A ROMANIAN PERSPECTIVE ON DETERMINING THE COMPETENT COURT FOR THE SHARING-OUT OF THE ESTATE IN THE LIGHT OF REGULATION (EU) NO. 650/2012

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Abstract

The Treaty on the Functioning of the European Union provides that the Union shall develop judicial cooperation in civil matters having cross-border implications and, for this purpose, the European Parliament and the Council shall adopt measures for the proper functioning of the internal market, aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction. To this end, the European Parliament and the Council of the European Union have adopted Regulation (EU) no. 650/2012 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, which applies to successions of natural persons who died on or after 17 August 2015.

There are more than a few cases in which the increasing mobility of private individuals, in particular within the European Union, gives rise to matters of succession with cross-border implications, such as when the deceased was the national of a state other than the state of their habitual residence at the time of death or when the assets forming part of the estate are located in the territory of several states. Thus, the inheritance, including the sharing-out of the estate, may fall under the scope of several legal systems. Under such circumstances, in the case of a judicial sharing-out of the estate, we are dealing with a private law matter having cross-border implications, which could result in a conflict of law, within the meaning that the dispute could be settled by courts from several states.

In light of the above, this short overview aims to analyse, on the one hand, the rules applicable in order to determine the court or courts of law competent to settle the sharing out of the estate, or the international jurisdiction of Romanian courts over foreign ones, without overlooking the correlation between the jurisdiction and the law applicable to the succession as a whole. After determining the state the courts of law of which hold jurisdiction, we will refer to internal jurisdiction, both in territorial and substantive terms, in line with the rules of the domestic civil procedural law.

One of the conclusions of our overview is that, although the regulation aims to ensure that the court of law ruling in connection with the sharing-out of the estate will enforce, in most of the cases, its own law, in practice, there will also be instances where the rules of procedural law will pertain to the legal system of one Member State which was party to the adoption of the Regulation, while the rules of substantive law will pertain to a third country. Thus, it is not impossible for the Romanian courts of law to enforce rules of substantive law pertaining to another legal system, all the more as, in accordance with Article 23 paragraph (2) letter j) of Regulation (EU) no. 650/2012, the scope of the applicable law also encompasses the sharing-out of the estate.

Keywords: *Regulation (EU) 650/2012, Romanian Code of Civil Procedure, succession, sharing-out of the estate, inheritance distribution (division), competent national court.*

1. Preliminary considerations

There are more than a few cases in which the increasing mobility of private individuals, in particular within the European Union, gives rise to matters of succession with cross-border implications, such as when the deceased was the national of a state other than the state of their habitual residence at the time of death or when the assets forming part of the estate are located in the territory of several states. Thus, the inheritance, including the sharing-out of the estate, may fall under the scope of several legal systems.

Under such circumstances, in the case of a judicial sharing-out of the estate, we are dealing with a private law matter having cross-border implications, which could result in a conflict of law, within the meaning that the dispute could be settled by courts from several states[1].

Therefore, first of all, we ought to detect the rules applicable in order to determine the competent court or courts of law in matters of sharing out of the estate, more specifically, the *international* jurisdiction of Romanian courts over foreign courts. After determining the state the courts of law of which hold jurisdiction, we will determine the *internal* jurisdiction, both in territorial, and substantive terms, in line with the rules of the domestic civil procedural law[2].

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[1] See Ion. P. Filipescu, Andrei I. Filipescu, *Tratat de drept internațional privat* (Treatise on private international law) (București: Universul Juridic, 2007), 33; Ioan Macovei, *Tratat de drept internațional privat* (Treatise of Private International Law) (București: Universul Juridic, 2017), 14.

[2] See Flavius George Păncescu in *Noul Cod de procedură civilă: comentariu pe articole* (Code of Civil Procedure: commentary on articles), vol. II: art. 527-1133, coordinated by Gabriel Boroi, second edition (București: Hamangiu, 2016), 998; Șerban-Alexandru Stănescu in Noul Cod de procedură civilă comentat și adnotat (The new Code of Civil Procedure commented and annotated), coordinated by Viorel Mihai Ciobanu and Marian Nicolae, vol. II (București: Universul Juridic, 2016), 1650.

