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Succession Agreements and the Confines of Private International Law: Insights from the Slovak Legal System

ABSTRACT: *This article explores the legal nature and recognition of succession agreements within the framework of European private international law, with particular attention to the Slovak legal system. Despite ongoing convergence among the European Union Member States, notable disparities persist in succession law, especially regarding the admissibility of arrangements mortis causa. Slovak law currently does not recognise succession agreements, yet their relevance is increasing due to the cross-border application of Succession Regulation. The article examines whether a Member State that does not provide for such agreements can invoke the public policy exception when applying foreign law that does.*
KEYWORDS: *Succession Agreement, Private International Law, Public Policy*

1.
Introduction

The completion of the internal market, globalisation, migration flows, and other related factors have all directly contributed to the growing frequency of private law relationships that involve a foreign element. The field of succession law is by no means an exception. Despite continuing convergence among the legal systems of Member States of the European Union (hereinafter referred to as "the EU"), certain disparities persist, particularly in the regulation of specific areas of private law. In the field of succession law, these disparities extend to the very legal titles by which inheritance may be acquired.

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Under the current Slovak civil law, succession may take place only by will or by operation of law. The existing legislation omits the institution of a succession agreement, although its reintroduction into the Slovak legal system is expected through the long-awaited recodification of the Civil Code[1], a reform that, one might say, is already knocking on the door of Slovak legal reality. Although the Slovak Civil Code currently does not recognise succession agreements, their relevance in legal practice is steadily increasing, particularly because of cross-border succession cases.

While the EU lacks the competence to harmonise substantive succession law, it has exercised its powers in the field of judicial cooperation in civil and commercial matters, thereby achieving a degree of harmonisation in cross-border succession cases. The Succession Regulation[2] explicitly envisages the succession agreement as one of the instruments by which a person may *disponere mortis causa*.

This article aims to examine whether, under the current legal framework, a Member State that does not recognise agreements as to succession can invoke the public policy exception when applying foreign law that does. A secondary aim is to trace the historical development and context of this institution within Slovak legal tradition. The research employs standard scientific methods such as analysis, comparison, deduction, and synthesis.

2.
Succession Agreement and its Historical Development in Slovakia

The succession agreement constitutes a title to succession that was unknown to Roman law. Roman private law placed considerable emphasis on the autonomous position of the individual and, accordingly, rejected any contractual limitations on the testator's freedom of disposition.[3] The institution of the succession agreement emerged later within medieval inheritance law, which, however, had not yet developed the concept of universal succession and instead operated with distinct regimes of noble and clerical succession. Alongside the succession agreement, other recognised titles to succession included the testament, the law itself, and the codicil.[4]

1 Act No. 40/1964 Coll., the Civil Code, as amended. http://doi.org/10.62733/2025.1.5-15

2 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 (OJ L 201, 27.7.2012, pp. 107–134; hereinafter referred to as "the Succession Regulation" or "the Regulation").

3 Cirák and Gandžalová, 2022, p. 33.

4 Mosný and Laclavíková, 2015, p. 102.

The Czechoslovak Republic, established in October 1918 at the conclusion of the First World War, recodified and provisionally adopted the pre-existing private law systems of its predecessor states. This acceptance resulted in a period of legal dualism: while Austrian civil law remained in force in the territory of the present-day Czech Republic, the territory of present-day Slovakia continued to apply uncodified the customary private law of the Kingdom of Hungary. Consequently, succession law in Slovakia was not codified until 1950. The principal sources of the succession law of the Kingdom of Hungary that was applicable on Slovak territory were the *Planum Tabulare, Werbőczy's Tripartitum*, and the Provisional Judicial Rules (*Ideiglenes Törvénykezési Szabályok*) adopted at the Judex-Curial Conference of 1861.[5] Under this legal framework, succession could be acquired not only by virtue of law or by testament but also through a succession agreement, a donation *mortis causa*, or a legacy (*legatum*).[6]

