UNIVERSITÀ DEGLI STUDI DI MILANO

DIPARTIMENTO DI STUDI INTERNAZIONALI, GIURIDICI E STORICO-POLITICI

PLANNING THE FUTURE OF CROSS-BORDER FAMILIES:
A PATH THROUGH COORDINATION – 'EUFAM'S'
Project JUST/2014/JCOO/AG/CIVI/7729
With financial support from the 'Civil Justice Programme' of the European Commission

In partnership with:

In association with:

SPANISH EXCHANGE SEMINAR

Valencia, October 2016

REPORT ON THE SPANISH GOOD PRACTICES

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PRESENTATION

The Spanish Exchange Seminar was the fourth National Exchange Seminar organized within the Eufam's Project. It was organized by the University of Valencia, one of the partners involved in the Project.

The event was intended to evaluate the state of implementation in Spain of EU Regulations on family law (Brussels IIa, Rome III, 4/2009 and 650/2012) and their interplay with the relevant International conventions. The objective of the Seminar was to identify problems derived from practice in the implementation process and elaborate proposals to improve the effectiveness of the European instruments in Spain.

After the presentation of the Project and the Seminar by the academics of University of Milan and University of Valencia, as well as the *Asociación Española de Abogados de Familia* (AEAFA), three expert speakers together with the rest of participants were invited to discuss about the Regulations. All of them addressed crucial issues, problems and possible solutions that were discussed among all the participants. In particular 18 academics, 4 judges, 1 state officer and 22 practitioners. The guest from France could not come because of justified medical reasons. The evaluator of the project attended also the Seminar.

The meeting was meant to be a moment of free and open discussion between the participants that favoured the exchange of opinions and compare their professional and academic experiences in the application of the EU Regulations and the International conventions.

During the Seminar the European instrument that was mostly referred to was the Brussels IIa Regulation, in particular the aspects regarding the international jurisdiction (more than that of recognition and execution of resolutions). According to the case law existing in Spain the debate was focused on matrimonial matters and parental responsibility more than maintenance obligations and successions.

The following report outlines the critical issues and opinions that arose during the Seminar. The names of the participants are not reported, but their professional status is provided.

I. CURRENT SITUATION IN THE APPLICATION OF THE EU REGULATIONS

The plurality of EU and international texts that can be applied to the same case was related as the principal problem connected with the application of the family law regulations. The case law regarding these matters is increasing day by day in the national context with decisions of the state courts. But also the number of judgments given by the ECJ as well as the ECHR is increasing. Several examples were exposed regarding the most recent cases in relation to the Brussels IIa Regulation.

In general terms, judges and lawyers agreed that the application of international instruments on family matters has clearly improved in Spain despite some pitfalls. Anyway, account was given of the difficulties arising out of the increasing and overlapping number of international instruments dealing with private international law issues that makes their application challenging. This is even more difficult as the concept of private international situation has been broadened as well, for example, to cover cases in which all the elements of the case refer to a country save a choice of forum or law clause to another jurisdiction. In this vein, it is to highlight that the Spanish judiciary lacks specialization in private international matters thereby the international element is disregarded in many cases. Nevertheless, this 'fear of the international' is being slowly overcome, and the establishing of networks of experts to whom seized courts may pose their doubts is greatly helping in this endeavour.

It was also noted that the Spanish jurisdiction is not an active one in posing prejudicial questions to the Court of Justice of the European Union in this field of law. Two reasons for this were advanced: the lack of technical support in drafting the questions (one issue in which the Spanish judiciary is consciously making efforts to improve) and the extra delay in finishing the ongoing proceeding that it involves and that is not welcome by the parties to the proceeding.

II. BRUSSELS II A REGULATION: MATRIMONIAL MATTERS

1. Scope of application

The academics referred to the future modification of BIIa and the proposal launched in June 2016 (Brussels, 30.6.2016, COM (2016) 411 final). In their opinion matrimonial and parental responsibility should be kept together in future instruments. More specifically, it would be important to include rules of coordination and relation between them as well as other family matters regulated in other instruments. In practice, the coordination between all the applicable texts in this field is deemed to be difficult. In addition to this, Spain has concluded many bilateral and multilateral conventions and that presents an additional source of complexity. For instance, Spain made a reservation to the 1996 Hague Convention and its Articles 60 and 55.1, a) and b) that might be of relevance. By the reservation Spain ensures jurisdiction to its authorities to undertake protective measures over a child's assets situated in its territory, and it also keeps the right of not recognizing parental responsibility measures or alike if they were incompatible with one adopted by its authorities in relation to those assets. It was reported during the seminar that this reservation has already been used to solve a case where the assets were located in Barcelona and the child in a third country.

