Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

16 July 2020 *

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 650/2012 – Scope – Definition of 'succession with cross-border implications' – Definition of 'habitual residence of the deceased' – Article 3(2) – Definition of 'court' – Whether notaries are subject to the rules of international jurisdiction – Article 3(1)(g) and (i) – Definitions of 'decision' and 'authentic instrument' – Articles 5, 7 and 22 – Agreement on the choice of court and the law applicable to the succession – Article 83(2) and (4) – Transitional provisions)

In Case C-80/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), made by decision of 17 January 2019, received at the Court on 4 February 2019, in the proceedings brought by

E. E.

intervening parties:

Kauno miesto 4-ojo notaro biuro notarė Virginija Jarienė,

K.-D.E.,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan, L. Bay Larsen, C. Toader (Rapporteur) and N. Jääskinen, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 16 January 2020,

after considering the observations submitted on behalf of:

– the Lithuanian Government, by V. Kazlauskaitė-Švenčionienė, V. Vasiliauskienė and K. Dieninis, acting as Agents,

* Language of the case: Lithuanian.

– the Czech Government, by M. Smolek, J. Vláčil and A. Kasalická, acting as Agents,

– the Spanish Government, by S. Jiménez García, J. Rodríguez de la Rúa Puig and S. Centeno Huerta, acting as Agents,

– the Hungarian Government, by M.Z. Fehér and D.R. Gesztelyi, acting as Agents,

– the Austrian Government, by J. Schmoll and G. Hesse, acting as Agents,

– the European Commission, by M. Wilderspin and S.L. Kalėda, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 March 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(1)(g) and (i), the first subparagraph of Article 3(2), Articles 4, 5, 7, 22 and 59 and the scope of 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 2012 L 201, p. 107, and corrigenda OJ 2012 L 344, p. 3; OJ 2013 L 60, p. 140; and OJ 2019 L 243, p. 9).

2 The request has been made in the context of proceedings brought by E. E. to secure the issuing of a certificate of succession by a notary established in Kaunas (Lithuania), following the death of his mother in Germany.

Legal context

European Union law

3 Under recitals 1, 7, 20, 22 to 24, 29, 32, 37, 39, 59, 61 and 67 of Regulation No 650/2012:

"(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is assured. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.

…

(7) The proper functioning of the internal market should be facilitated by removing the obstacles to the free movement of persons who currently face difficulties in asserting their rights in the context of a succession having cross-border implications. …

…

(20) This Regulation should respect the different systems for dealing with matters of succession applied in the Member States. For the purposes of this Regulation, the term "court" should therefore be given a broad meaning so as to cover not only courts in the true sense of the word, exercising judicial functions, but also the notaries or registry offices in some Member States who or which, in certain matters of succession, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in a given succession by delegation of power by a court. All courts as defined in this Regulation should be bound by the rules of jurisdiction set out in this Regulation. Conversely, the term "court" should not cover non judicial authorities of a Member State empowered under national law to deal with matters of succession, such as the notaries in most Member States where, as is usually the case, they are not exercising judicial functions.

…

(22) Acts issued by notaries in matters of succession in the Member States should circulate under this Regulation. When notaries exercise judicial functions they are bound by the rules of jurisdiction, and the decisions they give should circulate in accordance with the provisions on recognition, enforceability and enforcement of decisions. When notaries do not exercise judicial functions they are not bound by the rules of jurisdiction, and the authentic instruments they issue should circulate in accordance with the provisions on authentic instruments.

(23) In view of the increasing mobility of citizens and in order to ensure the proper administration of justice within the Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised, this Regulation should provide that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the habitual residence of the deceased at the time of death. In order to determine the habitual residence, the authority dealing with the succession should make an overall assessment of the circumstances of the life of the deceased during the years preceding his death and at the time of his death, taking account of all relevant factual elements, in particular the duration and regularity of the deceased's presence in the State concerned and the conditions and reasons for that presence. The habitual residence thus determined should reveal a close and stable connection with the State concerned taking into account the specific aims of this Regulation.

(24) In certain cases, determining the deceased's habitual residence may prove complex. Such a case may arise, in particular, where the deceased for professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a close and stable connection with his State of origin. In such a case, the deceased could, depending on the circumstances of the case, be considered still to have his habitual residence in his State of origin in which the centre of interests of his family and his social life was located. Other complex cases may arise where the deceased lived in several States alternately or travelled from one State to another without settling permanently in any of them. If the deceased was a national of one of those States or had all his main assets in one of those States, his nationality or the location of those assets could be a special factor in the overall assessment of all the factual circumstances.

…

(29) If succession proceedings are opened by a court of its own motion, as is the case in certain Member States, that court should close the proceedings if the parties agree to settle the succession amicably out of court in the Member State of the chosen law. Where succession proceedings are not opened by a court of its own motion, this Regulation should not prevent the parties from settling the succession amicably out of court, for instance before a notary, in a Member State of their choice where this is possible under the law of that Member State. This should be the case even if the law applicable to the succession is not the law of that Member State.

