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ESCAPE CLAUSE IN INTERNATIONAL FAMILY, PROPERTY AND SUCCESSION LAW

Abstract

This article discusses the regulation of the escape clause in private international family, property and succession law from the perspective of the jurisdiction of a Polish court or other authority, like a notary public. In cases concerning family, property and succession, the predictability of the applicable law is of particular importance as private laws in those matters differ in substantial way from one country to another. Whereas the escape clause exceptionally allows the court for the *a posteriori* application of the law more closely connected or at least substantially connected to the case which can create a situation of uncertainty of applicable law for the involved parties. The functioning of the escape clause in the family (parental responsibility and maintenance), property (transit goods) and succession private international law is analysed in this article. The common features and the particularities of the legal regulation are presented. First, the law that is manifestly more closely connected to the case, no matter if family, property or succession, is indicated on the basis of all circumstances of the case and not only one (or two), as is the case in the indication of law on the basis of the connecting factor. Those circumstances are different depending on the hypothesis of the legal norm (e.g., different for transit goods than for the succession case), the wording of the escape clause and are estimated by the court *a posteriori* on the basis of all facts of the case. Second, the application of the escape clause is excluded if there is a choice of law (although in

some cases parties are not allowed to choose law, e.g., for transit of goods or parental responsibility). Third, the escape clause is applicable exceptionally, as it introduces the uncertainty of law. Fourth, the escape clause is not regulated uniformly in international family, property and succession law. Moreover, the article presents how values such as legal certainty and flexibility are balanced by the legal regulation of the escape clause in family, property and succession private international law in order to indicate the law most closely related to a given relationship.

KEYWORDS

escape clause, private international law, parental responsibility, maintenance, transit good, succession

SŁOWA KLUCZOWE

klauzula korekcyjna, prawo prywatne międzynarodowe, odpowiedzialność rodzicielska, alimenty, rzecz w transporcie, dziedziczenie

1. INTRODUCTION

An escape clause (*exception clause*, *clause d'exception*, *clausola d'eccezione*, *Ausweichsklausel*) is the way of indicating the applicable law on the basis of the connecting factor of the closer connection.¹ Indication of law on the basis of the escape clause is always in correction to the conflict of laws rule that incorporates an objective connecting factor. The escape clause makes the indication of law more flexible by giving the judge the possibility to indicate the law that is closer to a given relationship than the one appointed by the legislator on the basis of the objective connecting factor. However, it also creates the risk of indication of the law being unpredictable to the parties. As the judge indicates the applicable law *a posteriori*, at the stage of the court proceeding.

In cases concerning family, property and succession matters, the predictability of the applicable law is of particular importance as the material law differs in substantial way from one country to another.² Therefore, the application of a different law in cross-border matters than the one appointed on the basis of the

¹ See more about the escape clause in Jürgen Basedow in *Encyclopedia of Private International Law*, Vol 1, Basedow and others (eds), Cheltenham, Northampton 2017, 668–674.

² See, Jens M Scherpe, *Comparative Family Law*, in Mathias Reimann, Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law*, Oxford 2019, 1089–1109; Sjef Van Erp, *Comparative Property Law*, in Reimann, Zimmermann (eds), *The Oxford Handbook of Comparative*

conflict of laws rule, which incorporates the objective connecting factor, may have substantial effects on the rights and duties of the parties. Despite the issue of unpredictability, the escape clause is also introduced in the provisions concerning applicable law to property, family and succession matters. This article focuses on regulating and functioning of the escape clause in cross-border family, property and succession cases, as well as on law-making policies and values related to this mechanism of indicating applicable law.

2. ESCAPE CLAUSE IN INTERNATIONAL FAMILY LAW

2.1. PARENTAL RESPONSIBILITY

In private international family law, the escape clause indicates law for parental responsibility and maintenance between spouses.

The general conflict of laws rule for the parental responsibility indicates the law of the authority that adjudicates such a case (*lex fori*) according to Article 15 paragraph 1 Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children.³ ‘However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection’. (Article 15 paragraph 2 of the 1996 Hague Convention).⁴ This provision (Article 15 paragraph 2 of the 1996 Hague Convention) is based on the closer connection rule and the principle of the best interest of the child⁵ and not only on the closer connection to a given parental responsibility relationship.

Law, Oxford 2019, 1032–1057; Marius J De Waal, *Comparative Succession Law*, in Reimann, Zimmermann (eds), *The Oxford Handbook of Comparative Law*, Oxford 2019, 1058–1087.

³ Further: ‘1996 Hague Convention’; See more, Piotr Mostowik, *Władza rodzicielska i opieka nad dzieckiem w prawie prywatnym międzynarodowym*, Kraków 2014, 282; Mostowik, *Rozdział 7 Prawo właściwe dla pieczy nad osobą dziecka i jego majątkiem* in *Międzynarodowe prawo rodzinne. Filiacja. Piecza nad dzieckiem. Alimentacja*, Mostowik (ed), Warsaw 2023. <<https://sip.lex.pl/#/monograph/369528150/129?keyword=Mostowik,%20Mi%C4%99dzynarodowe%20prawo%20rodzinne.%20Filiacja.%20Piecza%20nad%20dzieckiem.%20Alimentacja%20Warsaw%202023&toHit=1&cm=SFIRST>> accessed 27 July 2025.

⁴ See about escape clause, Andrzej Mączyński, *Kodyfikacyjne zagadnienia części ogólnej prawa prywatnego międzynarodowego*, in Andrzej Janik (ed), *Studia i Rozprawy. Księga jubileuszowa dedykowana profesorowi Andrzejowi Calusowi*, Warsaw 2009, 443.

⁵ Paul Lagarde, *Explanatory Report on the 1996 Hague Child Protection Convention*, in *Hague Conference on Private International Law*, Proceedings of the Eighteenth Session, 30 September to 10 October 1996, Vol II, Protection of children, Hague 1998, 574, further: ‘Lagarde Report’.

The term ‘parental responsibility’ is defined in Article 1(2) of the 1996 Hague Convention as ‘parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child’. Additionally, in Article 3 of the 1996 Hague Convention, the exemplary claims concerning parental responsibility are mentioned. These are the cases that concern contacts between a parent and a child, the possibility of taking decisions in the important matters of the child, like the habitual residence of the child, etc.⁶

For such cases, the escape clause from Article 15 paragraph 2 of the 1996 Hague Convention allows for the indication or consideration of a different law than the *lex fori*, being in the ‘substantial connection’ with the case of the parental responsibility and serving the best interest of the child.⁷ However, the provision does not require checking if there is no close connection of the situation with the law of the forum.⁸ In case of parental responsibility, the peculiarity of the escape clause is that it also allows for taking into consideration the more closely connected law and that it expressly invokes the best interest of the child (the protection of the person of the child or the property of the child) as the directive for the determination of the more closely connected law. Because of that, Article 15 paragraph 2 of the 1996 Hague Convention is qualified by the Polish doctrine as serving an alternative corrective indication due to the fact that it seems to require a substantive result in the form of ‘protection of the child’s person or property’.⁹ Apart from considering different circumstances than the *lex fori*, it is also possible to apply law on the basis of the different temporal subdeterminer – e.g., past or future circumstances.¹⁰ However, also for cases of parental responsibility, the escape clause should be applied exceptionally.¹¹

The law indicated or taken into consideration on the basis of the escape clause may be the law of the convention state, but also of any other state, because the

⁶ See more, Mostowik (n 3) 54–68.

⁷ See Paulina Twardoch, in *Prawo prywatne międzynarodowe. Komentarz*, Maksymilian Pazdan (ed), Warsaw 2018, 1069; Maria C Baruffi, *The 1996 Hague Convention on the Protection of Children*, in Ilaria Viarengo, Francesca C Villata (eds), *Planning the Future of Cross Border Families. A Path Through Coordination*, Series: Studies in private international law Vol 29, Hart, Oxford, London, New York, New Delhi, Sydney 2020, 264.

⁸ Similarly for the contractual obligation there is no need to check so called negative premise, see Judgment of the Court (Grand Chamber) of 6 October 2009. Case C-133/08, ECLI:EU:C:2009:617, further: ‘Case C-133/08’, at 51, 64.

⁹ See Mostowik (n 3) 286.

¹⁰ See Mostowik (n 3) 286.

¹¹ Lagarde Report (n 5) 575, para 89.

convention has a universal scope of application of its conflict of laws rules¹² in accordance with its Article 20 of the 1996 Hague Convention.¹³ Additionally, from the perspective of a Polish court, Article 56 paragraph 1 Polish Private International Law¹⁴ extends the application of the conflict-of-law rules contained in the 1996 Hague Convention to all matters relating to parental responsibility and contact with the child (parental responsibility).¹⁵

An important question to be answered is what other laws – apart from *lex fori* – could be applicable to parental responsibility and what circumstances should be taken into account according to Article 15 paragraph 2 of the 1996 Hague Convention. The doctrine indicates that this may be the child's country of citizenship or the location of the child's property based on the interpretation of the provision – Article 8 (2) of the 1996 Hague Convention.¹⁶ Another example mentioned by the doctrine is that if the case involves jurisdiction derived from a matrimonial case and the child has its habitual residence in a country other than the seat of the adjudicating court, then it is permissible to indicate the law of the child's habitual residence on the basis of the clause.¹⁷ Such a situation could be a case of parental authority in which the Polish court has jurisdiction, and parents are Polish citizens working in the USA, the child having Polish and USA citizenship and habitually residing in the USA.¹⁸

Another circumstance is the citizenship of the child, if the child is to return to the country of its nationality soon.¹⁹ Additionally, some authors suggest that even if the child does not have the citizenship of the country but is going to move to a certain country which is going to become his/her habitual residence, the best

¹² For the purpose of this article the legal source for the determination of jurisdiction is not being analysed on the basis of the formerly binding Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 in Michał Wojewoda *Jurysdykcja krajowa i prawo właściwe w sprawach dotyczących stosunków między rodzicami a dziećmi - studium przypadku w relacjach Polska-USA*, EPS 2018, No 4, 26–29.

