



Training of lawyers on EU Civil Law (TRADICIL)

Albert Domingo

European certificate of succession

Barcelona, 20 February 2026



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Opening Introduction

- Good morning, everyone
- Welcome to today's session on the European Certificate of Succession
- Thank you for being here

Topic of the Presentation

- The European Certificate of Succession
- Regulation (EU) No 650/2012
- Practical and legal implications

Table of Contents

- I. Introductory section
- II. The European Certificate of Succession

PART I – INTRODUCTORY SECTION

Regulation Governing the Certificate

Legal Framework

- **Articles 62–73 of Regulation (EU) No 650/2012**

Applicable since: 17 August 2015

- **Annex 5 as Form V established by Commission Implementing Regulation (EU) No 1329/2014**

Applicable from: 1 February 2015

Objective of the Regulation

- Harmonization of succession law within the EU
- Addresses:
 - Conflict of laws
 - Jurisdiction
 - Mutual recognition
 - European Certificate of Succession

Scope of Application

- Successions with a **cross-border element**
- Applicable in all EU Member States **except Denmark and Ireland**
- **Universal application:** it may designate the law of a non-Member State

Legal nature

Applies in all Member States to:

- EU nationals
- Nationals of third States

Article 20:

- Mandatory
- Entire
- Directly applicable

Applicable even if the law designated is not that of a Member State

Applicable Law

- General rule: Article 21
- Exception: Article 21(2)
- Choice of law (*Professio iuris*): Article 22

General Rule: Habitual Residence (art. 21)

- Law of the State of habitual residence at death
- Applies to the succession as a whole
- Autonomous EU concept
- Interpreted uniformly by the CJEU

Habitual Residence – Key Criteria

Overall assessment of factual circumstances:

- Duration and regularity of stay
- Reasons for presence
- Family and social ties
- Economic activity
- Location of main assets
- Degree of integration

Non-Decisive Factors

- Registration with population register
 - Nationality
 - Tax registration
 - Mere ownership of a dwelling
- What matters: **factual reality, not legal appearance**

Exception Clause (Art. 21(2))

- Applies when there is a **manifestly closer connection** with another State
- Must be:
 - Clear
 - Strong
 - Unequivocal
- Applied restrictively and exceptionally

Examples (Art. 21(2))


- Spanish national temporarily in Switzerland → Spanish law
- Italian national temporarily in Abu Dhabi → Italian law

Habitual residence is not corrected just because it is inconvenient

Choice of Law – Professio Iuris

- Article 22
- Choice of law of nationality
- At time of choice or death
- Multiple nationalities: choice of any
- Binding unless a new choice is made

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PART II – EUROPEAN CERTIFICATE OF SUCCESSION

Purpose of the Certificate (Art. 63)

Proof of:

- Status and rights of heirs and legatees
- Attribution of assets
- Powers of executors or administrators

Mandatory or Optional ?

- Not mandatory
- Does not replace national documents
- Produces effects once issued (Art. 69)

Competent Authority: Who Issues the Certificate? (Art. 64)

- Member State with jurisdiction
- Issuing authority:
 - Court, or
 - Other competent authority under national law

Spain: Competent Authorities

- **Judicial authority:**
 - Contentious succession
 - Litigation or disputes
 - **Notary:**
 - Non-contentious succession
 - No disputes
- Both must use Article 67 form

Notary vs Court

- **Spanish notary:**
 - Voluntary jurisdiction
 - No dispute resolution
 - Not a “court” under Art. 3(2)
- **Notary in some Member States:**
 - Notaries may qualify as courts
 - Judicial functions + control

Applicants (Art. 65.1)

- Heirs
- Legatees
- Executors of wills
- Administrators of the estate

Official Application Form

- Art. 65(2): use of form
- Implementing Regulation 1329/2014
- Annex 4 – Form IV

Mandatory use in practice

Application Content (Art. 65.3)

- Deceased and applicant details
- Beneficiaries
- Purpose of the Certificate
- Legal basis of entitlement
- Declarations on disputes
- Relevant additional information

Authority's Action (Art. 66)

Upon Receiving the Application

- Verification of documents
- Additional inquiries
- Declarations under oath
- Information of beneficiaries
- Requests to other Member States

Issuing the Certificate

Issuance (Art. 67)

- Without delay
- Form V (Annex 5)
- Beneficiaries informed

Certificate Content (Art. 68)

- Issuing authority
- Applicant and beneficiaries
- Applicable law
- Rights and shares
- Powers and limitations

Refusal

Refusal to Issue (Art. 67)

- Certified elements are challenged
- Incompatibility with an existing decision

Effects (Art. 69)

- No special procedure required
- Effects in all Member States
- Automatic evidential value

Protection (Art. 69.3 & 69.4)

- Presumption of good faith
- Protection of:
 - Third parties
 - Recipients of assets
- Exception:
 - Knowledge of falsity
 - Serious negligence

Registration

- Valid title for registration
- Subject to:
 - Rights in rem
 - National registration rules

Why the Original Is Retained ? (Art. 70)

- Authenticity
- Control of copies
- Correction or withdrawal
- Protection of third parties

Articles 70, 71 & 73

System Functioning

- Article 70: circulation control
 - Article 71: legal remedies
 - Article 73: legal effects
- Legal certainty and traceability

Validity of Copies (Art. 70.3)

- Valid for 6 months
- Expiry date required
- Original does not expire

Expiry Date

Why an Expiry Date?

- Up-to-date information
- Authority control
- Protection of third parties

Conclusions

- Uniform EU instrument
- Legal certainty
- Protection of heirs and third parties
- Efficient cross-border succession management

FINAL IDEAS

- **The European Certificate of Succession** is a document created by **Regulation (EU) No 650/2012** which makes it possible to prove a succession with **cross-border effects within the European Union**.
- **The European Certificate of Succession** is a **uniform evidentiary instrument** designed to facilitate **cross-border successions**, ensuring **legal certainty, efficiency and the protection of third parties** within the European Union.



