



Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 26 March 2020¹

Case C-80/19

E. E.

other parties:

**Kauno miesto 4-ojo notaro biuro notarė Virginija Jarienė,
K.-D. E.**

(Request for a preliminary ruling
from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania))

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 650/2012 — Scope — Concept of succession having cross-border implications — Concept of habitual residence — Whether notaries are subject to the rules of international jurisdiction — Concept of authentic instrument — Choice of law demonstrated by the terms of a disposition of property upon death — Transitional provisions — Conferral of international jurisdiction by the interested parties)

1. The Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) has referred for a preliminary ruling a number of questions on the interpretation of Regulation (EU) No 650/2012.² It considers them necessary to enable it to dispose of an appeal brought against the refusal of a notary in that country to grant a request to open a succession and issue a national certificate of succession rights.
2. The dispute has arisen in the context of the succession of a deceased Lithuanian national resident in Germany³ who had drawn up a will in Lithuania and whose estate is located in that country. Her son, also of Lithuanian nationality, requested a notary in Kaunas (Lithuania) to open the succession and issue a certificate of succession rights. The notary rejected those requests on the ground that the deceased was habitually resident in Germany.
3. In accordance with the Court's instructions, this Opinion will be confined to the fourth to sixth questions referred for a preliminary ruling. In analysing them, however, I shall have to refer in passing to the content of some of the others.

¹ Original language: Spanish.

² Regulation 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; 'the Regulation').

³ This point of fact is the subject of debate in the dispute [in the main proceedings].

I. Legal framework

A. EU law. Regulation No 650/2012

4. The following recitals are relevant:

‘(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. In the European area of justice, citizens must be able to organise their succession in advance. The rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession must be effectively guaranteed.

...

(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.

(21) This Regulation should allow all notaries who have competence in matters of succession in the Member States to exercise such competence. Whether or not the notaries in a given Member State are bound by the rules of jurisdiction set out in this Regulation should depend on whether or not they are covered by the term “court” for the purposes of this Regulation.

...

(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.

- (25) With regard to the determination of the law applicable to the succession the authority dealing with the succession may in exceptional cases — where, for instance, the deceased had moved to the State of his habitual residence fairly recently before his death and all the circumstances of the case indicate that he was manifestly more closely connected with another State — arrive at the conclusion that the law applicable to the succession should not be the law of the State of the habitual residence of the deceased but rather the law of the State with which the deceased was manifestly more closely connected. That manifestly closest connection should, however, not be resorted to as a subsidiary connecting factor whenever the determination of the habitual residence of the deceased at the time of death proves complex.

...

- (27) The rules of this Regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law. This Regulation therefore provides for a series of mechanisms which would come into play where the deceased had chosen as the law to govern his succession the law of a Member State of which he was a national.
- (28) One such mechanism should be to allow the parties concerned to conclude a choice-of-court agreement in favour of the courts of the Member State of the chosen law. ...

...

- (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.'

5. In accordance with Article 3(1):

- '(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 instrument; and
 - (ii) has been established by a public authority or other authority empowered for that purpose by the Member State of origin.’

6. Article 3(2) states:

‘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 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.
- ...’

7. According to Article 4:

‘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.’

8. Article 5 states:

- ‘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. ...’

9. In accordance with Article 7:

‘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:

...

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

10. In accordance with Article 9(1):

‘Where, in the course of proceedings before a court of a Member State exercising jurisdiction pursuant to Article 7, it appears that not all the parties to those proceedings were party to the choice-of-court agreement, the court shall continue to exercise jurisdiction if the parties to the proceedings who were not party to the agreement enter an appearance without contesting the jurisdiction of the court.’

11. Article 22 provides:

‘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.

...

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. In accordance with Article 59(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.

...’

13. In accordance with Article 83(2) and (4):

‘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.’

B. National law

1. Lietuvos Respublikos civilinis kodeksas (Civil Code)

14. Article 5(4) provides:

‘1. The place of opening of the succession shall be regarded as the last place of domicile of the deceased (Article 2(12) of this Code).

...

4. In the event of dispute, the court shall determine the place of opening of the succession, at the request of the interested parties, taking into account all of the circumstances’.

15. Article 5(66) reads:

‘1. Heirs by operation of law or by will shall be able to ask the notary for the place of opening of the succession to issue a certificate of entitlement to the estate ...’.

2. Lietuvos Respublikos notariato įstatymas (Law on the profession of notary)

16. Article 1 provides:

‘The profession of notary shall comprise all notaries who, in accordance with this Law, are empowered by law to establish the undisputed subjective rights of, and the legally relevant facts relating to, natural and legal persons, and to protect the legal interests of those persons and of the State’.

17. According to Article 26:

‘Notaries shall perform the following notarial acts:

...

(2) issue of certificates of entitlement to the estate;

...

Facts set out in documents certified by a notary shall be deemed to be established and shall require no proof unless those documents (or parts thereof) are declared invalid in the course of a statutory procedure’.

3. Civilinio proceso kodeksas (Code of Civil Procedure)

18. Article 444(2) states:

‘The courts shall have jurisdiction to hear and determine cases:

...

(8) relating to the acceptance of an estate and the determination of the actual place of opening of the succession’.

19. In accordance with Article 511(1):

‘The performance of any notarial act or the refusal to perform it may be challenged in accordance with the procedure laid down in this chapter’.

