JURISDICTION BY CONNECTION AND PROPER ADMINISTRATION OF JUSTICE UNDER EU REGULATIONS 1103/2016 AND 1104/2016

JURISDICCIÓN POR CONEXIÓN Y ADECUADA ADMINISTRACIÓN DE JUSTICIA EN LA UE A LA LUZ DE LOS REGLAMENTOS 1103/2016 Y 1104/2016

Actualidad Jurídica Iberoamericana Nº 15, agosto 2021, ISSN: 2386-4567, pp. 148-163

Maria PIA
GASPERINI

ARTÍCULO RECIBIDO: 16 de mayo de 2021
ARTÍCULO APROBADO: 1 de julio de 2021

ABSTRACT: El autor analiza las reglas de jurisdicción por conexión establecidas por los artículos 4 y 5 de los Reglamentos No. 1103 y 1104 de 2016 en materia de regímenes patrimoniales de parejas tranfronterizas, teniendo en cuenta el objetivo de una adecuada administración de justicia perseguido dentro de la cooperación judicial civil en la UE. Los Reglamentos mellizos proporcionan las herramientas procesales adecuadas para facilitar la concentración de competencias ante los tribunales del mismo Estado miembro, estableciendo un papel importante para el acuerdo de elección del tribunal, especialmente cuando surgen problemas de régimen económico en relación con la disolución de un matrimonio o de una unión. Mientras esperamos la implementación de estas reglas por parte de los tribunales nacionales y europeos, el autor también explora algunos posibles inconvenientes que pueden presentar.

KEY WORDS: Competencia; ley de familia; ley de sucesiones; regímenes económicos; acciones relacionadas.

RESUMEN: *The author analyses the rules of jurisdiction by connection set by Articles 4 and 5 of Regulations No. 1103 and 1104 of 2016 in matters of property regimes of transnational couples, taking into account the objective of proper administration of justice pursued within EU Civil judicial cooperation. The Twin Regulations provide for appropriate procedural tools to facilitate concentration of jurisdiction before the courts of the same Member State, establishing an important role for the choice-of-court agreement, especially where property regime issues arise in connection with a matrimonial case or a partnership dissolution case. As we wait for the implementation of these rules by national and European courts, the author also explores some possible drawbacks they may present.*

PALABRAS CLAVE: *Jurisdiction; family law; succession law; property regimes; related actions.*

I. PROPER ADMINISTRATION OF JUSTICE AND POSSIBLE IMPACT OF RULES OF JURISDICTION SET OUT IN THE TWIN REGULATIONS.

As restated by Regulation (UE) No. 1111/2019 on jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast of Regulation EC No. 2201/2003), the smooth and correct functioning of a Union area of justice is vital for the objective of creating, maintaining and developing an area of freedom, security and justice, in which the free movement of persons and access to justice are ensured[1].

Under Twin Regulations of 2016 in matters of property regimes of transnational couples, the aim of proper administration of justice is part of this general objective, and plays a central role as a specific objective of jurisdiction rules. Indeed, Recitals 32 state that to reflect the increasing mobility of couples and facilitate the proper administration of justice, the rules on jurisdiction set out in both Regulations should enable citizens to have their various related procedures handled by the courts of the same Member State. In this respect, it is appropriate to ask what "proper administration of justice" exactly means for protection of property rights of transnational couples, beyond the obvious goal of efficient protection of rights, as this administration could be seen from different points of view.

If we consider justice as service for citizens, "proper administration" should be intended, first of all, as facility of access for spouses or registered partners who want to settle all civil-law aspects of patrimonial regimes, such as the daily management of matrimonial property or property consequences of registered partnership as well as the liquidation of the regime, as a result of the death of one

1 Recital 3 of Reg. No. 1111/2019.

• Maria Pia Gasperini
Associate Professor of Civil Procedure Law, University of Camerino. E-mail: mariapia.gasperini@unicam.it

of the parties or the dissolution of the marriage or registered union[2]. Nevertheless, facility of access means both reasonable proximity between courts and parties, and certainty of criteria for identifying the court with jurisdiction, based on genuine connecting factors between the spouses or partners and the Member State where jurisdiction is exercised. It reduces the possibility of a creative interpretation by the courts, without prejudice for the autonomy of the single Member States[3].