Within the European Union, as far as successions with cross-border implications are concerned, it is Regulation (EU) no. 650/2012[3] which determines, as a matter of rule, the state the courts of law of which are competent to review the succession on the merits[4], and consequently, including the sharing-out of the estate.

In terms of territory, the regulation applies in all Member States, with the exception of Denmark (according to Articles 1 and 2 of Protocol no. 22 on the position of Denmark[5], annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union) and Ireland (according to Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice[6], annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union)[7].

Although there is no express stipulation in the Regulation within the meaning that the Member States which did not take part in its adoption are construed as third countries, Denmark and Ireland should be considered as *third countries* for the purposes of this Regulation[8] given that the Regulation cannot be enforced in a state which was not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

As regards the *application in time*, in accordance with Article 83 paragraph (1), the Regulation shall apply to the succession of persons who died on or after 17 August 2015, in particular, to the legal sharing-out of the estate concerning successions opened from and including 17 August 2015.

In connection with successions opened before the above-mentioned date, the internal rules of conflict of each Member State will apply, rules which, in the case of Romania, are contained in the Code of Civil Procedure[9], Book VII "International Civil Proceedings" (Articles 1064-1109).

In respect of the relationship with international conventions in effect at the time of its adoption, Article 75 paragraph (1) of Regulation (EU) no. 650/2012 provides that it shall not affect the application of international conventions to which one or more Member States are party at the time of adoption of this Regulation and which concern matters covered by this Regulation, nevertheless, in accordance with paragraph (2), this Regulation shall take precedence over conventions concluded exclusively between two or more Member States which are party to its adoption, in so far as such conventions concern matters governed by this Regulation.

Thus, with a view to fulfilling the international commitments undertaken to third states by the Member States before the enforcement of this Regulation, in so far as a Member State has concluded with a third state a convention on matters governed by the Regulation, the said convention will continue to apply in relationships between the contracting states. The Regulation shall only take precedence over the international convention where the latter was concluded exclusively between states which were part in the adoption of the Regulation.

Although Article 75 paragraph (1) of Regulation (EU) no. 650/2012 only refers to international conventions concluded before the adoption of the Regulation on 4 July 2012, the doctrine emphasized the fact that the European Union hold, from this point forward, exclusive jurisdiction over the negotiation and conclusion of international treaties comprising rules of international private law in matters of succession, which means that the Member States which were part in the adoption of the Regulation can no longer conclude such conventions among them, because this would impair the enforcement of the Regulation[10].

Hence, further to the transfer of jurisdiction from the Member States to the European Union in respect of the conclusion of international conventions on the matters covered by Regulation (EU) no. 650/2012, Romania could only enter into such conventions comprising rules of international private law in matters of succession subject to the Commission's consent[11].

Please find below, first of all, an overview of the main rules for determining the *international* jurisdiction of Member States in the matter of legal sharing-out of the estate, in observance of Regulation (EU) no. 650/2012, also having regard to the correlation between *the jurisdiction and the applicable law to the succession as a whole*. Then, we will focus on *internal* jurisdiction, both in territorial and

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[3] *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, published in the Official Journal of the European Union L 201 of 27 July 2012.

[4] See Ioan-Luca Vlad, *Succesiuni internaţionale. Regulamentul nr. 650/2012. Tratate internaţionale în domeniu* (International successions. Regulation no. 650/2012. International treaties in the field), second edition (Bucureşti: Editura Universul Juridic, 2020), 171.

[5] Published in the Official Journal of the European Union, C 326 of 26 October 2012.

[6] *Idem*. However, Ireland has the possibility to notify its intention to accept the Regulation, in accordance with Article 4 of the said Protocol.