…

(32) In order to simplify the lives of heirs and legatees habitually resident in a Member State other than that in which the succession is being or will be dealt with, this Regulation should allow any person entitled under the law applicable to the succession to make declarations concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or concerning the limitation of his liability for the debts under the succession, to make such declarations in the form provided for by the law of the Member State of his habitual residence before the courts of that Member State. This should not preclude such declarations being made before other authorities in that Member State which are competent to receive declarations under national law. Persons choosing to avail themselves of the possibility to make declarations in the Member State of their habitual residence should themselves inform the court or authority which is or will be dealing with the succession of the existence of such declarations within any time limit set by the law applicable to the succession.

…

(37) In order to allow citizens to avail themselves, with all legal certainty, of the benefits offered by the internal market, this Regulation should enable them to know in advance which law will apply to their succession. Harmonised conflict-of-laws rules should be introduced in order to avoid contradictory results. The main rule should ensure that the succession is governed by a predictable law with which it is closely connected. For reasons of legal certainty and in order to avoid the fragmentation of the succession, that law should govern the succession as a whole, that is to say, all of the property forming part of the estate, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State.

…

(39) A choice of law should be made expressly in a declaration in the form of a disposition of property upon death or be demonstrated by the terms of such a disposition. A choice of law could be regarded as demonstrated by a disposition of property upon death where, for instance, the deceased had referred in his disposition to specific provisions of the law of the State of his nationality or where he had otherwise mentioned that law.

…

(59) In the light of its general objective, which is the mutual recognition of decisions given in the Member States in matters of succession, irrespective of whether such decisions were given in contentious or non-contentious proceedings, this Regulation should lay down rules relating to the recognition, enforceability and enforcement of decisions similar to those of other Union instruments in the area of judicial cooperation in civil matters.

…

(61) Authentic instruments should have the same evidentiary effects in another Member State as they have in the Member State of origin, or the most comparable effects. When determining the evidentiary effects of a given authentic instrument in another Member State or the most comparable effects, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the Member State of origin. The evidentiary effects which a given authentic instrument should have in another Member State will therefore depend on the law of the Member State of origin.

…

(67) In order for a succession with cross-border implications within the Union to be settled speedily, smoothly and efficiently, the heirs, legatees, executors of the will or administrators of the estate should be able to demonstrate easily their status and/or rights and powers in another Member State, for instance in a Member State in which succession property is located. …'

4 Article 1 of Regulation No 650/2012, headed 'Scope', provides in paragraph 1 thereof:

'This Regulation shall apply to successions to the estates of deceased persons. It shall not apply to revenue, customs or administrative matters.'

5 Article 3(1)(g) and (i), and Article 3(2) of that regulation provide:

'1. For the purposes of this Regulation:

…

(g) "decision" means any decision in a matter of succession given by a court of a Member State, whatever the decision may be called, including a decision on the determination of costs or expenses by an officer of the court;

…

(i) "authentic instrument" means a document in a matter of succession which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:
(i) relates to the signature and the content of the authentic instrument; and
(ii) has been established by a public authority or other authority empowered for that purpose by the Member State of origin.

2. For the purposes of this Regulation, the term "court" means any judicial authority and all other authorities and legal professionals with competence in matters of succession which exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate:

(a) may be made the subject of an appeal to or review by a judicial authority; and

(b) have a similar force and effect as a decision of a judicial authority on the same matter.

The Member States shall notify the Commission of the other authorities and legal professionals referred to in the first subparagraph in accordance with Article 79.'

6 In Chapter II of Regulation No 650/2012, Article 4, headed 'General jurisdiction', provides:

'The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.'

7 Under Article 5 of that regulation, headed 'Choice-of-court agreement':

'1. Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction to rule on any succession matter.

2. Such a choice-of-court agreement shall be expressed in writing, dated and signed by the parties concerned. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to "writing".'

8 Article 7 of that regulation, headed 'Jurisdiction in the event of a choice of law', states:

'The courts of a Member State whose law had been chosen by the deceased pursuant to Article 22 shall have jurisdiction to rule on the succession if:

…

(b) the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of that Member State; or

(c) the parties to the proceedings have expressly accepted the jurisdiction of the court seised.'

9 Article 13 of that regulation provides:

'In addition to the court having jurisdiction to rule on the succession pursuant to this Regulation, the courts of the Member State of the habitual residence of any person who, under the law applicable to the succession, may make, before a court, 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, shall have jurisdiction to receive such declarations where, under the law of that Member State, such declarations may be made before a court.'

10 In Chapter III of Regulation No 650/2012, on 'Applicable law', Article 21, headed 'General jurisdiction', provides:

'1. Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.

2. Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State.'

11 Article 22 of the regulation, headed 'Choice of law', provides in paragraphs 1 and 2 thereof:

'1. A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.

A person possessing multiple nationalities may choose the law of any of the States whose nationality he possesses at the time of making the choice or at the time of death.

2. The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition.'

12 Under Article 28 of that regulation:

'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, shall be valid as to form where it meets the requirements of:

…

(b) the law of the State in which the person making the declaration has his habitual residence.'

13 Article 59 of Regulation No 650/2012 provides:

'1. An authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned.

A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form established in accordance with the advisory procedure referred to in Article 81(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

…'

14 Article 60(1) of Regulation No 1215/2012 provides:

'An authentic instrument which is enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 45 to 58.'