On the other hand, if we consider justice as activity involving public resources, "proper administration" also means efficiency and economy in carrying out this activity, such that when a proceeding is pending before a court of a Member State for the succession of a spouse or partner, or for legal separation, divorce, annulment of marriage or registered partnership, all claims concerning property regimes should be submitted to a court of the same Member State. This would serve to avoid both duplications of actions by the different Member States involved and the generation of irreconcilable decisions, thus ensuring a "harmonious functioning of justice"[4].

For these reasons, Regulations of 2016 provided for specific rules of jurisdiction based on connection of patrimonial regime cases with *status* cases. Articles 4 of Regulations No. 1103/2016 and 1104/2016 establish a general rule of jurisdiction, stating that where a court of a Member State is seised in matters of succession of a spouse or partner pursuant to Regulation (UE) No. 650/2012, the courts of that State shall have jurisdiction on matters of the matrimonial property regime, or property consequences, arising in connection with that case or application. Articles 5 establish a similar rule when a matrimonial case or a registered union annulment case is pending before the court of a Member State, albeit with significant specifications and restrictions[5].

Currently, the rules on jurisdiction laid down in the Twin Regulations have yet to be implemented by national courts, and have not even been submitted to the interpretation of the European Court of Justice. As we wait for these actions, all we can do is to imagine the possible impact of these rules, testing their capacity to achieve the objectives set by the Regulations, and trying to identify some interpretation issues which may arise.

2 Recitals 18 of both Regulations.

3 Recitals 35 of the Twin Regulations. This aspect is the focus of Bruno, P.: *I regolamenti europei sui regimi patrimoniali dei coniugi e delle unioni registrate*, Giuffrè, Milan, 2019, p. 73 ff.

4 Recital 42 of Reg. No. 1103/2016; Recital 41 of Reg. No. 1104/2016. In this perspective, as we are going to see, the tools provided for by the Twin Regulations are similar, but non identical. Jurisdiction in matters of matrimonial or partnership property rights is differently ruled in the case of separation, divorce, annulment of marriage and partnership, or in the case of succession.

5 In this regard see Gasperini, M.P.: "Jurisdiction and Efficiency in Protection of Matrimonial Property Rights", *Zbornik znanstvenih razprav*, 2019, LXXIX, p. 23 ff.

II. JURISDICTION BY CONNECTION WITH MATRIMONIAL CASES AND REGISTERED UNION ANNULMENT CASES: THE ROLE OF AGREEMENT ON CHOICE-OF-COURT.

In the event of disputes on property regimes related to a matrimonial case (legal separation, divorce, marriage annulment) or a registered union annulment case, the goal of "proper administration of justice" should be served preferably through the agreement of parties on applicable law and the choice of court. This is particularly important in matters of property consequences of registered partnerships, where the agreement of parties is an essential condition in order for jurisdiction by connection to be applied[6].

Incidentally, the Twin Regulations seek to promote and increase the knowledge of European citizens so they can make an informed choice about the most appropriate tool among those available for managing property rights deriving from marriages or other kinds of partnerships. It is preferable to make such a choice in advance, given that once a marriage or registered union is in crisis, it may be quite difficult to reach agreement on any points. When a couple indicates the applicable law and their court of choice at the beginning of their marriage or union, it will be much easier, should divorce and litigation occur, for the chosen court to move without confusion or impediments to apply domestic law and issue its decision: this satisfies the need for legal certainty, predictability and efficiency in exercising jurisdiction[7].

Article 5, par. 1, of Regulation No. 1103 states that where a court of a Member State is seised to rule on an application for divorce, legal separation or marriage annulment pursuant to Regulation (EC) No. 2201/2003, the courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that application. However, this rule turns out to be considerably reduced in the following par. 2, which provides that, where the *status* proceeding is submitted to a court of a Member State based on individually listed

6 Article 5, par. 1, Reg. No. 1104/2016: "Where a court of a Member State is seised to rule on the dissolution or annulment of a registered partnership, the courts of that State shall have jurisdiction to rule on the property consequences of the registered partnership arising in connection with that case of dissolution or annulment, where the partners so agree".