[7] The United Kingdom withdrew from the European Union and, starting from 1 February 2020, it holds the status of third country, more specifically, non-EU country.

[8] See Andrea Bonomi în A. Bonomi, P. Wautelet, I. Pretelli, A. Oztürk, *Le droit européen des successions. Commentaire du Règlement (UE) n° 650/2012 du 4 juillet 2012*, 2e édition (Bruxelles: Éditions Bruylant, 2016), 32-38; Paul Lagarde in Ulf Bergquist, Domenico Damascelli, Richard Frimston, Paul Lagarde, Felix Odersky, Barbara Reinhartz, *Commentaire du règlement européen sur les successions* (Paris: Éditions Dalloz, 2015), 14. See also Richard Frimston in *Idem*, 51-53.

[9] *Law no. 134/2010* on the Code of Civil Procedure, republished in the Official Gazette of Romania no. 247 from 10 April 2015.

[10] Andrea Bonomi în A. Bonomi, P. Wautelet, I. Pretelli, A. Oztürk, *Le droit européen des successions. Commentaire du Règlement (UE) n° 650/2012 du 4 juillet 2012*, 2e édition, 942.

[11] *Idem*, 942-943.

substantive terms, in line with the rules of Romanian civil procedural law.

2. Regulation (EU) no. 650/2012

A. *The habitual residence of the deceased at the time of death was located in a Member State* (general jurisdiction)

According to recital (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 that respect, *the general jurisdiction rule* is laid down in Article 4 of the Regulation, reading as follows "(t)he 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". In enforcing this article, the nationality of the deceased is irrelevant[12].

In accordance with abstract (23), in order to determine the *habitual residence*, the court of law 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 Regulation (EU) no. 650/2012.

Moreover, abstract (24) specifies that, 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.

The provisions of the Regulation were devised in such a manner as to ensure that the court of law ruling on the sharing-out of the estate will enforce, in most cases, its own law. Therefore, with a view to ensuring the *unity of the succession*, in accordance with Article 21 paragraph (1), "(u)nless 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".

However, as also specified in abstract (43), the rules of jurisdiction laid down by the Regulation may, in certain cases, lead to a situation where the court having jurisdiction to rule on the succession will not be applying its own law.

In order to narrow such a possibility, the regulation lays down several mechanisms which may be triggered when the deceased opted, in accordance with Article 22 paragraph (1), for his succession to be governed by the law of *another state* (than the state of his last habitual residence) the nationality of which he possessed[13]. In this case, the competent courts would be the courts of the Member State in which the deceased had his habitual residence at the time of death, and which should enforce the rules of substantive law of another state, irrespective of whether it is the law of a Member State or not.

Hence, Article 5 paragraph (1) reads as follows "(w)here 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".

Consequently, in this case, the heirs may enter into a *choice-of-court agreement*, so that jurisdiction will be assigned to the courts of law of the Member State the law of which was chosen by the deceased to govern his succession as a whole, thus ensuring the unity between the rules of substantive law and procedural law, meaning the unity between the applicable law and jurisdiction.

B. *The habitual residence of the deceased at the time of death was located in a third-country* (subsidiary jurisdiction)

In accordance with Article 10 paragraph (1) of the Regulation, there are two instances where the courts of a Member State, such as Romania, nevertheless have jurisdiction to rule on the succession as a whole,

[12] See Dan Andrei Popescu, „Domeniul de aplicare al Regulamentului (UE) 650/2012. Regulile de competență internațională" (Scope of Regulation (EU) 650/2012 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. International Competency Rules), *Revista română de drept privat* no. 5 (2014): 167.

[13] Article 22 paragraph (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.

although the habitual residence of the deceased at the time of death was not located in a Member State.

The former concerns the case where the *deceased had the nationality of that Member State at the time of death* (jurisdiction based on nationality). The latter refers to the case where the *deceased had his previous habitual residence in that Member State*, provided that, at the time the court is seized, a period of not more than five years has elapsed since that habitual residence changed (jurisdiction based on previous habitual residence).