In connection with this extra source of complexity when it comes to Spain, one of the provisions discussed in the Seminar was article 63, that is «Treaties with the Holy See», in particular the «Concordats». One academic stressed that this rule is at odds with the Regulation's objectives and may give rise to the infringement of the right to a fair trial. Nevertheless, it was also mentioned that its inclusion in the Regulation was mainly political as otherwise Portugal would not have accepted the Brussels II regulation, for which its removal was considered convenient but difficult to achieve.

As for the subject matter of the Brussels IIa Regulation the academics stressed the problems related to some kind of divorces as private divorces and that of same sex couples. In the first case, private divorces are not included in the BIIa Regulation's scope of application as already indicated by the Court of Justice in the Case C-281/15. In the second case, the absence of any reference to that was deliberated due to the different opinions in the EU member States on the acceptance of this type of marriage. However, it would be nowadays wise to tackle this issue as there can be

cases where this type of couples would not find a Member State jurisdiction to hear their judicial separation or divorce, and thus they are discriminated in relation to other couples. In the seminar, it was criticised that the reform proposal of June 2016 does not tackle the application of Brussels IIa Regulation to same sex marriages. Moreover, the proposal does not include a rule comparable to article 13 of the Rome III Regulation or article 9 of the not yet in force Regulation on matrimonial property regimes. This silence should be reconsidered as the inclusion of a rule of this type seems to be a matter of coherence among international instruments.

Other attendees attracted attention to the fact that no *forum necessitatis* has been incorporated in the proposal. It is worth recalling that, as regards to the Rome III Regulation and keeping in mind its article 13, the Council of the European Union issued a Declaration requesting a reform of Brussels IIa Regulation to include a *forum necessitatis* for cases in which the competent authorities are in countries that do not admit same sex marriages (Council Document of 26 November 2010, 17046/10, JUSTCIV 214, JAI 100). In this vein see also the European Parliament Resolution of 15 November 2010.

One academic noted that the possibility to limit the large number of alternative forums in the proposal for a Brussels IIa Recast Regulation should have been considered. In particular, those jurisdiction criteria based on the habitual residence of the claimant have been called into question. In this context, account should be given to the recent EGPIL's (European Group for Private International Law) considerations in line with this criticism, which are of the utmost significance and so was highlighted during the seminar. However, it was also mentioned during the seminar that the complete jurisdiction criteria list has been maintained for the sake of flexibility, as the express submission forum has not been specifically considered.

2. *Jurisdiction*

Focusing on the rules of jurisdiction, the seminar attendees drew attention to some practical issues: the role of party autonomy in matrimonial matters; that of articles 6 and 7 of Brussels IIa Regulation; the establishing of the defendant´s habitual residence; and problems on notification to the defendant.

a) The role of the party autonomy in matrimonial matters

Several academics criticised the proposal for a Recast of Brussels IIa Regulation for not including an express submission forum, even though both the public consultation and the preparatory studies previous to the launch of the reform proposal broadly supported its incorporation. In this vein, the choice of forum within the framework of so many alternative jurisdiction criteria as already laid down in the Regulation would promote legal certainty and contribute to avoid the *forum shopping*, in particular bearing in mind that Rome III Regulation does not apply to all member States.

Other participants in the seminar noted that the express submission forum would contribute to the coherence among the different Regulations. The possibility of a choice of *forum* and *ius* might would make possible to concentrate the different issues stemming from a marital crisis before the court of one country and submit all of them to a single law. At the moment it is possible that the election of applicable law envisioned in Rome III Regulation is rendered void in case the claim is filed before the authorities of a Member State where this instrument is not applied. In this regard, there is a risk that a lawyer advices a couple to choose the law of a certain country as applicable to the dissolution of their marriage and later on that country does not recognize the choice of law. It is not yet clear how this issue will be solved in the future regulation.

In this respect, several academics considered, though, that it would be desirable not to change much the current Brussels IIa Regulation in order to achieve the unanimity of all member States to approve its reform. However, this means to lose the opportunity to improve the existing regime, for instance in matters such as the inclusion of an express submission forum.

Several lawyers indicated though that these problems are more theoretical than real, as the number of couples interested in *forum election* is limited, being normally couples with high purchasing power.

b) Problems regarding articles 6 and 7.

The attendees to the seminar positively assessed that the proposal for a Brussels IIa Recast

Regulation has tried to clarify the understanding of articles 6 and 7 which had been posing many interpretative issues (Judgement of 29 November 2007, C-68/07 Sundelind López). They considered a success the removal of article 6 as it is only deemed to be a source of confusion in its current terms. The proposal has mingled both articles into a single provision entitled residual jurisdiction, which refers to domestic rules on jurisdiction when it is not possible to establish in accordance with arts 3, 4 and 5 the jurisdiction of any Member State authority. There is though one limitation, i.e. domestic rules on jurisdiction will not apply when the defendant has her habitual residence in a Member State or is a national of a Member State.