7 Recital 36 of Reg. No. 1103/2016; Recital 37 of Reg. No. 1104/2016.

connecting factors[8] or in some particular situations[9], the assignment of jurisdiction in matters of property regimes shall be subject to an agreement of the parties. The *ratio* of this provision is related to the fact that, since Regulation No. 2201/2003 (currently Regulation No. 1111/2019) offers the claimant spouse a range of options in the choice of court, it was deemed appropriate to introduce some restrictions, in order to discourage unfair choices of a party in prejudice of the other one[10].

On the other hand, in Article 5 of Regulation No. 1104, the allocation of jurisdiction based on the connection of cases is always subject to the agreement of parties. In the lack of a common legislative instrument that provides for connecting factors of jurisdiction with regard to the *status* case, and allows a possible distinction between "strong" or "weak" connecting factors, it was considered appropriate to request the agreement of parties in any case; otherwise, the applicable connecting factors shall be those noted in Article 6[11].

Articles 7, providing for the agreement of parties to attribute to a Member State's court the exclusive jurisdiction to rule on property regime disputes, refer to an extra-judicial agreement that may be concluded by parties before starting a proceeding regarding property regime, with a view to possible forthcoming litigation[12]. However, it is important to note the limits set by the 2016 Regulations to the will of the parties and, consequently, the effective scope of such agreements:

- first, spouses or partners can agree to attribute exclusive jurisdiction on property regime disputes, pursuant to Articles 7, to a Member State's court of applicable law (the law chosen by the parties themselves, or the law of the State indicated in Articles 26 of both Regulations), or to the courts of the Member State

8 The reference is to the circumstances specified by indents a) and b) of mentioned article: the agreement of parties is requested where the court seised to rule on the *status* case "is the court of a Member State in which the applicant is habitually resident and the applicant had resided there for at least a year immediately before the application was made, in accordance with the fifth indent of Article 3, par. 1, of Regulation (EC) No 2201/2003" (indent a), or "is the court of a Member State of which the applicant is a national and the applicant is habitually resident there and had resided there for at least six months immediately before the application was made, in accordance with sixth indent of Article 3, par. 1 (a) of Regulation (EC) No 2201/2003" (indent b). The references to Article 3 of Regulation (EC) No. 2201/2003 shall be read, currently, as Article 3 of Regulation (UE) No. 1111/2019, broadly unchanged.

9 Conversion of legal separation into divorce pursuant to Article 5 of Regulation (EC) No. 2201/2003 (currently Article 5 of Regulation (UE) No. 1111/2019), or residual jurisdiction pursuant to Article 7 of Regulation No. 2201/2003 (currently Article 6 of Regulation (UE) No. 1111/2019).

10 Lagarde, P.: "Règlements 2016/1103 et 1104 du 24 juin 2016 sur les régimes matrimoniaux et sur le régime patrimonial des partenariats enregistrés", *Rivista di diritto internazionale privato e processuale*, 2016, 3, p. 679.

11 See Viarengo, I.: "Effetti patrimoniali delle unioni civili transfrontaliere: la nuova disciplina europea", *Rivista di diritto internazionale privato e processuale*, 2018, 1, p. 42; Feraci, O.: "L'incidenza del nuovo regime europeo in tema di rapporti patrimoniali tra coniugi e parti di unioni registrate sull'ordinamento giuridico italiano e le interazioni con le novità introdotte dal d.lgs. 7/2017 attuativo della cd. Legge Cirinnà", *Osservatorio sulle fonti*, 2017, 2, p. 38 f.; Ruggeri L.: "Registered partnerships and property consequences", in AA.VV.: *Property relations of cross border couples in the European Union*, ESI, Naples, 2020, p. 61 f.

12 Pursuant to Article 7, par. 2, this kind of agreement must be expressed in writing, dated, and signed by the parties, with the added point that communication by electronic means that provide a durable record of the agreement is to be considered equivalent to typewritten or handwritten forms (see also the corresponding provisions of Regulations No. 650/2012, 1215/2012 and 4/2009).

of the conclusion of the marriage, or under whose law the registered partnership was created. In fact, it is a choice conditioned by a former choice (the choice of law), or directly by law[13];

- second, Articles 7 of both Regulations expressly refer to the "cases which are covered by Article 6", namely, residual cases in which the European legislator provided for some additional connecting factors in the absence of a proceeding in matters of dissolution of marriage or registered partnership (or succession)[14]. Thus, considering Articles 7, a choice-of-court agreement seems to be of insignificant importance, since the need to solve property regime disputes normally arises in the context of a dissolution of the matrimonial tie or partnership because of death, legal separation or divorce.

