

European Parliament Votes for Common Rules on Succession and Wills

On 16th November, MEPs voted overwhelmingly (**450 to 51**) in favour of a report by Mr Gargani of the Committee on Legal Affairs, asking the European Commission to draw up a

Community legal instrument relating to private international law on successions and wills, as already called for in the 1998 Vienna action plan, the programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters, adopted by the Council and Commission in 2000, the Hague Programme of 4 November 2004 for strengthening freedom, security and justice in the European Union, and the Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union (p.3-4).

The Report calls on the Commission to submit a legislative proposal to Parliament under Articles 65(b) and 67(5), second indent, of the EC Treaty during 2007, and to launch a call for proposals for an information campaign regarding cross-border wills and succession matters, targeted at legal practitioners in the field. The current problems in transnational testaments are described by the Rapporteur with an example:

Let us consider the hypothetical case of a German citizen who, on retirement, moves from Germany to the south of Spain (where he spends the last decade of his life) and dies there, leaving two sons residing in Germany and an estate comprising property in Germany. In a case of this kind, if the jurisdiction were determined solely on the basis of the deceased person's habitual place of residence at the time of death, the heirs – supposing they were in dispute over the will – would be obliged to bring the proceedings in question before the Spanish courts.

The rules proposed in the Report are fairly wide-ranging; in terms of scope, "the

legislative act to be adopted should aim to regulate succession exhaustively in private international law and at the same time: harmonise the rules concerning jurisdiction, the applicable law (the 'conflict rules') and the recognition and enforcement of judgments and public instruments issued abroad, except for the material substantive law and procedural law of the Member States (p.5). The proposed rule for determining a court's *jurisdiction* is the:

habitual place of residence of the deceased at the time of his death as the criterion for establishing both principal jurisdiction and the connecting factor.

The Report also suggests that the parties be allowed to choose their court (in accordance with Articles 23-24 Brussels I Regulation), and that the testator be able to choose which law should govern the succession, the law of the country of which he is a national or the law of the country of his habitual residence at the time the choice is made; this choice should be indicated in a statement taking the form of a testamentary clause.

The default choice of law rule proposed is that of **the law of the country which was the habitual residence of the deceased at the time of his death**; this would ensure, the Rapporteur argues, that the court with jurisdiction and the applicable law would coincide, which would help to ensure that any disputes concerning the succession were rapidly and effectively resolved. The Rapporteur does, however, admit a problem with reconciling any kind of succession law with the *lex loci rei sitae*: the law of the place where the property is situated, which generally governs the question of *transfer of title*. The Rapporteur simply recommends that those laws should be "coordinated." The suggested method is to ensure that:

the instrument to be adopted should make it clear that, for the purpose of acquiring and enjoying inherited property situated in a State other than that whose law applies to the succession, it is necessary to follow the rules of the law of the place where the property is situated only if that law requires further formalities or actions in addition to those required by the law applying to the succession.

Amongst all this, the EP stress that:

if European citizens could have access to a standardised document which had binding force in all the Member States and identified the law applicable to the succession, the property concerned and the heirs and executors, those heirs and executors could exercise their rights in all Member States even more simply, safely and effectively.

The EP therefore strongly recommend a "European Certificate of Inheritance", which should be issued by a public authority. The Report concludes by stating that,

This is obviously a complex and many-sided issue.

That, at least, is apparent. The full Report by the Committee on Legal Affairs is available [here](#). Also see the discussion in the 37th report of the UK government Committee on European Scrutiny. Does the Rapporteur's Report pick the right conflict of laws rules, and were the MEPs right to vote so strongly in favour of the Report? Comments welcome.