Training of lawyers on EU Civil Law (TRADICIL)

Marta Kuligowska

Regulation (EU) No 650/2012, Jurisdiction

Barcelona, 20 February 2026



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Legal Framework

- **EU Succession Regulation (EU 650/2012)**
- known as Brussels IV
- adopted 4 July 201
- applicable since 17 August 2015
- applies in most EU Member States (except Denmark and Ireland opt-outs)
- cross-border successions within the EU
- introduced with the aim of unifying succession laws across EU member states
- establishes uniform rules on jurisdiction, applicable law, recognition

Article 4

General jurisdiction

- The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.

Article 4

General jurisdiction

- Courts of the Member State of the deceased's habitual residence
- jurisdiction covers entire succession
- single forum principle

Article 4

General jurisdiction

- Problems:
 - a) No legal definition of habitual residence
 - b) preamble 23-25
 - c) Conflict with a third state possible

Preamble 23

- In view of the increasing mobility of citizens and in order to ensure the proper administration of justice within the Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised, this Regulation should provide that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the habitual residence of the deceased at the time of death.
- In order to determine the habitual residence, the authority dealing with the succession should make an overall assessment of the circumstances of the life of the deceased during the years preceding his death and at the time of his death, taking account of all relevant factual elements, in particular the duration and regularity of the deceased's presence in the State concerned and the conditions and reasons for that presence. The habitual residence thus determined should reveal a close and stable connection with the State concerned taking into account the specific aims of this Regulation.

Habitual Residence of the deceased at the time of death

- Autonomous EU concept
- general connecting factor for the purposes of determining both jurisdiction and the applicable law (preamble 23)
- Assessment at time of death
- Factors: duration, stability, family & social ties
- Case-by-case analysis

Habitual residence (preamble 24)

- In certain cases, determining the deceased's habitual residence may prove complex

Habitual residence (preamble 24) 1/2

- „Such a case may arise, in particular, where the deceased for professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a close and stable connection with his State of origin. In such a case, the deceased could, depending on the circumstances of the case, be considered still to have his habitual residence in his State of origin in which the centre of interests of his family and his social life was located.”

Habitual residence (preamble 24) 1/2

- Case:

- a) Working abroad, even for a long time;

- b) Close and stable connection with the State of origin.

- Factors deciding on habitual residence:

- a) the centre of interests of the family of the deceased;

- b) his social life.

Habitual residence (preamble 24) 2/2

- Other complex cases may arise where the deceased lived in several States alternately or travelled from one State to another without settling permanently in any of them. If the deceased was a national of one of those States or had all his main assets in one of those States, his nationality or the location of those assets could be a special factor in the overall assessment of all the factual circumstances.

Habitual residence (preamble 24) 2/2

- Case:

- a) lived in several States alternately,
- b) travelled without settling permanently.

- Factors deciding on habitual residence:

- a) his nationality (if was of one of those States);
- b) the location of his assets (if they were based in one of those States).

Habitual residence (preamble 25)

- With regard to the determination of the law applicable to the succession the authority dealing with the succession may in exceptional cases – where, for instance, the deceased had moved to the State of his habitual residence fairly recently before his death and all the circumstances of the case indicate that he was manifestly more closely connected with another State – arrive at the conclusion that the law applicable to the succession should not be the law of the State of the habitual residence of the deceased but rather the law of the State with which the deceased was manifestly more closely connected.
- That manifestly closest connection should, however, not be resorted to as a subsidiary connecting factor whenever the determination of the habitual residence of the deceased at the time of death proves complex.

Habitual residence (preamble 25)

- Case:

- a) the deceased had moved to the State of his habitual residence fairly recently before his death

- b) he was manifestly more closely connected with another State

- Factors deciding on habitual residence:

- a) Close connection with another State.

Article 22

Choice of law

- 1. A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.
- A person possessing multiple nationalities may choose the law of any of the States whose nationality he possesses at the time of making the choice or at the time of death.
- 2. The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition.
- 3. The substantive validity of the act whereby the choice of law was made shall be governed by the chosen law.
- 4. Any modification or revocation of the choice of law shall meet the requirements as to form for the modification or revocation of a disposition of property upon death.

Article 5

Choice of court agreement

- 1. Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction to rule on any succession matter.
- 2. Such a choice-of-court agreement shall be expressed in writing, dated and signed by the parties concerned. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

Article 5

Choice of court agreement

- Conditions:

- a) Choice of law made
- b) Law of EU member state chosen
- c) Parties concerned agreed

- Character:

- a) Exclusive jurisdiction
- b) All parties concerned have to agree or
- c) The other parties' rights to the succession not affected

Article 5

Choice of court agreement

- Function:

- a) Same law, same court

- b) Preamble 27: 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.

Problem:

- a) one of party concerned disagrees = no prorogation

Article 6

Declining of jurisdiction in the event of a choice of law

- Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the court seised pursuant to Article 4 or Article 10:
 - (a) may, at the request of one of the parties to the proceedings, decline jurisdiction if it considers that the courts of the Member State of the chosen law are better placed to rule on the succession, taking into account the practical circumstances of the succession, such as the habitual residence of the parties and the location of the assets; or
 - (b) shall decline jurisdiction if the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of the Member State of the chosen law.

Article 6

Declining of jurisdiction in the event of a choice of law

- Declining jurisdiction – optional:

- a) Choice of law made

- b) Request of 1 party

- c) courts of the Member State of the chosen law are better placed

- Declining jurisdiction – obligatory:

- a) Choice of law made

- b) Choice of court agreement (article 5) made

Article 7

Jurisdiction in the event of a choice of law

- The courts of a Member State whose law had been chosen by the deceased pursuant to Article 22 shall have jurisdiction to rule on the succession if:
 - (a) a court previously seised has declined jurisdiction in the same case pursuant to Article 6;
 - (b) the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of that Member State; or
 - (c) the parties to the proceedings have expressly accepted the jurisdiction of the court seised.