III. IF AGREEMENT IS NOT REACHED IN THE EVENT OF DISSOLUTION OF A REGISTERED PARTNERSHIP, SEPARATION, DIVORCE OR ANNULMENT OF A MARRIAGE: WHAT ABOUT JURISDICTION?

In the event of dissolution of a registered partnership, as noted above, the allocation of jurisdiction on property consequences to the court of pending *status* proceeding is always subject to the agreement of parties, pursuant Article 5 of Reg. No. 1104/2016. Then, if the parties fail to reach this agreement, the rule of jurisdiction by connection shall not apply, and residual connecting factors provided for in Article 6 shall be applicable[15]. However, with regard to dissolution or annulment of a registered partnership, there are no common provisions of connecting factors of jurisdiction, and the application of Article 6 would not ensure a concentration of jurisdiction before the court of the same Member State where the *status* proceeding might be pending[16]. In fact, the parties could end up with two courts, one with jurisdiction on property rights according to Article 6

13 The will of the European legislator clearly was to promote the union of *forum* and *ius,* so that the court of each Member State asked to rule on claims in matters of matrimonial or partnership property regimes can apply domestic law.

14 In other words, pursuant to Articles 7, the parties may conclude a choice-of-court agreement only for property regime disputes. However, if the property regime case is connected to a *status* case subsequently filed at another State's court, such an agreement cannot be taken into consideration in the proceedings (Bruno, P.: *I regolamenti europei*, cit., p. 102; Marino, S.: "Strengthening the European civil judicial cooperation: the patrimonial effects of family relationships", *Cuadernos de Derecho Transnacional*, 2017, 9, p. 27.

15 Article 6 of Reg. No. 1104/2016: "Where no court of a Member State has jurisdiction pursuant to Article 4 or 5 or in cases other than those provided for in those Articles, jurisdiction to rule on the property consequences of a registered partnership shall lie with the courts of the Member State: (a) in whose territory the partners are habitually resident at the time the court is seised, or failing that, (b) in whose territory the partners were last habitually resident, insofar as one of them still resides there at the time the court is seised, or failing that, (c) in whose territory the respondent is habitually resident at the time the court is seised, or failing that, (d) of the partners' common nationality at the time the court is seised, or failing that, (e) under whose law the registered partnership was created".

16 Accordingly Viarengo I, "Effetti patrimoniali delle unioni civili transfrontaliere", cit., p. 42, observes that the concentration of proceedings before the same Court is not always ensured in matters of dissolution or annulment of a registered partnership, given that the dissolution of a registered union is covered by the

(e.g. court of the Member State of partners' habitual residence at the time the court is seised) and another court, seised for the dissolution or annulment of the registered partnership, whose jurisdiction continues to be regulated by national laws.

The concentration of proceedings before the same court, therefore, could be subsequently achieved under Article 18 of Reg. No. 1104, in matters of related actions. As we can see, however, some conditions may occur:

- first, the court second seised may (or may not) deem that the actions "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" (par. 3), and may consider in any case not to stay its proceeding; accordingly, the court seised to rule on partnership dissolution and the other one seised to rule on property consequences shall carry out separate proceedings towards separate decisions on the merits[17];

- second, where both proceedings are pending at first instance, the court second 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" (par. 2); here too, the consolidation is subject to various conditions (jurisdiction of the court first seised over the actions second brought; possibility of consolidation of proceedings under the procedural law of the Member State of the court second seised), provided that the lack of an agreement of parties shall make jurisdiction by connection pursuant Article 5 inapplicable.

On the other hand, in the event of separation, divorce or annulment of a marriage, the lack of agreement between the parties shall prevent the rule of jurisdiction by connection taking effect only when jurisdiction on the *status* case is based on "weak" connecting factors listed by Article 5, par. 2, Reg. No. 1103 (in these cases, accordingly, the court seised to rule on an application for divorce, legal separation or marriage annulment shall not be allowed to rule, due to the

common rules of Regulation No. 2201/2003 only when the union in question is a marriage, whereas the dissolution of a registered partnership continues to be subject to different domestic regulations.