In all cases falling under the scope of Article 10 of Regulation (EU) no. 650/2012, recognition of subsidiary jurisdiction of the courts of a Member State is conditional upon the existence of assets forming part of the estate in the territory of that Member State, which was party to the adoption of the Regulation.

If the factual background does not fall under the scope of any of the cases described above, meaning that no court of law of a Member State has jurisdiction pursuant to Article 10 paragraph (1), the courts of the Member State in which assets forming part of the estate are located nevertheless have jurisdiction to rule not on the succession as a whole, but *only on those assets* (*forum necessitatis*).

Although the regulation aims to ensure that the court of law ruling in connection with the sharing-out of the estate will enforce, in most of the cases, its own law, in practice, there will also be instances where the rules of procedural law will pertain to the legal system of one Member State which was party to the adoption of the Regulation, while the rules of substantive law will pertain to a third country.

Thus, it is not impossible for the Romanian courts of law to enforce rules of substantive law pertaining to another legal system, all the more as, in accordance with Article 23 paragraph (2) letter j) of Regulation (EU) no. 650/2012, the scope of the applicable law also encompasses the sharing-out of the estate.

3. Territorial jurisdiction of the Romanian courts

As already specified above, upon determining the state the courts of which hold jurisdiction in accordance with Regulation (EU) no. 650/2012, we will determine the *internal* jurisdiction, both in territorial, and substantive terms, in line with the rules of the domestic civil procedural law.

In the case of Romania, in respect of the territorial jurisdiction, the Civil Procedure Code stipulates, in Article 118 paragraph (1) that, in inheritance matters, pending the severance of joint ownership, the following shall fall under the exclusive jurisdiction of the court assigned to the last residence of the deceased: motions on the validity or enforceability of testamentary dispositions; motions on the estate and its encumbrances, as well as motions on any claims which one heir might raise against another; motions of the deceased's legatees or creditors against any of the heirs or against the executor of the will.

Furthermore, Article 118 paragraph (2) clarify that the motions concerning estates relating to several successively opened successions fall under the exclusive jurisdiction of the court assigned to the last residence of any of the deceased.

A. *Exclusive jurisdiction of the court assigned to the last residence of the deceased*

In accordance with Article 118 paragraph (1) of the Civil Procedure Code, the court of law assigned to the last residence of the deceased, pending the severance of joint ownership[14], holds exclusive jurisdiction to rule on:

a) motions on the validity or enforceability of testamentary dispositions, such as motions to invalidate or ascertain the validity of a will or motions for the enforcement of a will, when the validity of the latter is not challenged [e.g., the universal legatee requests forced heirs to take actual possession of the estate, in accordance with Article 1128 paragraph (1) of the Civil Code][15];

b) motions on the estate and its encumbrances, as well as motions on any claims which one heir might raise against another, such as the motion for cancellation of the heir certificate, motion for reduction of gifts in excess of the freely disposable portion of the estate, motions on the conservation or administration of assets during the status of shared ownership, motion for the cancellation or termination of a sale of inheritance rights, *the request for the sharing-out of the estate* (including when the estate consists of real estate assets), inheritance claim, as well as the motion or any other motions whereby the heirs raise claims against one another, however, only in so far as such claims relate to the estate[16] (for instance, the motion of warranty against eviction and hidden flaws, submitted by one of the heir against the other heirs, in accordance with Article 683 of the Civil Code, or the motion to set aside the sharing out, by mutual consent, in accordance with Article 684 of the Civil Code)];

c) motions of the legatees or creditors of the deceased (estate) against any of the heirs or against the executor of the will, such as the motion for delivery of a particular devisee, motions whereby the personal creditors of the deceased exercise rights deriving from agreements concluded with the latter, motions whereby the creditors of the estate raise claims in reliance upon a title subsequent to the opening of the succession (e.g.,

[14] Nevertheless, "the jurisdiction is vested to the court holding powers over the last residence of the deceased, even where the succession was settled and the assets specified in the heir certificate were distributed, however, the distribution of other inherited real estate is sought, for which an ownership deed was issued after the sharing out" – Romanian High Court of Cassation and Justice, Civil Section I, *Decision no. 212/2016*, available on http://www.scj.ro.