¹³ Baruffi (n 7) 264, 266.

¹⁴ Private International Law Act from 4th February 2011, consolidated text Journal of Laws from 2023, position 503, further: 'Polish Private International Law'.

¹⁵ See Mostowik (n 3) 167–168; Wojewoda (n 12) 30. The same mechanism is used for the guardianship and care according to Article 59 paragraph 1 of Polish Private International Law.

¹⁶ Baruffi (n 7) 264.

¹⁷ Mostowik, in Pazdan (ed), *System prawa prywatnego. Prawo prywatne międzynarodowe*, Vol 20C, Warsaw 2015, 354, nb 98; Mostowik (n 3) 286.

¹⁸ See the similar facts of the case described by Wojewoda (n 12) 31.

¹⁹ Permanent Bureau HCPIIL, Revised Draft Practical Handbook, 53–54, Lagarde Report, 574; P. Mostowik (n 17) 354, nb 98; Paulina Twardoch, in Pazdan (eds), *Prawo prywatne międzynarodowe. Komentarz*, Warsaw 2018, 1069–1070.

interest of the child may suggest application of this law on the basis of the escape clause²⁰.

Next possible situation is the case when it may be necessary to give the guardian consent to the disposal of a child's property in that country, even though the law of the forum does not provide for such a requirement.²¹ This type of case suggests the application of the law of the location of the property (*lex rei sitae*), if it is known that the child is going to return to this country soon.²²

The other circumstances that may be relevant for the application of the escape clause may be the former habitual residence of the child; the place where family members that are going to take care of the child have their habitual residence; the place where the parent that has the right to personal contacts with the child has his/her habitual residence or the place where the child has contacts with the members of the family.²³

On the contrary, there is no justification to apply the escape clause in a case when a child who has travelled to another country to be subject to the surgical operation and the hospital of that country should ask for consent to that operation from the authorities of the country of the child's habitual residence. The court should apply *lex fori* (own law) and not the law of the conduct of operation.²⁴

Article 15 paragraph 2 of the 1996 Hague Convention also allows for considering a law different than *lex fori*. As such an example, the doctrine mentions using the legal terminology from a given state by a judge when writing a judgment.²⁵ Yet another example is the consideration of the law of the location of the real estate as the justification for the refusal to issue a sales permit.²⁶

To sum up, the difference between the escape clause in matters concerning parental responsibility is that it may be the basis for determining the applicable law, even though the parties cannot choose the law in order to avoid its application. Such regulation results in a situation in which the parties may not protect themselves from the uncertainty of applicable law. Nevertheless, the balance between uncertainty and flexibility is achieved differently. Namely, the court may only apply foreign law on the basis of the escape clause in parental responsibility cases.

²⁰ Andreas Bucher, *L'enfant en droit international privé*, Genève-Bâle-Paris 2003, 187.

²¹ Permanent Bureau HCPIL, Revised Draft Practical Handbook, 53–54; Mostowik (n 3) 286.

²² Lagarde Report (n 5) 574; Mostowik (n 3) 286.

²³ Lagarde Report (n 5) 179.

²⁴ Lagarde Report (n 5) 575.

²⁵ Permanent Bureau HCPIL, Revised Draft Practical Handbook, 91.

²⁶ See, Alain Devers, Isabelle Rein-Lescastereyres, Rahima Nato-Kaltane, *Loi applicable à la responsabilité parentale*, in Pierre Murat (ed), *Droit de la famille 2016-2017*, Paris 2016, point 533.71.

Such regulation guarantees that the courts use the escape clause in these matters exceptionally. This way of regulating the applicable law as the *lex fori*, from which the escape clause always indicates foreign law, assures legal certainty.

Additionally, for the parental responsibility cases, the best interest of the child is the directive for indication of the applicable law on the basis of the escape clause, which allows the court to not apply *legis fori*.²⁷ This criterion and not only closer connection has to be additionally checked by the court in order to indicate foreign law on the basis of the escape clause.²⁸ Another special feature of this mechanism is that it may be used not only for application but also for consideration of the foreign law.

2.2. MAINTENANCE

Another scope of family matters in which the escape clause is introduced is the law applicable to maintenance between spouses, ex-spouses or to parties of a marriage which has been annulled. In this field, the law applicable is indicated according to the Protocol of 23 November 2007 on the law applicable to maintenance obligations.²⁹

The general conflict of laws rule for maintenance between spouses, ex-spouses or to parties of a marriage which has been annulled is expressed in Article 3 of the Hague Protocol. It indicates the law of the habitual residence of the maintenance creditor. However, in case of maintenance between spouses, ex-spouses or parties to annulled marriages, there is the possibility to object to the application of the law indicated on the basis of Article 3 of the Hague Protocol according to Article 5 of the Hague Protocol.³⁰

The objective scope of the conflict of laws rule expressed in Article 5 of the Hague Protocol covers maintenance between spouses, former spouses, legally or de facto

²⁷ *Lex fori* may be indirectly determined by the jurisdictional circumstances that do not concern the person of the child. See, Mostowik (n 3) 285.

²⁸ See more about the protection of individuals placed in an unfavourable position in Gerald Goldstein, *Objective, subjective and imperative localization in the resolution of conflict of laws*, Yearbook of Private International Law Vol 24, 2022/2023 20.

²⁹ Council Decision of 30 November 2009 on the conclusion by the European Community of the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations, OJ L 331, 16 December 2009, 17–18, ELI: <http://data.europa.eu/eli/dec/2009/941/oj>, further: ‘Hague Protocol’.

³⁰ This provision is based on the proposal from the delegation of the European Community (Work. Doc. No 4), after: Andrea Bonomi, *The Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations*, YPIL Vol 10 (2008), 348, footnote 25.

separated spouses, as well as parties to the annulled marriage. This provision differs from Article 8 of the 1973 Maintenance Convention,³¹ which had a narrower scope of application. The change results from the fact that during the preparatory works, it has been found that it is better not to change the law applicable to the maintenance in case of law or separation, and that the law of the last common habitual residence of the spouses is even more adequate for the maintenance between spouses of an existing marriage.³² However, Article 5 of the Hague Protocol does not refer to civil partnerships or same-sex marriages. Nevertheless, during the preparatory works, it has been noted that the countries that have legalized these institutions may also apply this provision to the abovementioned relationships.³³ Such extension of the scope of this provision by analogy is optional and is not binding on the other State parties to the Hague Protocol.³⁴

The Hague Protocol in Article 3 expresses as the rule the applicable law of the habitual residence of the creditor. This solution is different for maintenance between spouses, divorced spouses and parties to the annulled marriage compared to Article 8 of the 1973 Maintenance Convention, which provided for the law applicable to divorce also in the field of maintenance. A similar solution was introduced in Article 8(2) of the 1973 Maintenance Convention for maintenance in cases of legal separation and annulled marriages.³⁵

However, in case of maintenance between spouses, ex-spouses or parties to annulled marriages, there is a possibility to object to the application of the law indicated on the basis of Article 3 of the Hague Protocol according to Article 5 of the Hague Protocol. This provision states that ‘in the case of a maintenance obligation between spouses, ex-spouses or parties to a marriage which has been annulled, Article 3 shall not apply if one of the parties objects and the law of another State, in particular the State of their last common habitual residence, has a closer connection with the marriage. In such a case, the law of that other State shall apply’.

The provision is classified as the escape clause by the doctrine.³⁶ Nevertheless, there is a significant difference in the regulation of Article 5 of the Hague Proto-

³¹ Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations, further: ‘1973 Maintenance Convention’.

³² See Bonomi (n 30) 350.

³³ See Minutes No 6, para 59 and following, after: Bonomi (n 30) 350.

³⁴ See Bonomi (n 30) 350. The author also points out the possibility of applying Article 13 of Hague Protocol and invoking the public order clause in the case of a maintenance case brought by a party to a civil partnership or same-sex marriage. (See Bonomi (n 30) 350).

³⁵ See Bonomi (n 30) 347.

³⁶ See Bonomi (n 30) 346–350, Anna Juryk, in *Prawo prywatne międzynarodowe. Komentarz*, Pazdan (ed), Warsaw 2018, 1125, Anna Juryk, *Prawo właściwe dla alimentacji dziecka*, in Mos-

col compared to other provisions that express the escape clause. The difference is that the court cannot *ex officio* invoke a law more closely related to the marriage for maintenance obligations between spouses, former spouses or parties to an annulled marriage, but it is necessary for one of the spouses or former spouses to oppose the application of the law designated in accordance with Article 3. Only if such an objection occurs, the court should assess whether any other law, e.g. the law of the spouses' last habitual residence, is more closely related to the marriage than the law indicated in accordance with Article 3 of the Hague Protocol. Moreover, the objection of one of the spouses (it seems that not only debtor but also creditor may object) does not cause the court to automatically depart from the application of the law specified in accordance with Article 3, but in the event of an objection, the court is obliged to examine whether another law – not necessarily indicated in the objection by the spouse or ex-spouse – is more closely related to the marriage than the law of the habitual residence of the maintenance creditor.³⁷ As advantages of Article 5, it is stated that adding the spouse's objection reduces legal uncertainty, because only in cases when an objection is raised, the court may refrain from specifying the law pursuant to Article 3.³⁸ It is also important to underline that the objection cannot be raised if the parties chose law on the basis of Article 7 or 8 of the Hague Protocol.