II. Facts, dispute and questions referred

20. E. E. is a Lithuanian national whose mother married K.-D. E., a German national. Mother and son (who was born of a previous marriage) moved to live in Germany when the son was a minor.

21. On 4 July 2013, E. E.’s mother drew up a will at the notary office in the town of Garliava (Lithuania) and named her son as sole heir to her entire estate.⁴

22. On 17 July 2017, E. E. requested notary office No 4 in the city of Kaunas (Lithuania) to open the succession and issue a certificate of succession rights.⁵

⁴ She stated that she left him the entirety of her immovable property, whether or not situated in Lithuania, and the money deposited in a Lithuanian bank. She also stated that she lived in Germany.

⁵ The information contained in the documents before the Court supports the conclusion that the deceased died after 17 August 2015.

23. The notary refused to grant E. E.'s request because of his belief that the deceased's habitual residence at the time of her death, within the meaning of the Regulation, was in Germany.

24. E. E. challenged the notary's refusal before the Kauno apylinkės teismas (District Court, Kaunas, Lithuania). On 29 January 2018, that court held that, even though E. E.'s mother had admitted having moved to Germany, she had not severed her links with Lithuania. On that ground, and on the basis of the principles of reasonableness and good faith, it upheld the action, annulled the notary's decision and ordered the notary to perform the notarial act.

25. The notary brought an appeal against the decision at first instance before the Kauno apygardos teismas (Regional Court, Kaunas, Lithuania), which, by judgment of 26 April 2018, set aside that decision. The appeal court held that, where the deceased's place of habitual residence is disputed, only a court may determine that that person was habitually resident in his or her State of origin; and that, in this case, there was nothing to indicate that the appellant had raised that issue before a court. It also stated that, in annulling the contested notarial decision, the court of first instance had improperly relied on general principles.

26. E. E. brought an appeal in cassation before the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), which has referred the following questions to the Court of Justice 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?’

III. Procedure before the Court of Justice

27. The request for a preliminary ruling was registered at the Court of Justice on 4 February 2019. Observations have been lodged by the Governments of Austria, the Czech Republic, Hungary, the Kingdom of Spain and Lithuania, and the Commission.

28. A hearing held on 16 January 2020 was attended by representatives of the Governments of the Kingdom of Spain and Lithuania, and the European Commission.

IV. Analysis

29. I shall look, in the first place, at the (fifth) question relating to the possibility that a deceased person’s habitual residence is situated in more than one Member State. In order to answer that question, I shall inevitably have to consider the applicability of the regulation at issue.

30. In the second place, I shall deal with the (fourth) question concerning the certificate of succession rights, which will in turn call for an examination of the classification of the notary issuing it as a judicial authority.

31. Lastly, I shall turn to the last (sixth) question, concerning the jurisdiction of the Lithuanian judicial bodies and the application of the law of that country to the succession at issue.

A. *Fifth question*

1. *Applicability of the Regulation*

(a) *Successions ‘having cross-border implications’*

32. The Regulation seeks to remove ‘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’.⁶

33. The Regulation does not contain a definition of ‘succession having cross-border implications’ or a list of elements, spread across a number of States, on the basis of which those implications can be accurately identified. To my mind, the objective of the Regulation as I have just reproduced it suggests that its provisions should be evaluated flexibly so as to enable them to cover any succession the organisation of which (by the deceased) or the processing of which (after the deceased’s death) is hampered by the presence of links to more than one State.

⁶ Recital 7. See also the judgment of 21 June 2018, *Oberle* (C-20/17, EU:C:2018:485; ‘judgment in *Oberle*’), paragraph 32.

34. For the purposes of Chapters II and III of the Regulation, the deceased's habitual residence at the time of death⁷ is the common criterion for attributing international jurisdiction and the connecting factor for the purposes of the conflict-of-laws rule. That criterion serves to determine whether the location of *another* element in a State other than the deceased's State of residence means that the succession is not purely domestic.

35. So far as concerns what that 'other element' might be, the Regulation contains specific provisions that give examples of successions having a bearing in more than one forum and set out non-exhaustive guidelines for recognising their transnational nature. The location of assets, heirs, legatees or other relatives of the deceased, and the deceased's nationality, are among the data that may typically be taken into account.

(b) Compulsory application

36. The application of the Regulation is not discretionary, which is to say that it does not depend on the will of any of the parties.⁸ A legal practitioner must comply with it, and may not deviate from it, where, in the light of its provisions, it is apparent that a particular succession may have implications in more than one forum.

37. On the other hand, the Regulation provides interested parties with means of mitigating to some extent the effects arising from the cross-border nature of the situation.

38. In particular, Article 22 of the Regulation allows the deceased, while alive, to offset the consequences of having a place of habitual residence in a State other than that in which the other factors (expected to be) relevant to the succession are located. He may, nonetheless, only do so within the framework offered to him by the Regulation, that is to say, only in the case where he is a national of the second State. In that case, he may choose to make the law of that State the applicable law.

39. Choosing that option does not divest the succession of its international status. It will, however, enable the interested parties, following the death of the deceased, to confer international jurisdiction on the courts of that State⁹ (Article 5 *et seq.* of the Regulation).