The succession agreement constituted a bilateral juridical act, whereby one party expressed and formalised their last will in a legally binding manner towards the other contracting party, who in turn accepted such disposition. It was not required that the party making the *mortis causa* disposition provide a benefit specifically in favour of the other contracting party upon their death.[7] Only persons possessing full legal capacity were entitled to conclude a succession agreement. By virtue of its contractual and binding nature, neither party could unilaterally revoke the agreement. However, revocation was admissible in cases of ingratitude (*ex causa ingratitudinis*).[8] A valid succession agreement was to be respected and enforced according to its terms.[9] Furthermore, the parties could enter into a reciprocal succession agreement, whereby each party made a disposition in favour of the other, either for the mutual benefit of both contracting parties or for the benefit of a third person.[10]

A fundamental turning point occurred in 1950, as a result of the so-called "two-year legal reform plan" (*právnická dvojročnica*), which culminated in the adoption of the Civil Code No. 141/1950 Coll. Succession law formed Part Five of this Civil Code and represented a substantial simplification compared to the previous legal framework. Several traditional institutions, such as the lying inheritance (*hereditas iacens*) and the donation *mortis causa*, were abolished, as was the succession agreement. From

5 Cirák, 2009, p. 26.
6 Fekete, 2015, p. 3.
7 Fajnor and Záturecký, 1998, p. 521.
8 Cirák, 2009, p. 39.
9 Muránska, 2013, p. 356.
10 Fajnor and Záturecký, 1998, p. 521.

that point onward, the only titles to succession recognised under Slovak civil law were the will and the law.[11]

The rationale behind this approach lay in the transformation of the overall function of succession law, as articulated in the general explanatory report to the Civil Code of 1950. Succession law was intended to primarily serve the purpose of strengthening family ties and was to be linked to family law rather than to the law of property. At the same time, the legislator sought to prevent 'the expansion of the private owner's freedom of disposition beyond the limits of his physical life'.[12] Within such an ideological framework, the regulation of the succession agreement had no place in the legal order of the time.

In the special explanatory section related to Section 512, which enumerated the titles to succession, only a single sentence refers to the succession agreement: 'Of the existing titles to succession, the succession agreement is not adopted, as it restricts the testator's testamentary freedom for the future (author's translation)'.[13] This statement reflects a rather peculiar and internally inconsistent construction, according to which a testator who had already entered into a binding succession agreement with a future heir would thereby limit his own ability to dispose of his (personal) property *mortis causa* under another title of succession (such as a will or testament). This reasoning appears to stem from a fundamental characteristic of the succession agreement, namely its binding nature and the irrevocability of the testator's declaration of will, except in cases of ingratitude (*ex causa ingratitudinis*) on the part of the prospective heir. However, in light of the broader ideological and systemic context, which sought to restrict freedom of disposition *mortis causa* in favour of statutory succession and to limit the portion of the estate qualifying as the testator's personal property, it may be argued that the justification offered in the explanatory memorandum is conceptually inconsistent and legally unconvincing.

In 1964, the Civil Code No. 40/1964 Coll. was enacted. This Civil Code retained the regulation of titles to succession in nearly the same form as that introduced by the Civil Code of 1950. The 1964 Civil Code remains in force to this day, albeit with substantial amendments adopted in the 1990s and further revisions associated with Slovakia's accession to the EU. Under the current legislation, inheritance may still take place solely by will or by operation of law, or simultaneously on the basis of both titles to succession. Neither is the succession agreement recognised as a title to inheritance nor the donation *mortis causa* permitted under the existing civil law framework. This

11 According to Section 512: 'Inheritance takes place by operation of law, by will, or on the basis of both.' (author's translation)

12 General section of the Explanatory Report to Act No. 141/1950 Coll. (Civil Code of 1950).

13 Special section of the Explanatory Report to Section 512 of Act No. 141/1950 Coll. (Civil Code of 1950).

legal instrument, commonplace in the private law systems of continental Europe, has thus been absent from Slovak legislation for over seventy-five years.