Article 7

Jurisdiction in the event of a choice of law

- Conditions:

- a) The choice of law made;
- b) Choice of court agreement made;
- c) previous court declined jurisdiction (art. 6);
- d) Express acceptance of parties.

Article 8

Closing of own-motion proceedings in the event of a choice of law

- A court which has opened succession proceedings of its own motion under Article 4 or Article 10 shall close the proceedings if the parties to the proceedings have agreed to settle the succession amicably out of court in the Member State whose law had been chosen by the deceased pursuant to Article 22.

Article 8

Closing of own-motion proceedings in the event of a choice of law

- Choice of law made = another court closing its proceedings

Article 9

Jurisdiction based on appearance

1. Where, in the course of proceedings before a court of a Member State exercising jurisdiction pursuant to Article 7, it appears that not all the parties to those proceedings were party to the choice-of-court agreement, the court shall continue to exercise jurisdiction if the parties to the proceedings who were not party to the agreement enter an appearance without contesting the jurisdiction of the court.

Article 9

Jurisdiction based on appearance

2. If the jurisdiction of the court referred to in paragraph 1 is contested by parties to the proceedings who were not party to the agreement, the court shall decline jurisdiction.

In that event, jurisdiction to rule on the succession shall lie with the courts having jurisdiction pursuant to Article 4 or Article 10.

Article 9

Jurisdiction based on appearance

- Court continues jurisdiction if:
 - a) Choice of court made
 - b) not all the parties to those proceedings were party to the CoC agreement
 - c) BUT: THEY enter an appearance without contesting the jurisdiction of the court

Article 9

Jurisdiction made on appearance

- Court declines jurisdiction if:
 - a) Choice of court made
 - b) not all the parties to those proceedings were party to the CoC agreement
 - c) They contest the agreement
- Jurisdiction art. 4 or 10.

Article 10

Subsidiary jurisdiction

1. Where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as:

(a) the deceased had the nationality of that Member State at the time of death; or, failing that,

(b) the deceased had his previous habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed.

Article 10

Subsidiary jurisdiction

2. Where no court in a Member State has jurisdiction pursuant to paragraph 1, the courts of the Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on those assets.

Article 10

Subsidiary jurisdiction

Subsidiary jurisdiction on whole succession:

- No habitual residence in a Member State,
- Assets located in a Member State,
- Nationality of a Member State,
- Previous habitual residence in a MS no more than 5 years before death.

Article 10

Subsidiary jurisdiction

Subsidiary jurisdiction on assets located in a Member State:

- a) No habitual residence in a Member State,
- b) Assets located in a Member State.

Article 11

Forum necessitatis

Where no court of a Member State has jurisdiction pursuant to other provisions of this Regulation, the courts of a Member State may, on an exceptional basis, rule on the succession if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected.

The case must have a sufficient connection with the Member State of the court seised.

Article 11

Forum necessitatis

- Exceptional jurisdiction
 - a) when proceedings impossible in third State, cannot reasonably be brought or conducted;
 - b) sufficient connection required,
 - c) applied restrictively.

Article 12

Limitation of proceedings

- 1. Where the estate of the deceased comprises assets located in a third State, the court seised to rule on the succession may, at the request of one of the parties, decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third State.
- 2. Paragraph 1 shall not affect the right of the parties to limit the scope of the proceedings under the law of the Member State of the court seised.

Article 12

Limitation of proceedings

- court may decide not to rule on one or more of assets in a third State:
 - a) at the request of 1 party,
 - b) its decision will not be recognized/declared enforceable in that third State

Article 13

Acceptance or waiver of the succession, of a legacy or of a reserved share

- In addition to the court having jurisdiction to rule on the succession pursuant to this Regulation, the courts of the Member State of the habitual residence of any person who, under the law applicable to the succession, may make, before a court, a declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person concerned in respect of the liabilities under the succession, shall have jurisdiction to receive such declarations where, under the law of that Member State, such declarations may be made before a court.

Article 13

Acceptance or waiver of the succession, of a legacy or of a reserved share

- acceptance or waiver of the succession/legacy/reserved share:

- a) court of habitual residence of the person making that declaration.

Article 14

Seising of the court

For the purposes of this Chapter, a court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the defendant;
- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court; or
- (c) if the proceedings are opened of the court's own motion, at the time when the decision to open the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.

Article 14

Seising of the court

- Seising of the court:

a) when document instituting the proceedings is lodged;

b) when it is received by the authority responsible for service;

c) when the decision to open the proceedings is taken/case is registered.

Article 15

Examination as to jurisdiction

Where a court of a Member State is seised of a succession matter over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 15

Examination as to jurisdiction

- The court has to check if it has jurisdiction!

Article 16

Examination as to admissibility

1. Where a defendant habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court having jurisdiction shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in time to arrange for his defence, or that all necessary steps have been taken to that end.

Article 16

Examination as to admissibility

- Court stays the proceedings:

- a) habitual residence of a defendant in a third state
- b) no appearance
- c) has to ensure that the defendant was able to receive the document to arrange their defence.

Article 17

Lis pendens

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 17

Lis pendens

- Court stays its proceedings:
 - a) proceedings involving the same cause of action and between the same parties are already brought;
 - b) it's not the first court seised;
 - c) has to wait for the jurisdiction of the first court seised to be established.

Article 18

Related actions

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.
2. Where those actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.
3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable decisions resulting from separate proceedings.

Article 18

Related actions

- Court may stay its proceedings:
 - a) Related actions pending,
 - b) It's not first court seised.

- to avoid the risk of irreconcilable decisions resulting from separate proceedings.

Article 18

Related actions

- Court may decline jurisdiction:
 - a) Related actions pending at first instance,
 - b) it's not first court seised,
 - c) On the application of 1 party
 - d) The court first seised has jurisdiction and law permits consolidation.