2. The concept of 'habitual residence of the deceased at the time of death'

40. The referring court asks, in essence, whether, for the purposes of the Regulation, the deceased must have only one habitual residence or might, conversely, be allowed to have a number of places of habitual residence.¹⁰

⁷ Where the question of the applicability of the Regulation is relevant to the decision as to the law applicable to the future succession, the answer will generally be based on the assumption that the current habitual residence will be the last place of residence. There is no requirement for the State where that place is located to be a European Union member bound by the Regulation: see Article 10, applicable in the case where the deceased's habitual residence was in a State not subject to the Regulation but the estate includes assets located in a State that *is* subject to it; or Article 20, on the universal application of the Regulation's conflict-of-laws rules.

⁸ Conversely, the Regulation recognises that the intention of the deceased and of the other interested parties does have a part to play: see point 92 *et seq.* below, concerning the sixth question raised by the referring court.

⁹ Provided that it is an EU Member State bound by the Regulation.

¹⁰ In paragraph 63 of its order for reference, the referring court recognises that the Regulation appears to support the inference that only one habitual residence is possible, but then goes on to say that 'that position is not, however, expressly prescribed and there is [therefore] a need for greater clarity and explanation from the Court of Justice in that context'. All those that attended the hearing confirmed that there can be only one place of habitual residence. How to determine what that is, is a different matter and one of crucial importance to the resolution of this dispute.

(a) *A single habitual residence*

41. As I have already submitted, within the scheme of the Regulation, habitual residence is, as a rule, the ‘general connecting factor’ for determining international jurisdiction and the applicable law. In my opinion, there can be only one such place of residence, not more.

42. The arguments of predictability, legal certainty, prevention of contradictory outcomes and the fact that the applicable law is intended to govern the succession as a whole in order to prevent its fragmentation, which are listed in recital 37, support the proposition that there should be a single place of habitual residence. Recital 27, according to which the rules of the Regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law, is consistent with that proposition.

43. It is true that the Regulation provides for the eventuality that ‘the deceased lived in several States alternately or travelled from one State to another without settling permanently in any of them’.¹¹ However, in such situations, which are described as ‘complex’, the solution proposed brings together a number of factors to be taken into account in making a final assessment of all the factual circumstances with a view to determining ‘the’ habitual residence.

44. The provisions of the Regulation would no longer be of any use if it were found to be the case that, for the purposes of settling the issues which the Regulation attempts to resolve, a person may have a place of habitual residence in various States at the same time. That possibility would render meaningless many of the provisions of the legislation itself, which, as I have said, refer time and again to ‘the’ habitual residence in the singular, not in the plural.

(b) *Identifying the place of habitual residence*

45. Neither does the Regulation provide a definition of what constitutes ‘habitual residence’ in the context of a cross-border succession: it simply states that such residence should reveal a ‘close and stable connection’ with a State.¹²

46. Habitual residence is an autonomous concept of EU law which does not take as its point of reference each of the terms used to describe the same concept in national legal systems. A contrary state of affairs would jeopardise the uniform application of the Regulation and open the door to different opinions on the part of the authorities tasked with implementing it.

47. Although it would not be out of the question to refer to the definition of ‘habitual residence’ used in other provisions of EU law, such a place, the hallmark of which is that it reveals a close and stable link with a State, must be assessed in the light of *the specific aims of the Regulation*,¹³ which are listed in recital 7.

48. A legal practitioner must thus locate the deceased’s last habitual residence with that in mind, and in the light, therefore, of the guidance given in the Regulation itself, relying on other guidance only on an ancillary basis.

49. Although the Regulation does not define the concept of habitual residence, it does provide useful guidance, in recitals 23 and 24, on how to determine it. To begin with, it states that habitual residence must be determined on the basis of a general assessment of the circumstances of the deceased’s life during the years preceding his death and at the time of his death.

¹¹ Recital 24.

¹² Recital 23.

¹³ Recital 23 *in fine*. My emphasis.

50. In support of that assessment, the competent authority must gather all relevant and legally admissible evidence. In that context, mere declarations by persons with an interest in the succession which are mutually corroborative and are made before an authority dealing with the succession that does not (as I shall explain at length) perform judicial functions are not, to my mind, sufficient to establish the deceased's habitual residence.

51. The combination of factual elements relating to the deceased's life, as referred to in recital 23, will form the basis for deciding which of the situations envisaged in that and the following recital reflects the circumstances of a particular deceased person.

52. The first situation is one in which the factual data relating in particular to the duration and regularity of the deceased's presence in a State (objective factors), and the circumstances of and reasons for his presence there (subjective factors), reveal in and of themselves the existence of a 'close and stable connection' with that State.¹⁴

53. It is true that *stability* is what is looked for at this initial stage of the analysis. It is my view, however, that, once this has been confirmed, no further definitive inferences should be drawn from it in relation to the deceased's habitual residence. It may also be necessary to assess the circumstances warranting such residence,¹⁵ so as to identify the place where his interests were habitually managed.

54. Although the EU legislature has given priority to the criterion of habitual residence, the increasing mobility of individuals cannot be ignored. It follows that the length of time a person spends in a Member State is not, in itself, a decisive criterion: what matters is to examine each case in such a way as to ascertain whether other evidence, relating to the person's family and his social connections with, and proximity to, the place in question, corroborates the result indicated by the time factor.