17 It should be noted that the EU Court of Justice did not give a single interpretation of "related actions". On the one hand, in the judgement of 4 February 1988 (C-145/86, *Hoffmann vs. Krieg*), the Court stated that a foreign judgment ordering a person to make maintenance payments to his spouse by virtue of his conjugal obligations to support her is irreconcilable with a national judgment pronouncing the divorce of the spouses, insofar as such judgments entail legal consequences that are mutually exclusive; on the other hand, the judgment of 6 December 1994 (C-406/92, *Tatry*) stated that in order to establish the necessary relationship between cases within the meaning of Art. 22 of the Brussels Convention it is sufficient that separate trial and judgment would involve the risk of conflicting decisions, without necessarily involving the risk of giving rise to mutually exclusive legal consequences. In this regard see Frimston, R.: "Art. 4", in AA.VV.: *The EU Regulations on Matrimonial and Patrimonial Property*, Oxford University Press, Oxford, 2019, p. 50 f., who hopes that the restricted interpretation shall not prevail.

connection of cases, on property regime issues between the spouses). But when jurisdiction on the *status* case is based on "strong" connecting factors (habitual residence of the spouses; last habitual residence of the spouses insofar as one of them still resides there; habitual residence of the respondent; habitual residence of either of the spouses in the event of a joint application), the rule of jurisdiction by connection shall apply regardless of the agreement of the parties, and the court seised to rule on the *status* case shall have jurisdiction also on property regime disputes[18].

In any case, it is possible that the mandatory character of rule of jurisdiction by connection set by Article 5, par. 1, Reg. No. 1103 would not ensure the concentration of *status* cases and related property regime cases before the courts of the same Member State whenever jurisdiction issues arise with regard to the *status* case. It may happen that transnational spouses submit applications for legal separation or divorce before courts of different Member States based on alternative connecting factors provided for by European Regulations (Article 3 of Reg. No. 2201/2003; currently, Article 3 of Reg. No. 1111/2019), thereby causing problems for the assessment of jurisdiction on related property issues. In fact, the jurisdiction by connection rule may work efficiently where only one *status* case is pending: otherwise, the attraction of jurisdiction may operate in many directions and the objective of concentration of proceedings might not be achieved[19].

In such situations, the resolution of problems depends on a correct application of the *lis pendens* rule, generally applied in the field of civil judicial cooperation with the specific goal of avoiding duplication of actions and preventing conflicting decisions, in order to ensure the "harmonious functioning of justice"[20]. Thus, in the event of a dispute involving a transnational couple which has resulted in separate (albeit identical) *status* cases before courts of different Member States, this rule, if properly applied, should require the court second seised to stay the

18 Accordingly, in these cases the spouses cannot agree to exclude jurisdiction by connection in advance by attributing exclusive jurisdiction on property regime issues to a Member State's court even if a *status* action is brought (and the related proceeding is pending) before a court of another Member State.

19 A similar issue (albeit not identical to one we are discussing) has been addressed by EU Court of Justice with regard to jurisdiction on maintenance obligations claims, where Article 3 of Reg. (CE) No. 4/2009 provides for a criterion of jurisdiction by connection in two separate situations, distinguishing cases where the claim in matters of maintenance is ancillary to proceedings concerning the status of a person, from cases where it is ancillary to proceedings concerning parental responsibility (indent d). The Italian Court of Cassation posed the situation of when a Member State's court is seised to rule on an application for legal separation or divorce between parents with minor children, while another Member State's court is requested to rule in matters of parental responsibility in relation to the same children, and asked whether the dispute on the maintenance of those children may be solved by both courts (based on a chronological criterion) since it is ancillary either to the case on legal separation/divorce or to the case in matters of parental responsibility. The EU Court of Justice (judgement of 16 July 2015, C-184/14, ECLI:EU:C:2015:479) stated that, in the perspective of a "proper administration of justice", the dispute in matters of maintenance of minor children must be deemed to be ancillary only to the case concerning parental responsibility, so that the court seised to rule on it is the court with exclusive jurisdiction on the dispute regarding the maintenance of the children.

