

## **Proposal for a Convention concerning jurisdiction and the enforcement of judgments in family and succession matters**

(Unofficial English Version)

### **Title I – Scope**

#### **Article 1**

1. This Convention shall apply in matters relating to succession and the family whatever the nature of the court or tribunal.
2. This Convention shall not apply to:
  - the name,
  - adoption,
  - measures aiming at the protection of the person of a minor or their property, including custody, visiting and accommodation rights,
  - maintenance,
  - measures aiming at the protection of the person of someone who is of age or their property.
3. The provisions of this Convention relating to the jurisdiction of courts shall also apply to the jurisdiction of administrative authorities.

### **Title II – Jurisdiction**

#### **Section 1 – Marriage, matrimonial property, separation, divorce**

#### **Article 2**

1. In matters relating to the existence, annulment or effects of a marriage, to matrimonial property, to separation or to divorce, the courts of the Contracting State in whose territory is located:
  - the defendant's habitual residence, or, in the situation where a joint action is brought, the habitual residence of either spouse, or
  - the last common habitual residence of the spouses in as much as one of them still resides there when bringing the action, or
  - the habitual residence of the spouse with whom a common minor child is habitually residing and over whom he exercises custody rights.

shall have jurisdiction.

2. The courts of a Contracting State of which the spouses are both nationals shall equally have jurisdiction.
3. In the case of the marriage ending by death, the courts which have jurisdiction in matters relating to succession shall equally have jurisdiction to decide questions relating to matrimonial property.
4. If there is no jurisdiction in a Contracting State under the provisions of paragraphs 1 and 2, the courts of any Contracting State shall have jurisdiction if they have jurisdiction according to their own law.

## Article 3

1. In an action aiming at completing or changing a decision relating to the existence, annulment or effects of a marriage, to matrimonial property, to separation or to divorce, the courts of the Contracting State:

- in whose territory is located the habitual residence of the defendant, or
- which has given judgment in relation to the existence, annulment, effects of marriage, matrimonial property, separation or divorce

shall have jurisdiction.

2. If there is no jurisdiction in a Contracting State under the provisions of paragraph 1, the courts of any Contracting State shall have jurisdiction if they have jurisdiction according to their own law.

## Section 2 – Parenthood

### Article 4

1. In matters relating to establishing or contesting paternity or maternity, the courts of the Contracting State in whose territory:

- the defendant is habitually resident, or
- the child is habitually resident, or
- the person whose paternity or maternity is claimed or contested is habitually resident

shall have jurisdiction.

2. If there is no jurisdiction in a Contracting State under the provisions of the previous paragraph, the plaintiff may sue before the courts of a Contracting State of which the child or the person whose paternity or maternity is claimed or contested is a national.

## Section 3 – Succession

### Article 5

1. The courts or authorities of the Contracting State in which the deceased had his habitual residence at the time of his death shall have jurisdiction in matters relating to succession.

2. When the law of the place in which property of the deceased is situated requires certain documents to establish the identity of the person entitled to succeed to that property and the courts or authorities of the Contracting State in which the deceased had his habitual residence at the time of his death do not provide equivalent documents, the courts or authorities of the Contracting State in which the property is situated shall have jurisdiction to issue such documents.

For the purpose of determining rights of succession, such courts or authorities shall apply the law applicable according to the rules of the conflict of laws of the State in which the deceased had his habitual residence at the time of his death.

3. When the law of the place in which property of the deceased is situated requires the appointment of a personal representative of the deceased to administer the estate in that country, the courts or authorities of that country shall have jurisdiction to take the necessary measures.

The second paragraph of the preceding Section of this Article shall also apply with regard to this Section.

4. The courts or authorities having jurisdiction under the first Section of this Article may decline jurisdiction to rule on the devolution or administration of immovable property situated outside the territory of the Contracting States if they consider that the courts of the place in which the immovable is situated are more appropriate to decide the issue, particularly when, according to their law, the latter have exclusive jurisdiction.

### Article 6

When the deceased did not have his habitual residence in any Contracting State at the time of his death, the courts of any Contracting State shall have jurisdiction if they have jurisdiction according to

their own law.

## Section 4 – Examination as to jurisdiction and admissibility

### Article 7

When a court of a Contracting State is seized of a claim which is principally concerned with a matter over which it has no jurisdiction under this Convention and over which the courts of another Contracting State have jurisdiction under this Convention, it shall declare of its own motion that it has no jurisdiction.

### Article 8

When the defendant does not enter an appearance, the court 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 sufficient time to enable him to arrange for his defence or that all necessary steps have been taken to this end.

The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, if the document instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention.

## Section 5 – Lis Pendens – Related actions

### Article 9

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

Where the jurisdiction of the court first seized is established any court other than the court first seized shall decline jurisdiction in favour of that court.

The foregoing paragraphs apply to legal separation and to divorce even when the actions of one or other of the spouses are not founded on the same cause.

### Article 10

Where related actions are brought in the courts of different Contracting States, the court secondly seized may stay its proceedings. Where these actions are pending at first instance, this court may also decide not to proceed with the case, on the application of one of the parties, if the law of that court permits the consolidation of related matters and the court first seized has jurisdiction over both actions.

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 judgments resulting from separate proceedings.

## Section 6 – Provisional, including protective, measures

### Article 11

For urgent cases, application may be made to the courts of the Contracting States for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.

Measures taken in application for the foregoing paragraph shall cease, with reservation of their final effects, as soon as the court having jurisdiction by virtue of this Convention has taken the measures required by the situation.

## Title III – Recognition and enforcement

The structure of Title III of the Brussels Convention of 27 September 1968, as amended at San Sebastian, on 26 May 1989, and of the Lugano Convention of 16 September 1988 can be retained, on reservation of the following amendments, relating to the subject matter of this Convention.

Article 25 of the Brussels and Lugano Conventions would read as follows:

“For the purposes of this Convention, judgment means any judgment given by a court or by an administrative authority of a Contracting State whatever the judgment may be called including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court and the measures under Article 5, paragraphs 2 and 3.”

Paragraph 3 of article 27 of the Brussels and Lugano Conventions, would read as follows:

“3° if the judgment is irreconcilable with the judgment given in the State in which recognition is against the party requesting recognition.”

Paragraph 4 of Article 27 is deleted.

In Article 28 of the Brussels and Lugano Conventions, paragraph 2 is not retained, paragraph 3 is retained with the deletion of “subject to the provisions of the first paragraph”.

Articles 52 and 53 of the Brussels and Lugano Conventions are without purpose in this Convention.

It will be necessary to add some final provisions and protocols, of the type provided by Article 54 and following of the Brussels and Lugano Conventions.

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