15 Article 64 of that regulation states:

'The [European] Certificate [of Succession] shall be issued in the Member State whose courts have jurisdiction under Article 4, Article 7, Article 10 or Article 11. The issuing authority shall be:

(a) a court as defined in Article 3(2); or

(b) another authority which, under national law, has competence to deal with matters of succession.'

16 Under Article 83 of that regulation, entitled 'Transitional provisions':

'1. This Regulation shall apply to the succession of persons who die on or after 17 August 2015.

2. Where the deceased had chosen the law applicable to his succession prior to 17 August 2015, that choice shall be valid if it meets the conditions laid down in Chapter III or if it is valid in application of the rules of private international law which were in force, at the time the choice was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed.

…

4. 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 this Regulation, that law shall be deemed to have been chosen as the law applicable to the succession.'

Lithuanian law

The Civil Code

17 Article 5.4 of the Lietuvos Respublikos civilinis kodeksas (Civil Code of the Republic of Lithuania) is worded as follows:

'1. The place of the opening of succession shall be regarded as the last place of domicile of the legator or testator (Article 2.12 of this Code).

2. In the event that the legator or testator had no permanent place of residence, the place of the opening of succession shall be considered to be:

(1) the place where the legator or testator lived for most of the time during the last six months prior to his or her death;

(2) if the legator or testator resided in several places, the place of the opening of succession shall be regarded as the place of the prevailing economic or personal interests of the legator or testator (place of location of property or its principal part, when the property is situated in several places; the place of residence of the spouse with whom the legator or testator maintained matrimonial relations during the last six months prior to his or her death, or the place of residence of the child who was residing together with the legator or testator).

3. Where it is impossible to determine the place of residence of the legator or testator in accordance with the circumstances indicated in Paragraphs 1 and 2 of this Article, the place of the opening of succession may be determined in accordance with the citizenship of the legator or testator, his or her registration, the place of registration of the vehicles belonging to him or her, and other circumstances.

4. In the event of dispute, the place of the opening of succession may be determined by the court at the request of the interested parties, taking into account all of the circumstances.'

18 Article 5.66 of that code provides that heirs by operation of law or by will are to be able to present an application to the notary for the place of the opening of succession, with a view to obtaining the certificate of the right to the inheritance ('the certificate of succession').

The Code of Civil Procedure

19 Article 444 of the Civilinio proceso kodeksas (Civil Procedure Code) provides:

'1. A court shall establish facts giving rise to the opening, change or termination of personal or property rights of persons.

2. The court shall examine cases:

…

(8) concerning the acceptance of the estate and the establishment of the actual place of the opening of the succession.'

20 Pursuant to Article 511 of that code, a notarial act performed or a refusal to perform a notarial act may be challenged. An action may be brought before the district court having jurisdiction for the place of work of the notary concerned.

The Law on the Institution of Notary

21 Article 1 of the Lietuvos Respublikos notariato įstatymas (Law of the Republic of Lithuania on the Institution of Notary; 'the Law on the Institution of Notary') provides:

'The Institution of Notary shall comprise all notaries who, in accordance with this Law, are granted the right legally to establish the undisputed subjective rights of, and the legal facts relating to, natural and legal persons, and to ensure the protection of the legal interests of those persons and of the State.'

22 By virtue of Article 2 of that law, notaries are to be appointed and dismissed by the Minister for Justice.

23 Article 12 of that law, headed 'Independence of notaries', provides that notaries are to exercise their powers without having regard for the influence of institutions of State power and the administration, and are to be subject only to the law.

24 Pursuant to Article 26 of that law, notaries are also to issue certificates of succession. The facts listed in documents certified by a notary are established and require no proof so long as the documents (parts thereof) have not been not deemed invalid in accordance with any statutory procedure.

25 In accordance with Article 41 of the Law on the Institution of Notary, any person who believes that the performance of a notarial act or the refusal to perform a notarial act is incorrect is to be entitled to challenge that matter before the courts.

The dispute in the main proceedings and the questions referred for a preliminary ruling

26 E. E. is a Lithuanian national. His mother, who was also a Lithuanian national, married K.-D. E., a German national, and changed domicile in order to live, with E. E., at her husband's home in Germany. On 4 July 2013, she drew up before a notary, whose office is situated in the town of Garliava (Lithuania), a will in which she designated her son as the heir to her entire estate.

27 On the death of E. E.'s mother in Germany, a property, namely an apartment in Kaunas, was registered in the name of the deceased. On 17 July 2017, E. E. contacted a notary established in Kaunas, requesting that the succession procedure be initiated and that a certificate of succession be issued.

28 On 1 August 2017, that notary refused to draw up that certificate on the ground that the habitual residence of the deceased, for the purposes of Article 4 of Regulation No 650/2012, was, in her view, to be regarded as being situated in Germany.

29 E. E. challenged that refusal before the Kauno apylinkės teismas (District Court, Kaunas, Lithuania). By decision of 29 January 2018, that court upheld the applicant's application on the ground that the deceased had not cut ties with Lithuania.

30 The notary contacted by E.E. lodged an appeal against that decision before the Kauno apygardos teismas (Regional Court, Kaunas, Lithuania). In those proceedings, E. E. made an application to have included in the case file a statement from K.-D. E., in which he declared that he had no claim on the estate of the deceased and agreed to the jurisdiction of the Lithuanian courts as no succession procedure had been initiated in Germany.