At present, a comprehensive recodification of the Slovak Civil Code is being prepared, envisaging a fundamental conceptual reform of the Code as a whole, including its individual subfields, among which succession law figures prominently. According to the current draft, succession law is to be systematically incorporated into Part Six of the Civil Code, following property law, which will form Part Five. The Explanatory Report accompanying the draft indicates an intention to expand the grounds of delation by introducing the succession agreement as an additional title to inheritance. Furthermore, the proposed text provides that while different titles to succession may coexist, the succession agreement is to take precedence over the other delation grounds.[14] It should also be possible to appoint a third person as an heir, and the appointment of an heir may be made in return for certain consideration, for example in the form of a maintenance annuity or the provision of care and support. According to the draft, the succession agreement must be executed in the form of a notarial deed, and full legal capacity shall be required for its valid conclusion.

According to the special explanatory section of the draft Civil Code, the essence of the succession agreement lies in the testator's intention to relinquish – in whole or in part – his testamentary freedom, since, unlike in the case of a will, the testator is bound by his contractual declaration of will until the moment of death, unless the succession agreement is terminated prior to his death.[15] The draft also addresses the situation wherein several succession agreements are concluded concerning the same property, providing that priority shall be given to the agreement concluded earlier.[16]

Although the forthcoming recodification of the Civil Code is expected to reintroduce the succession agreement as a title to inheritance, this article seeks to examine how the institution operates within the current Slovak legal environment, wherein the existing Civil Code does not recognise or regulate this legal instrument.

14 According to the proposed Section 1962 of the Civil Code: 'If inheritance does not take place under a succession agreement, the inheritance shall pass to the heir appointed by will. If inheritance does not take place under a will either, the inheritance shall pass to the heir by operation of law.'(author's translation)

15 Special Section of the Explanatory Report to the Draft Civil Code, § 1964. The memorandum also notes the possibility for the parties to stipulate a right to withdraw from the succession agreement without cause, provided such right is expressly included in the agreement.

16 The above operates in the exact opposite manner to a will, where the more recent testament revokes the earlier one.

3. Relevance of Succession Agreements in Cross-Border Contexts

Although the current Slovak civil law does not recognise succession agreements, their practical relevance within the Slovak legal environment has become increasingly evident in the context of cross-border successions. The completion of the internal market has greatly enhanced the mobility of EU citizens, resulting in situations wherein national courts are frequently confronted with legal institutions unfamiliar to their domestic legal order. Such instances may arise not only in the field of family law, but also, for example, within succession law, where courts of Member States that do not provide for succession agreements may nonetheless encounter this instrument in the context of inheritance relationships involving a foreign, cross-border element. For instance, this may occur where the deceased was a foreign national, had his habitual residence abroad at the time of death, left property located in another State, or executed a will or other *mortis causa* disposition in a foreign country. The law applicable to succession – often referred to as the succession statute – determines the governing law in cross-border inheritance relations. It encompasses a broad range of issues, including the existence and validity of the cause of succession, the extent and composition of the estate, and the (in)capacity to inherit. A distinction is made between a unitary succession statute, wherein all aspects of succession are governed by a single connecting factor under the relevant conflict-of-laws rule, and a fragmented succession statute, wherein different assets or aspects of the estate may be governed by different legal systems.[17]

The question of which law is applicable to succession matters is governed by several sources, each of which is binding upon Slovak courts adjudicating such cases, and whose scopes of application may, in certain instances, operate concurrently. At the domestic level, the issue is regulated by the Act on International Private and Procedural Law,[18] which establishes the conflict-of-laws framework applicable to succession relations within the Slovak legal order. In addition to the provisions contained in the Act on PIL, conflict-of-laws rules can also be found in certain bilateral treaties on legal assistance. Pursuant to Section 2 of the Act on PIL,[19] as well as under

17 Lysina et al., 2023, p. 339.

18 Act No. 97/1963 Coll, on International Private and Procedural Law (hereinafter referred to as the "Act on PIL").

19 Section 2 of the Act on PIL: 'The provisions of this Act shall apply only insofar as a treaty binding upon the Slovak Republic or an Act adopted for the implementation of such a treaty does not provide otherwise'. (author's translation)

the Constitution of the Slovak Republic[20] and the Vienna Convention on the Law of Treaties,[21] such treaties enjoy precedence over domestic legislation in application. However, these treaties will not be examined in detail in the present paper, since the most relevant ones are those concluded by the Slovak Republic with other Member States of the EU, and in such cases, the EU Succession Regulation takes precedence in application.[22] In this respect, primary attention will be devoted to the EU Succession Regulation, both because it takes precedence in application over the Act on PIL,[23] and because it explicitly recognises the institution of the succession agreement within the scope of matters governed by the Regulation. This confers upon the institution a (perhaps not entirely) new dimension within the Slovak legal order.