55. The second situation is described in recital 24 of the Regulation and covers cases in which there is no indication of the deceased's having been present in a particular State on a regular and long-term basis.¹⁶ There are two possible reasons for this:

- The person concerned may have moved abroad as a matter of professional choice, although without having changed the 'centre of interests of his family and social life'.
- It may also be the case that the deceased split his life between a number of States without establishing a stable connection with any of them.

56. In those scenarios, a personal consideration (the deceased's nationality) or an economic one (the location of his principal assets) may have a particular bearing on the overall assessment of all the factual circumstances.

57. It is my view that, in the light of the reasoning applied by the referring court, the Court of Justice should emphasise that the deceased's nationality and the location of his assets are *ancillary* determiners of habitual residence. In other words, a combined examination of the factual elements relating to the stability of the deceased's situation and the reasons for it will serve to determine whether his situation is 'complex', to use the terminology of recital 24 itself.

¹⁴ In this context, I do not think any immediate inference can be drawn from the deceased's residence for tax or marital purposes: these factors will fall to be examined, along with all other relevant evidence, as part of an overall assessment.

¹⁵ In particular, whether the deceased was employed (gainfully or otherwise) and, if so, where, for how long and under what type of contract (if any), whether or not he had any permanent accommodation, what his home background and social circles were, where he received medical treatment, which authority was responsible for any related costs ... and so on.

¹⁶ This second scenario is usually illustrated by reference to retired couples whose lives are split between two centres, one in the north of Europe and the other in the south. See, to that effect, the judgment of the Cour de cassation (Court of Cassation, France) of 29 May 2019 (Cass. 1re civ., 29 May 2019, n.° 18-13.383, JurisData n.° 2019-009044).

58. The foregoing examination will necessarily precede any recourse, exceptionally within the scheme established by the Regulation to ensure legal certainty, to the deceased's nationality and the location of his principal assets.¹⁷

59. I would point out, lastly, that, so far as concerns establishing the applicable law, recital 25 *in fine* of the Regulation prohibits the use as a subsidiary connecting factor of the criterion of the deceased's 'manifestly closest connection' with a legal system other than that of the place of his last habitual residence, even in cases where determining habitual residence proves complex.¹⁸ This makes it clear, in my opinion, that there is no getting out of identifying *a* place of habitual residence, however difficult this may be.

3. *In the dispute in the main proceedings*

(a) *The deceased's last habitual residence: Germany or Lithuania?*

60. The referring court states that the data relating to the deceased's habitual residence 'are set out imprecisely in the documents before it or are the subject of disagreement'.¹⁹ It does not therefore appear to regard this issue as having been resolved by the court of first instance or the court of appeal.

61. If that is the case, the picture that emerges is one characterised more by a lack of information than by the presence of doubts arising from the co-existence of opposing data making it impossible to arrive at a firm determination of the place of last habitual residence.

62. If it is not possible to obtain more evidence in the course of the appeal in cassation, the dispute will have to be resolved on the basis of the evidence available, since the succession cannot be processed without an answer to this question. *In extremis*, if the doubts in that regard were insurmountable, recourse could be had to the second of the scenarios described in recital 24 of the Regulation. The deceased's nationality and the location of the principal assets in the estate would then come to the fore in the overall assessment of all the objective circumstances.

(b) *The cross-border implications of the succession*

63. The referring court wishes to ascertain whether, in the case where there is some uncertainty as to the deceased's last habitual residence, the confluence of the other known elements (affected by the succession) within a single jurisdiction (Lithuania) warrants the succession's classification as being purely domestic. In that event, the Regulation would not apply.

64. As I have already said, the application of the Regulation is not discretionary. It follows from this premiss that the legal relevance of certain declarations or behaviours such as that of the deceased's husband (who has already stated that he has no interest in the estate and agreed for it to be dealt with in Lithuania) will be determined by the Regulation, if it is applicable, and by another legal regime if it is not.

¹⁷ The deceased's habitual residence is the criterion for conferring jurisdiction and determining the applicable law that is provided for in Articles 4 and 21 respectively of the Regulation. As regards international jurisdiction, the location of assets is only a subsidiary criterion (see Article 10 of the Regulation); it is an exceptional criterion in the context of the applicable law (Article 30 and, where appropriate, Article 34). Nationality is irrelevant, other than in the case where the deceased chooses the applicable law (Articles 5 and 22 of the Regulation).

¹⁸ As regards the applicable law, that link serves to correct the result of using habitual residence as a connecting factor. See Article 21(2) of the Regulation.

¹⁹ Paragraph 41 of the order for reference.

65. Although it is for the referring court to give a ruling in that regard, the cross-border implications of the succession at issue here are difficult to avoid, in view of the fact that one of the potential heirs is in Germany, the other heir and the estate are in Lithuania and the deceased was last resident in one of those States (probably Germany, where she said she was living when she drew up her will). That succession would be governed by the Regulation to the extent that the foregoing is the case.

66. An answer making the applicability of the Regulation conditional upon the parties' individual decisions on those aspects of the estate that concern them would create an enormously uncertain situation. An approach whereby, once the choice is made to apply the Regulation, those decisions will be assessed in accordance with that regulation's provisions, is a different matter.