31 By decision of 26 April 2018, that court annulled the contested decision and rejected the application made by E. E., who brought an appeal on a point of law before the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania).

32 In those circumstances, the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is a situation such as that in the case under examination – in which a Lithuanian national whose habitual place of residence on the day of her death was possibly in another Member State, but who in any event had never severed her links with her homeland, and who, inter alia, had drawn up, prior to her death, a will in Lithuania and left all of her assets to her heir, a Lithuanian national, and at the time of the opening of the succession it was established that the entire estate comprised immovable property located solely in Lithuania, and a national of that other Member State surviving his spouse expressed in clear terms his intention to waive all claims to the estate of the deceased, did not take part in the court proceedings brought in Lithuania, and consented to the jurisdiction of the Lithuanian courts and the application of Lithuanian law – to be regarded as a succession with cross-border implications within the meaning of Regulation No 650/2012 and to which that regulation must be applied?

(2) Is a Lithuanian notary who opens a succession case, issues a certificate of succession rights and carries out other actions necessary for the heir to assert his or her rights to be regarded as a "court" within the meaning of Article 3(2) of Regulation No 650/2012, regard being had to the fact that, in their activities, notaries respect the principles of impartiality and independence, their decisions are binding upon themselves or judicial authorities and their actions may be the subject of judicial proceedings?

(3) If the second question is answered in the affirmative, are certificates of succession rights issued by Lithuanian notaries to be regarded as being decisions within the meaning of Article 3(1)(g) of Regulation No 650/2012 and must jurisdiction for that reason be established for the purpose of issuing them?

(4) If the second question is answered in the negative, should the provisions of [Articles 4 and] 59 of Regulation No 650/2012 (together or separately, but without limitation to those articles) be construed as meaning that Lithuanian notaries are entitled to issue certificates of succession rights without following general rules on jurisdiction and that such certificates will be held to be authentic instruments which also give rise to legal consequences in other Member States?

(5) Must Article 4 of Regulation No 650/2012 (or other provisions thereof) be construed as meaning that the habitual place of residence of the deceased can be established in only one specific Member State?

(6) Should the provisions of Articles 4, 5, 7 and 22 of Regulation No 650/2012 (together or separately, but without limitation to those articles) be construed and applied in such a way that, in the present case, in accordance with the facts as set out in the first question, it must be concluded that the parties concerned agreed that the courts in Lithuania should have jurisdiction and that Lithuanian law should be applied?'

Consideration of the questions referred

The first and fifth questions

33 By its first and fifth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Regulation No 650/2012 must be interpreted as meaning that a situation in which the deceased was a national of one Member State residing in another Member State at the time of his or her death, but had not cut ties with the former Member State falls within the scope of the concept of 'succession with cross-border implications', and whether, in that situation, the last habitual residence of the deceased, within the meaning of that regulation, must be established in a single Member State.

34 As a preliminary point, it should be noted that Regulation No 650/2012 was adopted on the basis of Article 81(2) TFEU, which refers solely to civil matters with cross-border implications.

35 The aim of that regulation, in accordance with recitals 1 and 7 thereof, is to facilitate the proper functioning of the internal market by removing the obstacles to the free movement of persons who face difficulties in asserting their rights in the context of a succession having cross-border implications. Under recital 67, that regulation aims to settle successions with such implications speedily, smoothly and efficiently.

36 In order to establish whether a succession has those implications and falls, therefore, within the scope of Regulation No 650/2012, it is necessary, as the Advocate General observes in point 34 of his Opinion, to determine, in the first place, the Member State of habitual residence of the deceased at the time of his or her death and, in the second place, whether that residence can be established in another Member State on account of the location of another factor relating to the succession in a Member State other than that of the last habitual residence of the deceased.

37 In that connection, it should be noted that, while no provision in Regulation No 650/2012 defines the concept of 'habitual residence of the deceased at the time of his or her death', within the meaning of that regulation, useful guidance is set out in recitals 23 and 24.

38 Under recital 23 of that regulation, it is for the authority dealing with the succession to determine the habitual residence of the deceased and, to that end, that authority must take into account the fact that the general connecting factor is the habitual residence of the deceased, together with all of the circumstances of the life of the deceased during the years preceding his or her death and at the time of his or her death, taking account of all relevant factual elements, in particular the duration and regularity of the deceased's presence in the State concerned and the conditions and reasons for that presence. The habitual residence thus determined should reveal a close and stable connection between the succession and the Member State concerned.

39 In that regard, recital 24 of that regulation mentions different cases in which the matter of determining the habitual residence may be prove to be complex. Thus, according to the final sentence of that recital, if the deceased was a national of one of those States or had all his or her main assets in one of those States, his or her nationality or the location of those assets could be a special factor in the overall assessment of all the factual circumstances where the deceased for professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a close and stable connection with his or her State of origin.

40 It follows that the habitual residence of the deceased must be established by the authority dealing with the succession, by way of an overall assessment of the circumstances of the case in point, in a single Member State.

