent to receive such declarations (for example, notaries)? Are you aware of any challenges related to making such declarations in your MS<sup>64</sup> is cases where jurisdiction in succession matters was with the courts of another MS?**

Yes, declarations concerning the acceptance / waiver of a succession (or legacy by vindication) can be made either before a court or before a notary.

The case which resulted in the CJEU’s judgment in *Lawida* originates from Poland. In this case an heir has, by mistake, missed the deadline for making the declaration on waiver. Hence, the heir applied to the Polish court for the approval to be freed from the legal consequences of failing to make a declaration within the required period. Such an approval is needed – in accordance with the requirement under Polish law – so that the declaration on waiver can be made. The court decided to ask a preliminary question to the CJEU concerning the extent of the jurisdiction resulting from Article 13 Succession Regulation. The CJEU decided that jurisdiction derived from Article 13 has a limited scope. Consequently, it does not cover cases where the court must take measures which go beyond merely “receiving a declaration”.<sup>65</sup> As a result, in a case, where apart from simply “receiving” a declaration, a court of a Member State would have to take other kinds of measures (for instance, grant an approval), the heir cannot make use of the jurisdiction resulting from Article 13. We have identified such decision (stating lack of jurisdiction in cases an approval is needed, apart from simple “receiving” of a declaration), which were given even before *Lawida* judgment<sup>66</sup>.

**13. Are you aware of any challenges in your MS when it comes to accepting a declaration mentioned in Article 13 Succession Regulation (namely, ‘a declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person concerned in respect of the liabilities under the succession’) made in other MSs?**

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<sup>64</sup> See case C-57/24 *Lawida* ECLI:EU:C:2025:217.

<sup>65</sup> C-57/24 *Lawida* ECLI:EU:C:2025:217, para. 40.

<sup>66</sup> Postanowienie Sądu Rejonowego dla miasta stołecznego Warszawy z 24 lutego 2022 r., sygnatura: I Ns 1114/21 (decision of the District Court Miasto Stołeczne Warszawa, 24 February 2022, I Ns 1114/21).

No, we have not identified such cases.

**14. Are there any other decisions / doubts / challenges, which do not fit within any of the above questions, but are related to jurisdictional rules of the Succession Regulation, and therefore, should be signaled within the National Report?**

No other doubts or challenges are revealed by the identified case law.

*Applicable law*

**15. Are you aware of any doubts / challenges to the application of the rules on applicable law of the Succession Regulation in your MS? Are there any voices suggesting any amendments to these rules?**

These rules are not subject to any severe criticism (however there are amendments which were suggested even during the EUSuccess National Seminar. These included abolition of *renvoi* or extending party autonomy by allowing choice of applicable law designating the law of the habitual residence of the deceased at the time of making a disposition of property upon death).

**16. Were there cases where the escape clause of Article 21(2) Succession Regulation was applied? If yes, please explain which laws were considered and what circumstances of the case were considered to justify that the deceased was manifestly more closely connected with another law?**

No have not identified any case where an escape clause of Article 21(2) Succession Regulation would be applied. We have noticed that this clause is sometimes (erroneously) pointed to by applicants as justifying jurisdiction of Polish courts.

**17. Were there instances of doubts as to choice of applicable law under Article 22 Succession Regulation? Were there instances where a tacit choice ('demonstrated by the terms of a disposition of property upon death') within the meaning of Article 22(2) Succession Regulation was identified?**

No cases where the existence of the tacit choice of applicable law would be discussed / analysed was identified (even though it seems to us that the existence of the tacit choice of applicable law might have been considered each time there is a disposition of property upon death made by the deceased).

**18. Were there any instances where the substantive validity of a choice of applicable law was discussed? What was the exact doubt?**

No, no such cases were identified.

**19. Were there any instances where the modification / revocation of a choice of applicable law within the meaning of Article 22(4) Succession Regulation was discussed?**

No, no such cases were identified.

**20. Are there any doubts in your MS as to which matters are governed by the law applicable to succession (*lex successionis*)? Are there any doubts in delineating**

**the scope of the law applicable to succession (*lex successionis*) and other matters<sup>67</sup> (for example, law applicable to rights *in rem*, law applicable to matrimonial property regimes, legal capacity)?**

No, no such cases were identified.

**21. Were there cases concerning a choice of law made prior to 17 August 2015, which triggered application of Article 83(2) Succession Regulation?**

No, no such cases were identified.

