



Application of EU Member States' Decisions on Succession Rights to Immovable Property in the Slovak Republic

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Abstract

The article examines notarial activity in succession proceedings involving immovable property after the application of Regulation (EU) No 650/2012. Its aim is to assess how decisions issued in other EU Member States concerning succession rights to immovable property are applied in the Slovak Republic and whether the Regulation has fulfilled its purpose in this area. The paper combines doctrinal legal research with practice-based analysis, drawing on the author's more than fifteen years of professional experience as a notary and on an academic examination of relevant Slovak legislation, EU law, case law, and selected comparative solutions since 2015. The analysis identifies practical and legal difficulties related in recognising foreign succession decisions and registering rights in public registers. It concludes that, despite the Regulation's unifying purpose, significant uncertainties remain and further clarification is needed at both EU and national levels.

Keywords

EU Succession Regulation, Specifics of the Slovak Legal System Related to Successions of Immovable Property, Challenges to Succession Proceedings

I. Introduction

The Succession Regulation is the first instrument to unify cross-border succession at a broader European and even international level. It applies in 25 Member States of the European Union. It harmonises conflict-of-law rules for determining the applicable law in succession matters, as well as rules on international jurisdiction and the recognition and enforcement of foreign (succession) decisions and public instruments. The United Kingdom, Ireland, and Denmark chose not to apply the Regulation, exercising their opt-out under the Treaties and Protocols.

Article 1(2)(l) excludes the registration of rights in immovable property from the scope of the Regulation. These matters remain governed by national law. The Regulation introduced

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the European Certificate of Succession (ECS), intended to facilitate the cross-border exercise of inheritance rights. This instrument serves as an alternative to “traditional” national succession decisions. Being valid in all Member States as a document with full legal effect, without the need for any special recognition is its main advantage. It can also be used in situations where citizens need, for various reasons, to prove in another Member State the rights acquired in succession proceedings (Sisák, 2021). However, it does not address national property registration rules, which limit its practical effectiveness. For the sake of completeness, it should be added that ownership rights to immovable property (including by way of succession) are acquired only upon a decision of the administrative authority. Subsequently, these rights are entered into the land register. To preserve the reliability of the data in the land register, it is necessary to record all changes in ownership rights therein. From a broader private law perspective, the effectiveness of property-related rights is closely linked to the existence and enforceability of adequate security mechanisms, which serve to ensure the real economic function of obligations and their practical enforceability (Dzimko, Kubinec and Maruškinová, 2025). The issuance of an ECS is not mandatory at the end of the succession proceedings and merely certifies the facts established in the proceedings. The entitled person (heir) has only the option (not the obligation) to apply for its issuance (Krajčo, 2016).

We argue that the Regulation has not resolved key problems but, instead, has revealed deeper systemic tensions (Miler, 2020; Pazdan and Zachariasiewicz, 2021; Pfeiffer, 2016; Solomon, 2016; Szocs, 2019). Although these challenges have been identified in both national and international scholarship, they are often treated as isolated practical issues. This article argues that they reflect a deeper systemic tension between harmonised succession rules and fragmented national property regimes. The methodological framework of the present study is outlined below. Given that the author is a registered notary with the Notary Chamber of the Slovak Republic, the article highlights practical application issues encountered within the Slovak Republic.

II. Methodology

This article is based primarily on doctrinal legal analysis of Regulation (EU) No 650/2012 and the relevant provisions of Slovak law governing succession proceedings and the registration of immovable property. The analysis focuses on the interpretation of Article 1(2)(1) of the Regulation and its practical implications in cross-border cases. In addition, a comparative method is employed to examine how selected EU Member States address similar challenges related to the registration of succession rights in immovable property, with reference to the Czech Republic, Germany and Austria. This comparative perspective identifies both convergences and divergences in national approaches. The study also incorporates elements of case law analysis, including relevant decisions of the Court of Justice of the European Union and national courts, to assess the practical application of the Regulation. Finally, the article adopts a functional approach, linking normative analysis with practical experience derived from the application of the Regulation in the Slovak legal environment. This allows the identification of systemic shortcomings that are not always apparent from a purely formal interpretation of legal rules.

III. Analysis of Literature and Previous Research

The issues addressed in the present article form part of an established scholarly debate on the application of Regulation (EU) No 650/2012, particularly regarding the tension between its harmonisation objectives and the persistence of national legal regimes governing immovable property.