Article 19

Provisional, including protective, measures

- Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

Article 19

Provisional, including protective, measures

- provisional, including protective, measures can be taken even in lack of jurisdiction

Practical problems concerning habitual residence

- Deceased was a seasonal employee in Germany, has house and family in Poland
- Deceased was a retired person with a house in Spain, spending winter in Spain and summer in Czechia
- Deceased moved from France to Italy 3 months before death.

Other practical problems

- Lack of agreement of all the parties concerned (art. 5) => One person blocks the court of choice agreement
- Deceased lived in Poland, but had a house in the US => Polish court has jurisdiction on whole succession, but its ruling may be not recognised by the court in the US

Other practical problems

- Deceased had no habitual residence in the Member State, but had several houses in different Member States => every Member State has jurisdiction limited to the assets located on its territory
- Forum necessitatis => how to determine, whether proceedings „cannot reasonably be conducted“?

Other practical problems

- Art. 13 different deadlines for waiving of succession in every country
- Art. 10 How substantial should be the assets one left? Is there any difference between a bank account with 1000 euro and e.g. a horse?



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Ariadna Ribés i Romeu

Applicable law

Barcelona, 20 February 2026



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Stating the Obvious:

0. “You can’t take it with you when you go”
1. **Succession law is one of the areas with the greatest variation between legal systems**
2. **Cross-border successions are increasingly the rule, not the exception**
3. **Harmonising succession laws across jurisdictions is highly challenging, if not unrealistic**

2026

The number of foreign nationals living in Catalonia accounts for 19.3% of the population.

According to data from Spain's National Statistics Institute (INE) as of January 1, 2026, there are now 1.58 million foreign nationals living in Catalonia, almost one in five people.

Foreign residents in Barcelona exceed 25%

Source: Catalan News


Expats

Digital Nomads

Erasmus Couples

Retirees

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TEMPORAL SCOPE:

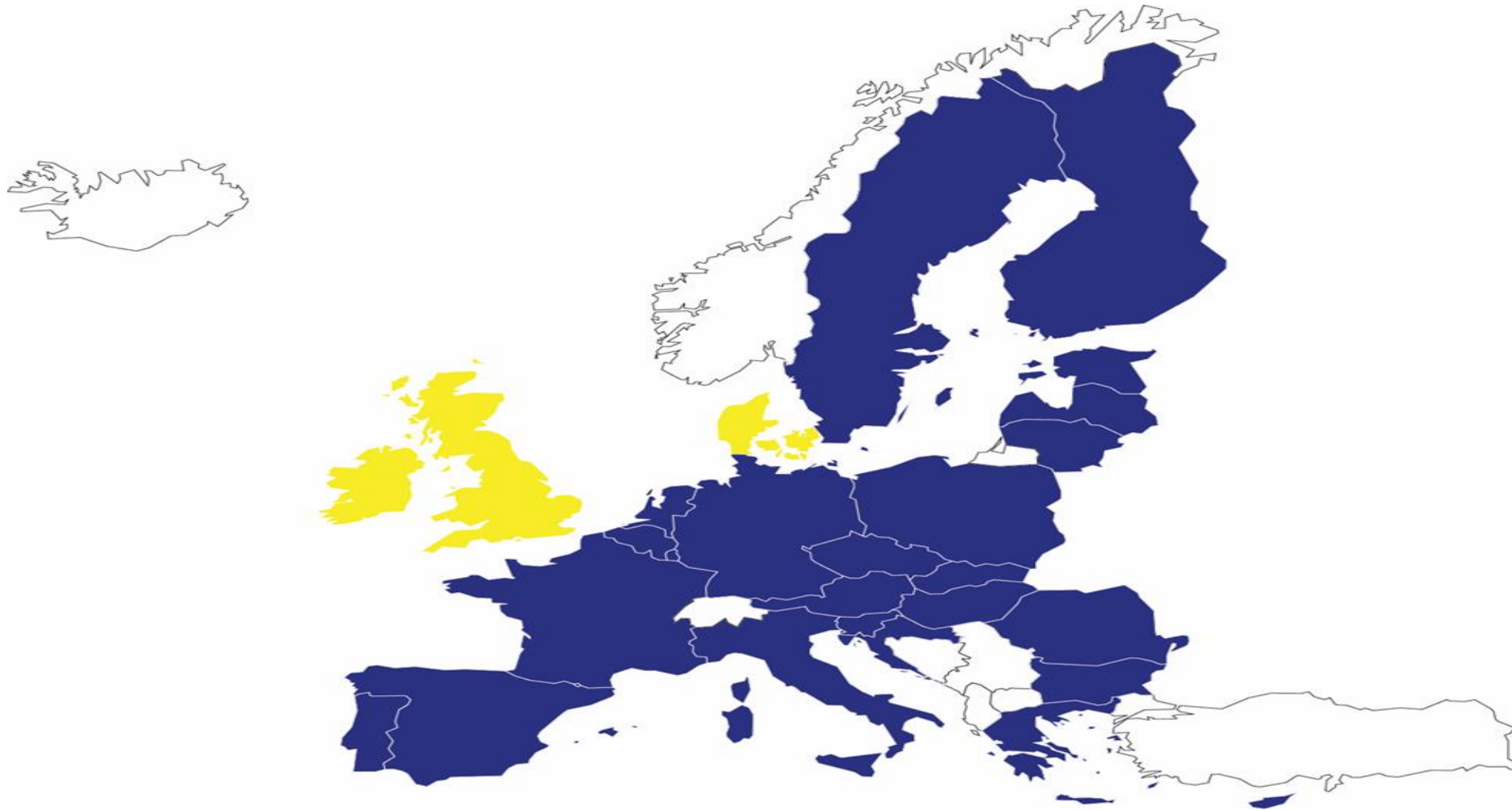
17.8.2015

TERRITORIAL SCOPE:

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Succession Regulation: MAIN PRINCIPLES

Limited unification – **Cross-border** – Private International Law

- **Personalist** conception of succession (habitual residence, nationality...)
- **Unity**: one authority (broad meaning), one law
- **Universality**: one authority for all, one law for all (art. 4, 10.1; 21, 22.1, 23.1)
- **Correlation *forum/ius***: one authority, applying its own law (Recital 27)

- **Is the Succession Regulation (SR) applicable to the succession of a deceased Spanish national (with Catalan “vecindad civil”), habitual residence in Barcelona, who owned, among other assets, a house in Montpellier (France)? What if he/she owned only a bank account there?**
- **The deceased spent long periods at the house located in Montpellier. Can it be considered that she had two habitual residences?**

“The last habitual residence of the deceased, within the meaning of that regulation, must be established by the authority dealing with the succession **in only one of those Member States**”.