The Act on PIL is based on the concept of a unitary succession statute.[24] Despite the precedence of the Succession Regulation in application, the provisions of the Act continue to retain their significance in cases where the scope of the Regulation, particularly its material or temporal scope – is not fulfilled.[25] This concerns, for example, oral agreements or other matters falling outside the Regulation's material scope and legal acts performed prior to its entry into force,[26] which must still be assessed under the national conflict-of-laws framework.

Section 17 of the Act on PIL establishes the basic conflict-of-laws rule governing succession relations, linking them to the connecting factor of the deceased's nationality at the time of death. Section 18 then addresses ancillary questions related to succession. According to Section 18(1):

> *'The capacity to make or revoke a will, as well as the effects of defects in the will or its declaration, shall be governed by the law of the State of which the deceased was a national at the time of making the declaration. The same law shall determine which other types of mortis causa dispositions are admissible (author's translation).'*[27]

20 Art. 7(5) of the Act No. 460/1992 Coll. – The Constitution of the Slovak Republic: 'International treaties on human rights and fundamental freedoms and international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law shall have precedence over laws'.

21 Art. 27 of the Vienna Convention on the Law of Treaties: 'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty…'

22 Art. 75(2) of the Succession Regulation.

23 Judgment of 15 July 1964, Costa/E.N.E.L., C-6/64, ECLI:EU:C:1964:66.

24 Succession relations are regulated in Sections 17 and 18 of the Act on PIL.

25 Art. 1(2)(f) of the Regulation excludes from its material scope 'the formal validity of dispositions of property upon death made orally'.

26 Art. 83(3) of the Succession Regulation.

27 Section 18(1) of the Act on PIL.

The cited provision clarifies that, in view of the classificatory challenges posed by the diversity of *mortis causa* instruments across legal systems, the legislator anticipated the existence of other forms of *mortis causa* dispositions besides the will. As noted by the commentators on this provision, the determination of permissible forms of *mortis causa* dispositions depends on the respective national legal orders. The conflict-of-laws rule, thus formulated, prevents a court from being unable to deal with an institution unknown to its domestic legal system – a situation exemplified by the succession agreement, which remains unregulated under Slovak law.[28] The question that remains to be addressed is whether a restriction on the testator's testamentary freedom for the future, as suggested by the historical connotations discussed above, could trigger the protective mechanism of the public policy exception. This issue will be subjected to a more detailed analysis in the following section of this article.

A pivotal moment in the development and introduction of new institutions into the field of international private and procedural law of succession was the adoption of the EU Succession Regulation. Since the EU lacks competence to harmonise the substantive law of succession, the Regulation is limited to cross-border succession matters within the Union. The Succession Regulation introduced several significant innovations to the practice of authorities in the Member States. In addition to explicitly addressing the concept of a succession agreement in cross-border contexts, it also permits choice in the applicable law to govern succession relationships – an option not recognised under the Slovak Act on PIL.

The Regulation enjoys primacy of application not only over bilateral treaty arrangements concluded exclusively between Member States[29] but also, by virtue of the general principle of supremacy of EU law, over national legislation, including the Slovak Act on PIL. Before presenting the substantive content of the Regulation itself, it is essential to delineate its scope of application, as the analysis of mutual interaction between two or more legal sources is relevant only when their respective scopes are cumulatively fulfilled. In other words, if the Regulation does not apply, it would be pointless to examine its relationship to either an international treaty or national law.