However, the important question to answer is what the deadline is to submit an objection. The provision does not introduce a time limit in this respect. Therefore, it depends on the procedural rules of the court adjudicating on the case.³⁹ For example, if a Polish court decides on a case, the provisions of the Polish Code of Civil Procedure⁴⁰ apply. However, the doctrine postulates that it is the moment when the parties enter into a dispute, unless, as a result of an objection, Polish law is applied.⁴¹ On the contrary, the Polish Supreme Court states that such an objection may be filed even in appellate proceedings.⁴²

towik (ed), *Międzynarodowe prawo rodzinne. Filiacja. Piecza nad dzieckiem. Alimentacja*, Warsaw 2023, 422.

³⁷ See Bonomi (n 30) 349.

³⁸ See Bonomi (n 30) 348–349.

³⁹ See Postanowienie Sądu Najwyższego z dnia 23 marca 2016 r., III CZP 112/15, LEX nr 2016029, further: 'Judgment No III CZP 112/15', Juryk (n 36) 423.

⁴⁰ Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego, i.e. Journal of Laws 2024.1568 as amended.

⁴¹ See Juryk, in *Prawo prywatne międzynarodowe. Komentarz*, Pazdan (ed), Warsaw 2018, 1125, Juryk (n 36) 423, The author refers to a similar view expressed by P. Mostowik regarding the choice of law for divorce see. P. Mostowik, *Prawo właściwe dla rozvodu i separacji w świetle rozporządzenia unijnego nr 1259/2010*, KPP 2011/2, 366–367.

⁴² Uzasadnienie Postanowienia Sądu Najwyższego, z 23.03.2016 r., III CZP 112/15, LEX nr 2016029.

The provision of Article 5 of the Hague Protocol contains another important difference in its regulation of the escape clause, as it clearly indicates the law of the last common habitual residence of the spouses as being most closely connected to the marriage. However, this is not a real presumption similar to that under Article 4 paragraph 2 of the Rome Convention,⁴³ but only a mere indication,⁴⁴ reflecting the most common cases of the more closely related law other than the creditor's habitual residence.⁴⁵ Similar regulation is introduced in Article 4 Section 3 of the Rome II Regulation.⁴⁶ In case of Article 5 of the Hague Protocol, it is enough for the habitual residence to be in the same country, and it is not necessary for it to be in the same town or at the same address.⁴⁷

The abovementioned circumstance of the last common habitual residence of the spouses or former spouses as being closely related to the marriage has been indicated by the Special Commission.⁴⁸ However, the literature also provides other circumstances that indicate the law that is more closely related. For example, if the last common habitual residence is state A, to which the spouses have moved from state B, where they previously had their common habitual residence, and then one of the spouses or former spouses (maintenance creditor) returns to state B, it would seem that the law of state B, which is the place of residence of the maintenance creditor, is more closely related to the maintenance case than the law of state A.⁴⁹ In such a case, there would be no need to apply the escape clause, as the law of the habitual residence of the maintenance creditor is indicated on the basis of Article 3 of the Hague Protocol. Another example is the situation of the spouses who lived for several years in country A, then moved for a short time to country B, and then the creditor moved to country C. In such a situation, there is no close link with the last common habitual residence, which was in country B, but rather there is a link with the previous common habitual residence, which was in country A.⁵⁰

⁴³ Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 (Rome Convention); Bonomi (n 30) 349, footnote 27.

⁴⁴ See Work. Doc No 2, after: Bonomi (n 30) 349.

⁴⁵ Bonomi (n 30) 349.

⁴⁶ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199, 31 July 2007, 40–49, ELI: <http://data.europa.eu/eli/reg/2007/864/oj>.

⁴⁷ See Juryk (n 36) 422.

⁴⁸ See Bonomi (n 30) p 348. However, 'the current common habitual residence' was not used because it coincides with the creditor's habitual residence and therefore does not lead to an exception from Article 3 (See Bonomi (n 30) 349).

⁴⁹ This example is invoked in Bonomi (n 30) 348.

⁵⁰ This example is invoked in Bonomi (n 30) 349.

In the judgment of the Polish Supreme Court of 23 March 2016,⁵¹ the court correctly invoked the following circumstances as having importance to indicate the closer law. 'i.e., on the one hand, that their [spouses] last and only common place of habitual residence during the marriage' (..) [Norway] 'and that the defendant still has his habitual residence there and that Norwegian law is applicable to the divorce, and on the other hand, where the marriage between the plaintiff and the defendant was concluded, and that the defendant, taking into account the citizenship of the plaintiff and her place of residence before the marriage, must have seriously taken into account that in the event of the breakdown of the marriage she would probably return to Poland'.⁵² The court also correctly stated that in this case it should be rather 'a law that has a closer connection with the spouses' marriage than the law of the maintenance creditor's habitual residence, and (..) a law that has a closer connection with the maintenance creditor or other person entitled to maintenance vis-à-vis the person obligated to pay it. From this point of view (...) the place of residence of the spouses' child (..) is '(...) not decisive'.⁵³ In the invoked case, the facts of this case concerned, among other things, maintenance for a former spouse who, at the time of the application for maintenance, had habitual residence in Poland and held Polish citizenship. The maintenance debtor, on the other hand, had Swedish citizenship and, after getting married in Poland, both spouses lived in Norway. The husband filed for separation in Norway. The wife, after returning to Poland and giving birth to their child, filed for divorce and, among other claims, the maintenance for herself. The justification of this judgment rightly invokes the circumstances closer to marriage relevant for the escape clause. As good examples, the judgment lists such circumstances as 'common place of habitual residence during the marriage',⁵⁴ where 'the defendant still has its habitual residence in that country' and 'the law applicable to the divorce'.

Other examples of the more closely related law are also: the previous common place of habitual residence of the spouses or former spouses⁵⁵ and the place of legal separation or divorce.⁵⁶ Theoretically possible, but very rarely constituting the link that more closely connects maintenance with a given law, is the law of common citizenship of the spouses or former spouses⁵⁷ and the place of legal separation or divorce.⁵⁸

⁵¹ Justification of Judgment No III CZP 112/15.

⁵² Quote, Justification of Judgment No III CZP 112/15.

⁵³ Quote, Justification of Judgment No III CZP 112/15.

⁵⁴ See the same circumstance invoked by Bonomi (n 30) 349.

⁵⁵ See Bonomi (n 30) 348, 349.

⁵⁶ See Bonomi (n 30) 349.

⁵⁷ See Bonomi (n 30) 348, 349.

⁵⁸ See Bonomi (n 30) 349.

To sum up, the particularity of the escape clause in maintenance law is that it is applicable only if one of the spouses, ex-spouses or party of a marriage which has been annulled objects to the law of the habitual residence of the maintenance creditor. This assures legal certainty as the court cannot invoke the escape clause *ex officio*. Additionally, this provision provides an indication of the law that is most often more closely connected with the marriage, namely the law of the country of the last common habitual residence of the spouses. This also ensures the balance between flexibility and legal certainty. Other features of this mechanism, like its functioning on the stage of indication of applicable law, exceptionality, exclusion in the case of choice of law and the necessity to examine all the circumstances of the case do not show any particularities in comparison to other provisions that express the escape clause. There is also no need to check if the law of habitual residence of the maintenance creditor does not have a close connection to the marriage. It is enough to check if the other law is closely connected to the marriage.⁵⁹

Three elements need to be underlined to guarantee the balance of values such as flexibility and legal certainty in case of the escape clause for maintenance: the choice of law, the objection of the spouse and the exemplary indication of the law closer related to the marriage. It is also worth adding that the legislator introduced the escape clause only in case of matrimonial maintenance, that is the relationship of equal parties and not in relation to maintenance for weaker parties, like children.

3. *ESCAPE CLAUSE* IN INTERNATIONAL PROPERTY LAW

Conflict of laws rules concerning property are not unified on the international or EU level.⁶⁰ Each country has its own legal norms on the law applicable to property matters. In most countries (Poland included), the general rule concerning property is the location of the thing (*lex situs*). This legal norm is expressed in Article 41 of Polish Private International Law.⁶¹ Polish private international property law has mostly 'rigid' legal norms from which parties may not waive by choosing a different law.⁶² Such regulation concerns all private international property law,

⁵⁹ Similarly, see Case C-133/08, at 51, 64.

⁶⁰ EU has the competence to regulate applicable law starting from the Treaty of Amsterdam. However, there is no EU regulation on law applicable to property.

⁶¹ Ustawa z dnia 4 lutego 2011 r. Prawo prywatne międzynarodowe, i.e. Journal of Laws 2023.503, further: 'Polish Private International Law'.

⁶² See Chapter 9 of Polish Private International Law. In addition to Polish Private International Law, conflict of laws provisions in the field of property matters are also regulated in Aviation

including the conflict of laws rule referring to transit goods. However, in the case of transit goods (*res in transitu*), the escape clause is introduced in Article 43 sentence 2 of Polish Private International Law. Moreover, for transit goods, the conflict of laws rule expressed in Article 43 sentence 1 of Polish Private International Law does not indicate the law of the location of the thing but the law of the country of dispatch.