[15] Gabriel Boroi, Mirela Stancu, *Drept procesual civil* (Civil procedural law), fifth edition (Bucureşti: Hamangiu, 2020), 290.

[16] Ibidem.

requests for expenses relating to the deceased's burial or expenses required for the conservation and administration of assets forming part of the estate[17]);

d) motions concerning the cancellation of the heir certificate and for determining the rights of persons claiming infringement of their rights as a result of issuance of the heir certificate.

Mention is to be made that, in the following cases, the jurisdiction of the court is determined not in reliance upon Article 118 paragraph (1) of the Civil Procedure Code, but in accordance with the general rule[18]:

a) motions whereby heirs exercise rights collected from the succession against third parties, debtors of the deceased;

b) motions whereby heirs bring suit against a creditor of the estate (e.g., in order for the court to ascertain the statute of limitations in respect of the creditor's right to claim and be granted foreclosure for a debt, for the termination or rescission of an agreement concluded by it *de cuius*);

c) motion whereby the third-party plaintiff does not intend to exercise a right of receivable over the estate, such as filing a real estate motion against the heirs or the heirs claiming a real estate to be returned by a third party, who does not challenge their capacity as his heirs *de cuius*, fall under the jurisdiction of the court assigned to the location of the real estate;

d) motions submitted by creditors of the estate, when there is only one heir, because there is no joint ownership, shall be settled by the court having jurisdiction over the heir's domicile[19].

B. *Jurisdiction in the case of successive successions*

In accordance with Article 118 paragraph (2) of the Civil Procedure Code, where several successions are opened successively, the court having jurisdiction over the last residence of any of the deceased shall have exclusive jurisdiction to rule on motions concerning the estate. This provision only applies when the persons who died successively are heirs of one another[20].

The considerations above reveal that the request for the sharing-out of the estate, including when the estate consists of real estate, falls under the exclusive jurisdiction of the court assigned to the last residence of the deceased.

Where the last residence of the deceased is not located in the territory of Romania, which means that the court having jurisdiction to rule in the case cannot be identified, the request for the sharing-out of the estate shall be forwarded, in accordance with Article 1072 of the Civil Procedure Code, in observance of the rules governing the substantive jurisdiction, to the Local Court of 1st District of Bucharest, or to the Tribunal of Bucharest.

That is why it is still necessary to determine the *internal* jurisdiction, in substantive terms, in accordance with the rules of Romanian civil procedural law, both when the last residence of the deceased is located in the Romanian territory, and when *de cuius* could have his residence abroad.

4. Substantive jurisdiction of the Romanian Courts

Before the Civil Procedure Code was amended by means of Law no. 310/2018[21], in accordance with Article 94 section 1 letter j), local courts used to rule, as courts of first instance, on *motions for legal distribution, irrespective of the value* and irrespective of the nature of the sharing-out, therefore, including on the sharing-out of the estate. On the other side, Article 105 of the Civil Procedure Code (currently repealed) stipulated that, *in matters of succession, jurisdiction depending on value was determined without subtracting the encumbrances or debts relating to the estate*.

When the motion for sharing-out of the estate was accompanied by motions such as for ascertaining the opening of the succession, the capacity and shares to which the heirs were entitled or the composition of the estate, it was deemed that this was a *main single motion for sharing-out*, because such motions are inherent to any sharing-out of estates, and the competent court was the local court, in accordance with Article 123 paragraph (1)[22] and Article 94 section 1 letter j) of the Civil Procedure Code[23].

