

THE NOTARIES' ROLE AND DUTIES REGARDING CERTAIN CROSS-BORDER RELATIONSHIPS IN THE FIELD OF SUCCESSION LAW

Abstract:

The new inheritance law in Bosnia and Herzegovina (B&H) has put in hands of public notaries the important tasks in the field of substantive and procedural inheritance law. The paper is premised on the understanding that the public notaries will, in the course of their work, confront the issues of private international law (determination of the applicable law, familiarizing with the content and application of the foreign law determined by the conflict law rules, international jurisdiction, etc.). The paper states that the aforementioned requires excellent knowledge of private international law.

The paper critically assesses the conflict of law rules in inheritance matters as well as the impossibility of choice of law in this field. A special focus has been put on the competences and duties of the public notary while the notarisation of some legal acts (a will, a life care contract, a contract on the division and transfer of the property during the life of a deceased). The author emphasizes interesting questions regarding the inheritance contract and the role of a public notary in the succession proceedings without the analysis in-depth due to the limitations of the paper.

The paper states that the private international law in B&H does not meet the modern trends regarding the inheritance relations with the foreign element in the three parts: in the definition of the connecting factors (statehood), the imperative ascertainment of the relevant connecting factor with the moment of the deceased death, and the lack of possibility for the testator to determine the applicable law. The aforementioned problems require reform of this private international law regarding the succession with the foreign element. The comparative analysis demonstrates that B&H do not follow the trends in the contemporary private international law in the EU and the region.