From the perspective of its territorial scope, the Regulation applies in all Member States of the EU, with the exception of Denmark, the United Kingdom and Ireland,[30] which exercised their right to an opt-out and, therefore, do not participate in its application. The United Kingdom subsequently withdrew from the Union altogether. As regards its temporal scope, the Regulation applies to the succession of persons

28 Lysina et al., 2012, pp. 104–105.
29 Art. 75(2) of the Succession Regulation.
30 Recitals 82 and 83 of the Preamble to the Succession Regulation.

who died on or after 17 August 2015.[31] For the purposes of the present analysis, Article 83(3) of the Regulation is also of particular relevance. It provides that:

> *'A disposition of property upon death made prior to 17 August 2015 shall be admissible and valid in substantive terms and as regards form if it meets the conditions laid down in Chapter III or if it is admissible and valid in substantive terms and as regards form in application of the rules of private international law which were in force, at the time the disposition was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed or in the Member State of the authority dealing with the succession.'*[32]

In light of the subsidiary jurisdiction laid down in Article 10 of the Regulation, the personal scope is not necessarily of primary relevance. The *ratione materiae*, by contrast, is framed in the broadest possible terms and defined both positively and negatively. The Regulation applies to succession to the estate of deceased persons with a cross-border element. Moreover, it expressly excludes several matters from its material scope, *inter alia*, the formal validity of oral dispositions of property upon death, as previously mentioned.[33] The courts and other competent authorities of the Member States, including those of the Slovak Republic, apply the Regulation *ex officio*. Regarding the basic criteria for determining jurisdiction and the applicable law, it may be generally observed that the objective of the Regulation, subject to a few exceptions, is to ensure that courts adjudicate in accordance with the *lex fori*.[34] Recital 27 of the preamble, although not legally binding,[35] confirms this understanding: 'The rules of this Regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law...'[36]

The objective of the Regulation itself is clarified in Recital 7 of the Preamble:

> *'The proper functioning of the internal market should be facilitated by removing the obstacles to the free movement of persons who currently face difficulties in asserting their rights in the context of a succession having cross-border implications. In the European area of justice, citizens must be able to organise their succession in advance. The rights of heirs*

31 Art. 83(1) of the Succession Regulation.
32 Art. 83(3) of the Succession Regulation.
33 See:: Art. 1(2)(f) of the Succession Regulation and consider also the other matters expressly excluded from the material scope of the Regulation.
34 This principle is clearly reflected in Arts. 4 and 5 to 9 of the Regulation.
35 Judgment of 19 November 1998, Nilsson and Others, C-162/97, ECLI:EU:C:1998:554, Para. 54.
36 Recital 27 of the preamble to the Succession Regulation.

> *and legatees, of other persons close to the deceased and of creditors of the succession must be effectively guaranteed.'*[37]

This is inherently linked to the question of guaranteeing equal access to inheritances within the Union. The Regulation adopts the concept of a unitary succession statute, as it provides that:

> *'For reasons of legal certainty and in order to avoid the fragmentation of the succession, that law should govern the succession as a whole, that is to say, all of the property forming part of the estate, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State.'*[38]

Under the principle of unity, the authorities of a single Member State may adjudicate upon immovable property located abroad – a previously unthinkable concept.[39]

The succession agreement (*pactum successorium*), a disposition of property upon death, is defined in the Regulation as a contract, 'including an agreement resulting from mutual wills, which, with or without consideration, creates, modifies or terminates rights to the future estate or estates of one or more persons party to the agreement'.[40] In its judgment in *UM*, the Court of Justice favoured a substantive interpretation over a formalist one, stating that 'a contract under which a person provides for the future transfer, on death, of ownership of immovable property belonging to him or her to other parties to the contract is an agreement as to succession within the meaning of that provision'.[41]

The key provision governing succession agreements is Article 25(1) of the Regulation, which provides that

> *'...an agreement as to succession regarding the succession of one person shall be governed, as regards its admissibility, its substantive validity and its binding effects between the parties, including the conditions for its dissolution, by the law which, under this Regulation, would have been applicable to the succession of that person if he had died on the day on which the agreement was concluded.'*[42]

37 Recital 7 of the preamble to the Succession Regulation.
38 Recital 37 of the preamble to the Succession Regulation.
39 With the exception of Art. 10(2) and Art. 12(1) of the Succession Regulation.
40 Art. 3(1)(b) of the Succession Regulation.
41 Judgment of 9 September 2021, UM (Contrat translatif de propriété mortis causa), C-277/20, ECLI:EU:C:2021:708.
42 Art. 25(1) of the Succession Regulation.