**22. Were there instances in which Article Succession Regulation was applied<sup>68</sup> (and the law in accordance with which ‘a disposition of property upon death was made prior to 17 August 2015’ and ‘which the deceased could have chosen in accordance with this Regulation’ was found to ‘have been chosen as the law applicable to the succession’)? How was the requirement of being made ‘in accordance’ with the given law understood?**

No cases where Article 83(4) Succession was applied were identified.

It seems to us that the application of Article 83(4) might be considered in each case a disposition of property was drafted before 17 August 2015<sup>69</sup>, including in a case identified and mentioned under question 36 above. In this case, a testatrix, who was a Polish national, died in 2016 in Canada leaving some assets in Poland. She left a will in a Polish language dated of 16 November 2013 assisted by three witnesses. The will was written by someone else and signed by the testatrix. If the court would find this valid (in accordance with *favor validitatis* principle of 1961 HCCH Form of Wills Convention), it should have – in our view - considered application of Article 83(4).

**23. Were there instances where Article 83(3) Succession Regulation concerning the validity of a disposition of property upon death made prior to 17 August 2015 was applied? Please elaborate?**

No such cases were identified.

**24. Were there any cases in your MS concerning the ‘substantive validity’ of a disposition of property upon death within the meaning of Article 26 Succession Regulation and Articles 24-25 Succession Regulation? Where there any doubts as to the designation of applicable law for this purpose or with respect to the**

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<sup>67</sup> See case C-218/16 *Kubicka* ECLI:EU:C:2017:755, case C-558/16 *Mankopff* ECLI:EU:C:2018:138.

<sup>68</sup> See case C-80/19 *EE* ECLI:EU:C:2020:569.

<sup>69</sup> See case C-80/19 *EE* ECLI:EU:C:2020:569, para. 92-94: “By contrast, paragraph 4 of that article [84] governs cases in which a disposition of property upon death does not comprise such a choice. More specifically, in accordance with that paragraph, if a disposition of property upon death was made prior to 17 August 2015 in accordance with the law which the deceased could have chosen in accordance with that regulation, that law is to be deemed to have been chosen as the law applicable to the succession. That provision applies in the present case as, first, the will at issue in the main proceedings was drawn up before 17 August 2015 and, second, Lithuanian law could have been chosen, in accordance with the first subparagraph of Article 22(1) of Regulation No 650/2012, given that the deceased was a Lithuanian national at the time when the will was drawn up. Consequently, that law, in accordance with which that will was drawn up, is deemed to have been chosen as the law applicable to the succession at issue in the main proceedings”.

**notions of ‘admissibility’, ‘substantive validity’, ‘binding effects between the parties’ or ‘conditions of its dissolution’?**

No, no such cases were identified.

**25. Were there any doubts as to the delineation of ‘substantive validity’ and ‘formal validity’?**

No, no such cases were identified.

**26. Were there any challenges to the application of Article 28 on validity as to form of ‘a declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person making the declaration’?**

No, no such cases were identified.

**27. Is there an institution of an administrator whose appointment is mandatory or mandatory upon request in your MS within the meaning of Article 29 Succession Regulation? Were there instances where foreign applicable law (*lex successionis*) interfered with the powers of administrator exercised under the law of the forum?**

Yes, such institution does exist in Polish substantive succession law, however no cases concerning administration of estate were identified.

**28. Were there cases where the *renvoi* provided for in Article 34 Succession Regulation operated? If yes, please explain the laws of which states were considered? Is partial *renvoi* possible?**

Yes, one case where provision on *renvoi* provided for in Article 34 Succession Regulation was discussed and applied by the court was identified.

The case concerned an application for confirmation of inheritance.<sup>70</sup> The court assessed that the deceased, at the time of death (in 2021) was habitually resident in the UK. The court assumed jurisdiction under Article 10(1)(b) Succession Regulation based on location of assets in Poland and previous habitual residence of the deceased in Poland. Consequently, the court had jurisdiction to rule on the succession as a whole. The court has decided to limit the scope of the proceedings on the basis of Article 12(1), as some assets were located in the UK, where separate inheritance proceedings were pending. The court established that in accordance with Article 21 Succession Regulation the law applicable was the law of England and Wales.