41 As the Advocate General observes, in essence, in point 42 of his Opinion and as is apparent from the case-law of the Court, an interpretation of the provisions of Regulation No 650/2012, according to which the habitual residence of the deceased at the time of his or her death could be established in several Member States, would lead to a fragmentation of the succession, given that that residence is the condition for the purposes of applying the general rules set out in Articles 4 and 21 of that regulation, under which both the jurisdiction of the courts to adjudicate on a succession as a whole and the law applicable pursuant to that regulation, which is intended to govern a succession as a whole, are determined in relation to that residence. Consequently, that interpretation would be incompatible with the objectives of that regulation (see, to that effect, judgments of 12 October 2017, *Kubicka*, C-218/16, EU:C:2017:755, paragraph 57, and of 21 June 2018, *Oberle*, C-20/17, EU:C:2018:485, paragraphs 53 to 55).

42 Moreover, it is necessary to assess whether the succession is cross-border in nature on account of the location of another factor relating thereto in a Member State other than that of the last habitual residence of the deceased.

43 In that connection, it should be noted that the Court has held that a succession has cross-border implications when it includes assets situated in several Member States and, in particular, in a Member State other than that of the last residence of the deceased (see, to that effect, judgment of 21 June 2018, *Oberle*, C-20/17, EU:C:2018:485, paragraph 32). Furthermore, Regulation No 650/2012 refers, non-exhaustively, to other circumstances which can reveal the existence of a succession involving several Member States.

44 As the Advocate General also observes, in essence, in point 65 of his Opinion, a body of consistent indications, such as those mentioned in recitals 23 and 24 of Regulation No 650/2012 and referred to, in particular, in paragraphs 38 and 39 of the present judgment, are – subject to verifications that are for the referring court to carry out – such as to lead to the finding that a succession such as that at issue in the main proceedings, which has cross-border implications, falls within the scope of Regulation No 650/2012.

45 In the light of the foregoing considerations, the answer to the first and fifth questions is that Regulation No 650/2012 must be interpreted as meaning that a situation in which the deceased, a national of one Member State, was residing in another Member State at the date of his or her death but had not cut ties with the first of those Member States, in which the assets making up his or her estate are located, while his or her successors have their residence in both of those Member States, falls within the scope of the concept of 'succession with cross-border implications'. The last habitual residence of the deceased, within the meaning of that regulation, must be established by the authority dealing with the succession in only one of those Member States.

The second question

46 By its second question, the referring court asks, in essence, whether Article 3(2) of Regulation No 650/2012 must be interpreted as meaning that Lithuanian notaries can be regarded as 'courts' within the meaning of that regulation.

47 Under the first subparagraph of Article 3(2) of Regulation No 650/2012, non-judicial authorities or legal professionals with competence in matters of succession fall within the scope of the concept of 'court', within the meaning of that provision, where they exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate may be made the subject of an appeal to or review by a judicial authority and have a similar force and effect as a decision of a judicial authority on the same matter.

48 Furthermore, it is apparent from recital 20 of Regulation No 650/2012 that the term 'court' should be given a broad meaning, which also encompasses notaries where they exercise judicial functions in relation to certain matters of succession.

49 Furthermore, it should be stated that the failure by a Member State to notify the Commission of the exercise of judicial functions by notaries, as required under the second subparagraph of Article 3(2) of Regulation No 650/2012, is not decisive for their classification as a 'court' (judgment of 23 May 2019, *WB*, C-658/17, EU:C:2019:444, paragraph 64).

50 It must also be borne in mind that Regulation No 650/2012 states, in Article 3(2) thereof, that the concept of 'court', within the meaning of that regulation, encompasses not only judicial authorities but also all other authorities and legal professionals with competence in matters of succession which exercise judicial functions and which satisfy the conditions laid down by that provision (judgment of 23 May 2019, *WB*, C-658/17, EU:C:2019:444, paragraph 40).

51 In that connection, the Court has already noted that an authority must be regarded as exercising judicial functions where it may have jurisdiction to hear and determine disputes in matters of succession. That criterion applies irrespective of whether the proceedings for issuing a deed of certification of succession are contentious or non-contentious (judgment of 23 May 2019, *WB*, C-658/17, EU:C:2019:444, paragraph 56).

52 In the present case, it must be found that, under Article 1 of the Law on the Institution of Notary, Lithuanian notaries are empowered to establish undisputed subjective rights.

53 It would seem to follow, as the Advocate General observes in point 81 of his Opinion, that a Lithuanian notary is not competent to decide on matters in dispute between the parties, and is not empowered to establish facts that are not clear and obvious, or to decide on facts in dispute.

54 It must therefore be found that, subject to verification by the referring court, the issuance of a national certificate of succession by Lithuanian notaries does not entail the exercise of judicial functions.

55 That being so, in the light of the wording of Article 3(2) of Regulation No 650/2012, the status of 'court', within the meaning of that provision, can also follow from the fact, for the authorities and professions referred to, of acting by delegation or under the control of a judicial authority. It is for the referring court to determine whether that is the case for Lithuanian notaries when they issue certificates of succession.

56 In the light of the foregoing considerations, the answer to the second question is that Article 3(2) of Regulation No 650/2012 must be interpreted as meaning that, subject to verification by the referring court, Lithuanian notaries do not exercise judicial functions when issuing certificates of succession. However, it is for the referring court to determine whether those notaries act by delegation or under the control of a judicial authority and whether, consequently, they can be classed as 'courts' within the meaning of that provision.