The following Para. further addresses the issue of agreements concerning the succession of several persons, while the third Para. supplements this by extending the possibility of a choice of applicable law to succession agreements, subject to the conditions laid down in Article 22. The Regulation itself establishes a set of elements that determine the substantive validity of *mortis causa* dispositions, including succession agreements, thereby ensuring the uniform application of these specific rules across Member States.[43] Article 27 sets out the rules governing written dispositions of property upon death, providing that such a disposition is formally valid if it complies with the law applicable to its form.[44]

In practical terms, wherein the deceased was a Slovak national with habitual residence in Slovakia, the general connecting factor under Article 21 of the Succession Regulation would render Slovak law applicable to the succession. Consequently, under Article 25(1), any succession agreement concluded by such a person would likewise be assessed, in terms of its admissibility, substantive validity, and binding effects, in accordance with Slovak law, which, however, does not currently recognise or regulate this legal instrument. A potential avenue of deviation is provided by Article 22 of the Regulation, which introduces the possibility of a choice of law in matters of succession, though this is strictly limited to the law of the State of the deceased's nationality (*lex patriae*). Thus, wherein the deceased was, for instance, a Czech national or a bipolitan, it would be possible to choose as the applicable law that of the State of nationality. Such a choice would subsequently extend to Article 25, thereby linking the law of the chosen State to the succession agreement itself. In such circumstances, a Slovak court, if deemed competent under the Regulation, would be required to examine the succession agreement through the lens of a foreign legal system that may, unlike Slovak law, recognise this institution. This raises the critical question of whether there exists scope for the Slovak court to invoke the protective mechanism of the public policy exception in such a scenario.

4.
Correction of the Effects of Applying Foreign Law to Succession Agreements through the Public Policy Exception

Across global legal systems, significant disparities persist. This has rendered it necessary within private international law to establish the possibility of derogating from the provisions of the otherwise applicable foreign law, provided that specific conditions are met. Although the EU has progressively harmonised several areas

43 Art. 26 of the Succession Regulation.
44 Aras Kramar and Vučko, 2020.

of law, considerable divergences remain between the legal systems of the Member States. Consequently, even at the Union level, it is essential to preserve mechanisms that allow the forum's legal order to protect its fundamental principles. One of the most important defensive instruments available in this regard is the public policy exception. The public policy exception serves a protective function, safeguarding the essential interests of the legal order of the forum. From this perspective, one of its core purposes lies in preserving the sovereignty of the State in matters falling within its exclusive competence. Every legal system is founded upon a set of values intrinsic to that society's social, cultural, and moral fabric. Therefore, the public policy exception's function is to ensure that the application of foreign law in a given case does not undermine these fundamental values of the lex fori.[45]

Public policy is also enshrined in national legal frameworks, and the Slovak Act on PIL is no exception. Section 36 of the Act provides that: 'A legal provision of a foreign State shall not be applied if the effects of such application would be contrary to the principles of the social and state system of the Slovak Republic and to its legal order, adherence to which must be unconditional'.[46] Thus, the Act expressly provides a definition of public policy, although, for the logical reasons discussed above, a specific catalogue of such norms is absent. Nevertheless, an instructive example may be found in the case law of the Supreme Court of the Slovak Republic,[47] notably in a decision concerning the adoption of an adult. The judgment addressed the non-recognition of a decision of the District Court of Donaustadt on the grounds that the adoption of an adult is not permitted under Slovak legislation. In this case, the Supreme Court held that the public policy exception operates as a protective mechanism aimed at preventing the effects of applying foreign law where such application would potentially contradict the fundamental principles of the social and state system of the Slovak Republic and its legal order. According to the Court, these principles may derive either from constitutional provisions designed to meet fundamental societal needs, or from core rules of other legislative acts. In any event, the Court emphasised that adherence to such provisions must be unconditional, while also noting that not every mandatory norm automatically possesses these characteristics or is necessarily capable of triggering the application of the public policy exception. Of particular interest is the Court's comparative observation that several other Member States permit the institution of adult adoption, thereby highlighting the relativity of public policy considerations in a cross-border context.[48] The same conclusion may be drawn in relation to the institution of the succession agreement, although, on the opposite side of the scale, one must consider the principle of testamentary freedom.