CJEU 16.7.2020, Case C-80/19, *E.E.*

APPLICABLE LAW: MAIN PRINCIPLES

- **Universal application:** “*any law specified by this Regulation shall be applied whether or not it is the law of a Member State*” (art. 20).
- **Unity of the applicable law:** a single law applies to the entire succession of a deceased person, regardless of the nature or location of the assets (r. 37, art. 21.1, 23.1 “*succession as a whole*”)
- **Personal connections:** *professio iuris*, habitual residence (“*vecindad civil*” - civil residence in Spain)

APPLICABLE LAW

“SUCCESSION AS A WHOLE”: SCOPE (art. 23 SR)

The law determined pursuant to Article 21 or Article 22 shall govern the **succession as a whole**.

In particular:

- The causes, time, and place of the opening of the succession
- The determination of the beneficiaries and their shares and succession rights, including those of the surviving spouse or partner
- The determination of obligations imposed by the deceased on the beneficiaries
- Capacity to inherit, disinheritance, and disqualification by conduct
- The transfer of assets, rights, and obligations forming part of the estate
- The conditions and effects of the acceptance or waiver of the succession or of a legacy
- The powers of heirs, executors of the will and other administrators of the estate
- Liability for the debts under the succession
- The disposable part of the estate, the reserved shares and other restrictions on the disposal of property upon death as well as claims which persons close to the deceased may have against the estate or the heirs
- Any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries
- Sharing-out of the estate

APPLICABLE LAW

“SUCCESSION AS A WHOLE”: EXCLUSIONS (art. 1)

1. *This Regulation shall apply to succession to the estates of deceased persons (...)*

2. *The following shall be **excluded** from the scope of this Regulation:*

d) questions relating to matrimonial property regimes and property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage; The determination of the beneficiaries and their shares and succession rights, including those of the surviving spouse or partner ...

g) property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts, joint ownership with a right of survivorship, pension plans, insurance contracts and arrangements of a similar nature, without prejudice to point (i) of Article 23(2); Capacity to inherit, disinheritance, and disqualification by conduct ...

*(k) the nature of rights *in rem**

APPLICABLE LAW

“SUCCESSION AS A WHOLE”: CONNECTING FACTORS

1. Choice of law (Art. 22): the testator may choose the law of the **state** of his nationality
2. General rule: law of the **state** of habitual residence of the deceased at the time of death (Art. 21.1 SR)
3. Escape clause: manifestly closer connections (Art. 21.2 SR)

1. Choice of Law (art. 22)

1. A person may choose as the law to govern his succession as a whole the law of the State whose **nationality** he possesses **at the time of making the choice or at the time of death**.

A person possessing **multiple nationalities** may choose the law of **any** of the States whose nationality he possesses at the time of making the choice or at the time of death.

2. The choice shall be made **expressly** in a declaration in the form of a disposition of property upon death or shall be **demonstrated by the terms of such a disposition**. **CJEU 16.7.2020, Case C-80/19, E.E.**

3. The substantive validity of the act whereby the choice of law was made shall be governed by the chosen law.

4. Any modification or revocation of the choice of law shall meet the requirements as to form for the modification or revocation of a disposition of property upon death.

2. General Connecting Factor: Habitual Residence (art. 21.1)

How habitual residence is to be determined? arts. 4 (forum) and 21.1 (ius) SR

Recitals 23, 24: “*genuine connecting factor... between the succession and the Member State in which jurisdiction is exercised*”

Aspects to consider:

- duration and regularity
- place where family, personal, or professional ties are established
- location of most of the deceased’s assets
- significance and use of those assets (*e.g.*, securities vs. residential home)
- reasons for residence (*e.g.*, medical or care-related vs. emotional)

3. Escape Clause: “Manifestly closer Connections” (Art. 21.2 SR)

*Where, by way of **exception**, it is clear from all the circumstances of the case that, at the time of death, the deceased was **manifestly more closely connected** with a State other than the State whose law would be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State.*

“Manifestly closer Connections”: Example



OTHER APPLICABLE LAW RULES

- Admissibility and substantive validity of dispositions of property upon death
 - Dispositions other than agreements as to succession (art. 24)
 - Agreements as to succession (art. 25)

- Formal validity
 - Dispositions made in writing (art. 27)
 - Declarations concerning acceptance or waiver (art. 28)

STATES WITH MORE THAN ONE LEGAL SYSTEM: TERRITORIAL CONFLICTS OF LAWS

Art 36 SR

*1. Where the law specified by this Regulation is that of a State which comprises several territorial units each of which **has its own rules of law in respect of succession**, the internal conflict-of-laws rules of that State shall determine the relevant territorial unit whose rules of law are to apply.*

(“INDIRECT REFERRAL”)

*2. In the **absence** of such internal conflict-of-laws rules:*

(a) ...the habitual residence of the deceased, be construed as referring to the law of the territorial unit in which the deceased had his habitual residence at the time of death;

(b) ...the nationality of the deceased, be construed as referring to the law of the territorial unit with which the deceased had the closest connection;

(c) ...other elements as connecting factors, be construed as referring to the law of the territorial unit in which the relevant element is located.

... (“DIRECT REFERRAL”)

TERRITORIAL CONFLICTS OF LAWS: SPAIN



Art. 38 SR

Non-application of this Regulation to internal conflicts of laws

A Member State which comprises several territorial units each of which has its own rules of law in respect of succession shall not be required to apply this Regulation to conflicts of laws arising between such units only.