The third question

57 By its third question, the referring court asks, in essence, whether, in the event that it should find that Lithuanian notaries may be classes as 'courts' within the meaning of Regulation No 650/2012, certificates of succession that they issue may be classed as 'decisions', within the meaning of Article 3(1)(g) of Regulation No 650/2012 and whether, for the purposes of issuing such certificates, those notaries can apply the rules on jurisdiction laid down in Chapter II of that regulation.

58 Under Article 3(1)(g) of Regulation No 650/2012, the term 'decision' covers any decision in a matter of succession given by a court of a Member State, whatever the decision may be called.

59 It follows from that provision that the sole condition laid down by that regulation for an instrument to be classed as a 'decision' is that it be delivered by a 'court', within the meaning of Article 3(2) of that regulation.

60 Consequently, in the event that the referring court should find that Lithuanian notaries can be classed as 'courts' within the meaning of Article 3(2) of Regulation No 650/2012, a certificate of succession issued by one of those notaries can be classed as a 'decision' within the meaning of Article 3(1)(g) of that regulation.

61 As regards the rules of jurisdiction, the Court has held that Regulation No 650/2012, in particular Article 4 thereof, determines the international jurisdiction in relation to proceedings involving measures concerning the succession as a whole, such as, in particular, the issuing of national certificates of succession, irrespective of whether those proceedings are contentious or non-contentious, as also follows from recital 59 of that regulation (see, to that effect, judgment of 21 June 2018, *Oberle*, C-20/17, EU:C:2018:485, paragraphs 44 and 45).

62 As is apparent from recital 22 of Regulation No 650/2012, where notaries exercise judicial functions or act by delegation or under the control of a judicial authority, they are bound by the rules of jurisdiction, laid down in Chapter II of that regulation, and the decisions they give should circulate in accordance with the provisions on recognition, enforceability and enforcement of decisions, referred to in Chapter IV of that regulation.

63 In the light of the foregoing considerations, the answer to the third question is that Article 3(1)(g) of Regulation No 650/2012 must be interpreted as meaning that, in the event that the referring court should find that Lithuanian notaries can be classed as 'courts' within the meaning of that regulation, certificates of succession that they deliver can be regarded as 'decisions' within the meaning of that provision, with the result that, for the purposes of issuing such certificates, those notaries can apply the rules of jurisdiction laid down in Chapter II of that regulation.

The fourth question

64 By its fourth question, the referring court asks whether Articles 4 and 59 of Regulation No 650/2012 must be interpreted as meaning that notaries in a Member State, who are not classed as 'courts' within the meaning of that regulation, can issue certificates of succession without applying the general rules of jurisdiction laid down by that regulation, and whether the latter are to be regarded as 'authentic instruments' within the meaning of Article 3(1)(i) of the same regulation, producing effects in the other Member States.

65 More specifically, by the first part of that fourth question, the referring court asks whether, in order to ensure the unity of a succession, in the event that Lithuanian notaries should not be classed as 'courts' for the purposes of Regulation No 650/2012, they are bound by the rules of jurisdiction laid down in Chapter II of Regulation No 650/2012, headed 'Jurisdiction', and whether, prior to issuing a national certificate of succession, such notaries must determine which courts would, where necessary, have jurisdiction by virtue of those provisions.

66 In that connection, it is apparent from the clear wording of recital 22 of Regulation No 650/2012 that, where notaries do not exercise judicial functions, they are not bound by the rules of jurisdiction.

67 Furthermore, as the Court has already held, Article 4 of that regulation determines the international jurisdiction of the courts of the Member States in relation to proceedings involving measures concerning the succession as a whole (judgment of 21 June 2018, *Oberle*, C-20/17, EU:C:2018:485, paragraph 44). However, non-judicial authorities are not referred to in the provisions under Chapter II of Regulation No 650/2012 on the rules of jurisdiction.

68 Consequently, it must be observed that, if the referring court were to find that Lithuanian notaries cannot be classed as 'courts' within the meaning of Article 3(2) of Regulation No 650/2012, those notaries would not be subject to the rules of jurisdiction laid down by Regulation No 650/2012 and they would not, moreover, be required to determine which courts would, where necessary, have jurisdiction to adjudicate by virtue of the provisions under Chapter II of that regulation.

69 Furthermore, the principle of a single estate is not absolute, as the Advocate General observes, in essence, in point 79 of his Opinion. Regulation No 650/2012 refers to the situation in which the authorities of several Member States are involved in the same succession. It is apparent from Article 13 of that regulation that, where the heirs or legatees habitually reside in a Member State other than that in which the succession is or will be dealt with, that regulation allows the authorities of their Member State of their habitual residence to receive declarations relating to the succession. That is consistent with the objective of that regulation, which seeks to simplify the lives of heirs and legatees, as is apparent from recital 32 of that same regulation.