45 Moravcová, 2023.
46 Section 36 of the Act on PIL.
47 Judgment of the Supreme Court of the Slovak Republic, Case No. R 54/2000.
48 Ibid., See also Moravcová, 2023.

The public policy exception is also introduced by the Regulation itself in Article 35: '*The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum*'.[49] In the absence of a closed catalogue of circumstances wherein a court may invoke the public policy exception, the matter must invariably be assessed on an *ad hoc*, *in concreto* basis, taking into account all the relevant circumstances of the individual case.[50] Some authors emphasise that the judicial practice concerning the invocation of the public policy exception should remain consistent with the overarching objectives of private international law, while also promoting the spirit of international cooperation.[51] There is no doubt that, at the Union level, the public policy exception should be invoked only in truly exceptional circumstances, at least in relations between the Member States.[52] This assertion may likewise be supported by the fact that the Regulation itself expressly contemplates the existence of succession agreements, recognising that they constitute a succession title widely established within the legal systems of the Member States.

As noted by Gianluca Contaldi and Cristina Grieco, the very purpose of the public policy exception is to limit the extent to which provisions of foreign law that the forum's legal system considers wholly unacceptable may be applied. The requirement of a manifest incompatibility, as set out in the Regulation, may thus be interpreted to mean that the public policy exception cannot be invoked merely on the basis of a divergence in the substantive rules governing the matter at issue.[53] The mere absence of a particular legal institution in the domestic legal order should not, in itself, constitute sufficient grounds for the activation of the public policy exception.

Indeed, public policy represents an open-ended legal concept, the content of which is determined by national legal systems on a case-by-case basis. It ensures legal certainty within the domestic context, yet lacks any universally accepted or uniform definition at either the Union or Member State level.[54] Some scholars propose an analytically nuanced distinction between two dimensions of the public policy exception – the outer and the inner limit. The outer limit encompasses the fundamental principles of the State, such as human dignity and other constitutionally protected rights, representing the core axiological foundations of the legal order. The inner limit, by contrast, pertains to the social and normative structure of the

49 Art. 35 of the Succession Regulation.
50 Csach, Gregová Širicová and Júdová, 2018, pp. 59–60.
51 Rozehnalová et al., 2017, p. 178.
52 Moravcová, 2023.
53 Contaldi and Grieco, 2016.
54 Akkermans, 2019.

legal system, encompassing, *inter alia*, rules of procedural law, property law, and succession law.[55]

It is our view that, in the application of the Regulation, due regard must be given to the degree of cooperation achieved among the Member States, while also recognising the necessity to consider the objectives pursued by the Succession Regulation itself. Therefore, a careful balance must be sought between supranational objectives and national procedural autonomy. This implies that national law must, in certain instances, give way to European law; yet, at the same time, the application of domestic law should, where feasible, be adapted in such a manner as to better serve the attainment of the common objective.[56]

Under what circumstances, then, may the public policy exception be invoked? Based on the French approach and comparative analysis, it may apply in cases where foreign law grants a privilege of primogeniture, affords advantages to male heirs, or conditions the capacity to inherit on belonging to a particular religion. More broadly, the exception may be activated whenever a foreign law introduces discriminatory conditions based on illegitimate grounds, such as race, religion, or similar criteria.[57] Such situations directly engage fundamental human rights guarantees – particularly the prohibition of discrimination – that follow from numerous international human rights instruments as well as from the Charter of Fundamental Rights of the European Union – a part of the EU's primary law standing at the apex of the Union's legal order.

