

Habitual Residence of Individuals with Short-term, Medium-term, or Unstable Periods of Stay (summary)

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In light of the advent of the “immigration era”, a particular difficulty in determining the applicable law under Japan’s private international law is establishing habitual residence. Workers in programs such as the Technical Intern Training Program, and refugees reside in Japan for short- or medium-term stays or under residence statuses that do not guarantee a long-term stay. Their circumstances regarding how long they will stay in Japan are often unstable, so it is unclear where their habitual residence should be determined to be.

This article examines how habitual residence should be determined under Japan’s current private international law, focusing on individuals with short-term, medium-term, or unstable periods of stay. Particularly noteworthy is the concept of “integration,” which is a significant factor in Germany and the EU.

Part 1 summarizes the debate on habitual residence in Japan. Habitual residence is described as “the place where a person regularly resides for a considerable period,” or “the place where a person habitually resides and actually maintains the center of their life.” It is determined by considering the duration, purpose, and circumstances of residence comprehensively. There is debate over whether a person’s habitual residence can be determined to be in different states depending on the nature of the issue at hand. Some argue that conflict-of-law rules have different functions and purposes, particularly in family and property matters, and therefore, different criteria may be required to determine habitual residence in different contexts. Others advocate for a unified understanding of the concept of habitual residence, on the basis that concepts should fundamentally be understood as having the same meaning within a single law and propose the idea that the location of one’s habitual residence is more changeable than previously thought.

Parts 2 and 3 introduce discussions in Germany and the EU. German case law requires not only “a stay of a duration that, unlike a simple or brief stay, must not only be of a short length” for a habitual residence to be established in a particular place, but also “the existence of further relationships, particularly from a family or professional perspective, in which the center of

gravity of the person's connections is to be found" (*i.e.* social integration). Discussions on the interpretation of the concept of habitual residence under EU private international law have developed based on case law concerning the habitual residence of children in the context of jurisdiction. Since 2020, the Court of Justice of the European Union has issued four decisions concerning the habitual residence of adults. Notably, in the Lindenbaumer case it characterized the concept of habitual residence under the Rome III Regulation as being defined by two factors: the intention of the persons concerned to establish the habitual centre of their interests in a particular place, and a sufficiently stable presence in the territory of the Member State concerned. Furthermore, this article analyzes two German court decisions examining the habitual residence of "refugee" children under the Brussels IIbis Regulation, based on the premise that the concept of habitual residence under that Regulation also applies in the context of applicable law.

Part 4 contains some considerations. Regarding the issue of the effect of family relationships where the applicable law may be the law of the habitual residence under the Japan's current private international law, there is no problem with determining the applicable law based on the criteria of living there with a certain degree of stability and intending to continue living there. This can result in a law that is better suited to the circumstances of life being applied. However, if the location of habitual residence can easily be changed, this necessarily affects the national law for individuals with multiple nationalities (excluding Japanese nationals) as well as the law of the habitual residence of stateless persons and refugees that serves as a substitute for their national law. Therefore, in this context, changes in the location of habitual residence should be determined by strict standards.