20 Recital 42 of Reg. No. 1103/2016.

proceeding, and allow the court first seised to check its jurisdiction and continue the proceeding where jurisdiction is assessed. Once the court having juridiction on the *status* case has been identified, then related disputes in matters of matrimonial property regime shall be subject, by connection, to the same jurisdiction.

Where the *status* proceedings are not handled by the courts of the same Member State and the *lis pendens* rule is not correctly applied, problems may also arise for the identification of the court with jurisdiction on property regime isssues. It may actually happen that the court second seised decides not to stay its proceeding (e.g. divorce case) because it does not involve the same cause of an action (e.g. legal separation) first brought before the court of a different Member State. Moreover, a recent European Court of Justice judgement regarding the consequences of a breach of the *lis pendens* rule stated that when a court of a Member State second seised has issued a decision that has become final, even though it has done so in violation of this rule, the courts of the Member State of the court first seised cannot refuse recognition of this decision[21].

IV. JURISDICTION BY CONNECTION WITH A SUCCESSION CASE.

Articles 4 of the Twin Regulations state that where a court of a Member State is seised in matters of the succession of a spouse or partner pursuant to Regulation (EU) No. 650/2012, the courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that succession case. Since Articles 4 do not make the application of jurisdiction by connection subject to the agreement of the parties, it is possible to observe that the aim of proper administration of justice in this field is entrusted essentially to the application of jurisdiction by connection. Thus, when a proceeding in matters of succession pursuant to Regulation No. 650/2012 is pending before a court of a Member State, all claims on matrimonial or partnership property regime rising in connection with the succession case are subject only to this criterion, to the exclusion of any other potentially applicable ones[22].

21 See the EU Court of Justice judgement of 16 January 2019, C-367/17 (ECLI:EU:C:2019:24). European Court considered (pt. 56) that "the rules of lis pendens in Article 27 of Regulation No 44/2001 and Article 19 of Regulation No 2201/2003 must be interpreted as meaning that where, in a dispute in matrimonial matters, parental responsibility or maintenance obligations, the court second seised, in breach of those rules, delivers a judgment which becomes final, those articles preclude the courts of the Member State in which the court first seised is situated from refusing to recognise that judgment solely for that reason. In particular, that breach cannot, in itself, justify non-recognition of a judgment on the ground that it is manifestly contrary to public policy in that Member State".

22 This means that the interested parties cannot legitimately agree in advance to exclude the application of this criterion by concluding a choice-of-court agreement to give exclusive jurisdiction on property regime disputes to a Member State's court, regardless of whether a succession case is pending before a court of another Member State. Similarly, this criterion of connection of cases cannot be excluded when the surviving spouse or partner appears before the court of a Member State, seised to rule on issues related to property regime, and there is also a succession case pending in another Member State. Indeed, Articles 8 of Twin Regulations expressly exclude an attribution of jurisdiction based on the appearance of the defendant

It has been suggested that jurisdiction by connection might limit access to justice for the surviving spouse or partner, who may be involved in a succession case before a court other than the court of habitual residence. In fact, jurisdiction in matters of succession is generally allocated to the courts of the Member State where the deceased had the habitual residence at the time of death (Article 4 Reg. No. 650/2012), but this criterion could make it difficult for a surviving spouse or partner to submit a claim about the property regime before the same court seised by other heirs to rule on the succession[23]. Problems of access to justice for the surviving spouse or partner may also arise in the event of a difference between the nationality of the deceased and his habitual residence, where Article 6 (a) of Regulation No. 650/2012 may apply[24].

Despite these drawbacks, the choice of the Twin Regulations to concentrate succession cases and property regime cases before courts of the same Member State has to be considered favourably. It is reasonable that the courts of a Member State seised to rule on the whole succession of a spouse or partner may also rule on property rights related to the marriage or partnership. After all, surviving spouses or partners are also heirs, so it would not be very easy to keep rights deriving from liquidation of the matrimonial property regime separate from succession rights, given the close relationship between assessment of matrimonial property rights and inheritance rights[25].

V. POSSIBLE LACK OF CONDITIONS FOR APPLICATION OF ARTICLE 4 OF THE TWIN REGULATIONS.

The concentration of jurisdiction on property regime cases before the court seised to rule on succession, pursuant to Article 4 of the Regulations of 2016, is

"in cases covered by Article 4", so the appearance of the defendant could mean that the court seised in matters of succession could be deprived of jurisdiction to rule on related property regime issues.