The draft of Polish Private International Law has already provided for the possibility of departing from the law of the country of dispatch in favour of a more closely related law for transit goods, although the wording of the provision differed from the final version.⁶³ The justification for the draft indicates that the conflict of laws rule specifying the law applicable to property rights in transit goods contains a ‘specific corrective rule with a narrow scope of application’⁶⁴ that should allow for the flexibility of the indication of law.⁶⁵ As a result of the opinion on the draft act,⁶⁶ the subcommittee modified the provision regarding transit goods, however the escape clause has been preserved. This version of the provision has been adopted unchanged as Article 43 of Polish Private International Law.⁶⁷

Polish Private International Law does not define the concept of ‘transit goods’ (*res in transitu*). This term may be understood in various ways.⁶⁸ In Polish doctrine

Law, Maritime Code and Statute on some financial securities as well as in bilateral international agreements.

⁶³ The draft included Article 41, according to which ‘Real rights in transit goods are subject to the law of the country from which the goods were sent, unless the circumstances indicate that they are more closely related to the law of another country. The law of that other country then applies’. Translation into English of Rządowy projekt ustawy – Prawo prywatne międzynarodowe, druk nr 1277 z 31.10.2008, <<https://orka.sejm.gov.pl/Druki6ka.nsf/wgdruku/1277>> accessed 27 July 2025.

⁶⁴ In Polish: ‘(...) szczególną regułą korygującą o wąskim zakresie zastosowania’ from Uzasadnienie rządowego projektu ustawy – Prawo prywatne międzynarodowe, druk nr 1277 z 31.10.2008, 7, <<https://orka.sejm.gov.pl/Druki6ka.nsf/wgdruku/1277>> accessed 27 July 2025.

⁶⁵ Uzasadnienie rządowego projektu ustawy - Prawo prywatne międzynarodowe, druk nr 1277 z 31.10.2008, 7, 23, <https://orka.sejm.gov.pl/Druki6ka.nsf/wgdruku/1277> accessed 27 July 2025.

⁶⁶ Opinia o projekcie ustawy – Prawo prywatne międzynarodowe (druk sejmowy nr 1277) z dnia 16.12.2008 r., prepared by Mączyński, 19; <<https://orka.sejm.gov.pl/rexdomk6.nsf/Opdodr?Open-Page&nr=1277>> accessed 27 July 2025.

⁶⁷ Sprawozdanie Podkomisji Nadzwyczajnej do rozpatrzenia rządowego projektu ustawy – Prawo prywatne międzynarodowe (druk nr 1277) z dnia 9.08.2010 r. wraz z projektem, that includes Article 43 in final version, <[https://orka.sejm.gov.pl/opinie6.nsf/nazwa/spr_1277/\\$file/spr_1277.pdf](https://orka.sejm.gov.pl/opinie6.nsf/nazwa/spr_1277/$file/spr_1277.pdf)> accessed 27 July 2025.

⁶⁸ See e.g., F. Hellendall, *The res in transitu and Similar Problems in the Conflict of Laws*, in Janeen McCarruthers (ed), *Transfer of property and private international law Volume I*, Cheltenham, UK ; Northampton, MA, USA : 2016, 766–767. The author of this article for transit good understands also the transport of goods from country A to country B that are directly adjacent to each other.

and jurisprudence, it is assumed that the term ‘transit goods’ applies to situations when an item is transported (regardless of the means of transport) from one country to another through the territory of at least one third country or across the high seas.⁶⁹ On the contrary, the factual situation when the good is transported only across one state border (without the need to move it across the high seas) remains outside of the scope of this concept. In the latter factual situation, it is assumed that there is only a change of the property statute.⁷⁰ Likewise, the legal norm expressed in Article 43 of the Private International Law does not apply to rights established on means of transport, e.g., the pledge on the ship.⁷¹ However, Article 45 of Polish Private International Law respectively applies Article 43 to the possession of the transit goods.⁷² Therefore, based on Polish Private International Law, a narrow understanding of the concept of transit goods is adopted. Such a narrow understanding of the concept of *res in transitu* means that the escape close also applies to a rather narrow range of cases.⁷³

Another issue that the legislator does not specify in Polish Private International Law is from and until what moment the good is in transport. For example, a thing is transported from country A to country C via country B. Is the transit of goods taking place from the moment the thing is loaded in country A to the place of unloading in country C, or from the moment the thing crosses the border between country A and B until the border between country B and C is crossed? In the context of the connecting factor of the country of dispatch, which is used in Article 43 of Polish Private International Law, this issue is important from the moment of crossing the border between countries B and C to the moment of unloading in country C.⁷⁴ The doctrine states that the moment of delivery of the item in the destination country (in the example, country C) means that the transit of goods does not take place anymore.⁷⁵ Similarly, it should be assumed that the moment

⁶⁹ See Jacek Górecki, in Pazdan (ed), *System prawa prywatnego. Prawo prywatne międzynarodowe*, Vol 20B, Warsaw 2015, 963; Wyrok Sądu Apelacyjnego w Krakowie - I Wydział Cywilny z dnia 24 września 2014 r. I ACa 722/14, Legalis.

⁷⁰ See *ibid* ; compare Hellendall (n 68) 766–767.

⁷¹ See Article 42 of the Polish Private International Law.

⁷² See Górecki, in Pazdan (ed), *Prawo prywatne międzynarodowe. Komentarz*, Warsaw 2018, 405.

⁷³ Also in the situation of a break in transport on the territory of transit country, the property effects of the legal events should be estimated on the basis of the law of the location of the good (*lex situs*), See Maciej Tomaszewski in Jerzy Poczobut (eds) *Prawo prywatne międzynarodowe. Komentarz*, Warsaw 2017, 707.

⁷⁴ E.g., Ulrich Ernst, *Das polnische IPR-Gesetz von 2011 – Mitgliedstaatliche Rekodifikation in Zeiten supranationaler Kompetenzwahrnehmung*, Rabels Zeitschrift für ausländisches und internationales Privatrecht Vol 76, No 3, 2012, 625.

⁷⁵ See Kazimierz Kruczałak, *Prawa rzeczowe w ustawie o prawie prywatnym międzynarodowym*, KPP 2000, issue 3, 617, See also Edward Drozd, *Kolizyjna problematyka rzeczy w transporcie*, KSP 1979, 45, Górecki (n 69) 965–966.; Tomaszewski (n 73) 706.

when the process of transit of goods begins is when the goods are loaded in country A, and not when they cross the border between country A and country B.⁷⁶ As already mentioned, this moment has no practical significance if the applicable law is determined on the basis of the connector, which is used in Article 43 sentence 1 (law of the country of dispatch) of Polish Private International Law. However, when the escape clause is the basis for the indication of law, it acquires practical significance because it results in a departure from the law of the country of dispatch in favour of another law that is more closely connected (e.g., the law of the country of destination of the goods).

The Polish legislator adopted in Article 43 sentence 1 of Polish Private International Law as the applicable law, the law of the country of dispatch (*lex loci expeditionis*) for property rights to transit goods.⁷⁷ However, there is no possibility of derogating from this legal norm on the basis of the choice of law. Only on the basis of the escape clause, the court may indicate *a posteriori* another law more closely related to the case. The legal norm does not include any examples of the circumstances that indicate the law more closely connected. According to Article 43 sentence 2 of Polish Private International Law, the court may *a posteriori* determine as applicable a law other than that indicated on the basis of the law of the country from which the item was sent, provided that this law is more closely related to property rights than the law indicated by the objective connecting factor. In the scope of the transit goods, it is proposed to use the escape clause very narrowly, because the parties cannot in any way protect themselves against the legal uncertainty resulting from indication of law on the basis of the closer connection.

Nevertheless, it is important to answer the questions which other laws – apart from the law of the country of dispatch – could be applicable to transit goods

⁷⁶ See Tomaszewski (n 73) 706.

⁷⁷ The law of the country of dispatch has also been introduced in a few European countries, i.e. Spain - Article 10.1.III of the Spanish Civil Code (See more Jose C Fernández Rozas, Sixto Sánchez Lorenzo, *Derecho Internacional Privado*, Cizur Menor (Navarra) 2022, 829–832; *Derecho Internacional Privado*, Ana P Abarca Junco and others, Madrid 2016, 615–617) and Romania – Article 2618 of Book VII of the Romanian Codex Civil Law Provisions of Private International (See translation into Polish, Paulina Twardoch, Alexander Stan-Otasevici, *Księga VII rumuńskiego kodeksu cywilnego Przepisy prawa prywatnego międzynarodowego*, Problemy Prawa Prywatnego Międzynarodowego 2013 Vol 13, 165–198 and comments in Twardoch, *Nowe rumuńskie prawo prywatne międzynarodowe*, Problemy Prawa Prywatnego Międzynarodowego 2013 Vol 13, 117–139). Some representatives of the doctrine were also in favor of the law of the country of dispatch (See Pierre Arminjon, *Précis de Droit international privé*, Vol 2, Paris 1958, 114; Etienne-Adolphe Bartin, *Principes de Droit International Privé*, 1935, Vol 3, 231; Hellendall (n 68) 793–794).

on the basis of the escape clause and what circumstances result in the law being ‘more closely connected’ to the property rights to transported things.

