

Inheriting and bequeathing in Europe

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If, in the future, German citizens want to bequeath their holiday homes in Spain, for example, they should be allowed to decide for themselves whether this should be dealt with under German or Spanish law. Credit: Susanne Schauer

The holiday home on the Costa del Sol, the bank account in London, the local assets of foreign citizens resident in Germany - which rules apply to the bequeathing of such assets? Not an easy question, because the freedom to stipulate how one's assets are to be disposed of in one's last will and testament is subject to different limitations in each country of the EU. There is not even agreement between the Member States as to which national law must be applied to an inheritance which involves different countries. Researchers at the Max Planck Institute for Comparative and International Private Law in Hamburg have drawn up a statement as to how inheriting and bequeathing within the EU could be made simpler in the future. The statement supports the corresponding proposals by the European Commission.

A working group headed jointly by Director Jürgen Basedow, director at

the Max Planck Institute for Comparative and International Private Law, and his colleague Anatol Dutta has spent six months working intensely on the proposal which the European Commission presented at the end of last year. "There is an urgent need for action to clarify the situation with respect to inheritance law within the EU as soon as possible," says Jürgen Basedow about the increasingly problematic situation at the moment. The opening of the borders in the European Union and the associated internal migration mean there are now more cross-border wills and inheritances than ever before. Moreover, the first generation of migrant workers are reaching an age where it seems sensible to make arrangements for their estate. "If one considers that in Germany alone there are several million people, some of whom have been very economically successful here, then it is easy to estimate that we are talking about quite a few billion euros, which are to be bequeathed privately," is how he outlines the human and financial dimensions of this demographic development for citizens and for private law. "These are cases of considerable importance which the courts will have to deal with."

The core of the Hamburg statement is an extension of the right of the bequeather to choose the law. "This means that they themselves can then determine which national law will govern their inheritance," explains Basedow. This would also make it easier than before for the beneficiaries of the first generation of migrant workers to settle their estates, for example. According to current legislation, the national law which must be applied by German courts is determined by the last nationality. "If the children of a Spanish greengrocer in Berlin, for example, want to continue paying the shop rent from his account after his death, they often cannot do this," because without a valid certificate of inheritance the banks do not grant access to the account of the bequeather. But the certificate of inheritance must be issued in accordance with Spanish law, and the German public authorities and courts of law are usually not familiar with this. It can therefore take a

long time before such a document is provided - time which the beneficiaries do not really have, because the rent continues to be demanded for the shop premises. To make things easier to deal with, the EU Commission and the Hamburg MPI unanimously propose that the applicable law should in future depend on the last place of residence and not on the nationality. This would be German law in the example above.

How complicated the standardisation of international inheritance law in practice becomes apparent when considering the time frame in which the draft now presented has been created. The EU has been allowed to regulate international private law since the Treaty of Amsterdam in 1997. Although inheritance law was put on the agenda of the European legislator only one year later with the Vienna Action Plan of 1998, the Commission was only able to present a proposal for a European inheritance law on which consensus could be reached in October 2009. This contains provisions regarding the classical issues of international private law, such as the question of applicable law, the international competence of the courts and the recognition and enforcement of foreign judgements in inheritance cases. Moreover, the Commission also proposes provisions for the cross-border handling of inheritances and the introduction of a European certificate of inheritance with uniform effect in all Member States.

The Hamburg legal experts want to support the efforts of the [European Commission](#) with their statement. "We are contributing our academic expertise," says Basedow. At the Max Planck Institute for Comparative and International Private Law in Hamburg, researchers conduct basic research into comparative law in the fields of foreign, European and international private, commercial, business and civil procedural law. In concrete terms, they systematically analyze foreign legal systems and compare them with German law and with each other. An important objective of the research is to investigate the possibilities for harmonizing and coordinating the existing national legal systems.

Against the background of increasing globalisation and the associated internationalisation of law this is a task of great academic and practical significance, says the legal researcher. The statement thus contains numerous amendment and improvement proposals intended to make international inheritance law simpler in practice and at the same time to increase the acceptance of the new solutions in the Member States.

Taken as a whole, the Hamburg Institute sees the Commission's proposal as "a further important step on the way to a modern and coherent codification of international private law in the European Union." The issue is therefore much wider than the question as to who can inherit the holiday home on the Costa del Sol without a lot of bureaucracy and high legal costs. Indirectly, it outlines the model of European private law which maintains the diversity within the Union yet nevertheless increases the legal security of its citizens. The statement together with a comparison of the Commission's proposal and the amendments suggested by the Institute is available electronically in advance on the Institute's website. It will be published in the autumn in Issue 3/2010 of *The Rabel Journal of Comparative and International Private Law* (Rabels Zeitschrift für ausländisches und internationales Privatrecht).

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