Both Slovak (Júdová, 2019; Krajčo, 2016; Sisák, 2021) and international scholarship (Bost, 2013; Pfeiffer, 2016; Van Erp and Zimmermann, 2022) consistently highlight the relationship between the Regulation's harmonisation objectives and the persistence of national legal regimes. These studies point to interpretative ambiguities, procedural inefficiencies and the limits of legal certainty in cross-border succession.

Arguably, a central point of discussion in both national and international literature concerns Article 1(2)(1) of the Regulation, which excludes the registration of rights in immovable property from its scope. European academic commentary generally interprets this provision as a deliberate compromise preserving Member States' autonomy in property law. However, it is simultaneously identified as a major source of fragmentation. The exclusion leads to coexistence of unified rules on succession with divergent national requirements for property registration, thereby undermining the Regulation's effectiveness in practice.

This tension has been documented across multiple jurisdictions (e.g. Pazdan and Zachariasiewicz, 2021; Szocs, 2019). The case law of the Court of Justice of the European Union, particularly Case C-354/21, confirms that Member States may require specific formal elements, such as precise identification of immovable property, for registration purposes, reinforcing the continuing relevance of national law in this field.

Against this background, the findings of the present article align with the prevailing academic view that the Regulation has not fully eliminated barriers to the effective exercise of succession rights. At the same time, the present study advances the discussion by demonstrating that the difficulties associated with Article 1(2)(1) are not merely technical or procedural. Rather, they reflect a systemic tension inherent in European private international law, arising from the coexistence of harmonised conflict-of-law rules and fragmented national property regimes.

The problems identified should therefore not be understood as isolated features of the Slovak legal system, but as part of a broader structural challenge recognised in contemporary European legal scholarship. This broader structural tension between European legal harmonisation and national regulatory autonomy has also been identified in other areas of EU law, where decisions of the Court of Justice of the European Union have significantly interfered with domestic legal frameworks, raising questions of proportionality, legal certainty and the limits of regulatory transparency (Kubinec et al., 2023).

IV. Formal Requirements for the Registration of the Rights Acquired by Succession According to Slovak Law

The essence of the succession procedure involves identifying the legitimate heirs, whether determined by law or by a will, and the estate's assets and liabilities. The primary aim of succession proceedings is to establish consensus among the heirs. This consensus revolves around determining which heir assumes possession of specific assets from the deceased and in what share. Regarding debts, if there is an explicit agreement among the heirs, the creditor holding the debt becomes a participant in the succession proceedings. In cases where the heirs fail to resolve these matters through a specific agreement, the general provisions outlined in the Civil Code come into effect.²

Legislation will specify the manner and the details of identifying specific items subject to succession. Specifically, immovable property shall be subject to certain formal prerequisites. These apply not only to contractual transfers but also to all determinations made by the judicial authority. Should the subject of succession involve real estate as delineated in a judicial authority's decision, such a decision is to be documented in the Land Register. This entry does not establish new rights but merely acknowledges an existing situation. A specialised act (the Cadastral Law) outlines the procedure for the administrative authority to register a decision on succession in the Land Register. The administrative body reviews whether the submitted document (the decision) lacks clerical, numerical, or evident errors and satisfies the requisites outlined in the Cadastral Law. The focus of the present paper was to draw attention to and stress the challenges to the application of EU Member States' decisions on succession rights to immovable property in the Slovak Republic. Since the Regulation did not truly reflect the specifics of national legislation in practice, the author seeks to explain the basic conditions for the registration of real estate-related deeds in the Slovak public Land register. To exemplify the thesis that permeates the study, we present a range of the formal obligatory requirements of the Slovak legal system for real estate registration.

Slovak law imposes highly detailed formal requirements for identifying immovable property and heirs, which must be strictly complied with to register succession decisions in the Land Register. The heir shall be identified by first name, surname, family name, date of birth, birth number, and place of residence. For each owner, the size of their co-ownership share in the property must also be specified.

If the subject of the succession is a plot of land, it must be identified by the cadastral area in which it is located, the parcel number, the designation of register "C" or "E", its area, and the type of land. If the subject of the succession is a building, it must be identified by the cadastral area in which it is located, its registration (house) number, and the parcel number on which it is situated. If the subject of succession provided by the resolution of succession is a flat or non-residential premises, the obligation to specify it is defined in another separate

² §470 Civil Code: *"The heir shall be liable up to the value of the inheritance for the reasonable costs of the funeral of the deceased person and for the debts of the deceased person which have passed to him on the death of the deceased person. If there are several heirs, they shall be liable for the costs of the deceased person's burial and for the debts in the proportion in which they have received a share of the inheritance in relation to the entire estate."*

act (Section 5(1) of the Act No 182/1993 Coll.). As far as formalities are concerned, if the property is the subject of a succession, the resolution on the succession must also hold details of the acquirer, the heir. If the resolution on succession does not contain any of the data, the administrative authority which records the resolution on succession shall not record the deed and shall return it to the notary for completion if a Slovak notary dealt with the succession.