Several academics criticised that the proposal had renounced to the possibility of including subsidiary criteria of international jurisdiction, similar to those included in other instruments such as the Maintenance Regulation. In Spain, this implies the application of *Ley Orgánica del Poder Judicial* (LOPJ). However and after its reform by the act 7/2015 of 7th July, the special forum on matrimonial matters, article 22 quater c) of LOPJ, is a copy of the ones used in the Regulation, for which reason litigants in Spain can only count on the criteria established by the Brussels IIa Regulation.

While practice confirms that it is essential to modify the Brussels IIa Regulation, such a modification ought to be carried out if it implies a clear improvement in respect of the Regulation in force and of course if there is unanimity in the Recast; otherwise, it is better to remain as we are.

c) Problems in determining the defendant´s habitual residence

Equally controversial was the issue of establishing where the defendant's habitual residence is to the extent that many factors contribute to make this endeavour not an easy one such as the fact that it requires an examination of the whole circumstances concerning a particular individual. In particular, it is to highlight that it is not acquired merely through registering at the local council as one lawyer pointed out reminding that this used to be the Spanish approach to this difficult issue. In addition to this, the habitual residence may change many times during a person's life due to work transfers, or the defendant might be in an irregular situation, etcetera. The difficulties in its

location leads in practice to concrete its meaning according to the circumstances surrounding the concrete case. In the light of these difficulties, the suggestion was made as to the legislature providing clear guidelines on this topic. However, one academic reminded that this issue is cyclically addressed at The Hague Conference on Private International Law, but it is always left undetermined in the The Hague conventions because of the lack of consensus on how to approach it. Anyway, the remark was made that this generates much insecurity among lawyers.

d) Problems in notifying the defendant

Although not directly addressing the topic of the seminar, it is worth mentioning that one of the main debates during the seminar referred to the practical problems arising out of the notification to the defendant in and outside the European Union. In particular these problems arise in cases in which the defendant pretends not to have been notified, with the latter risk that the judgement might not be recognized. Despite the international instruments on notification of judicial and non-judicial documents, many lawyers showed their worries on the effects of e-notifications as well as the lack of reaction by courts in cases in which defendants were simply hiding. This costs unnecessary delays in proceedings and causes much uncertainty as to the extraterritorial effects of the judgments rendered in such cases.

3. Conflicts of laws

The discussion on this topic was brief. It started when one judge highlighted the progress that Spanish courts are making in applying the regulations. More specifically, the impression was shared that international jurisdiction rules are properly applied while that was not the case of conflict rules as Rome III Regulation has not being so far applied by the Spanish jurisdiction. Although none of the attendees had conducted a thorough research, the general understanding was that Spanish court kept applying the domestic conflict rule, article 107.2 of the Spanish Civil Code.

Nevertheless, one lawyer openly disagreed with the abovementioned judge as to even the application of Brussels IIa Regulation, which led the other participants to make the point that

while some judges and lawyers are familiar with the EU regulations, many others are for which reason it was noted that all Spanish legal professions need to improve their knowledge and know-how on the EU instruments. Against this framework, it was also suggested that court specialization could be a way out of this impasse. As to lawyers, they highlighted that the complexity on these matters was keeping those inexperienced colleagues out of game being the problem solved by this means.

In general, the application of conflict rules in Spain was brought to the attention of the attendees by the academics to the extent that the proof of foreign law is an extremely controversial issue in Spain. While Article 12.6 of the Spanish civil code lays down that conflict rules are to be applied *ex officio* by courts, the Supreme Court places the burden of proof of foreign law on the parties to the proceeding. This has led in practice to legal uncertainty given that some judges apply *ex officio* foreign law while others apply Spanish law if the parties fail to prove foreign law.

Unfortunately, a significant number of courts do not acknowledge the international element and directly apply Spanish law, not even indicating the applicable conflict rule. As highlighted by some lawyers, this leads to great frustration on the side of the affected party to the proceeding. The attendees agreed that the Spanish practice has to improve in these matters, but they also highlighted that it is necessary to enhance access to foreign law by ameliorating cooperation in the European area of justice and simplifying proof of foreign law.

These problems have been diminished by the fact that the connections chosen by European private international law point to the *lex fori* in a very significant number of cases. In this regard, the predominance of the habitual residence over that of nationality in e.g. Rome III Regulation is positively assessed by the attendees. However, one judge also pointed out that it would be advisable to include a reference to the law of the nationality of the spouses as *obiter dicta* for recognition purposes in their country of origin. Morocco´s law was specifically mentioned in view of the number of cases dealt with by the Spanish judges.