70 That interpretation is not undermined by Article 64 of Regulation No 650/2012 on the issuance of a European Certificate of Succession, the aim of which is to specify that the rules of jurisdiction contained in Articles 4, 7, 10 and 11 of that regulation apply not only to courts, within the meaning of Article 3(2) of that regulation, but also to other authorities which, by virtue of national law, are competent to deal with matters of succession. The European Certificate of Succession, which was created by Regulation No 650/2012, is subject to an autonomous legal regime, established by the provisions of Chapter VI of that regulation (judgment of 21 June 2018, *Oberle*, C-20/17, EU:C:2018:485, paragraph 46).

71 Moreover, by the second part of its fourth question, the referring court asks whether a national certificate of succession may be classed as an 'authentic instrument' within the meaning of Article 3(1)(i) of Regulation No 650/2012, and what the effects thereof are.

72 Article 3(1)(i) of Regulation No 650/2012 defines 'authentic instrument' as a document in a matter of succession which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which relates to the signature and the content of the authentic instrument and has been established by a public authority or other authority empowered for that purpose by the Member State of origin.

73 In addition, it is apparent from recital 62 of that regulation that it is necessary to adopt an autonomous interpretation of the concept of 'authenticity' which satisfies a number of criteria, including the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. Authenticity should also cover the factual elements recorded by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated.

74 It is for the referring court to determine whether all those conditions are satisfied. However, although that court alone has jurisdiction to assess the facts at issue in the main proceedings and interpret national legislation, in preliminary ruling proceedings, the Court, which is called on to provide answers of use to the national court, may provide guidance based on the documents in the file.

75 In the present case, as the Advocate General observes in point 87 of his Opinion, the certificate of succession is an authentic instrument under national law and, as is apparent from Article 26 of the Law on the Institution of Notary, notaries are authorised to issue certificates relating to a succession which contain elements regarded as established.

76 Accordingly, subject to verifications that are for the referring court to carry out, a national certificate of succession, such as that at issue in the main proceedings, appears to satisfy the conditions laid down in Article 3(1)(i) of Regulation No 650/2012.

77 As to the case where the referring court should find that that certificate is an authentic instrument within the meaning of that provision, it should be noted, with regard to the effects thereof, in the first place, that it is apparent from the first subparagraph of Article 59(1) of Regulation No 650/2012 that authentic instruments drawn up in one Member State have the same evidentiary effects in another Member State or produce the most comparable effects. In that connection, it is stated in recital 61 of that regulation that, when determining the evidentiary effects of a given authentic instrument in another Member State or the most comparable effects, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the Member State of origin. The evidentiary effects which a given authentic instrument should have in another Member State will therefore depend on the law of the Member State of origin.

78 Furthermore, in accordance with the second subparagraph of Article 59(1) of Regulation No 650/2012, in order to use an authentic instrument in another Member State, it is possible to ask the authority establishing that instrument in the Member State of origin to fill in the form

corresponding to that set out in Annex 2 to Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the Forms referred to in Regulation (EU) No 650/2012 (OJ 2014 L 359, p. 30).

79 In the second place, pursuant to Article 60(1) of Regulation No 650/2012, an authentic instrument which is enforceable in the Member State of origin is to be declared enforceable in another Member State, in accordance with the procedure laid down in Articles 45 to 58 of that regulation.

80 In the light of the foregoing considerations, the answer to the fourth question is that Articles 4 and 59 of Regulation No 650/2012 must be interpreted as meaning that 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. If the referring court finds that those certificates satisfy the conditions laid down in Article 3(1)(i) of that regulation and can, therefore, be regarded as 'authentic instruments', within the meaning of that provision, such certificates produce, in other Member States, the effects that Article 59(1) and Article 60(1) of Regulation No 650/2012 attribute to authentic instruments.

The sixth question

81 By its sixth question, the referring court asks, in essence, whether Articles 4, 5, 7 and 22 of Regulation No 650/2012 must be interpreted as meaning that the testator's wish and the agreement between his or her heirs can lead to the determination of a court having jurisdiction in matters of succession and the application of the law on successions of a Member State other than those that would result from the application of the criteria laid down by that regulation.

82 In so far as concerns determination of the court having jurisdiction in matters of succession, it should be noted that Article 4 of Regulation No 650/2012 lays down a general rule that the courts of the Member State in which the deceased had his or her habitual residence at the time of death are to have jurisdiction to rule on the succession as a whole, while Article 5(1) of that regulation contains provisions which derogate from that general rule and allow the possibility, for the parties to succession proceedings, of agreeing that the courts of a Member State other than that would result from the application of the criteria laid down by that regulation are to have jurisdiction.

83 In accordance with Article 5(1) of Regulation No 650/2012, where the law chosen by the deceased to govern his or her succession pursuant to Article 22 is the law of a Member State, the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction to rule on any succession matter.

84 Article 5(2) and Article 7 of Regulation No 650/2012 state the formal conditions to be satisfied in order for the choice-of-court agreement to be valid. In particular, it is apparent from Article 5(2) and Article 7(b) of that regulation that that agreement is to be expressed in writing, dated and signed by the parties concerned, or that those parties have expressly accepted the jurisdiction of the court seised, as provided in Article 7(c) of that regulation.

85 In the present case, although it is not apparent from the information before the Court that the parties to the succession proceedings concluded an agreement in accordance with the aforementioned conditions, in order to confer exclusive jurisdiction on the Lithuanian courts, the referring court states that the deceased's surviving spouse, a German national who lived in Germany with her at the time of her death, had declared that he consented that jurisdiction.