The above examples illustrate the excessive formalism of real estate registration in Slovakia. Similarities can be observed in other EU Member States, for example, the Czech Republic (Pauknerová – Pfeiffer, 2014), Poland (Załużcki, 2018), Hungary (Szocs, 2019) or Lithuania (Limante, 2021). A comparable level of formalism can also be observed in other public registers within Slovak law, such as the Commercial Register, where strict statutory requirements for entries play a crucial role in ensuring legal certainty and the reliability of registered data (Ušiaková, 2025).

Historical deficiencies in land records further complicate the registration process. In many cases, insufficient identification data renders it difficult or impossible to register rights based on foreign succession decisions. The adopted solutions can serve as a guide for taking further legal steps to address this issue comprehensively. The Czech Republic addressed this issue by allowing registration based on supplementary declarations accompanying the ECS.³ An analogous proposal is presently under development in Slovakia but has not yet successfully undergone the legislative procedure. The view expressed officially thus far by the Office of Geodesy, Cartography and Cadastre of the Slovak Republic, the proposer of an amendment to the law, suggests that *“The Office advises district offices and cadastral departments to consider the specifics of individual cases and proceed with registering a valid European Certificate of Inheritance in alignment with the forthcoming amendment to the Cadastral Act. This entails requesting an affidavit from the successor in title, meeting the requirements outlined in Section 42 (2) of the Cadastral Act, with the successor’s signature on the affidavit duly certified.”* Nonetheless, it is important to note that this opinion is advisory in nature, and district authorities are not obliged to follow it. Nevertheless, such guidance marks a breakthrough after several years during which it was impossible to register ownership rights acquired through the European Certificate of Inheritance in the Land Registry.

³ Section 69, subsection 6 of Decree No. 357/2013 Coll. on Cadastre of Real Estate of Czech Republic: *“If a document issued under the conditions stipulated directly by a directly applicable regulation of the European Union, which certifies universal legal succession, does not contain the rights or properties to which the legal succession pertains, due to the provisions of the legal system of the state in which the document was issued, the cadastral office shall register the change of ownership or other proprietary rights based on this document and the declaration of the legal successor with the requirements according to Section 66, paragraph 4, letters a) to d) and f).”*

V. Restrictions on the Transfer of Title to Immovable Property Under Specific Legislation in the Slovak Republic

Under Slovak law, there are substantive legal limitations stemming from Article 30 of the Regulation. In succession proceedings, it is necessary to consider legal provisions governing the protection or special regime for the acquisition (and thus inheritance) of certain types of immovable property. In the Slovak legal system, such limitations include the prohibition of fragmentation and the special procedure for the acquisition (and therefore also inheritance) of immovable property with the status of common property. Act No. 180/1995 Coll. on Certain Measures for the Arrangement of Land Ownership, as amended, regulates specific conditions for the acquisition of agricultural and forest land located outside the built-up area of a municipality. These restrictions do not apply to all land, but only to selected types, namely agricultural and forest land. Such land must be located exclusively outside the municipality's built-up area (i.e. extravilan). For the sake of completeness, it should be added that, in the case of the acquisition of agricultural land, no plot smaller than 3,000 m² may be created (including in the case of a co-ownership share). In the case of forest land, no plot smaller than 5,000 m² may be created (including in the case of a co-ownership share).

A statutory limitation under Act No. 180/1995 Coll., as amended, establishes a minimum area of land that may be acquired based on a decision on succession. Slovak law imposes quantitative and structural limitations on land division and acquisition to prevent fragmentation. This regulation aims to preserve the integrity of land and prevent its fragmentation into small plots, thereby maintaining its economic function.

This restriction was also examined by the Constitutional Court of the Slovak Republic, which assessed whether measures aimed at preventing land fragmentation constitute an interference with property rights and whether such interference is justified in the public interest. The Constitutional Court of the Slovak Republic concluded that the prohibition of the fragmentation of certain types of land is in the public interest.

If the heirs do not wish to comply with the above restrictions, the notary will make an authoritative decision. The claims of the other heirs are secured in several ways:

- * by establishing a statutory lien on the land in favour of the other heirs, with the legislature granting this lien priority over any previous liens;
- * by granting a pre-emption right to the lienholder in relation to the land to which the lien is attached.