Hence, in accordance with Article 34(1) Succession Regulation, the court verified private international law rules in place in the UK. It stated that the law in England and Wales in this area is not codified, but is based on custom, case law and legal scholarship. The court assessed that in England and Wales the law applicable to the succession of immovable property is the law of the place where the property is located, and to the succession of other assets (movable property, which also includes shares in companies) is the law of the last place of residence of the deceased. Given the above, the court has decided that the succession to immovable property located in Poland is subject to Polish substantive succession law, while the remaining assets

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<sup>70</sup> Postanowienie Sądu Rejonowego dla Warszawy-Śródmieścia w Warszawie z 8 grudnia 2022 r., sygnatura akt: VI Ns 191/22 (Order of the District Court Warszawa-Śródmieście, 8 December 2022, VI Ns 191/22).

(except for these located in the UK) were subject to the laws of England and Wales. Hence, the court admitted partial renvoi however did not elaborate on its admissibility.

**29. Were there cases where the rule on *commorientes* of Article 32 Succession Regulation was applied? If yes, please describe.**

No cases concerning Article 32 Succession Regulation were identified.

**30. Were there cases where the rule on estate without claimant of Article 33 Succession Regulation was applied? If yes, please describe.**

No cases concerning Article 33 Succession Regulation were identified.

**31. Were there cases in your MS, in which certain provisions of the law of your MS or another state were qualified as special rules mentioned in Article 30 Succession Regulation (namely as ‘special rules which, for economic, family or social considerations, impose restrictions concerning or affecting the succession’ in respect of certain specific assets, which ‘are applicable irrespective of the law applicable to the succession’)? If yes, please describe which rules and relating to what kind of assets were considered? How did the court establish that these rules are indeed applicable irrespective of applicable law?**

No cases concerning Article 30 Succession Regulation were identified.

In one of the decisions of the Supreme Court<sup>71</sup> included in this National Report, this provision is mentioned, however it is unclear to us what exactly the Supreme Court had in mind.

**32. Were there cases in your MS in which an adaptation of a foreign right *in rem* was performed in accordance with Article 31 Succession Regulation? Please provide details of such adaptation. What was the original right and what was the equivalent?**

No cases concerning Article 31 Succession Regulation were identified, except for the case underlying CJEU’s decision in *Kubicka*.

**33. Were there instances in your MS where the public policy clause of Article 35 Succession Regulation was applied or considered but not applied? If yes, please describe the context of the case and the reasoning of the court.**

No cases where Article 35 Succession Regulation was applied or directly considered were identified. However one of the cases, where the Court was discussing public policy clause as an obstacle to recognition / enforcement of a decision coming from a third state (the US), can be mentioned.

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<sup>71</sup> Order of the Supreme Court of 11 March 2016, I CSK 64/15. In this case the Succession Regulation was not applicable as the deceased died before 17 August 2015. In the justification the Supreme Court refers to Article 30 Succession Regulation. It states: “Once the law applicable to succession matters in general has been determined, exceptions to this rule must be identified. According to Article 41 Private International Law Act, ownership and other rights *in rem* are governed by the law of the country in which the object is located. This is confirmed by Article 30 of Regulation No 650/2012”.

In accordance with US (Illinois) intestate succession law, the US court decided that the deceased's spouse inherits the whole estate. At the same time, under Polish intestate succession law, in the same factual background, the estate would be inherited by the spouse and parents of the deceased. Hence, the Court mentioned public policy as an obstacle against recognition / enforcement, stressing that the purpose of the public policy clause is not to assess the compatibility of a foreign judgment with Polish law. The exceptional nature of this clause means that only a violation of the basic, fundamental principles of the legal order can constitute a justified basis for refusal of recognition. Then, the Court explains that recognition / enforcement of a foreign decision would violate the fundamental principles of the legal order in only if the effect of such recognition would be incompatible with the very concept of a specific institution in Polish law, and not with the specific provisions regulating the same institution in both countries. Hence, in the case at hand, recognition of a US decision providing that the parents of the deceased do not inherit would not be contrary to the fundamental principles of the legal order, since Polish succession law does not always provide for inheritance rights of the parents of the deceased and it also allows for drafting of a disposition of property upon death, in which the testator can freely determine the circle of their heirs.

At the end, the Court underlines that 'the same argument applies to the public policy clause specified in Article 35' Succession Regulation.

