

Money issues lead to the deterioration of their relationship and finally Pia left the apartment in July 2019 and moved in with a friend in Luxembourg. Tina and Pia dissolved their partnership in Luxembourg in August 2019. In November 2019, Tina commenced the proceedings to divide their property before the Croatian court. When she received it, Pia was upset with the claim and quickly responded that she disagrees with the entire Tina's claim because it is extremely excessive.



Question 2.1. Can the Croatian court decide on the division of their property?

Answer 2.1. Yes. Art. 8 of the Property Consequences of the Registered Partnership Regulation (no. 2016/1104) provides that a court of a MS whose law is applicable pursuant to Art. 26(1), and before which a defendant enters an appearance shall have jurisdiction. Both conditions are met in this case to result in the jurisdiction of the Croatian courts. First, Art. 26(1) leads to the law of the State under whose law the registered partnership was created, i.e. Croatian law in this case. Second, Pia entered an appearance by responding to the merits of the case without previously contesting jurisdiction. (Yet, if Pia contested jurisdiction, the Croatian court would have to declare of its own motion that it has no jurisdiction under Art. 15.)

Question 2.2. Which law is applicable to division of their property?

Answer 2.2. As already explained, according to Art. 26 of the Property Consequences of the Registered Partnership Regulation (no. 2016/1104), if the partners do not choose the applicable law, the law applicable to the property consequences of registered partnerships is the law of the State under whose law the registered partnership was created. Therefore, division of property between Tina and Pia is governed by Croatian law.

Help us gather information on transnational families and mixed marriages by filling-in the PSEFS online anonymous questionnaire for cross-border couples at: <http://survey2.cs.unicam.it/limesurvey/index.php/584535?lang=en>



PERSONALIZED SOLUTION IN EUROPEAN FAMILY AND SUCCESSION LAW

PSEFS, an acronym that stands for “Personalized Solution in European Family and Succession Law”, is a project co-funded by the European Union’s Justice Programme (2014-2020). It is focused on three EU regulations which deal with jurisdiction, applicable law and the recognition and enforcement of decisions related to property issues arising within a cross-border family: matrimonial property, registered partnership property and succession. The project is intended to raise awareness of the new regulations, in particular their specific mechanisms which are aimed at securing more legal certainty to transnational families when it comes to their property relations. Further activities relate to collecting statistical data and law reports for the Member States, creation of the taxonomy of families, and setting-up of the Atlas summarizing the legal regulation and identifying discriminatory provisions or practices. The important outcomes of the project are hands-on model documents and accompanying material for effective and inclusive implementation of the legal standards.

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Family Property in EU: Case Studies

CHECK REAL-LIFE CASES TO
UNDERSTAND THE RULES!

SUCCESSION
MATRIMONIAL PROPERTY
REGISTERED PARTNERSHIP PROPERTY

Case study 1

Facts 1. Joaquim, a Portuguese national, lives in Lisbon and works for a multinational company engaged in software development. He owns a house in Lisbon, a personal car and stocks of a Portuguese telecommunication company. In 2017, during his holidays in the Amalfi coast in Italy, he met Eleonora, an Italian and French national, who lived in an apartment she owned in Amalfi and run a local restaurant she owns. For a year, the couple maintained a long-distance relationship. Joaquim spent every other weekend in Amalfi, and Eleonora travelled to Lisbon as often as she could.

In the summer of 2018, Eleonora moved to Lisbon. She gave the restaurant space up for a lease and sold her apartment. They used the money to renovate the house in Lisbon to live in it together, and to buy another studio apartment in Portugal which they rented and used as a source of additional income. In February 2019, the couple married. After a short period of marital bliss, Joaquim gradually started working



longer hours. Eleonora felt bored, spending most of her time alone in the house. She even suspected that Joaquim started seeing someone else. These circumstances caused a line of serious arguments between the couple, last of them ending with Eleonora leaving Portugal and moving to Amalfi in May 2019. She no longer had an apartment so she rented one. She registered with an Italian employment agency and reactivated her Italian health insurance. The only steady income she had was the one from the lease of the restaurant space. However, it was not enough for the lifestyle she was accustomed to. After the consensual separation, Eleonora decided to commence the proceedings for divorce and division of property in December 2019.

The series of unfortunate events did not end here for Eleonora. Her French grandmother who lived in France all her life died in December 2019, leaving behind a large house and a surrounding land in the French Alps.

Question 1.1. Can Eleonora commence the proceedings for division of the property before the Italian court?

Answer 1.1. Yes. According to Art. 5 of the Matrimonial Property Regime Regulation (no. 2016/1103), the courts of the MS in which a court is seised to rule on an application for divorce have jurisdiction to rule on matters of the matrimonial property regime arising in connection with

that application. Jurisdictional rules on divorce are laid down by the Brussels II bis Regulation (no. 2201/2003). According to Art. 3 of the Brussels II bis Regulation, a spouse may sue for divorce, among other courts, before the courts of the MS where she is habitually resident if she resided there for at least six months immediately before the application was made and is a national of that MS. All three conditions are met in this case: Eleonora's habitual residence is in Italy; she had been living in Italy for seven months after the move and she demonstrates the intention of staying in Italy where she registered with employment agency and acquired health insurance; and she is an Italian national. Therefore, Italian courts have jurisdiction to decide on both, divorce and division of their property.



Question 1.2. Which law is applicable to division of the property?

Answer 1.2. According to Art. 26 of the Matrimonial Property Regime (no. 2016/1103), if the parties did not choose the applicable law, the law of the State of the spouses' first common habitual residence after the conclusion of the marriage will be applicable. Eleonora and Joaquim's first (and only) common habitual residence was in Portugal as they have actually lived there together and demonstrated such intention by tangible steps, such as renovating the house in Lisbon and moving in it subsequent to Eleonora selling her apartment in Italy. Therefore, Portuguese law is applicable for the division of their property.

Question 1.3. Which court has jurisdiction in succession proceedings and which law is applicable?

Answer 1.3. Art. 4 of the Succession Regulation (no. 650/2012) contains a general rule on jurisdiction pursuant to which courts of the MS in which the deceased had his or her habitual residence at the time of death have jurisdiction to rule on the succession as a whole. A general rule on applicable law is prescribed by Art. 21 of the Succession Regulation. According to it, law applicable to the succession as a whole shall be the law of the State in which the deceased had his or her habitual residence at the time of death. Since Eleonora's grandmother lived in France all her life, French courts have jurisdiction for succession proceedings and French law is applicable.



Case study 2

Facts 2. Tina is a Croatian national living in Luxembourg since 2013 when she started working for the Croatian Translation Unit at the Court of Justice in Luxembourg. In 2017, she met Pia, a Slovenian national, who works for the Research Unit at the Court of Justice and lives in Saarbrücken, Germany, close to the Luxembourg border. They fell in love and started a relationship. Soon, Pia decided to move in with Tina in the Tina's rented apartment in Luxembourg. In March 2019, they organised a private ceremony for their families and closest friends and registered their partnership in Rijeka, Croatia. After registering their partnership, in April 2019, they decided to buy the house in Saarbrücken where they will both live and commute every day to Luxembourg. Since the house required substantial renovating, Tina and Pia continued to live in the apartment in Luxembourg. The renovation required more expenditure than they originally planned. Additionally, Pia decided to quit her job and start a non-profit.