In respect of other motions concerning matters of succession, such as the inheritance claim, cancellation of heir certificates or reduction of gifts in excess of the freely disposable portion of the estate, the court having jurisdiction to settle the sharing-out motion was disputed.

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[17] Mihaela Tăbârcă, *Drept procesual civil* (Civil procedural law), vol. I (Bucureşti: Universul Juridic, 2013), 674.

[18] See G. Boroi, M. Stancu, *Drept procesual civil* (Civil procedural law), fifth edition, 290 et seq.

[19] Exception: motions concerning the enforcement of testamentary dispositions falling under the scope of the court having jurisdiction over the location where the succession was opened, when the sole heir is the universal legatee, and the testator appointed a third party as his executor. See G. Boroi, M. Stancu, *Drept procesual civil* (Civil procedural law), fifth edition, 291.

[20] M. Tăbârcă, *Drept procesual civil* (Civil procedural law), vol. I, 676. See also Romanian High Court of Cassation and Justice, Civil Section I, *Decision no. 212/2016*, aforesaid.

[21] *Law no. 310/2018* for amending and supplementing the Law no. 134/2010 on the Code of Civil Procedure, as well as for amending and supplementing other normative acts, published in the Official Gazette of Romania no. 1074 from 18 December 2018.

[22] Article 123 paragraph (1) of the Civil Procedure Code: Additional motions, ancillary motions, as well as incidental motions shall be settled by the court having jurisdiction over the underlying motion, even if substantive or territorial jurisdiction would lie with another court of law, save for the motions listed in Article 120.

[23] See G. Boroi, M. Stancu, *Drept procesual civil* (Civil procedural law), third edition, 205; Gheorghe Liviu Zidaru, *Competenţa instanţelor judecătoreşti în dreptul procesual civil român şi german* (The jurisdiction of the courts in Romanian and German civil procedural law) (Bucureşti: Universul Juridic, 2015), 342.

On the one hand, it was argued that, in cases of sharing-out of the estate, jurisdiction did not have to be split between the local court and the tribunal, "given that all motions […] concern, in the end, the sharing-out of the estate, will form a common part of it and will be tried before the local court, as first instance"[24].

On the other hand, save for the case where other motions in matters of succession were submitted on a subsidiary basis, during the proceedings for sharing out of the estate[25], it was deemed necessary, in each and every case, to determine the underlying claim, and, depending on it, to determine the rule of jurisdiction depending on which the substantive jurisdiction was to be decided[26].

Article I section 9 of Law no. 310/2018 added, in the Civil Procedure Code, in Article 94 section 1, after letter j), a new letter, j^1, reading as follows: "motions relating to matters of succession, irrespective of their value". In addition, Article I section 12 of Law no. 310/2018 repealed Article 105 of the Civil Procedure Code and, therefore, jurisdiction in matters of succession is no longer determined depending on the value, which means that the value of the object of such motions is no longer relevant in determining the substantive jurisdiction, and the motions relating to matters of succession fall under the jurisdiction of local courts, as first instance.

Consequently, as emphasized in the doctrine, at present, "motions for sharing-out of the estate fall under the substantive jurisdiction of local courts, irrespective of the value of the divisible property to be shared out and of whether it is submitted as underlying, ancillary or incidental motion, within another motion relating to matters of succession"[27]. If, in accordance with the law, other motions were also submitted in connection with the sharing-out of the estate and on the settlement of which depends the performance thereof, such as motions for the reduction of gifts in excess of the freely disposable portion of the estate, motions for the summary of donations to be included in the estate and others similar, in accordance with Article 985 paragraph (2) of the Civil Procedure Code, the local court shall further rule, in first instance, on such motions forming common part with the sharing-out of the estate[28].