B. Fourth question

67. The fourth question starts from the assumption that Lithuanian notaries are not regarded as 'courts' within the meaning of the Regulation. The referring court wishes to ascertain, on that premiss, whether those notaries would be entitled to issue certificates of succession rights 'without following general rules on jurisdiction'.

68. The second part of that question concerns the classification as an 'authentic instrument' within the meaning of the Regulation of certificates of succession rights.

1. Whether Lithuanian notaries are subject to the rules on jurisdiction laid down in the Regulation

(a) Preliminary point: notaries in Article 3(2) of the Regulation

69. The Regulation defines 'court' in Article 3(2). That term covers judicial authorities and other legal practitioners competent to deal with matters of succession.

70. The European legislature includes that detail in the Regulation in the awareness that the Member States have different arrangements for distributing powers to deal with matters of succession.²⁰ In that way, it makes apparent that the system introduced by the Regulation is intended to be neutral, in line with other, previous instruments which, either directly or through the prism of interpretation, adopt a concept of 'court' that combines an institutional or organic understanding of that term with a functional approach to its use.

71. The Court has had occasion to note, in a context similar to that at issue here, that 'the exercise of judicial functions means the person concerned has the power to rule of his own motion on possible points of contention between the parties concerned'.²¹

72. In the judgment in *WB*, the Court, first of all, relied on the interpretation of the term 'decision' it had adopted, in connection with the 1968 Brussels Convention, in relation to a judicial transaction and its classification for the purposes of the chapter on the recognition and enforcement of judgments contained in that Convention. Secondly, it reiterated its previous case-law on Article 267 TFEU.

²⁰ Although the Regulation expresses this intention in recital 20, it is nonetheless clear from its wording that the functional treatment of notaries (and other legal professionals) as courts is regarded as residual.

²¹ Judgment of 23 May 2019, *WB* (C-658/17, EU:C:2019:444; 'the judgment in *WB*'), paragraph 55.

73. In the light of those considerations, the Court, in the judgment in *WB*, held that a notary who is able to perform the activities relating to the issue of a certificate of succession rights only at the unanimous request of the interested parties, the prerogatives of the court in the absence of agreement between the parties remaining unaffected, does not constitute a ‘court’.²²

(b) Are Lithuanian notaries subject to the rules on jurisdiction laid down in the Regulation?

74. The classification of a non-judicial authority (or a legal professional) as a ‘court’ within the meaning of the Regulation brings about two consequences: one in the context of international jurisdiction; and the other in the context of the rules governing the circulation of the product of its/his activities.

75. Where a non-judicial authority (or a legal professional) acts as a ‘court’, it/he is then, and only then, subject to the rules of international jurisdiction laid down in the Regulation.²³ This ensures that its/his interventions will satisfy the objective of proximity between the authority and the succession that is necessary for the sound administration of justice, and the objective of avoiding the substantive fragmentation of the succession.²⁴

76. Other than in those circumstances, a notary is not subject to the rules of international jurisdiction laid down in the Regulation. By extension, it is likewise not for him to determine whether the courts of the jurisdiction in which he practises have general jurisdiction to decide, as a second step, on his own competence as a notary under the territorial distribution of powers applicable under the law of that forum.

77. The referring court²⁵ appears to construe the Regulation as meaning that a notary should not issue a certificate of succession rights if the courts of the legal system within which he operates lack international jurisdiction under the Regulation. That view is shared by the Governments of Austria and Hungary, and its substance was discussed at the hearing.

78. It is true that such an interpretation would ensure unity in the processing of a succession linked to a number of legal systems. In accordance with Article 64 of the Regulation, moreover, that is the relevant rule in the case of requests for the issue of a *European* succession certificate. The Regulation does not apply that rule, however, where the request is for a *national* certificate.

79. The Regulation explains, in recital 32, that the objective of unity is combined with that of simplifying the lives of heirs; this is reflected in provisions such as Article 13. The fact that non-judicial authorities (such as, for example, notaries not performing such functions) in a number of Member States issue documents on a person’s status as heir and on that person’s rights as such should not fragment the succession from the point of view of its substantive outcome because they are all applying the same law.

²² Judgment in *WB*, paragraph 59 and paragraph 1 of the operative part.

²³ Recital 22 of the Regulation. According to the judgment in *Oberle*, a court in the strict sense (that is to say, defined organically rather than functionally), on the other hand, is subject to the rules of jurisdiction in any proceedings in matters of succession that are entrusted to it, even if its intervention does not entail a decision disposing of a dispute, as, for example, in the case where it issues a national certificate of succession rights.

²⁴ The argument as to unity in the procedural processing (understood in a broad sense as also including the receipt and drafting of expressions of intention and the issue of certificates) of a cross-border succession is not absolute. If that were the only criterion, any activity relating to a succession covered by the Regulation would have to be carried out within a single Member State: more specifically, in the Member State whose courts would have jurisdiction under the Regulation if proceedings were instituted before them. This, however, is not the option that was adopted by the European legislature.

²⁵ Paragraph 54 of the order for reference.

80. The existence of multiple certificates does produce fragmentation, of course, in the management of the succession. However, the Regulation accepts this (inevitable) possibility and, having articulated it in recital 36, refers, by way of a solution, to a voluntary agreement between the parties on how to proceed. In the absence of such an agreement (which is to say, in the event of a dispute), a court must intervene, the last word falling to a court with jurisdiction under the Regulation.

