

## Newsletter

*PA Private Clients, Trusts and Estates*

The decision of the German Federal Court of Justice of 29 June 2022, IV ZR 110/21

### **The right to a reserved share as a limit to the application of foreign succession law**

On June 2022, the German Federal Court of Justice, confirming the decision of the Higher Regional Court of Cologne, clarified that the foreign law chosen by a deceased to govern his succession pursuant to the EU Succession Regulation No. 650/2012 (hereinafter, the “**Regulation 650**”) is not applicable if it does not comply with German forced heirship rules.

In particular, the decision refers to the succession of a British citizen, who expressly elected by will the English law as the law governing his succession and died with habitual residence in Germany. Under such will, the testator disinherited his son. The son of the testator claimed before the German Court his right to a reserved share of the deceased’s estate. The Court held that English law would not apply despite the testator’s choice of law, since it would not afford an adequate right to a compulsory share and this would constitute a violation of German public order.

According to Regulation 650, the succession law selected by the testator must not be manifestly incompatible with the public policy of the forum. Under German law, certain family members of the testator, including the children, are entitled to receive a portion of the inheritance assets irrespective of financial resources and needs, irrespective of the provisions included under the relevant will. On the contrary, English law does not provide for a corresponding right of forced heirs to a reserved share of the inheritance assets.

In the case at hand, the German Court expressly stated that (i) the entitlement to a reserved share is part of the German public policy, (ii) English law does not recognise the right to such reserved share thus violating German public policy and, therefore, (iii) English law shall not apply even though it has been selected by the deceased as succession governing law. More in

detail, the German Court referred to the guarantee of inheritance rights provided by Article 14, paragraph 1 sentence 1, and Article 6, paragraph 1, of the Basic Law of the Federal Republic of Germany (*Grundgesetz*), which grants children the right to a minimum share in their parents' estate, not depending on their financial resources and needs. On the basis of the above, the right of children to a reserved share (as a constitutional right) represents a general limit to the power of the testator to disinherit his heirs and is part of German public policy.

In addition, the German Court provided a further requirement for the non-application of foreign law to the succession at hand, namely the strong domestic connection of the case. In order to exclude the application of the English law as governing law of the succession, the Court took into account that both the testator and the claimant of the reserved share have been residing in Germany for a long time, the estate was located in Germany and the claimant was a German citizen.

## **The application of foreign succession law from an Italian law perspective**

The decision of the German Federal Court of Justice is particularly relevant as it expressly recognizes the protection of forced heirs' rights as a principle of German public policy principles. Furthermore, the Court has clarified that in order to refuse the application of a foreign law to a succession is also necessary that the case appears manifestly closely connected with the domestic law. Unfortunately, the German Court does not clarify which are the limits of such domestic connection.

The decision in question is also particularly relevant from an Italian law perspective, since also Italian law provides forced heirship rules; accordingly as per Article 35 of the Regulation 650, the application of foreign law to a succession may also be denied by Italian Courts should such foreign law be manifestly incompatible with "Italian public order principles".

However, to date the Italian Supreme Court has excluded that the forced heirs' rights fall under the Italian public policy principles, also considering that the Italian Constitution does not make any reference to forced heirs' rights (*inter alia*, Italian Supreme Court, 24 June 1996 No. 5832; Italian Supreme Court, 30 June 2014 No. 14811).

---

## Contacts

### **Giovanni Cristofaro**

Partner – Chiomenti  
*Private Clients, Trusts and Estates*  
T. +39.06.46622.708  
giovanni.cristofaro@chiomenti.net

### **Camilla Culiarsi**

Senior Associate – Chiomenti  
*Private Clients, Trusts and Estates*  
T. +39.06.46622.275  
camilla.culiarsi@chiomenti.net

### **Gian Gualberto Morgigni**

Senior Associate – Chiomenti  
*Private Clients, Trusts and Estates*  
T. +39.02.72157.879  
giangualberto.morgigni@chiomenti.net

### **Lucia Garruba**

Associate – Chiomenti  
*Private Clients, Trusts and Estates*  
T. +39.06.466.221  
lucia.garruba@chiomenti.net

---

*For any additional requests, please contact your contact person in Chiomenti at  
[pa.privateclienttrusts@chiomenti.net](mailto:pa.privateclienttrusts@chiomenti.net)*