**34. Were there instances in your MS where 'mechanisms designed to tackle the evasion of the law, such as fraude à la loi' were applied as suggested in Recital (26) Succession Regulation? If yes, please explain the circumstances and outcome of this application?**

No cases concerning mechanisms designed to tackle the evasion of the law, such as *fraude à la loi* mentioned in Recital (26) Succession Regulation were identified.

**35. Were there instances where the rules on territorial conflict of laws (Article 36) or inter-personal conflict of laws (Article 37) were applied in your MS? Were there any doubts / challenges to their application? Please elaborate.**

No cases where Article 36 or Article 37 Succession Regulation would be discussed were identified. However, in the case discussed above (under point 28 on renvoi), the court was faced with territorial conflict of laws, as the deceased was habitually resident at the time of death in the UK. The court noted that as "the last habitual residence was in L., the law applicable to all aspects of his succession is the law of England and Wales (there is no single law applicable to all parts of the United Kingdom in this area)".<sup>72</sup> It seems that the court applied directly the solution provided for in Article 36(2)(a) Succession Regulation, without elaborating on Article 36(1), which provides for the application of internal conflict-of-laws rules of a given state.

**Does your MS comprise several territorial units each of which has its own rules of law in respect of succession within the meaning of Article 38 Succession Regulation? If yes, are domestic rules or the Succession Regulation applied to resolve conflicts of laws arising between such units? Please explain.**

No, there are no territorial units with own rules of law in respect of succession within the meaning of Article 38 Succession Regulation in Poland.

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<sup>72</sup> Postanowienie Sądu Rejonowego dla Warszawy-Śródmieścia w Warszawie z 8 grudnia 2022 r., sygnatura akt: VI Ns 191/22 (Order of the District Court Warszawa-Śródmieście, 8 December 2022, VI Ns 191/22).

**36. Are there any other decisions / doubts / challenges, which do not fit within any of the above questions, but are related to the rules on applicable law of the Succession Regulation, and therefore, should be signaled within the National Report?**

Because it seems that none of the questions above relate to “formal validity” of a disposition of property upon death, we would like to point out here challenges related to the application of the 1961 HCCH Form of Wills Convention. Poland is party to the 1996 HCCH Form of Wills Convention since 1969. This convention takes precedence before the Succession Regulation in these Member States who are parties to it. It seems however that it might happen that a court overlooks the existence of this convention. It happened in the following cases<sup>73</sup>. The testatrix, who was a Polish national, died on 4 January 2016 in Canada leaving some assets in Poland. An applicant (son of the testatrix) applied for confirmation of inheritance on the basis of a will. In the opinion of the court, the will (dated of 16 November 2013) did not meet the requirements of a holographic (handwritten) will under Polish substantive law. The will was written by someone else and the testatrix has only signed it (whereas under Polish law a holographic will must be entirely handwritten and signed by the testator). The court of the first instance applied Polish substantive succession law and confirmed the inheritance on the basis of the rules on intestate succession. An appeal was filed. The court of the second instance pointed out that the cross-border nature of the case was completely overlooked. The case clearly had an international dimension: the deceased held dual citizenship, had lived in Canada for 25 years, died there, made their last will there, but left assets in Poland. The second instance court noted that in accordance with Article 1 of 1961 HCCH Form of Wills Convention, the will might be valid if it meets requirements of the law of the place of its making (in this case, Canadian law). Hence, the court of the second instance overturned the decision of the court of first instance and referred the case back for reconsideration.

In one of the identified cases even the Supreme Court overlooked the HCCH 1961 Form of Wills Convention stating that Article 27 Succession Regulation applies to that respect.<sup>74</sup>

*Authentic Instruments and Court Settlements*

**37. Are you aware of any doubts / challenges to the application of the rules on Authentic Instruments and Court Settlements of the Succession Regulation in your MS? Are there any voices suggesting any amendments to these rules?**

No case law which would specifically discuss the rules on Authentic Instruments and Court Settlements of the Succession Regulation was identified.

**38. Are you aware of any challenges to the use of authentic instruments produced in your MS in another MS?**

No case law which would specifically discuss the use of Polish authentic instruments in other EU Member States was identified. Please note however that ECTS judgement in *WB* case originates from Poland (see also answer to “Setting the scene” Part above). It follows from this

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<sup>73</sup> Postanowienie Sądu Okręgowego w Lublinie z 20 kwietnia 2017 r., sygnatura: II Ca 990/16 (Order of the Regional Court in Lublin), 20 April 2017, II Ca 990/16).