(c) In the dispute in the main proceedings

81. It follows from the information provided by the referring court, which was confirmed at the hearing, that a Lithuanian notary does not have competence to adjudicate on the issues in dispute between the parties. He has no power to establish matters of fact that are not clear and obvious, or to rule on facts in dispute; where there are doubts about the content of the will, it is not for him to explain it and he cannot endorse an interpretation offered by one of the heirs or, in the event of disagreement between them, determine which understanding of the text reflects the actual intention of the deceased.

82. In the event of any dispute or doubt, a Lithuanian notary must refrain from making any decisions, it being for the court to adjudicate in that regard. It is, in any event, the judicial authorities that resolve any disputes over the opening of the succession, the validity or execution of the will, or the administration of the succession, among other matters.²⁶

83. That information (which the referring court will have to corroborate) supports the inference that the issue of a national certificate of succession rights by a Lithuanian notary does not involve the exercise of judicial functions. Those notaries are not therefore ‘courts’ within the meaning of Article 3(2) of Regulation No 650/2012.

84. In the light of the foregoing, a Lithuanian notary is not subject to the rules of international jurisdiction laid down in the Regulation or governed by whether or not those rules confer jurisdiction on Lithuanian courts to resolve a dispute in relation to a succession.

2. Fourth question, second part. Authentic instrument

85. The referring court wishes to ascertain whether the certificate issued by a Lithuanian notary is an ‘authentic instrument’, within the meaning of the Regulation, which produces legal effects in other Member States.²⁷

86. The Court has ruled on the concept of ‘authentic instrument’ as defined in Article 3(1)(i) of the Regulation on several occasions, recently in the judgment in *WB*.²⁸ The condition and scope of ‘authenticity’ as an essential feature of an authentic instrument are described in the Regulation and were addressed by the Court in that judgment.²⁹

²⁶ At the hearing, some clarifications were provided in relation to the description of the notary’s competence as ‘exclusive’, in so far as it is confined to the requirement that heirs request a notary to open the succession.

²⁷ Recital 22 defines notarial acts as falling into two categories, being either ‘decisions’ or ‘authentic instruments’. The fact is that they may be neither one nor the other.

²⁸ Judgment in *WB* (C-658/17, EU:C:2019:444, paragraph 67).

²⁹ Recital 62 of the Regulation and the judgment in *WB*, paragraph 68: ‘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 requirements 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’.

87. In the light of that case-law and the information available,³⁰ the certificate issued by a Lithuanian notary appears to exhibit the characteristics necessary for it to be classified as an ‘authentic instrument’ for the purposes of the Regulation, since:

- the notary is empowered by Article 26 of the Law on notaries to issue certificates relating to a succession;
- pursuant to that article of the Law on notaries, facts recorded in notarial documents are deemed to be established and do not require proof, unless the documents in question are annulled;
- according to Article 40 of the Law on notaries, the notary must refuse to carry out any act that is contrary to the law;
- a certificate of succession rights is an authentic instrument, based on an official template drawn up by the Ministry of Justice, which certifies acceptance of the succession and the heirs’ rights to the assets; and
- prior to issuing it, the notary must perform a number of acts, including: establishing whether or not there is a will; if there is, verifying its content and validity; determining the assets in the estate; identifying the heirs by examining the declaration of acceptance or waiver of the estate; assessing ties through kinship and marriage and property rights.

88. It is once again for the referring court, whose knowledge of its domestic law puts it in a better position to dispose of this issue, to give a definitive ruling in that regard. If it finds that the certificate constitutes an authentic instrument, its evidentiary force will have to be accepted in other Member States, in accordance with Article 59(1) of the Regulation.

C. Sixth question

89. The referring court in fact asks two related questions, taking as its starting point the facts described in its order for reference. It wishes to ascertain whether, in accordance with those facts, ‘the parties concerned agreed that the courts in Lithuania should have jurisdiction and that Lithuanian law should be applied’.

90. The answer therefore requires an interpretation of Article 22(2) of the Regulation. Given the date of the will, prior to 17 August 2015, I shall also consider its transitional provisions.

91. Under Article 5(1) of the Regulation, the choice by the deceased of the law of a Member State makes it possible for the parties with an interest in the succession to agree to confer exclusive jurisdiction on the courts of that State, subject to certain conditions. Article 7(c) extends that choice, in so far as it allows it to be made expressly before the court seised. The order for reference also asks for an interpretation of those provisions.

³⁰ See, in addition to the information provided by the referring court and that contained in the observations submitted by the Lithuanian Government, in writing and at the hearing, the study by Beaumont, P, Fitchen, J. and Holliday, J., *The evidentiary effects of authentic acts in the Member States of the European Union, in the context of successions*, [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/556935/IPOL_STU\(2016\)556935_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/556935/IPOL_STU(2016)556935_EN.pdf), pp. 152 *et seq.*

1. *Choice of law not expressly mentioned in the will*

(a) *Testamentary dispositions made after 17 August 2015*³¹

92. The establishment of freedom of choice in circumstances involving a conflict of laws relating to matters of succession is one of the most striking aspects of the Regulation. The validity of that choice is, nonetheless, subject to subjective, objective and formal conditions.