The following applicable laws could possibly apply on the basis of the escape clause regulated in Article 43 sentence 2 of Polish Private International Law: (1) the law of the destination of the thing (*lex loci destinationis*)⁷⁸ (including the potential destination; the law of the place where the transport of goods is actually terminated; the law of the place of delivery of the thing); (2) the law of the place of origin of the means used to transport goods (e.g. the law of the ship’s flag⁷⁹); (3) the law of the place of the current location of things;⁸⁰ (4) the law of the place of action (*lex actus*),⁸¹ as well as (5) the law applicable at the court’s seat (*lex fori*).⁸²

The abovementioned laws are all possibly applicable depending on the facts of the case, as provision of Article 43 sentence 2 of Polish Private International Law does not indicate any circumstance as constituting a more closely connected law. The escape clause gives the possibility to apply the law that is more closely connected on the basis of all the circumstances of the case and not only one or two elements as in the case of an objective connecting factor. However, this should be the law of one country. This is much appreciated, especially in situations related to transit goods that are often very complicated, as several entities frequently participate in transport, including: carrier, carrier’s subcontractors, forwarder, and entity of the storage contract. Therefore, the multilevel dependencies may arise. In addition, when ordering online, it may turn out that the seller has a seat in a different country than the state from which the item has been sent. This means that, depending on the situation, a different circumstance may indicate a closer connection.

⁷⁸ See Jean P Niboyet, *Des conflits de lois relatifs à l’acquisition de la propriété et des droits sur les meubles corporels à titre particulier*, Recueil Sirey, 1912, 107; Ernst Frankenstein, *Internationales Privatrecht*, 1929, Vol 2, 54; Adolf Schnitzer, *Handbuch des Internationales Privatrecht*, 1937, 264; Compare cases: *Lüttges v Ormiston & Glass Ltd*, Case 3522, Recueil des Décisions des Tribunaux Arbitraux Mixtes, 1926 Vol 6, 570, whereas in this case the law of the country of dispatch was applied to the moment of the crossing the border of the country of destination by the good; *Case Büsse v British Manufacturing Stationery*, Recueil des Décisions des Tribunaux Arbitraux Mixtes, 1927, Vol 7, 349.

⁷⁹ Christian v Bar, *Theorie und Praxis des International en Privatrechts*, 1889, Vol 1, 619, Frankenstein, *ibid* 53; H. Weil, *Die Kollisionsrechtliche Beurteilung von Tatbeständen des Sachenrechts in Beziehung auf res in transitu*, Berlin 1933, 33. But there is no justification for the applicable law to be registration law in matters relating to motor vehicles (See Eva-Maria Kieninger, *Property Law (International)*, point 3, Special rules, <[https://max-cup2012.mpipriv.de/index.php/Property_Law_\(International\)>](https://max-cup2012.mpipriv.de/index.php/Property_Law_(International)>) accessed 27 July 2025).

⁸⁰ *Ibid*, 608, with restriction that the rule does not concern all things.

⁸¹ E.g. the judgments of USA courts in *Hellendall* (n 68) 792, footnote 77. However the author is against the law of place of action.

⁸² These laws mentioned as potentially applicable laws for transit goods by Górecki, in (n 69) 963.

Certainly, the most common circumstances would be the destination, delivery or the place where the transport was actually terminated. Especially, since the circumstance of destination is introduced by most legislators and soft law constitutes the basis for law applicable to transit goods.⁸³ The example of the departure from the principle of the country of dispatch in favour of the law of the country of delivery could be a situation when the endorsement of documents constituting the title of ownership (e.g. bill of lading) has reached the place of destination of the goods and the confirmation has the effect of transferring the ownership of the goods in accordance with the law of delivery, even if the item has not reached the destination country yet.⁸⁴ The advantage of the law of delivery is that this is the law under which the transported good is to be subject to further trading. The disadvantage is that this law is uncertain at the moment when the transport begins.

Another example could be the place of origin of the means used to transport goods (e.g., the law of the ship's flag). The example is the case of the property effects of sale contract of the transit goods for which the bill of lading is issued to the sea carrier in accordance with the law of the state of the ship's flag, which also governs the contract of carriage and the sale contract that is subject to the law of the ship's flag state by the choice of law of the parties. In such a case, the property effects of the sales contract concluded during the transport of goods should also be governed by the ship's flag law based on the escape clause.⁸⁵

⁸³ See Górecki, in (n 69) 964. Based on Article. 5 GEDIP, the law applicable to assets in transit is the law of the country of destination. Pursuant to this provision, the acquisition and the loss of proprietary rights in an asset in transit or to be exported are governed by the law of the country of destination. This rule provides for detailed solutions for certain means of transport in Article 6, i.e. plane, train and vessel. (See: The law applicable to rights *in rem*: skeleton GEDIP, <<https://gedip-egpil.eu/wp-content/uploads/2019/09/The-law-applicable-to-rights-in-rem-July-2019-1.pdf>> accessed 27 July 2025). Similarly in Article 85 (4) UNCITRAL Model Law on Secured Transactions, 'A security right in a tangible asset that is in transit at the time of its putative creation or intended to be relocated to a State other than the State in which it is located at that time may also be created and made effective against third parties under the law of the State of the asset's ultimate destination, provided that the asset reaches that State within [a short period of time to be specified by the enacting State] after the time of the putative creation of the security right'. (See UNCITRAL Model Law on Secured Transactions, <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-08779_e_ebook.pdf> accessed 27 July 2025). Górecki proposes the discussion to amend Article 43 of Polish Private International Law by changing the applicable law to the law of destination (See Górecki, *Prawa rzeczowe na rzeczy w transporcie z perspektywy kolizyjnej* in Edyta Figura-Góralczyk and others (eds), *Prawne zagadnienia międzynarodowego obrotu cywilnego i handlowego*, Warsaw 2023, 156).

⁸⁴ Such exception from the law of the country of dispatch invokes Hellendall (n 68) 794. Similarly case *Baker v Brown*, 2014 Mass 196.

⁸⁵ See Tomaszewski (n 73) 707; compare Górecki (n 69) 965.

The next example is the application of the law of the place of the current location of things. This example is invoked as to the encumbrance of transit goods with property rights that have arisen in accordance with the law of the place where the good is currently located, e.g., in the transit country.⁸⁶ However, if the good is located on the high seas or when its location is not known at the time of the legal transaction, the principle of the place of location of the good should not apply.⁸⁷

Another example is the law of the place of action (*lex actus*) in case it is equivalent to the location of the thing. Then, it could also be the applicable law based on the escape clause. However, the sole place of action, e.g., the place of conclusion of the contract or creating the encumbrance, if other circumstances of the case are located in a different country, is not enough to apply the law of the place of action to the property rights of transit goods.

Similarly, the law of the seat of the court (*lex fori*), based only on the jurisdiction of this court in cases concerning property rights over transit goods, does not justify its application by virtue of the escape clause. As this instrument should be applied exceptionally, the sole jurisdiction of the court does not constitute sufficient connection for the application of the law of the court. Moreover, other circumstances, like the destination of the thing to the country of the court's seat should occur.

In summary, the specific nature of the escape clause in property law is that it may serve as a basis for indicating the applicable law, even though the parties cannot choose the law to prevent its application. Such a regulation results in a situation in which the parties may not protect themselves from the uncertainty of applicable law for transit goods. However, other features of this instrument, like its functioning on the stage of the indication of applicable law, exceptionality, no negative premise⁸⁸ and the necessity to examine all the circumstances of the case, do not show any particularities in comparison to other provisions that express the escape clause.

When analysing the escape clause from the point of view of the values such as flexibility and legal certainty, the regulation in private international property law is unfortunately imbalanced. The flexibility predominates the legal certainty. In case of transit goods, the escape clause may be used to indicate both foreign law and the law of the court as the jurisdiction is not coherent with the law of the dispatch from Article 43 sentence 1 of Polish Private International Law. This may lead to a situation where Polish courts are tempted to apply a too broad escape clause, especially

⁸⁶ See Pazdan, *Prawo prywatne międzynarodowe*, Warsaw 2017, 263; Górecki (n 72) 400.

⁸⁷ See Hellendall (n 68) 784.

⁸⁸ Similarly, see Case C-133/08, at 51, 64.

to indicate their own law. Additionally, there is no possibility to choose the law for transit goods in order to avoid the uncertainty of the applicable law.

4. *ESCAPE CLAUSE* IN INTERNATIONAL SUCCESSION LAW

Private international succession law is unified in the EU⁸⁹ by 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.⁹⁰ This Regulation covers both jurisdiction and the applicable law concerning succession.

Succession is defined in Article 3 paragraph 1 (a) of Regulation No 650/2012 as ‘succession to the estate of a deceased person and covers all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession’.

If the deceased person has not chosen the law, the law applicable to succession is the law of the country where the deceased had his/her habitual residence at the time of death (Article 21 paragraph 1). Habitual residence is not defined in Regulation No 650/2012.⁹¹ However, if it is clear from all the circumstances of the case that the deceased was manifestly more closely connected to another country than the place of habitual residence, the court may exceptionally indicate this law as applicable to the inheritance based on Article 21 paragraph 2, which expresses the escape clause. The escape clause should be the basis for indicating the applicable law only in exceptional cases.⁹² Additionally, it is possible that the deceased person chooses as the applicable law the law of his/her citizenship on the basis of Article 22 Regulation No 650/2012.

⁸⁹ Except Denmark and Ireland.

⁹⁰ ELI: <<http://data.europa.eu/eli/reg/2012/650/oj>>, further: ‘Regulation No 650/2012’.