<sup>74</sup> Postanowienie Sądu Najwyższego z 31 sierpnia 2022 r., sygnatura: III Cz 93/22 (decision of the Supreme Court, 31 August 2022, III Cz 93/22).

judgment that domestic certificate of succession issued by Polish notary is an authentic instrument within the meaning of the Succession Regulation, and not a decision.

**39. Are you aware of any challenges to the use in your MS of authentic instruments within the meaning of Article 3(1)(i) Succession Regulation, which were produced in another MS?**

No case law which would specifically discuss the use of foreign authentic instruments in Poland was identified.

**40. Were there any challenges to the enforcement in your MS of a foreign court settlement under Article 61 Succession Regulation?**

No such cases were identified.

**41. Were there any other decisions / doubts / challenges, which do not fit within any of the above questions, but are related to circulation of authentic instruments and court settlements under the Succession Regulation, and therefore, should be signaled within the National Report?**

No such cases were identified.

*Recognition and Enforcement of Judgements*

**42. Were there cases in your MS, in which the rules on recognition and enforcement caused doubts / were analysed and discussed?**

We have identified one case in which rules on recognition and enforcement of the Succession Regulation were analysed. In this case, the heir applied to Polish Land Register for updating data concerning ownership of immovable property on the basis of German notarial deed confirming succession. The application faced refusal due to doubts as to finality of this “decision”. The court of the second instance, overturned this decision and send it back for reconsideration. The court of second instance explained that it must be examined whether the notarial deed titled “confirmation of inheritance” meets the requirements of Article 3(2) Succession Regulation, so as to be considered a “decision”. The conclusion as to whether the document submitted meets the requirements of Article 3(1)(g) in conjunction with Article 3(2) Succession Regulation depends on the provisions of German law regulating the institution of notarial “confirmation of inheritance” (just as Polish law does with respect to Polish certificate of inheritance - *akt poświadczenia dziedziczenia* - in Article 95j Notarial Law). Upon re-examination, the District Court should ascertain the content of foreign law (German law). For this purpose it might turn to Ministry of Justice.

**43. Were there any cases in your MS, in which a decision on succession matters originating from another MS faced refusal of recognition / enforcement? If yes, please provide details.**

See answer to the preceding question. No other cases on recognition / enforcement of decisions were identified.

**44. Does the Succession Regulation have any influence on the recognition and enforcement of decisions coming from third states (for example, when it comes to the assessment of indirect jurisdiction of the foreign court)?**

Yes, the question as how to assess the indirect jurisdiction at the stage of recognition / enforcement of decisions coming from third states should be discussed here.

Decisions of foreign courts or other authorities given in succession matters are subject to recognition / enforcement in Poland in accordance with provisions of the Code of Civil Procedure (or an applicable bilateral agreement). Pursuant to Article 1146 § 1(2) Code of Civil Procedure, a foreign judgment will not be recognized / enforced if it was handed down in a case falling within the exclusive jurisdiction of Polish courts. The examples of exclusive jurisdiction of Polish courts include cases involving property rights and possession of immovable property located in Poland (Article 1107<sup>1</sup> Code of Civil Procedure). Also, cases other than those listed above fall under exclusive jurisdiction insofar as their adjudication concerns property rights or possession or use of immovable property located in Poland (1110<sup>2</sup> Code of Civil Procedure).

With respect to cases concerning estate of a deceased, who died after 17 August 2025, it is unclear which jurisdictional rules should be considered while contemplating recognition / enforcement of a foreign decision with respect to an immovable property located in Poland.

Two solutions seems conceivable:

(1) As jurisdictional rules of the Succession Regulation are of exhaustive nature and therefore replace such rules contained in domestic law, the rules of the Succession Regulation, which do not provide for exclusive jurisdiction, should be applied. Consequently, a decision from a third state in matters of succession is subject to recognition / enforcement even if it relates to immovable property located in Poland; or

(2) As the Succession Regulation does not cover recognition / enforcement of decisions originating from third states, domestic jurisdictional rules of the Code of Civil Procedure should be applied. Consequently, a decision from a third state in matters of succession will be faced with refusal of recognition / enforcement to the extent it relates to immovable property located in Poland.