93. The right to choose is, for obvious reasons, conferred only on the deceased, who, pursuant to Article 22(1) of the Regulation, may designate only his national law.³²

94. In order to ensure that the choice was made freely and that the purpose of that choice was clear, Article 22(2) of the Regulation lays down formal conditions: the choice must be made expressly in the form of a disposition of property upon death or be demonstrated by the terms of such a disposition. It is the second of those options that poses more difficulties in practice.

95. Determining whether there has been a choice of law in a matter of succession calls for special care to be exercised, in order to ensure respect for the wishes of an individual (the deceased) who, by definition, cannot confirm them or dispute them at the time when the succession is opened.

96. For that reason, and in the light of the formal conditions I have already mentioned, I take the view that the choice of law cannot be inferred from data external to the testamentary disposition itself. That is particularly true where the disposition was made before a notary and, therefore, advice was given (or can be assumed to have been given) on the law applicable to the succession.

97. Thus, factors external to the testamentary disposition (such as, for example, whether the deceased moved to a particular country to draw up his will, what the nationality of the officiating authority was or under which legal system that authority exercised its powers) are not decisive. Where appropriate, they will serve as arguments for the sake of completeness, that is to say, arguments which support the conclusion based on the testamentary disposition itself as to whether or not there was a choice of law.

98. It follows from recital 39 of the Regulation that a choice of law can be regarded as ‘demonstrated by a disposition of property upon death ... [in which] the deceased had referred ... to specific provisions of the law of the State of his nationality or ... had otherwise mentioned that law’.

99. That consequence will depend on which *specific provisions* were referred to. Those provisions must be compared with the law of the place of habitual residence, as the law applicable by default, in order to establish to what extent the provisions referred to are typical only of the legal system the choice of which is under consideration.

(b) *Wills drawn up prior to 17 August 2015*

100. What I have said up to this point may not be true, however, of wills drawn up prior to the date on which the Regulation became fully applicable.

31 Article 84 states that the Regulation ‘shall apply from 17 August 2015’. According to Article 83(1), its provisions are to apply to the succession of persons who die on or after 17 August 2015. Testamentary dispositions made on the 17th itself, therefore, fall within the scope of that European legislation.

32 The choice might be more extensive in the cases envisaged in Article 83(2), given the reference to the rules of private international law in force in the State in which the deceased was habitually resident or in any of the States of which he was a national at the time when the choice was made.

101. Article 83 of the Regulation laid down a transitional regime for testamentary dispositions made prior to 17 August 2015. Its purpose is to safeguard those provisions from any legislative amendments introduced after the point at which the deceased organised what should happen to his estate after his death.

102. Informed by the objective of respecting the testator's wishes, Article 83(2) governs the validity of a choice of — national or other — law made prior to 17 August 2015 (if the deceased dies on or before that date). That choice is to be valid if it meets the conditions laid down in Chapter III or those 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.

103. Article 83(4) of the Regulation provides that, if a disposition of property upon death made prior to 17 August 2015 is valid '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'.

104. The fiction established by that provision removes the need to ascertain whether a will drawn up prior to 17 August 2015 included a choice of law, where such a choice is not readily apparent from the text of the will concerned (in which case, regard must be had to Article 83(2)): provided, of course, that the condition laid down in the provision itself is met.

(c) In the dispute in the main proceedings

105. It is common ground that the will was drawn up before a notary in Lithuania on 4 July 2013. Even then, the succession contained foreign elements that were known to the deceased: her Lithuanian nationality, her stable presence in Germany, the location of her estate in Lithuania and the different nationalities of her husband and son respectively.

106. On that date, moreover, the Regulation had already entered into force. An express choice of law or one based on the terms of the testamentary disposition would have been possible under Article 83(2).

107. In any event, if the will is valid in accordance with the national law of the deceased at the time of the making of the will or at the time of death, Article 83(4) of the Regulation would authorise immediate recourse to the fiction that that law was indeed chosen.

2. Choice of forum following the choice of law.

(a) Justification and conditions

108. In accordance with Article 4 of the Regulation, international jurisdiction to resolve any aspect of a succession with cross-border components falls exclusively to the courts of the Member State in which the deceased was habitually resident at the time of his death.

109. Presumably, there will be a strong connection between the courts thus designated, on the one hand, and the assets in the estate, as well as the persons with an interest in that estate, on the other. And, given that the applicable law is, by default, the law of the last place of habitual residence, there will automatically be a correlation between the forum and the law. These are both central objectives of the Regulation, as recital 23 and 27 thereof explain.

110. The increasing mobility of persons, combined with the possibility of choosing the national law to be applicable to a future succession, puts at risk or directly frustrates the objectives I have just mentioned. Conscious of this, the EU legislature adopted rules on international jurisdiction which, subject to certain conditions, oust the jurisdiction established in Article 4 of the Regulation.

111. One of those rules offers persons with an interest in the succession the option of conferring jurisdiction on the courts of the State of which the deceased was a national, where the deceased had chosen his national law as the law applicable.

112. The question is whether the option which is offered to the interested parties, and which, as I have said, is contingent upon a prior choice of law by the deceased, is also available in the case where there is no certainty as to whether or not a choice of law was explicitly made but the deceased's national law is applicable pursuant to the fiction established in Article 83(4) of the Regulation (for wills drawn up prior to 17 August 2015).