Further legal restrictions apply to common property, such as township (urban communal) property. Common property represents a single entity that may consist of multiple land parcels and is subject to specific rules governing its ownership and disposition. It is generally considered indivisible, with exceptions provided by law. Similarly as land located outside built-up areas, there are also restrictions on the division of such property within a land community.

In the case of common property, it is prohibited to create a co-ownership share of less than 2,000 m². At the same time, there is an additional restriction requiring that the heir acquire a share in all parcels forming part of the common property that belonged to the deceased.

The status of common property is evident from the title deed under which the property is registered.

Another area of succession that may pose challenges for foreign authorities is the inheritance of a membership share in a housing cooperative. The legal regulation governing the transfer of such a right is set out in Section 700 et seq. of the Civil Code. In the case of a cooperative apartment, the subject of inheritance is not the immovable property itself, but a property right – a membership share in the housing cooperative. The acquisition of such a membership share is subject to specific statutory limitations. If the deceased was married at the time of death, the law determines which heirs are entitled to acquire the share. At the same time, the law excludes the division of the membership share among multiple heirs. The specific legal nature of cooperative membership rights, which differ significantly from classical ownership rights to immovable property, further complicates their treatment in succession proceedings and cross-border contexts (Némethová, 2022).

VI. Registration of Foreign Decisions in Succession Proceedings in the Selected EU Countries

It is imperative to differentiate between the procedural and substantive prerequisites for succession, as examined in the previous chapter. Additionally, it is crucial to differentiate between the challenges encountered when registering these determinations regarding the heir's entitlements across the various legal systems of the EU Member States.⁴ The precise data that must be included in the decision on succession for the registration of immovable property in the Land Registry are excluded from the Regulation's scope. The absence of the overall issue of registration of immovable property in the land registers, the conditions of registration and its effects cause difficulties in the application practice.

The varying regulations governing the registration of immovable property in land registries across different EU Member States have led to problematic outcomes when attempting to register succession decisions abroad (Szocs, 2019). A comparative analysis also shows that statutory restrictions on the exercise of rights to immovable property, such as limitations on mortgage enforcement, may create additional barriers to the cross-border effectiveness of legal decisions (Pacalajová and Kubinec, 2021). In addition to the Lithuanian case regarding property identification criteria, uncertainties have emerged in the Czech Republic, Hungary, Austria, and Germany due to discrepancies in national laws regarding the implementation of rights arising from succession decisions. German succession decisions based on universal succession often lack detailed identification of immovable property, which leads to their rejection in the Slovak Land Register. Consequently, the Slovak Land Registry would reject such a decision and request additional information to meet the required criteria. The issue was addressed by the Supreme Administrative Court of the Slovak Republic in Case No. 8Sžk/25/2021. The dispute centred on the rejection of registration based on an ECS and its translation, which lacked the description of the real estate mandated by the

⁴ Art. 30 of the Regulation: "Where the law of the State in which certain immovable property and certain undertakings or other special categories of family or social considerations impose restrictions relating to or affecting the succession to such property, this special regime shall apply irrespective of the law applicable to the succession."

Cadastral Act. The decision on succession, issued in Munich under German law, failed to meet the formalities required for registration in the Slovak Land Register. However, incorporating Slovak formalities into the German decision contradicts the principle of universal succession, as affirmed by the German court. The Supreme Administrative Court of the Slovak Republic dismissed the action as unfounded. It held that the procedure followed by the Slovak authorities was correct. In its opinion, the administrative authority (the District Office, Cadastral Department) acted in accordance with the law when it called for the elimination of deficiencies or the completion of the necessary data in the submitted document – the European Certificate of Succession. In our view, the applicant’s argument that the administrative authority should refrain from the strict formalities required by Slovak law as a reason for registering such a deed is not acceptable, particularly in the light of Article 1(2)(l) of the Regulation. The Ministry of Justice of the Slovak Republic expressed the same view in its opinion, stating that *“In the light of the divergent views of Germany and the Slovak Republic on the above-mentioned problem, it would be most appropriate for the Court of Justice of the European Union to give a preliminary ruling in a similar case, so that the necessary adjustments can be made either to the procedural rules followed by the German authorities when deciding on succession cases (specification of the deceased person’s property directly in the decision) or to the national procedures of the Member States (including the Slovak Republic) which exist for the registration of property.”*