23 Bruno, P.: *I regolamenti europei sui regimi patrimoniali*, cit., p. 80; Peiteado Mariscal, P.: "Competencia internacional por conexión en materia de régimen económico matrimonial y de efectos patrimoniales de uniones registradas. Relación entre los Reglamentos UE 2201/2003, 650/2012, 11103/2016 y 1104/2016", *Cuadernos de Derecho Transnacional*, 2017, 9, p. 315.

24 According to this provision, if the deceased had previously chosen to have his succession governed by the law of the Member State whose nationality he possessed at the time of choice or the time of death (the Member State of chosen law), under Article 22 of Regulation No. 650/2012, and if instead a succession case has been brought before a court of the Member State of last habitual residence, different from that of his nationality, each party may ask this court to decline jurisdiction in favour of the Member State whose nationality the deceased possessed. However, a unilateral request put forth by a party in conflict with the surviving spouse or partner may also lead to the case related to property regime being heard before a court not easily accessible for the spouse or partner. In this case, the judge must carefully weigh the decision of whether to deny jurisdiction (by assessing wheter the courts of the Member State of the chosen law are better placed to rule on the succession) to counteract any possible "unfair" behaviour of the parties in the proceeding.

25 In the event of death of one of the spouses, for example, German law (Art. 1371, par. 1, BGB) provides for a fixed allocation of the accrued gains by increasing the surviving spouse's share of the estate. In this regard European Court of Justice stated that related issues fall within the scope of Reg. Successions (judgement of 1 March 2018, C-558/16, ECLI:EU:C:2018:138).

still subject to specific conditions, which may not occur. In that event, proceedings in matters of property regime and succession may be pending before courts of different Member States (or third States)[26]. The following situations may occur:

- first, an heir of the deceased (other than the surviving spouse or partner) might bring an action before a court of a Member State regarding succession rights to a single asset that the heir claims to be his or her inheritance, under the jurisdiction of the seised court, pursuant to Article 10, par. 2, Reg. No. 650/2012 (that is, jurisdiction of a court of the Member State where the estate assets are located, where no court in a Member State has jurisdiction on the whole succession pursuant to par. 1). Where the surviving spouse or partner subsequently brings a claim for assessment of property regime rights on the same asset, jurisdiction by connection shall not apply, so the court first seised cannot rule on property regime issues since there is not a "succession case" (that is, a case on the whole succession) in the sense of Article 4 of the Twin Regulations[27]. Therefore, in this event as well, the concentration of jurisdiction could be achieved under art. 18 in matters of related actions, as mentioned above;

- second, a proceeding could be pending between spouses or partners on issues related to patrimonial regime before a court of a Member State with jurisdiction under the Twin Regulations, and following the death of one spouse or partner a second proceeding could be brought by one or more heirs on the whole succession before the court of another Member State with jurisdiction pursuant to Regulation No. 650/2012. The court first seised will have jurisdiction pursuant Articles 6, or 7, or 8, of the Twin Regulations, as when the proceeding was brought, there was no pending case on the whole succession. We could ask whether jurisdiction may be removed from the court first seised for the property regime case, and consequently transferred to the second court seised to rule on the succession case, but it is thought that this may not occur[28]. It has to be excluded where the case regarding property regime has been brought first before an Italian court, since jurisdiction is determined with reference to the factual situation and law in force at the time of application (*perpetuatio iurisdictionis*) pursuant Article 5 of Italian Civil Procedure Code. In such an event, jurisdiction on property regime cases and succession cases cannot be concentrated before the courts of the same Member State.

26 Jurisdiction by connection cannot operate, indeed, if the succession case is pending before a State not belonging to the European Union, or belonging to the European Union but not participating in the enhanced cooperation that led to the adoption of the two Regulations (see Pérez Vallejo, A.M.: "Matrimonial property regimes with cross-border implications: Regulation (EU) 2016/1103", in AA.VV.: *Property relations of cross border couples in the European Union*, cit., p. 24.

27 Peiteado Mariscal, P.: *Competencia internacional*, cit., p. 317 f. See also Kunda, I.: Winkler S., "Jurisdiction and applicable law in succession matters", in AA.VV.: *Property relations of cross border couples in the European Union*, cit., p. 106 f.

