

Succession law and jurisdiction of the courts:
last habitual residence and other criteria

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I. Preliminary points

- Current private international law
 - Succession law and real property
 - Succession law and movable property
 - Jurisdiction of the courts
- Changes implemented by the Regulation

II. Main criterion of last habitual residence

- Article 4 (general jurisdiction) and article 21,1 (succession law)
- Unity sought by these general rules
- No definition of this notion of last habitual residence in the Regulation
- But guidance provided by the Recitals (23 to 25)
- Comparison with concept of « domicile » currently used in private international law

III. Alternative criteria used for determining the succession law

- The escape clause of article 21.2 (« deceased manifestly more closely connected with another State ») and its potential impact on the successions of French individuals living in the UK
- The choice made by the deceased himself (professio juris under article 22)

IV. Alternative criteria used for determining the jurisdiction of the courts

1. In the event of a choice of the law of a Member State, jurisdiction of the courts of that Member state :

- Upon the decision of the parties to the proceedings (article 5)
- When these courts are better placed to rule on the succession (article 6a)
- When the parties have accepted the jurisdiction of these courts (article 6b)

2. Subsidiary jurisdiction of the courts of a Member state in which some assets are located, despite the fact that the deceased was not habitually resident in that Member State:

- To rule on succession as a whole if deceased had the nationality of that State or had his previous habitual residence less than 5 years before the court was seised.

Again, potential importance of this provision for French individuals living in the UK.

- If not, to rule only on the assets located in this Member State.

3. Other particular circumstances determining the jurisdiction of the courts

- Forum necessitatis (article 11), on an exceptional basis and if there is sufficient connection with the case
- Limitation of proceedings (article 12) in relation to assets located in a third State
- Closing of proceedings in the case of an out of court settlement (article 8)

Conclusion

- Current difficulties met to advise clients in cross-border situations, because of the existing uncertainties pending the application of the Regulation, for instance as far as the status of the UK is concerned (Member State or third State)
- But choice of law clauses already included in wills
- Potential effect, in Anglo-French successions, of the escape clause of article 21.2 (succession law) and of the provision relating to the subsidiary jurisdiction of the courts (article 10)