In one of the identified cases, the court applied the latter approach to the recognition of a US (Illinois) decision.<sup>75</sup>

**45. Are there any other decisions / doubts / challenges, which do not fit within any of the above questions, but are related to the recognition and enforcement of judgements under the Succession Regulation, and therefore, should be signalled within the National Report?**

No other doubts or challenges are revealed by the identified case law.

*European Certificate of Succession*

**46. Where there any doubts or challenges with respect to the issuance / use of an ECS<sup>76</sup> in your MS?**

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<sup>75</sup> Postanowienie Sądu Rejonowego w Jaśle z 22 lutego 2024 r., sygnatura akt: I Ns 295/22 (Order of the District Court in Jasło, 22 February 2024, I Ns 295/22).

<sup>76</sup> See case C-301/20 *UE, HC*, ECLI:EU:C:2021:528, case C-354/21 *RJR* ECLI:EU:C:2022:587, case C-187/23 *Albausy* ECLI:EU:C:2025:34, case C-240/24, *BNP Paribas Fortis* (pending), case C-873/24 *Marwanek* (pending).

No other doubts or challenges are revealed by the identified case law.

#### 47. Are there any statistics on ECSs made in your MSs available?

Some statistics on ECSs made in Poland are available. For instance, the Ministry of Justice published statistics concerning the period from 2013 to 2024 (see the table below), which reveals: (1) the number of domestic certificates of succession (*akt poświadczenia dziedziczenia*) produced by notaries (line 1 of the table below), including these documenting the acquisition of ownership or rights in rem in immovable property or acquisition of shares in corporate bodies owning or having rights in rem in such property by a foreigner (line 2 of the table below) and (2) the number of ECSs (*europejskie poświadczenia spadkowe*) produced by notaries (line 3 of the table below), including these documenting the acquisition of ownership or rights in rem in immovable property or acquisition of shares in corporate bodies owning or having rights in rem in such property by a foreigner (line 4 of the table below).

| WYSZCZEGÓLNIENIE |                                                                                                                          | Liczba czynności |        |        |        |         |         |         |         |         |         |         |         |
|------------------|--------------------------------------------------------------------------------------------------------------------------|------------------|--------|--------|--------|---------|---------|---------|---------|---------|---------|---------|---------|
|                  |                                                                                                                          | 2013             | 2014   | 2015   | 2016   | 2017    | 2018    | 2019    | 2020    | 2021    | 2022    | 2023    | 2024    |
| 1.               | Akty poświadczenia dziedziczenia                                                                                         | 69 932           | 76 524 | 84 799 | 94 126 | 102 471 | 110 486 | 123 608 | 124 416 | 183 927 | 174 742 | 163 165 | 168 450 |
| 2.               | w tym, o których mowa w art. 8a ust. 1 pkt 2 ustawy z dnia 24 marca 1920 r. o nabywaniu nieruchomości przez cudzoziemców |                  |        |        |        |         |         |         |         |         | 555     | 505     | 1 591   |
| 3.               | Europejskie poświadczenia spadkowe                                                                                       |                  |        |        | 58     | 95      | 86      | 106     | 93      | 2 543   | 157     | 185     | 327     |
| 4.               | w tym, o których mowa w art. 8a ust. 1 pkt 3 ustawy z dnia 24 marca 1920 r. o nabywaniu nieruchomości przez cudzoziemców |                  |        |        |        |         |         |         |         |         | 15      | 10      | 13      |

Source: Wydział Statystyki i Analiz, Departament Analiz i Strategii Ministerstwa Sprawiedliwości, *Akty poświadczenia dziedziczenia przez notariuszy w latach 2013-2024* available at:

Please note that ECS may be produced in Poland not only by notaries but also by courts. The ones produced by courts are not included in the above table.

#### 48. Are there any statistics on ‘foreign’ ECSs used in your MSs available?

We are not aware of the existence of such statistics in Poland.

#### 49. Are there any other decisions / doubts / challenges<sup>77</sup>, which do not fit within any of the above questions, but are related to the issuance or use of the ECS, and therefore, should be signaled within the National Report?

No other doubts or challenges are revealed by the identified case law.

#### Other aspects

#### 50. Are there any other decisions / doubts / challenges, which do not fit within any of the above headings and questions, but are related to the application of the Succession Regulation, and therefore, should be signaled within the National Report?

No other doubts or challenges are revealed by the identified case law.

<sup>77</sup> See case C-102/18 *Brisch* ECLI:EU:C:2019:34.