28 Peiteado Mariscal, P.: *Competencia internacional*, cit., p. 325.

VI. CONCLUDING REMARKS.

With regard to jurisdiction rules, the Regulations of 2016 on property regimes adopted traditional regulatory solutions together with a criterion of jurisdiction by connection, to give jurisdiction on property regime cases to the court of a Member State seised to rule on succession, legal separation, divorce or dissolution of a registered partnership. It should be pointed out that European Legislator pursues the objective of concentrating *status* cases and property regime cases before the courts of the same Member State, without ensuring the concentration of these cases before the same court, which may occur only where provided for by procedural domestic laws.

On the one hand, the provision for jurisdiction by connection has to be favourably assessed. On the other hand, it can be said it is reasonable to assign a different role to choice-of-court agreement and to make jurisdiction by connection mandatory in matters of succession, given the complexity of such cases, which normally involve parties in different positions, such as a surviving spouse or partner and other heirs.

As considered above, the practical functioning of this criterion may present some problems, in the event of a succession case as well in matrimonial or partnership dissolution cases. However, these difficulties can be addressed by educating the parties so they can make well-informed decisions in the exercise of their private autonomy, where possible, through the choice of law and later, the choice of court.

Finally, in the field of jurisdiction, the Regulations of 2016 provide for appropriate procedural tools to facilitate concentration of jurisdiction on various related claims before courts of the same Member State in the majority of cases. In the other cases that may occur, the objective of proper administration of justice has to be one of the main interpretation guidelines for the implementation of the Twin Regulations by national and European courts.

BIBLIOGRAPHY

Bruno, P.: *I regolamenti europei sui regimi patrimoniali dei coniugi e delle unioni registrate*, Giuffrè, Milan, 2019, p. 73 ff..

Feraci, O.: "L'incidenza del nuovo regime europeo in tema di rapporti patrimoniali tra coniugi e parti di unioni registrate sull'ordinamento giuridico italiano e le interazioni con le novità introdotte dal d.lgs. 7/2017 attuativo della cd. Legge Cirinnà", *Osservatorio sulle fonti*, 2017, 2, p. 38 f.

Frimston, R.: "Art. 4", in AA.VV.: *The EU Regulations on Matrimonial and Patrimonial Property*, Oxford University Press, Oxford, 2019, p. 50 f.

Gasperini, M.P.: "Jurisdiction and Efficiency in Protection of Matrimonial Property Rights", *Zbornik znanstvenih razprav*, 2019, LXXIX, p. 23 ff.

Lagarde, P.: "Règlements 2016/1103 et 1104 du 24 juin 2016 sur les régimes matrimoniaux et sur le régime patrimonial des partenariats enregistrés", *Rivista di diritto internazionale privato e processuale*, 2016, 3, p. 679.

Marino, S.: "Strengthening the European civil judicial cooperation: the patrimonial effects of family relationships", *Cuadernos de Derecho Transnacional*, 2017, 9, p. 27.

Peiteado Mariscal, P.: "Competencia internacional por conexión en materia de régimen económico matrimonial y de efectos patrimoniales de uniones registradas. Relación entre los Reglamentos UE 2201/2003, 650/2012, 11103/2016 y 1104/2016", *Cuadernos de Derecho Transnacional*, 2017, 9, p. 315.

Peiteado Mariscal, P.: *Competencia internacional*, cit., p. 317 f. See also Kunda, I.: Winkler S., "Jurisdiction and applicable law in succession matters", in AA.VV.: *Property relations of cross border couples in the European Union*, ESI, Naples, 2020, p. 106 f.

Pérez Vallejo, A.M.: "Matrimonial property regimes with cross-border implications: Regulation (EU) 2016/1103", in AA.VV.: *Property relations of cross border couples in the European Union*, ESI, Naples, 2020, p. 24.

Ruggeri L.: "Registered partnerships and property consequences", in AA.VV.: *Property relations of cross border couples in the European Union*, ESI, Naples, 2020, p. 61 f.

VIARENGO, I.: "Effetti patrimoniali delle unioni civili transfrontaliere: la nuova disciplina europea", *Rivista di diritto internazionale privato* e *processuale*, 2018, 1, p. 42.