>> Interregional law: Spanish Civil Code

TERRITORIAL CONFLICTS OF LAWS: SPAIN

Originally – Unity of the conflict-of-laws System: Spanish Civil Code

International cases: Nationality (Spanish national = civil residence [“vecindad civil”])

Interregional cases: Civil residence (“vecindad civil”)

Conventions and EU Regulations

Duality of systems: International conflicts v. Interregional conflicts

Duality of lawmakers: EU vs. State legislator

PROFESSIO IURIS

Art. 22: “Law of the State” = Spanish law?

Non-Spanish National with Spanish Ties

Case 1: Ms. Steiger, a German citizen who had been living in Lloret de Mar for the last 10 years. Her husband is Spanish, as well as her children who live in Malaga. Most of her assets are located in Andalusia.

- Is there a choice of law? Art. 22 SR
- ...otherwise: Art. 21.1 SR (General Rule) + Art. 36.2.a SR: CCCat (when the deceased is a foreign national, the applicable Spanish law is determined through “direct referral”)

Non-Spanish National with Spanish Ties

Case 2: Mr. Smith, an American citizen (from Boston), dies with habitual residence in Sagaró, with assets in Spain and in the United States. He makes a will and chooses U.S. law as the law governing his succession.

- Art. 22 + Art. 36.2.b SR (application of the law of the State of Massachusetts)

Case 3: Mr. Laurent has his social and family center of interests in Toulouse, but during the week he lives in Figueres (Catalonia), where he has been working for five years and where he is buying a house to settle with his family in four months. His wife is Catalan.

- Art. 21.1 SR (General Rule) = French Law
- Art. 21.2 SR + Art. 36.2.c SR = Catalan Law?



Training of lawyers on EU Civil Law (TRADICIL)

Anna M Vidal i Cardona

**Recognition and enforcement of decisions, and
acceptance and enforcement of authentic
instruments in matters of succession**

Barcelona, 20th February 2026



Co-funded by the European Union

RECOGNITION AND ENFORCEMENT OF DECISIONS, AND ACCEPTANCE AND ENFORCEMENT OF AUTHENTIC INSTRUMENTS IN MATTERS OF SUCCESSION

Importance of
the topic

What means recognition

What means exequatur

EU regulation
650/2012
concerning
successions:
inter partes

Other rules and
legal
instruments:

Applicable with third countries (not EU members states in the EU Regulation about successions)

International conventions


Domestic rules (in Spain LCJI)

Specific cases of
analysis:

successions involving Morocco citizen living in Spain

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What means recognition ?

- Judicial decision already made
- Constitutive effect
- Typicality effect

What means exequatur?

- **Enforceability**

EU REGULATION 650/2012 ABOUT SUCCESSIONS. RECOGNITION

DIRECT RECOGNITION

- *A decision given in a Member State shall be recognized in the other Member States without any special procedure being required (ART 39.1)*

PRINCIPAL RECOGNITION

- In case of opposition (art. 39.2) we have to use the proceeding of art 45-58. The same for enforceability
Grounds of non-recognition (art 40)

INCIDENTAL RECOGNITION

ART 39.3 : If the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question

For direct recognition we need

- Documents art 46 3 a) i b)
 - a) copy of the decision which satisfies the conditions necessary to establish its authenticity;
 - b) the attestation issued by the court or competent authority of the Member State of origin using the form established

For direct recognition we need

- that the following grounds
of non-recognition don't
exist

Grounds of non-recognition

- (art 40)
- manifestly contrary to **ordre public** in the Member State in which recognition is sought
- where it was **given in default of appearance**, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so
- is **irreconcilable** with a decision given in proceedings between the same parties in the Member State in which recognition is sought
- is **irreconcilable** with an **earlier decision** given in another Member State or in a third State in proceedings involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought
- **Under no circumstances may a decision given in a Member State be reviewed as to its substance.** (art 41)

EU REGULATION 650/2012 ABOUT SUCCESSIONS. ENFORCEABILITY

main elements of enforceability

- Established in art 45-58
- **Determination of domicile** (the court seized shall apply the internal law of that Member State)
- **Jurisdiction of local courts** “shall be submitted to the court or competent authority of the Member State of enforcement communicated by that Member State to the Commission in accordance with Article 78”
- **No postal address.** The applicant shall not be required to have a postal address or an authorised representative in the Member State of enforcement
- **Documents needed.** Art 46.3 a) and b)
- **Non-production of the attestation** (equivalent document or dispense) Art 47
- **Translation:** the court or authority can ask the translation done by a by a person qualified to do translations
- **Legal aid** (in cases of An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses)
- **No security, bond or deposit**
- **No charge, duty or fee**

EU REGULATION 650/2012 ABOUT SUCCESSIONS. ENFORCEABILITY

Requires a proceeding

- The UE regulation establishes the main elements of this proceeding
- The application procedure shall be governed by the law of the Member State of enforcement.

Direct effect

The decision shall be declared enforceable immediately on completion of the formalities in Article 46 without any review under Article 40. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Appeals

- 1) First instance
 - a) The decision on the application for a declaration of enforceability may be appealed against by either party
 - b) rules governing procedure in contradictory matters.
 - c) Delay for presentation
30 days or 60 days
- 2) Second appeal possible
The decision given on the appeal may be contested only by the procedure communicated by the Member State concerned to the Commission in accordance with Article 78.

Decisions

shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 40. It shall give its decision without delay.

EU REGULATION 650/2012 ABOUT SUCCESSIONS. AUTHENTIC DOCUMENTS

AUTHENTIC DOCUMENTS

An authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned.

VALIDITY

may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form established in accordance with the advisory procedure referred to in Article 81(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin

Any challenge relating to the authenticity of an authentic instrument shall be made before the courts of the Member State of origin and shall be decided upon under the law of that State

PROCEEDING

An authentic instrument which is enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 45 to 58

Also an attestation using the form established in accordance with the advisory procedure referred to in Article 81(2).