Registrations of real estate in Land registers in the Czech Republic and the Republic of Austria face the same problems. In the Czech Republic, the procedure and criteria for registering foreign succession decisions involving immovable property align with those prescribed in the Slovak Republic. The cadastral authorities have refused to register such deeds unless the details relating to the immovable property are completed. The controversial nature of such a procedure has changed the decision-making of the Czech courts in 2019. The courts found that the continued refusal of the cadastral authorities to register the owner due to the alleged incompleteness of the ECS violated the constitutional right to property and the guarantee of succession rights enshrined in Article 11(1) of the Charter of Fundamental Rights and Freedoms. Based on this line of reasoning, they thus began to accept the German ECS, which were “incomplete” from the Czech point of view, for the registration of the owner in the land register. This situation was finally resolved in the Czech Republic by the adoption of an amendment to the Decree on the Cadastral Act, which introduced the possibility of entering the ECS into the cadastre, together with the so-called owner’s declaration containing all the data required by law. The Republic of Austria resolved this problem through case law rather than legislative changes (Sisák, 2021).

In its recent ruling, the CJEU finally affirmed that land registry authorities in EU Member States can refuse to register immovable property if it is solely supported by an ECS lacking property identification. Indeed, the dispute involved Lithuania’s refusal, citing the absence of specific identification of immovable property in the Certificate issued by a German probate court. The Lithuanian court referred this issue to the CJEU, citing a conflict between German universal succession principles and Lithuanian land registry requirements. The CJEU emphasised that, while the European Certificate of Succession serves as a means of registering succession property, its content may vary. However, national law governs the

prerequisites for property registration, allowing EU Member States to set conditions. Thus, if the Certificate lacks necessary property data, authorities may reject applications. This ruling aligns with the Succession Regulation's intent, acknowledging the role of national law in property registration requirements. Despite Advocate General Szpunar's differing view, who recognised a potential gap between this principle and the diverse national property registration norms across Member States, the CJEU's decision emphasised the need for property identification in the Certificate for effective property registration across EU Member States (Case C-354/21).

VII. Conclusion

In view of the above-mentioned challenges in applying the Regulation to succession rights, the question arises whether its adoption has truly achieved the objective set out in point 7 of the Regulation. Similar concerns regarding the gap between formal legal frameworks and their practical effectiveness have been identified in other areas of private law, where the mere existence of legal mechanisms does not guarantee their actual accessibility or functionality (Dzimko, 2024).

The findings of this study confirm that the difficulties associated with the application of Regulation (EU) No 650/2012, particularly in relation to Article 1(2)(1), cannot be regarded as isolated deficiencies of individual national legal systems. Rather, they reflect a systemic tension inherent in the current architecture of European private international law, arising from the coexistence of harmonised conflict-of-law rules and divergent national regimes governing the registration of immovable property. This conclusion is consistent with the broader academic discourse, which has repeatedly identified the fragmentation between succession law and property law as a structural limitation of the Regulation. The Slovak legal system thus does not represent an exception, but rather an illustrative example of a wider European problem. In this respect, the Regulation has not fully achieved its objective of facilitating the effective exercise of succession rights across borders.

When searching for a possible response to these concerns, one can refer to the Ministry of Justice of the Slovak Republic's statement. The solution, according to the Ministry, is either (a) the adoption of the same or similar national legislation in the context of the procedure for the registration of immovable property, of foreign deeds submitted in succession proceedings, or (b) the unification of the procedural rules for the registration of such deeds within the EU Member States. Of the options outlined above, the latter represents the more straightforward route. However, any solution adopted in the form of a Regulation rather than a Directive in this case would likely conflict with national legislation. It is not straightforward to consider all the legal conditions, particularly the limitations, in a decision on succession (also in the case of ECS), especially in the case of immovable property, if these institutes and procedures are not regulated by or recognised under foreign law.

To conclude, the adoption of the EU Succession Regulation has raised a range of issues aimed at simplifying the procedures for exercising the rights of heirs in cross-border successions. The Regulation itself has not eliminated the problems that existed when succession matters fell within the exclusive competence of national private international laws. Without further legal adjustments in the EU Member States' legal systems, leading

to a real unification of the European succession rules, the Regulation would not achieve its true objective for EU citizens. The reason why this matter was not addressed via a directive remains unclear, despite the potential benefit of granting EU Member States sufficient time to harmonise their national regulations. Regarding real estate registration in the Slovak Republic, where property ownership details in the land register often lack specifics, primarily due to historical circumstances, a complete departure from stringent formalities is not considered a viable solution. Observing the evolution of relevant case law and the European Union's approach to the raised concerns will be of great interest. The Court of Justice of the European Union holds a significant opportunity to address these crucial issues through its further preliminary rulings. Additionally, the forthcoming comprehensive review of the Regulation presents an opportunity to devise more nuanced solutions for specific core regulatory aspects.

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