⁹¹ See the examples of how courts interpret the habitual residence in succession matters in Marcin Margoński, in Konrad Osajda (ed), *Rozporządzenie Parlamentu Europejskiego i Rady (UE) Nr 650/2012 z dnia 4 lipca 2012 r. w sprawie jurysdykcji, prawa właściwego, uznawania i wykonywania orzeczeń, przyjmowania i wykonywania dokumentów urzędowych dotyczących dziedziczenia oraz w sprawie ustanowienia europejskiego poświadczenia spadkowego. Komentarz*, Warsaw 2019, commentary to Article 21, letter D, Legalis.

⁹² See Lena Kunz, *Die neue Europäische Erbrechtsverordnung – ein Überblick* (Teil I), GPR 4/2012, 210.

Legal norm expressed in Article 21 paragraph 2 does not introduce any other criteria – apart from, manifestly closer connection of the deceased – at the time of death – with other State than the State whose law is indicated on the basis of the objective connector from Article 21 paragraph 1. The closer connection should be based on all the circumstances of the case. It clearly expresses only an indication of the law, without reference to the consideration of the law. Moreover, it does not require the heirs or other parties to the inheritance case to show any activity (e.g., objection regarding applicable law) in the field of applicable law, but it is the role of the court or other authority (e.g., notary) to determine the applicable law in this respect.

Recital 25 of the preamble to Regulation No 650/2012 is given as an example of a situation in which it is possible to indicate the applicable law based on the escape clause. The EU legislator states that this is possible in exceptional cases, where, for example, the deceased had moved to the state fairly recently before the death and all the circumstances of the case indicate that the deceased was manifestly more closely connected with another state. Let us imagine a situation where a person with Polish citizenship and previously living in Poland moves to Italy, where this person intends to retire. However, this person dies a few months later. Some authors point out that this is the only example of the application of the escape clause, due to the possibility of flexible interpretation of the concept of habitual residence in Article 21 paragraph 1.⁹³ This issue is described in the next example. A person with Polish citizenship, property and family in two countries, e.g., Poland and France, living in France for many years, moves back to Poland at the end of his/her life and after dies a few months. The example given in recital 25 of the preamble to Regulation No 650/2012 concerns a situation where a person only has a new habitual residence in a country and no other circumstances binding with that country, such as citizenship, family or property. Therefore, more complicated cases, such as the second example (Polish-French), should not be resolved on the basis of the escape clause, but on the basis of determining in which of the two countries the person had habitual residence based on Article 21 paragraph 1. Additionally, recital 25 clearly states that difficulties in determining habitual residence should not constitute a reason for invoking the escape clause.⁹⁴ The other example of such difficulties may be shuttle traveling of the deceased person between two countries.⁹⁵

⁹³ See Alfonso-Luis Calvo Caravaca, *General Rule*, in Alfonso-Luis Calvo Caravaca, Angelo Davì, Heinz-Peter Mansel (eds), *The EU Succession Regulation. A Commentary*, Cambridge University Press 2016, 318–319, footnote 62.

⁹⁴ Also the escape clause is not intended to replace other instruments, e.g. fraud of the law (See Calvo Caravaca (n 93) 321–322).

⁹⁵ Kunz (n 92) 211.

In inheritance matters, the principle of uniformity of the succession statute applies.⁹⁶ Therefore, it seems that on the basis of the escape clause, the court may only indicate one different law, more closely connected with the deceased than the law of the deceased person's habitual residence at the time of death, for all inheritance matters. It does not seem that the escape clause makes it possible to specify a different law only for a part of these matters (e.g., in the field of inheritance of movable property).

So far, the CJEU has not ruled on the escape clause in succession matters. It seems that the reason for this is, firstly, that the country of habitual residence, as a rule, remains in close connection with the deceased person.⁹⁷ The concept of habitual residence is interpreted by some representatives of the doctrine in such a way that only if social relations were established in the country to which the deceased moved, which replaced those in the country of the previous habitual residence, is there a change of habitual residence.⁹⁸ Others point out that habitual residence occurs in the country with which the deceased was objectively integrated and if the centre of life interests was located in this country.⁹⁹ One of the conditions for integration with a given country is the adoption of its citizenship.¹⁰⁰ Such interpretation of the concept of habitual residence (especially in the first version) makes the escape clause from Article 21 paragraph 2 of Regulation No 650/2012 redundant.¹⁰¹ Secondly, the connecting factor of habitual residence creates such flexible interpretative possibilities¹⁰² that the courts, by interpreting this concept, arrive at the applicable law without the need to use the escape clause.¹⁰³ Moreover, the jurisdiction according to the general rule expressed in Article 4 of Regulation No 650/2012 is also based on the habitual residence. Therefore, in most cases,¹⁰⁴ the escape clause may only constitute the basis to indicate foreign law in a succession case. Additionally, it is possible for the testator to choose the law of the

⁹⁶ Opinion of Advocate General Campos Sánchez-Bordona delivered on 23 March 2023, Case C-21/22, ECLI:EU:C:2023:247, point 64.

⁹⁷ Marion Greeske, *Die Kollisionsnormen der neuen EU-Erbrechtsverordnung*, in Rainer Hausmann, Astrid Stadler, Michael Stürner (eds), *Schriften zum internationalen Privat- und Verfahrensrecht*, Band 17, Frankfurt am Main 2014, 147.

⁹⁸ See *ibid* 148.

⁹⁹ See Kunz (n 92) 211.

¹⁰⁰ See Kunz (n 92) 211.

¹⁰¹ See Greeske (n 97) 149. It is proposed to delete from Article 21 paragraph 2 of the escape clause (See Greeske (n 97) 150)

¹⁰² See Recital 23 and 24 of the preamble of Regulation No 650/2012.

¹⁰³ Paul Lagarde, *Les principes de base du nouveau règlement européen sur les successions*, *Revue critique de droit international privé* 2012/4, 701; Rapp. C Kohler, Walter Pintens, *Entwicklungen im europäischen Familienund Erbrecht 2011-2012*, *FamRZ*, 18/2012, 1429.

¹⁰⁴ Differently on the basis of Article 10 of Regulation No 650/2012.

citizenship¹⁰⁵ in accordance with Article 22 Regulation No 650/2012 in a situation where he or she does not want the law of the habitual residence to be applicable. Therefore, only in exceptional cases would the court establish jurisdiction on the basis of the deceased's habitual residence under Article 4, and then conclude that foreign law is applicable on the basis of the escape clause. In turn, if Polish courts find out that the deceased's habitual residence was abroad, they could reject the case on the basis of lack of jurisdiction.¹⁰⁶

Despite the abovementioned reasoning, it is worth considering whether there might occur situations in which the applicable law is indicated in succession on the basis of the escape clause. The example of such a situation is the following: the deceased, intending to reside in a given country, moves there shortly before his or her death and dies suddenly, while all other circumstances still link this person to another country¹⁰⁷ – e.g., previous habitual residence or citizenship. This example may concern an elderly person from a northern European country who, after retirement, due to the higher cost of living in his or her home country and a worse climate than in southern Europe, moves to Spain or Italy, and dies shortly thereafter.¹⁰⁸

Another example is a case where the deceased and his/her family moves to another country for a certain predetermined period of time for professional reasons, but with the intention of returning to the country of origin.¹⁰⁹

The next example is the death of a diplomat or consul in a country where this person had held duties and lived for several years. In such a situation, it would not be the law of the country of the last habitual residence that would be applicable to the succession, but the law of the country of origin.¹¹⁰ Also, such circumstances

¹⁰⁵ In case of an agreement as to succession regarding the succession of several persons, the chosen law may be the law of citizenship of any party of the agreement according to Article 25 paragraph 3 of Regulation No 650/2012.

¹⁰⁶ See Postanowienie Sądu Rejonowego w Sopocie – I Wydział Cywilny z dnia 25 października 2022 r., I Ns 180/22, Legalis; Postanowienie Sądu Rejonowego Szczecin-Centrum w Szczecinie - III Wydział Cywilny z dnia 3 grudnia 2020 r., III Ns 356/20, Legalis; Postanowienie Sądu Rejonowego w Słupcy - I Wydział Cywilny z dnia 2 grudnia 2020 r., I Ns 254/20, Legalis; Postanowienie Sądu Rejonowego w Biskupcu - I Wydział Cywilny z dnia 18 lipca 2017 r., I Ns 148/17, Legalis.

¹⁰⁷ H. Dörner, *EuErbVO: Die Verordnung zum Internationalen Erb- und Erbverfahrensrecht ist in Kraft!*, ZEV (2012), 510–511.

¹⁰⁸ See Calvo Caravaca (n 93) 318.

¹⁰⁹ See Dörner (n 107) 511; Greeske (n 97) 147, Calvo Caravaca (n 93) 321.

¹¹⁰ Calvo Caravaca (n 93) 319; Pazdan, in Pazdan (ed) *Prawo prywatne międzynarodowe. Komentarz*, Warsaw 2018, 1172. It would also be possible to interpret the concept of habitual residence in such a way that the diplomat/consul would still have his habitual residence in the country of origin, which does not exclude the indication of the law of that country on the basis of the escape clause.

constitute the case of the relocation of an elderly person to another country to a nursing home because he or she cannot afford to pay for such care in his or her home country.¹¹¹ In such a case, the country of the previous habitual residence of the deceased person could also be applicable on the basis of the escape clause.