In the context of the present discussion, Professor Etienne Pataut notes that the public policy exception is frequently invoked in several Member States in relation to succession agreements and the protection of the reserved portion of an estate, yet it is rarely applied against legal systems that do not recognise these institutions. With regard to the reserved portion, the absence of a conflict with public policy has been explicitly confirmed in Germany, Greece, and Portugal. In France, only a few judicial decisions address this matter; however, the Cour de cassation appears never to have considered a foreign law that disregards the reserved portion as contrary to public policy, even when such a law operated to the detriment of a French heir.[58] A comprehensive analysis of French case law further led one scholar to conclude that a foreign legal system that does not recognise the reserved portion of the estate cannot be deemed incompatible with French public policy.[59]

However, the Regulation itself, in its preambular part, explicitly states that:

55 Asser-Vonken, pp. 404–405, cited in Ibid.
56 Akkermans, 2019.
57 Pataut, 2010.
58 Ibid.
59 Billarant, 2004, cited in Ibid.

> *'The law which, under this Regulation, will govern the admissibility and substantive validity of a disposition of property upon death and, as regards agreements as to succession, the binding effects of such an agreement as between the parties, should be without prejudice to the rights of any person who, under the law applicable to the succession, has a right to a reserved share or another right of which he cannot be deprived by the person whose estate is involved.'*[60]

Pataut points out that the public policy exception has also been invoked in connection with succession agreements; however, in France, such agreements are no longer regarded as incompatible with international public policy.[61] He further observes that the very wording of the Regulation governing succession agreements excludes, in principle, the possibility of activating the public policy exception solely on the basis of their existence or validity.[62] From our perspective, it is clear that any reliance on protective mechanisms such as *ordre public* must be interpreted strictly and applied only in exceptional circumstances. Consequently, within the intra-Union framework governed by the Regulation, the mere absence of the institution of a succession agreement in the domestic legal order should not, *per se*, constitute grounds for invoking public policy. Activation of this mechanism would require the presence of an additional element that genuinely infringes the fundamental principles of the forum, for instance, a violation of the Charter of Fundamental Rights of the European Union or of the core constitutional values of the Member State.

This leads to the conclusion that the sole remaining context wherein the public policy exception may plausibly come into play in succession matters concerns the protection of the reserved portion of an estate, and only in situations where the application of foreign law would result in a manifest breach of fundamental rights or principles of justice recognised within the European legal order.[63]

5.
Concluding Remarks

This article has addressed agreements as to succession from the standpoint of the Slovak legal order, which, under its current civil law framework, does not recognise the category of *mortis causa* disposition. The introductory part of the paper traced the historical evolution of the institution within Slovak succession law, from its

60 Recital 50 of the preamble to the Succession Regulation.
61 Revillard, cited in Pataut, 2010.
62 Pataut, 2010.
63 Ibid.

early codified manifestations to the present state, which, while firmly upholding the principle of testamentary freedom, excludes contractual arrangements concerning future inheritance. The forthcoming recodification of the Slovak Civil Code, long in preparation, is expected to reintroduce this legal instrument into the national system.

Notwithstanding its absence in domestic legislation, the practical significance of succession agreements is increasing, particularly in view of cross-border successions governed by the Succession Regulation. Therefore, Slovak judicial and administrative authorities may be called upon to adjudicate upon such instruments concluded under a foreign law that permits them, thereby engaging issues of recognition and compatibility with domestic public policy. The omission of succession agreements in Slovak law reflects the traditional doctrinal adherence to testamentary freedom, ensuring the testator's unrestricted power to dispose of their property until death. Nevertheless, private international law provides mechanisms for correcting or limiting the effects of foreign law, among which the public policy exception, *ordre public*, occupies a central place.

The analysis presented herein leads to the conclusion that, although the scope of the public policy clause is not expressly circumscribed, the mere absence of a national legislative framework governing succession agreements cannot, *per se*, justify its invocation. Given that the Succession Regulation expressly envisages such instruments, and that comparable mechanisms exist in the legal systems of neighbouring Member States, Slovak authorities appear to have only a very limited basis for relying on public policy in this regard.

It remains to be seen how the Court of Justice of the European Union will progressively delineate the contours of the public policy exception under the Succession Regulation. Ultimately, the anticipated recodification of the Slovak Civil Code and the inclusion of succession agreements into its substantive provisions would not only align Slovak succession law with that of other European jurisdictions but would also render the debate on *ordre public* and the absence of domestic regulation in this field largely obsolete.

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