113. In my opinion, the answer must be in the affirmative. A formalistic reading of the Regulation must be ruled out (notwithstanding that the latter always refers to the law 'chosen' by the deceased), and the conferral of jurisdiction on the authority that knows the applicable substantive law best must be advocated. This, in my opinion, is the solution most consistent with the objective set out in recital 27 of the Regulation.

114. Where the law chosen by the deceased to govern his succession is the law of a Member State, Article 5 of the Regulation provides that the parties concerned may confer exclusive jurisdiction to rule on any succession matter on a court of that State.

115. That express choice of court is, however, subject to strict formal conditions laid down in Article 5(2). These seek to ensure that anyone signing an agreement conferring exclusive jurisdiction is familiar with its content, gives his consent to it and is aware of its consequences: to extend the jurisdiction of the courts chosen and to revoke that of the court of the deceased's last habitual residence.

116. Article 7(c) of the Regulation also provides that the parties to the proceedings (to be understood as referring to proceedings already under way) must expressly accept the jurisdiction of the court seised. Article 9 extends the jurisdiction of a court chosen by agreement which is already hearing a case to parties to those proceedings that were not party to that agreement, if they enter an appearance before that court without contesting its jurisdiction.

117. The Regulation does not provide for any other ways of conferring jurisdiction. The failure to enter an appearance by an interested party who has been notified of the opening of succession proceedings does not amount to a tacit choice of court. An extra-procedural declaration made by an interested party with respect to his rights or obligations in relation to the estate does not have that effect either.

118. The EU legislature does not impose the same strict formal conditions in Article 7 as in Article 5. In the former scenario, the proceedings are under way: the interested parties who were called upon to participate in those proceedings, and who accepted at that time the jurisdiction of the court seised, will have been provided with all of the relevant material required for their consent to be deemed informed.

119. The acceptance of jurisdiction must nonetheless be express, so as to avoid any doubt as to its existence. It is for the national legislature to specify any other temporal and formal conditions necessary to enforce acceptance in proceedings which have been opened, provided that such conditions observe the principles of effectiveness and equivalence.

(b) In the dispute in the main proceedings

120. From the information available in the request for a preliminary ruling, there does not appear to have been an agreement by the parties to confer jurisdiction on the courts of Lithuania. There are, on the other hand, unilateral declarations made by the deceased's husband, in Germany, in which he waives any claim to the estate, consents to the jurisdiction of the Lithuanian court and refuses to enter an appearance before it in the proceedings under way in that State.

121. Only the second of those declarations is of any interest, in so far as it might reflect the situation described in Article 7(c) of the Regulation. The referring court will have to determine whether that is the case, in the light of the terms of that declaration, and, in particular, the extent of the consent which is expressed in it. It will also have to establish whether any other temporal and formal conditions which its legal system requires to be fulfilled in order for such a declaration to have the effect of conferring jurisdiction in the course of proceedings which are under way are met.

122. So far as concerns jurisdiction by agreement between the parties, I think it appropriate to recall that the Regulation must not be read in such a way as to prevent parties from settling a succession out of court in a Member State which they have chosen, if that is possible under the law of that Member State. That option must remain open even if the law applicable to the succession is not the law of that State. This view, which is clearly expressed in recital 29 of the Regulation, may be useful to the referring court.

V. Conclusion

123. In the light of the foregoing, I propose that the answer to be given to the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) should be as follows:

- (1) Article 4 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, and the other provisions relating to the habitual residence of the deceased, must be interpreted as meaning that there may be only one such habitual residence.
- (2) Where the deceased's habitual residence is in one State and other elements relevant to the succession are located in another State or other States, the succession is cross-border in nature and Regulation No 650/2012 is therefore applicable.
- (3) Articles 3(2) and 4 of Regulation No 650/2012 must be interpreted as meaning that a notary who cannot be classified as a "court" with the meaning of the former provision is not subject to the rules on jurisdiction laid down in that regulation.
- (4) Article 3(1)(i) of Regulation No 650/2012 must be interpreted as meaning that a national certificate of succession rights such as that at issue in the main proceedings, which is issued by the notary at the request of the party concerned, in accordance with an official template and following checks relating to the veracity of the facts and declarations listed in it, constitutes an "authentic instrument" and produces the corresponding evidentiary effects in other Member States.
- (5) Article 22(2) of Regulation No 650/2012 must be interpreted as meaning that a choice of law by the deceased which has not been explicitly made in a declaration in the form of a disposition of property upon death must be demonstrated exclusively by the terms of such a disposition.

- (6) Article 83(4) of Regulation No 650/2012 must be interpreted as meaning that, where a testamentary disposition made prior to 17 August 2015 does not contain a choice of law, or the choice of law is not demonstrated by the terms of that disposition, the succession is governed by the national law of the deceased in accordance with which that testamentary disposition is valid, without there being any need to ascertain whether that law was indeed chosen.
- (7) Article 7(c) of Regulation No 650/2012 must be interpreted as meaning that an extra-procedural declaration made by an interested party, to the effect that he accepts the jurisdiction of the courts over proceedings under way which have been instituted by other parties, amounts to an express acceptance of the jurisdiction of those courts if it meets the formal and temporal conditions imposed by the rules of procedure of the forum.'