In order to establish the closeness of a deceased's connection with the country to which he or she had moved – especially after retirement – knowledge of the language of that country is important.¹¹² In case of elderly people who require care, also family relationships with the person providing care should be particularly taken into account.¹¹³

The doctrine also mentions an example of the invalid choice of law made by the testator.¹¹⁴ Some argue that in such a situation, additionally the testator should have an objectively sufficient close connection to the country.¹¹⁵ However, the only element being an invalid choice of law as justifying the applicable law on the basis of the escape clause seems to be insufficient. Similarly, despite that in doctrine, there is a postulate to interpret Article 21 section 2 by analogy and on the basis of the closer connection to indicate the applicable law even when the deceased had no habitual residence.¹¹⁶ However, CJEU ruled in case EE C-80/19¹¹⁷ that the habitual residence of the deceased must be established in each succession case.¹¹⁸

Other circumstances relevant for indicating law on the basis of the escape clause in succession cases are: the law of the testator's citizenship¹¹⁹ and the previous

(See, Andrea Bonomi, *Article 4*, in Andrea Bonomi, Patrick Wautelet (eds), *Le droit européen des successions. Commentaire du Règlement n° 650/2012 du 4 juillet 2012*, Bruxelles, 2013, 175 footnote 21; Lagarde (n 103) 701).

¹¹¹ Kunz (n 92) 211.

¹¹² See Kunz (n 92) 211.

¹¹³ See Kunz (n 92) 211.

¹¹⁴ See Anatol Dutta, Commentary to EuErbVO Article 21 Allgemeine Kollisionsnorm, in Münchener Kommentar zum BGB 8. Auflage 2020, Rn. 6, beck-online; Compare, Peter Kindler, *The law applicable to the succession objective connecting factors*, in Stefania Bariatti, Ilaria Viarengo, Francesca C Villata (eds), *EU Cross-Border Succession Law*, Cheltenham, Northampton 2022, 110.

¹¹⁵ Michael Volmer, *Die EU-Erbrechtsverordnung – erste Fragen an Dogmatik und Forensik*, Rechtspfleger 2013, 424, Compare, Kindler ibid 110.

¹¹⁶ See Pazdan (n 86) 1172 and the literature there indicated. Compare Greeske (n 97) 75.

¹¹⁷ Judgment of the Court (First Chamber) of 16 July 2020, Case EE C-80/19, ECLI:EU:C:2020:569, further: 'Case EE C-80/19'.

¹¹⁸ At 40 in Case EE C-80/19 'the habitual residence of the deceased must be established by the authority dealing with the succession'.

¹¹⁹ Mateusz Pilich, *Łączniki norm kolizyjnych oparte na podstawie obywatelstwa in Zasada obywatelstwa w prawie prywatnym międzynarodowym. Zagadnienia podstawowe*, Warsaw 2015.

or different habitual residence of the deceased person, and not the last one.¹²⁰ However, the applicable law should be determined not only on the basis of one element (e.g., citizenship) but should reflect all circumstances of the case.

Difficulties in using the escape clause in the area of inheritance law are caused by the fact that in the succession there is a different specificity than in the area of obligations, in which the clause provides the basis for a closer connection of the obligation with a given law.¹²¹ Similarly, in family or property law, the closer connection concerns the relationships between living persons. On the contrary, the law applicable to succession matters determines the further fate of the inheritance.¹²² Therefore, the law additionally indicated on the basis of the escape clause should also reflect the justified expectations of the parties involved.¹²³

The following threats are indicated by the doctrine related to the escape clause in the area of inheritance law. Firstly, it is contrary to the principle of legal certainty.¹²⁴ Secondly, it allows to depart from the court's law in favour of another, more closely connected law,¹²⁵ which may prolong the proceedings due to, for example, the need to determine the content of foreign law, and consequently increases its costs.¹²⁶ In terms of legal certainty, the doctrine emphasizes that the clause allows the court to indicate the law of a different country than the parties could expect.¹²⁷

On the contrary, certain conditions are indicated as advantages of the possibility of using the escape clause. Firstly, it is possible to indicate the law on the basis of the escape clause in case the deceased did not make a choice of law or this choice is invalid.¹²⁸ Secondly, it is a remedy for such cases when all the circumstances of the case show a closer connection of the deceased with another country than the

<https://sip.lex.pl/#/monograph/369334638/287138> (accessed 27 July 2025), Pazdan, Górecki (eds), *Nowe europejskie prawo spadkowe*, LEX 2015, Reguła korekcyjna z art. 21 ust. 2 r.s. (accessed 27 July 2025).

¹²⁰ See Pazdan, Górecki (eds), *ibid.*

¹²¹ Calvo Caravaca (n 93) 319.

¹²² Under Roman law, inheritance is a continuation of the deceased's personal life. (See, Calvo Caravaca (n 93) 319).

¹²³ Anna Wysocka-Bar in Mariusz Załucki (eds), *Unijne rozporządzenie spadkowe Nr 650/2012. Komentarz*, Warsaw 2018, 143–145; Maciej Rzewuski, *Transmisja spadku*, WK 2016, Chapter VI, point 3.3.1.

¹²⁴ See, Calvo Caravaca (n 93) p 320; Greeske (n 97) 150.

¹²⁵ Lagarde (n 103) p 701; Dörner (n 107) 511.

¹²⁶ Calvo Caravaca (n 93) 320.

¹²⁷ Calvo Caravaca (n 93) 321; Greeske (n 97) 150.

¹²⁸ Calvo Caravaca (n 93) 321.

last place of habitual residence.¹²⁹ Thirdly, the court may use this institution *ex officio* without the party having to invoke it.¹³⁰

To sum up, the escape clause in succession law is applicable as an exception to the general conflict of laws rule, which is based on the connecting factor of the habitual residence of the deceased at the time of death, which should be, by definition, closely connected to the succession. Moreover, there is the uniformity of the applicable law in succession matters and the function of this branch of law is to determine the fate of inheritance, which influences the functioning of the escape clause. Other features of this instrument, like indication of the applicable law, exclusion in case of choice of law, no need to test the negative premise,¹³¹ exceptionality and the necessity to examine all the circumstances of the case do not show any particularities in comparison to other provisions that express the escape clause.

When considering the escape clause from the point of view of the values such as legal certainty and flexibility, the succession regulation seems to serve as the model regulation. First of all, the jurisdiction and the conflict of laws rule are based on the same circumstance, that is the habitual residence of the deceased. Due to this, the escape clause in most of the cases, would be used to indicate only foreign law. This assures legal certainty. Because the courts, in order to apply by their 'own choice' the foreign law, would invoke the escape clause only in really exceptional situations. This would happen only in evident situations when *lex fori* known to the court is prevailed by foreign law because of all the circumstances of the case. Furthermore, the only premise for invoking the escape clause is the closer connection and no material elements are to be checked by the court. This causes the indication of the law to be quicker because the court does not have to check the content of the material law. Moreover, the testator may choose the law of his/her citizenship and protect himself/herself in this way from applying the escape clause.¹³² This also strengthens the legal certainty. In effect, the regulation of the escape clause for succession is best written from the point of view of the balance of values such as flexibility and legal certainty in order to indicate the law that is most closely connected.

¹²⁹ Calvo Caravaca (n 93) 321.

¹³⁰ Calvo Caravaca (n 93) 322.

¹³¹ Similarly, see Case C-133/08, at 51, 64.

¹³² It should be worth considering to allow the testator also to choose the law of its habitual residence, as such widening of the choice of law, would better protect the deceased from the courts unexpected use of escape clause than the possibility to choose only the law of the citizenship.

5. CONCLUSIONS

The analysis of the escape clause in private international family, property and succession law allows for the formulation of some interesting conclusions. Firstly, the law that is manifestly more closely connected to the case, no matter if family, property or succession is indicated on the basis of all the circumstances of the case and not only one or two as it is in the 'classical' connecting factor of the legal norm of private international law. Those circumstances are different depending on the hypothesis of the legal norm (e.g., different for *res in transitu* than for the succession case) and the wording of the escape clause (e.g., for succession, all the circumstances of the case should be manifestly more closely connected with the deceased and for maintenance – with the marriage). However, they are estimated by the court *a posteriori* on the basis of all the facts of the case. Secondly, the application of the escape clause is excluded if there is a choice of law (although the analysed material shows some peculiarities as, e.g., there is no possibility to choose law for transit goods or parental responsibility). Thirdly, the escape clause is applicable exceptionally, as it introduces the uncertainty of law. The exceptionality of the escape clause should guarantee that the applicable law is foreseeable for the parties of a given relationship. Fourthly, the escape clause is not regulated uniformly in details in international family, property and succession law (e.g. in the case of a maintenance obligation between spouses, ex-spouses or parties to a marriage which has been annulled, one of the parties has to object against the applicable law in order for the court to apply the escape clause whereas in other cases such objection is not introduced).

The balance of the values, such as legal certainty and flexibility, in order to indicate the law most closely connected to a given relationship, may be observed in some but not all analysed matters. Namely, such a balance occurs only when the legal regulation guarantees that the escape clause is applied exceptionally. It occurs if on the basis of the escape clause – in most cases – the court applies foreign law, because then the court would do it exceptionally. Such regulation takes place if the jurisdiction is based on the same circumstances as the connecting factor of the conflict of laws rule from which the escape clause is introduced (e.g., regulation of the escape clause for succession matters in Regulation No 650/2012).