DECISIONS

The court with which an appeal is lodged under Article 50 or Article 51 shall refuse or revoke a declaration of enforceability only if enforcement of the authentic instrument is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement.

SPECIFIC CASES

- French judgement establishing that the two Spanish sons of a Spanish citizen living in Paris are the inheritors of his father who had properties in Spain

SPECIFIC CASES

- Catherine a French citizens decides at 75 years old come to live to Catalonia. After 6 months living in Barcelona, she goes to the notary and makes a will applying article of the Catalan civil code that allow to not give the legitimate participation in the following case.
- *e) The clear and continuous absence of a family relationship between the deceased and the heir, if this is due exclusively to a cause attributable to the heir. Article 451-17 of the Catalan Civil Code*
- The son present a claim asking for his right and he finally gets a judgement saying he has the right to get the legitimate share. Catherine has properties in France.

OTHER INSTRUMENTS AND DOMESTIC LAW

CONVENTIONS

- No specific conventions
- Usually International conventions about general civil affairs excludes successions

EXAMPLE OF CONVENTIONS:

- Bilateral convention Spain-Morocco Judicial Cooperation in Civil, Commercial and Administrative Matters signed in Madrid 30-05-1997
- *Article 22.*
- *2. This Convention shall not apply to decisions issued in the following matters and cases:*
 - *testamentary and inheritance matters*

SPANISH LAW

- LAW ON INTERNATIONAL CIVIL COOPERATION (ley de cooperation civil international 29/2015 de 30 de julio(JCI)

OTHER INSTRUMENTS AND DOMESTIC LAW

LAW ON INTERNATIONAL CIVIL COOPERATION (ley de cooperacion civil internacional 29/2015 de 30 de julio(JCI)

- **Subsidiary law**
- **Article 41. Scope of application.**
 - 1. Final foreign judgments handed down in contentious proceedings shall be subject to recognition and enforcement in Spain in accordance with the provisions of this title.
 - 2. Final foreign judgments adopted within the framework of a non-contentious jurisdiction procedure shall also be subject to recognition and enforcement in accordance with the provisions of this title.
 - 3. Foreign public documents shall be subject to execution in accordance with the terms provided for in this law.
 - 4. Precautionary and provisional measures shall only be subject to recognition and enforcement when their refusal entails a violation of effective judicial protection, and provided that they have been adopted after having heard the opposing party.
 -
- **Article 42. Exequatur procedure.**
 - 1. The procedure for declaring the recognition of a foreign judicial decision and, where appropriate, for authorizing its execution shall be called the exequatur procedure.
 - 2. The same procedure may be used to declare that a foreign judgment is not subject to recognition in Spain because it entails any of the grounds for refusal provided for in Article 46.

SPECIFIC CASE WITH MOROCCO

Ahmed was born in Casablanca but after living 15 years in Spain acquires the Spanish citizenship.

He has 1 daughter and 1 son. And he has a flat in Barcelona acquired with his wife Rahma.

When he got retired he decides to live in Casablanca, where he also has a house of his own. And before leaving Spain he makes a will saying that the house in Morocco is for his son and the half part of the flat in Barcelona for his daughter.

In 20-06-2025 he dies in Casablanca.

Their inheritors start in Casablanca a judicial proceeding in which finally the Moroccan Court decides that all the successions have to be divided according to Moroccan Law and the son has more rights than the daughter of all the properties of the deceased Ahmed.

The son wants to recognize this judgement in Spain for to get his participation also in the properties in Spain.



Training of lawyers on EU Civil Law (TRADICIL)

Emmanuelle Bonboire-Barthelemy

**The application of the succession EU Regulation
under French Law**

Barcelona, 20 February 2026



Co-funded by the European Union

Introduction

Applicable to successions opened on or after August 17, 2015

Aim of the Succession EU Regulation :

- Unify the rules of private international law within the EU
- Secure and streamline the settlement of successions by providing for conflict-of-law rules that favor the use of a single law that converging with jurisdiction
- Establish a principle of mutual recognition between EU Member States
- Promote advance estate planning with the possibility of choosing in advance the law applicable to one's future succession (national law as the only option)

Part 1

The concept of the habitual residence of the deceased

Connecting factor : the concept of habitual residence is a central concept of the Succession EU Regulation

- Article 4: the court of the place of the deceased's last habitual residence has jurisdiction
- Article 21: the applicable law is the law of the deceased's last habitual residence

Determination of habitual residence: however, the concept of last habitual residence is not expressly defined by the Succession EU Regulation

1°) The main criteria – Recital 23 of the Succession EU Regulation

“In order to determine habitual residence, the authority responsible for the succession should make an overall assessment of the circumstances of the deceased's life in the years preceding his or her death and at the time of death, taking into account all relevant factual elements, in particular the duration and regularity of the deceased's presence in the State concerned, as well as the conditions and reasons for that presence.”

Two elements :

- an **objective element** — the length and regularity of presence. There is no minimum period of residence required.
- A **subjective element** — the intention and reasons for being there.

Examples:

Cass. Civ. 1^{re} , July 12, 2013, No. 21-11.041:

“After noting that Mr [M] [I] had only settled in Portugal as from 28 June 2016 and, having died on 20 November 2016, had resided there for less than five months, the Court of Appeal observed that he had undertaken to learn Portuguese only at a very late stage, that at the time of his death he was still registered on the French electoral roll and that, although he and his wife owned at least one property in Portugal, where they were officially domiciled, they still retained a house in France. The court further found, upon examining the numerous witness statements produced, that the spouses’ families, most of their social relationships, as well as the principal beneficiaries of the life insurance policy, were domiciled in France.”