Pursuant to an opinion expressed before the amendment of the Civil Procedure Code, "the thesis of predominant finality of the sharing-out of the estate cannot be adopted, irrespective of the particulars of each and every case, or of the nature of motions brought before the court"[29]. Thus, in light of the Civil Procedure Code, in the wording preceding the amendments enforced by Law no. 310/2018, in the case of motions not strictly connected with the legal relationships between presumptive heirs, but legal relationships also having as subjects parties not connected with the estate, as it happens in the case of motions concerning the ascertainment of absolute nullity of donation agreements concluded with third parties, such motion may not be construed as ancillary to the sharing-out of the estate, but a main claim in its own right, and therefore the criteria of value will be applied[30] in determining the court having substantive jurisdiction.

Since the ascertainment of the nullity of donations is aimed at replenishing the estate, and the motion for sharing-out of the estate falls under the substantive jurisdiction of the local court, whether it is submitted as an underlying claim or as an ancillary or incidental one, we believe that, at present, ascertainment of the absolute nullity of donation agreements concluded by *de cuius* with third parties will also fall under the jurisdiction of the local court, as first instance. Such motions will form common part with the sharing-out of the estate, as it also happens in the case of reduction of the gifts in excess of the freely disposable portion of the estate, or the quashing of donations, in so far as necessary for replenishing the forced heirship, all the more as reduction applies not only to donations benefiting heirs, but also to donations benefiting third parties to the estate.

5. Instead of a Conclusions

The interaction between elements such as the habitual residence of *de cuius* at the time of death, the choice-of-court agreement concluded by the heirs, the choice of law to be applied to the succession and the location of the assets forming part of the estate, leads to different results in terms of determining the Member State the courts of which have the power to rule on the succession as a whole, therefore, including in respect of the sharing-out of the estate. Thus, the fact that the deceased was a Romanian national or that he had chosen the Romanian law as the governing law or Romania as the venue where the assets forming part of the estate are located is not a guarantee of the fact that the Romanian courts will have jurisdiction, in accordance with Regulation (EU) no. 650/2012 to rule on the request for the sharing-out of the estate.

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[24] M. Tăbârcă, *Drept procesual civil* (Civil procedural law), vol. I, 528. In the same sense, see also G. L. Zidaru, *Competenţa instanţelor judecătoreşti în dreptul procesual civil român şi german* (The jurisdiction of the courts in Romanian and German civil procedural law), 344.

[25] See G. Boroi, M. Stancu, *Drept procesual civil* (Civil procedural law), third edition, 818-819.

[26] *Idem*, 205.

[27] G. Boroi, M. Stancu, *Drept procesual civil* (Civil procedural law), fifth edition, 235-236.

[28] Mihaela Tăbârcă, *Drept procesual civil. Supliment al vol. I, II, III: Comentarii ale Legii nr. 310/2018* (Civil procedural law. Supplement to vol. I, II, III: Comments of Law no. 310/2018), third edition (Bucureşti: Solomon, 2019), 17.

[29] See Gheorghe Liviu Zidaru, „Curtea de Apel Bucureşti, Secţia a IV-a civilă, Sentinţa nr. 58F din 5 aprilie 2016 (Jurisprudenţă comentată)" (Bucharest Court of Appeal, Civil Section IV, Sentence no. 58F of 5 April 2016 – Commented case-law), *Curierul judiciar* no. 2 (2017): 85.

[30] In accordance with Article 94 section 1 letter k) of the Civil Procedure Code: Local courts rule […] on any other motions which may be measurable in money, amounting up to and including RON 200,000, irrespective of the parties' capacities, whether they are professionals or not.

Furthermore, although the regulation aims to ensure that the court of law ruling in connection with the sharing-out of the estate will enforce, in most of the cases, its own law, in practice, there will also be instances where the rules of procedural law will pertain to the legal system of one Member State which was party to the adoption of the Regulation, while the rules of substantive law will pertain to a third country.

As such, we may be faced with the situation where the Romanian courts, competent to rule on the sharing-out of the estate, will enforce rules of substantive law pertaining to another legal system, all the more as, in accordance with Article 23 paragraph (2) letter j) of Regulation (EU) no. 650/2012, the scope of the applicable law also encompasses the sharing-out of the estate.

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