Additionally, to strengthen the legal certainty, the regulation should allow the parties (or at least one party, similarly to succession matters) to choose the applicable law. Such legal regulation guarantees protection from the uncertainty of applicable law.

Therefore, two observations may be presented serving as the indications for the future modifications of private international law when the escape clause is regulated. Firstly, the jurisdiction and the conflict of laws rule in relation to which the escape clause is introduced should be based on the same circumstances, so that the indicated law on the basis of the escape clause would be – in most cases – the foreign law. Secondly, in cases when the escape clause is regulated the choice of law should also be allowed.

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REFERENCES

- Abarca Junco AP and others (eds), *Derecho Internacional Privado*, Madrid 2016
- Arminjon P, *Précis de Droit international privé*, Vol 2, Paris 1958
- Bar v C, *Theorie und Praxis des International en Privatrechts*, 1889, Vol 1
- Bartin E-A, *Principes de Droit International Privé*, 1935, Vol 3
- Baruffi MC, *The 1996 Hague Convention on the Protection of Children*, in I Viarengo, FC Villata (eds), *Planning the Future of Cross-Border Families. A Path Through Coordination*, Series: Studies in private international law Vol 29, Hart, Oxford, London, New York, New Delhi, Sydney 2020
- Basedow J and others (eds), *Encyclopedia of Private International Law*, Vol 1, Cheltenham, Northampton 2017
- Bonomi A, Wautelet P (eds), *Le droit européen des successions. Commentaire du Règlement n° 650/2012 du 4 juillet 2012*, Bruxelles, 2013
- Bonomi A, *The Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations*, Yearbook of Private International Law Vol 10, 2008
- Bucher A, *L'enfant en droit international privé*, Genève-Bâle-Paris 2003
- Calvo Caravaca A-L, *General Rule*, in A-L Calvo Caravaca, A Davì, H-P Mansel (eds), *The EU Succession Regulation. A Commentary*, Cambridge University Press 2016
- Devers A, Rein-Lescastereyres I, Nato-Kaltane R, *Loi applicable à la responsabilité parentale*, in P Murat (ed), *Droit de la famille 2016-2017*, Paris 2016
- Dörner H, *EuErbVO: Die Verordnung zum Internationalen Erb- und Erbverfahrensrecht ist in Kraft!*, ‘Zeitschrift für Erbrecht und Vermögensnachfolge’, 2012

Drozd E, *Kolizyjna problematyka rzeczy w transporcie*, Krakowskie Studia Prawnicze 1979

Dutta A, *Commentary to EuErbVO Article 21 Allgemeine Kollisionsnorm*, in *Münchener Kommentar zum BGB*, 8. Auflage 2020

Ernst U, *Das polnische IPR-Gesetz von 2011 – Mitgliedstaatliche Rekodifikation in Zeiten supranationaler Kompetenzwahrnehmung*, *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 2012, Vol 76, No 3

Erp Van S, *Comparative Property Law*, in M Reimann, R Zimmermann (eds), *The Oxford Handbook of Comparative Law*, Oxford 2019

Fernández Rozas JC, Sánchez Lorenzo S, *Derecho Internacional Privado*, Cizur Menor (Navarra) 2022

Frankenstein E, *Internationales Privatrecht*, 1929, Vol 2

Goldstein G, *Objective, subjective and imperative localization in the resolution of conflict of laws*, *Yearbook of Private International Law* Vol 24, 2022/2023

Górecki J, *Prawa rzeczowe na rzeczy w transporcie z perspektywy kolizyjnej [Property rights on the transit good from comparative perspective]*, in E Figura-Góralczyk and others (eds), *Prawne zagadnienia międzynarodowego obrotu cywilnego i handlowego [Legal issues of international civil and commercial relationships]*, Warsaw 2023

Greeske M, *Die Kollisionsnormen der neuen EU-Erbrechtsverordnung*, in R Hausmann, A Stadler, M Stürner (eds), *Schriften zum internationalen Privat- und Verfahrensrecht*, Band 17, Frankfurt am Main 2014

Hellendall F, *The res in transitu and Similar Problems in the Conflict of Laws*, in JM Carruthers (ed), *Transfer of property and private international law*, Volume I, Cheltenham, UK; Northampton, MA, USA : 2016

Kieninger E-M, *Property Law (International)*, point 3 Special rules, <[https://max-eup2012.mpipriv.de/index.php/Property_Law_\(International\)](https://max-eup2012.mpipriv.de/index.php/Property_Law_(International))> accessed 27 July 2025

Kindler P, *The law applicable to the succession objective connecting factors*, in S Bariatti, I Viarengo, FC Villata (eds), *EU Cross-Border Succession Law*, Cheltenham, Northampton 2022

Kohler C, Pintens W, *Entwicklungen im europäischen Familienund Erbrecht 2011-2012*, 'Zeitschrift für das gesamte Familienrecht 2012 No 18

Kruczalak K, *Prawa rzeczowe w ustawie o prawie prywatnym międzynarodowym [Property rights in Private International Law Act]*, *Kwartalnik Prawa Prywatnego* 2000, issue 3

Kunz L, *Die neue Europäische Erbrechtsverordnung - ein Überblick* (Teil I), *Zeitschrift für das Privatrecht der Europäischen Union* 2012 No 4

Lagarde P, *Explanatory Report on the 1996 Hague Child Protection Convention*, in *Hague Conference on Private International Law*, Proceedings of the Eighteenth Session, 30 September to 10 October 1996, Vol II, Protection of children, Hague 1998

Lagarde P, *Les principes de base du nouveau règlement européen sur les successions*, 'Revue critique de droit international privé' 2012 No 4

Mączyński A, *Kodyfikacyjne zagadnienia części ogólnej prawa prywatnego międzynarodowego [Codification issues of the general part of Private International Law]*, in A Janik (ed), *Studia i Rozprawy. Księga jubileuszowa dedykowana profesorowi Andrzejowi Calusowi [Studies and Dissertations. Anniversary book dedicated to Professor Andrzej Calus]*, Warsaw 2009

Mostowik P (ed), *Międzynarodowe prawo rodzinne. Filiacja. Piecza nad dzieckiem. Alimentacja [International family law. Filiation. Childcare. Maintenance]*, Warsaw 2023

--, *Prawo właściwe dla rozvodu i separacji w świetle rozporządzenia unijnego nr 1259/2010 [The law applicable to divorce and separation in the light of EU Regulation No. 1259/2010]*, Kwartalnik Prawa Prywatnego 2011, issue 2

--, *Władza rodzicielska i opieka nad dzieckiem w prawie prywatnym międzynarodowym [Parental authority and child custody in Private International Law]*, Kraków 2014

Niboyet JP, *Des conflits de lois relatifs à l'acquisition de la propriété et des droits sur les meubles corporels à titre particulier*, Recueil Sirey, 1912

Osajda K (ed), *Rozporządzenie Parlamentu Europejskiego i Rady (UE) Nr 650/2012 z dnia 4 lipca 2012 r. w sprawie jurysdykcji, prawa właściwego, uznawania i wykonywania orzeczeń, przyjmowania i wykonywania dokumentów urzędowych dotyczących dziedziczenia oraz w sprawie ustanowienia europejskiego poświadczenia spadkowego. Komentarz [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. Commentary]*, Warsaw 2019

Pazdan M (ed), *Prawo prywatne międzynarodowe. Komentarz [Private International Law. Commentary]*, Warsaw 2018

--, *System prawa prywatnego. Prawo prywatne międzynarodowe [System of Private Law. Private International Law]*, Vol 20B, Warsaw 2015

--, *System prawa prywatnego. Prawo prywatne międzynarodowe [System of Private Law. Private International Law]*, Vol 20C, Warsaw 2015

Pilich M, *Zasada obywatelstwa w prawie prywatnym międzynarodowym. Zagadnienia podstawowe [The principle of citizenship in private international law. Basic issues]*, Warsaw 2015

Poczobut J (ed) *Prawo prywatne międzynarodowe. Komentarz [Private International Law. Commentary]*, Warsaw 2017

Rzewuski M, *Transmisja spadku [Transmission of Inheritance]*, Wolters Kluwer 2016

Scherpe JM, *Comparative Family Law*, in M Reimann, R Zimmermann (eds), *The Oxford Handbook of Comparative Law*, Oxford 2019

Schnitzer A, *Handbuch des Internstionales Privatrecht*, 1937

Twardoch P, *Nowe rumuńskie prawo prywatne międzynarodowe [New Romanian Private International Law]*, Problemy Prawa Prywatnego Międzynarodowego 2013 Vol 13

Volmer M, *Die EU-Erbrechtsverordnung – erste Fragen an Dogmatik und Forensik*, Rechtspfleger 2013

Waal De MJ, *Comparative Succession Law*, in M Reimann, R Zimmermann (eds), *The Oxford Handbook of Comparative Law*, Oxford 2019

Weil H, *Die Kollisionsrechtliche Beurteilung von Tatbeständen des Sachenrechts in Beziehung auf res in transitu*, Berlin 1933

Wojewoda M, *Jurysdykcja krajowa i prawo właściwe w sprawach dotyczących stosunków między rodzicami a dziećmi – studium przypadku w relacjach Polska-USA [National jurisdiction and applicable law in matters relating to relations between parents and children - a case study in Poland-USA relations]*, Europejski Przegląd Sądowy 2018, No 4

Załucki M (ed), *Unijne rozporządzenie spadkowe Nr 650/2012. Komentarz [EU Inheritance Regulation No 650/2012. Commentary]*, Warsaw 2018