Paris Court of Appeal, Division 3 - Chamber 1, March 8, 2017, No. 15/24600:

“The deceased only stayed in France for the periods necessary for his medical treatment before returning to Côte d'Ivoire, the country where he had all his assets and financial interests;”

2°) Additional criteria – Recital 24 of the Succession EU Regulations

In some cases, it may be difficult to determine the habitual residence of the deceased. Such a case may arise, in particular, where, for professional or economic reasons, the deceased had moved to another State to work, sometimes for a long period, while maintaining close and stable ties with his or her State of origin. In such cases, depending on the circumstances, the deceased may be considered to have continued to have their habitual residence in their State of origin, where the centre of their family and social life was located.

Other complex cases may arise where the deceased lived alternately in several States or travelled from one State to another without settling permanently in any one State. If the deceased was a national of one of these States or had all of their main assets there, their nationality or the location of those assets could constitute a specific criterion for the overall assessment of all the factual circumstances.

Examples:

Cass. Civ. 1^{re} , May 29, 2019, No. 18.13.383:

"The deceased divided his time between the United States and Europe, particularly Paris, without the length of his stays in either country being decisive in resolving the dispute, such that his nationality and the location of his main assets constitute the specific criteria to be used in the overall assessment of the factual circumstances enabling his habitual residence to be determined (...)

Z... H... had American nationality, was born in New York, where he died, spent his entire working life, and wrote his will in New York, declaring in that document 'resident in New York', that most of his close family members lived in the United States and that he owned real estate in New York consisting of several buildings of significant value, the fruit of a professional life entirely dedicated to New York real estate, to which he still devoted time (...)

he had had a fixed address in New York for more than forty years, as shown on his passports, that he wished to be buried alongside his parents in Brooklyn, that he was resident in New York for tax purposes, where he voted regularly, and that he was not affiliated with any medical reimbursement organisation in France (...)"

TJ Nanterre, May 28, 2019, No. 18/01502, Hallyday case:

The court assesses all the factual circumstances as a whole in order to determine the relevance of establishing the habitual residence of singer Johnny Hallyday in France.

“Following the in-depth adversarial debate, another decisive factor emerges, justifying the priority location of O K's interests in France and his continued presence there despite his lengthy stays in California. This stems from the singer's strong preference for performing on stage, given that the analysis according to which the artist cannot be distinguished from the man must be considered, after examination of the evidence provided, to be relevant.”

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Part 2

Applicable foreign succession law and French international public policy

I. Application of the Designated Law

- Article 21§1 of the Succession EU Regulation: the law applicable to the whole of a succession is that of the State in which the deceased had their habitual residence at the time of their death
- Article 22 of the Succession EU Regulation: the deceased may designate as applicable to their succession the law of a country of which they are a national at the time of their choice or at the time of death. If the deceased has multiple nationalities, they may choose between these different nationalities
- Limit: Article 35 of the Succession EU Regulation (public policy of the forum)

II. Foreign succession law that does not recognise the reserved portion

Definition of the reserved portion

Article 912 of the Civil Code : *"the share of the estate and inheritance rights which the law ensures will devolve free of charge to certain heirs known as compulsory heirs, if they are called to the succession and if they accept it"*

Children are compulsory heirs. Their share of the reserved portion depends on the number of children:

- If there is 1 child, that child receives half of the estate
- If there are 2 children, they receive two-thirds of the estate, or one-third each
- If there are 3 or more children, they receive three quarters of the estate, to be divided equally

Article 914-1 of the Civil Code: in the absence of children, the surviving spouse is a compulsory heir

Question : If the designated foreign law excludes forced heirship, must French courts apply it fully? Or should the French concept of the reserved portion be considered part of French international public policy, and therefore override the foreign law?

1°) The Position of the Cour de cassation

Cass. Civ. 1^{re} , 27 September 2017, No. 16-17.198

The reserved portion is not a matter of international public policy.

ECHR, *Colombier v. France, Jarre v. France*, February 15, 2024, 14925/18:

"Despite its importance in French domestic law, the institution of the reserved portion has never been ruled by the Court of Cassation to be contrary to the values that the French legal system considers universal, as might be the case for any provision of foreign law that would reduce or remove a person's rights on social, racial, political, sexual or religious grounds."

2°) The Legislator's Response : The Compensatory Levy

Article 913, paragraph 3, of the Civil Code:

*"and where the foreign law where the deceased or at least one of their children is, at the time of death, a national of a Member State of the European Union or habitually resides there applicable to the succession does not provide for any mechanism to protect the children's reserved portion, each child or their heirs or successors may make a compensatory withdrawal from the assets existing in France on the date of death, so as to be **restored to the reserved rights granted to them by French law**, within the limits of those rights."*

Criticism:

- the right to a compensatory levy is incompatible with the terms of Article 22 of the Regulation
- the right to a compensatory levy is difficult to reconcile with Article 23 of the Regulation

III. Discriminatory Inheritance Law

The compensatory levy was initially introduced to neutralise certain effects of Islamic inheritance rights.

- **Example - Iranian law:** articles of the Iranian Civil Code provide for unequal legal devolution depending on the sex of the children or the surviving spouse

Article 907 provides that: if there are both sons and daughters, each son receives twice the share of each daughter.

Article 913 provides unequal shares for the surviving spouse:

- The husband inherits one half of the estate if there are no children, and one quarter if there are children.
- The wife inherits one quarter if there are no children, and one eighth if there are children.

1°) The Public Policy question public policy

Is a gender-based inequality in inheritance rights compatible with French international public policy?

Multiple supranational instruments in France protected equality :

- The Universal Declaration of Human Rights;
- Article 14 of the European Convention on Human Rights;
- Article 26 of the International Covenant on Civil and Political Rights;
- Article 21 of the EU Charter of Fundamental Rights. Recital 58 of the Succession Regulation expressly refers to compliance with Article 21 of the Charter.

2°) The Position of French Case Law

French case law has not yet ruled on whether the inequality established by Islamic law between heirs on the basis of their sex is contrary to French international public policy

T. civ. Alger, February 3, 1922:

It has ruled in this regard with regard to a privilege of primogeniture or masculinity recognised by foreign law

Doctrine strongly suggests that discrimination based on sex in succession matters should be also considered incompatible with French public policy.