86 As the Advocate General observes in point 121 of his Opinion, it is for the referring court to determine whether such a declaration has, in the main proceedings, the effect of conferring jurisdiction, within the meaning of Article 7(c) of Regulation No 650/2012.

87 Furthermore, it should be borne in mine that, as follows from recital 29 of Regulation No 650/2012, the latter must not be interpreted as meaning that it prevents the parties from settling the succession amicably, independently of any dispute, in a Member State of their choice, in the event that the law of that Member State allows it and even if the law applicable to the succession is not the law of that Member State.

88 As regards the question whether the testator's wish and the agreement between his or her heirs can lead to the application of the law on successions of a Member State other than that which would follow from the application of the criteria laid down by Regulation No 650/2012, it should be noted that, pursuant to the first subparagraph of Article 22(1) thereof, headed 'Choice of law', a person may choose as the law to govern his or her succession as a whole the law of the State whose nationality he or she possesses at the time of making the choice or at the time of death. Moreover, Article 22(2) states that that choice should be made expressly in a declaration in the form of a disposition of property upon death or be demonstrated by the terms of such a disposition.

89 As the Commission notes in its written observations, it is appropriate to read Article 22(2) of Regulation No 650/2012 in the light of recital 39 thereof, according to which the choice of law could be regarded as demonstrated by a disposition of property upon death where, for instance, the deceased had referred in his or her disposition to specific provisions of the law of the State of his or her nationality.

90 In the present case, given that Lithuanian law is the law of the Member State of which the deceased was a national at the time of her death, that law could validly be chosen by virtue of Article 22(1) of Regulation No 650/2012. In that connection, it is for the referring court to ascertain whether such a choice is the result of the terms of the will at issue in the main proceedings, in accordance with Article 22(2) of that regulation.

91 Furthermore, it is apparent from the information before the Court that that will was drawn up in Lithuania, on 4 July 2013, before Regulation No 650/2012 entered into force, and that the death of the person concerned occurred after 17 August 2015, namely after the date of application of the rules laid down by that regulation. The transitional provisions referred to in Article 83 of Regulation No 650/2012 may therefore also be relevant, in accordance with paragraph 1 of that article.

92 Article 83(2) of that regulation refers to cases in which the deceased had, prior to 17 August 2015, chosen the law applicable to his or her succession. As the Advocate General observes in point 102 of his Opinion, that provision seeks to respect the testator's wishes and, in order for that choice to be valid, it must satisfy the conditions laid down in that provision. By contrast, paragraph 4 of that article governs cases in which a disposition of property upon death does not comprise such a choice.

93 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.

94 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.

95 In that connection, it should, lastly, be borne in mine that, as is apparent from recital 27 of that regulation, the provisions thereof are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law.

96 In the light of the foregoing considerations, the answer to the sixth question is that Articles 4, 5, 7 and 22, together with Article 83(2) and (4), of Regulation No 650/2012 must be interpreted as meaning that the testator's wish and the agreement between his or her heirs can lead to the determination of a court having jurisdiction in matters of succession and the application of the law on succession of a Member State other than those which would result from the application of the criteria laid down by that regulation.

Costs

97 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **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 must be interpreted as meaning that a situation in which the deceased, a national of one Member State, was residing in another Member State at the date of his or her death but had not cut ties with the first of those Member States, in which the assets making up his or her estate are located, while his or her successors have their residence in both of those Member States, falls within the scope of the concept of 'succession with cross-border implications'. The last habitual residence of the deceased, within the meaning of that regulation, must be established by the authority dealing with the succession in only one of those Member States.**

2. **Article 3(2) of Regulation No 650/2012 must be interpreted as meaning that, subject to verification by the referring court, Lithuanian notaries do not exercise judicial functions when issuing certificates of succession. However, it is for the referring court to determine whether those notaries act by delegation or under the control of a judicial authority and whether, consequently, they can be classed as 'courts' within the meaning of that provision.**

3. **Article 3(1)(g) of Regulation No 650/2012 must be interpreted as meaning that, in the event that the referring court should find that Lithuanian notaries can be classed as 'courts' within the meaning of that regulation, certificates of succession that they deliver can be regarded as 'decisions' within the meaning of that provision, with the result that, for the purposes of issuing such certificates, those notaries can apply the rules of jurisdiction laid down in Chapter II of that regulation.**

4. **Articles 4 and 59 of Regulation No 650/2012 must be interpreted as meaning that 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. If the referring court finds that those certificates satisfy the conditions laid down in Article 3(1)(i) of that regulation and can, therefore, be regarded as 'authentic instruments', within the meaning of that provision, such certificates produce, in other Member States, the effects that Article 59(1) and Article 60(1) of Regulation No 650/2012 attribute to authentic instruments.**

5. **Articles 4, 5, 7 and 22, together with Article 83(2) and (4), of Regulation No 650/2012 must be interpreted as meaning that the testator's wish and the agreement between his or her heirs can lead to the determination of a court having jurisdiction in matters of succession and the application of the law on succession of a Member State other than those which would result from the application of the criteria laid down by that regulation.**

[Signatures]