Implementation in Spain of Article 14 of Rome III Regulation, on the application of conflict rules thereof in Member States with more than one legal system, was also questioned, given that

Catalan law was being applied not by reference to this provision, but by mandate of the Catalan Autonomous Statute. Political reasons and the territoriality principle would explain this departure from the said regulation as one judge explained. However, it was acknowledged that Article 14 has to be mentioned as well while establishing the applicable law to internal conflicts of laws. In this vein, there was a mention to the specific problem of cross-border successions from foreigners who reside in a Spanish region with its own law, being the issue which law is applicable, either that of the Spanish civil code or the special law of that territory.

III. BRUSSELS IIA REGULATION: PARENTAL RESPONSABILITY MATTERS

1. Scope of application

The procedural treatment of matrimonial crisis in Spain tends to be unitary, meaning that all issues related to it such as the liquidation of the matrimonial property and parental responsibility matters are accumulated to the proceeding dealing with the judicial separation or divorce of the couple. The fact that all these matters are split in different regulations, not always coordinated between them, is deemed to be problematic by the Spanish practitioners. In particular, a mismatch on international jurisdiction issues between the Maintenance Regulation and the Brussels IIa Regulation emerged from the discussion.

More specifically, while the not yet in force Regulation on matrimonial property links its international jurisdiction rules to those dealing with matrimonial matters, the Maintenance Regulation entitles one of the partners to disagree on the latter court deciding on the other's right to a compensation for domestic work as laid down by the Spanish Civil Code, or to a compensation for work according to the Catalonian Civil Code. If this happens, the joinder of actions is not feasible, and the action for maintenance is to be brought before another jurisdiction. An alternative approach was suggested and it would consist on the understanding that this lack of agreement on the jurisdiction of the court deciding on the divorce to also rule on the action for maintenance would amount to an abuse of law. However, this suggestion is very controversial in the light of the Maintenance regulation's terms.

2. The role of judicial cooperation in ascertaining international jurisdiction

The judicial cooperation problems arising out of the provisions on international jurisdiction of Brussels IIa Regulation were also discussed during the seminar in the light of the case C-259/09, *Purrucker*. As known, a non-married couple pitted against each other for the custody of the twins they had while living in Spain; one of the twins that needed medical treatment remained in Spain with his Spanish father while the other moved with her German mother to her country of origin. Although there was an agreement between the parents on Germany being the children's country of residence, the father claimed for provisional measures and required the provisional custody of the two children. Once the mother was informed, she initiated proceedings in Germany as well. The German court was confused about whether the Spanish proceedings were over the merits of the case or not and tried to contact the Spanish jurisdiction. Although some information was provided, it did not entirely clarify the doubts of the German court finally leading to a prejudicial question before the Court of Justice.

Against this background, the discussants contended that judicial cooperation needs to be greatly improved in the European area of justice as key to a successful application of the regulations. By the same token, the inherent difficulties to the comparative analysis of family and procedure law were also highlighted for which reason it was suggested in the seminar that the European Judicial Network needs to enhance its resources for these purposes.

The role of judicial cooperation in ascertaining jurisdiction is essential in applying Article 15 of Brussels IIa Regulation dealing with *forum (non) conveniens* for which reason it was brought to the attention of the audience which signalled that despite being an oddity Spanish courts were already aware of its potentiality and welcomed it.

3. Article 12 of Brussels IIa Regulation

Article 12 of the Brussels IIa Regulation was also mentioned in the discussion. However, there

seems not to have been any problems in its application by Spanish courts to the extent that it is understood that this provision requires *sine qua non* the consent of both spouses. Hence, this forum is treated as if it were a tacit submission, meaning that none of the parties to the proceeding challenges the jurisdiction of the court; otherwise, international jurisdiction based on Article 12 is not accepted. The same applies if one of the spouses remains absent to the proceeding in which case the jurisdiction is verified *ex officio* and Spanish courts decline to rule on parental responsibility matters.

4. The concept of habitual residence and problems related to it

The judges attending the seminar showed their concerns about the concept of habitual residence and the problems in establishing where it is. By the same token, they signalled the paramount role of the seized court to decide on the merits of the case in establishing where the habitual residence of the child is, as highlighted by for example Case C-376/14, *C v M*, posed by the Supreme Court of Ireland to the ECJ. Nevertheless, this case was criticized because it suggests that the minor's habitual residence may be transferred as a consequence of an interim judgement and this conclusion could undermine the authority of the court deciding on the merits of the case.

In a similar vein, one judge pointed out the different consequences of the legal transfer of habitual residence during a pending proceeding depending on the applicable instrument, either the Brussels IIa Regulation given that the jurisdiction remains with the country of origin, or the 1996 The Hague Convention where the jurisdiction is transferred along the minor´s habitual residence. The different approach to the same issue is deemed to be confusing by the attendees.

The discussion went on to emphasise the significance of all circumstances of fact specific to the case in establishing the minor's habitual residence, and not only the parents' intention as it used to be in past judgements in Spain. Accordingly, the latter is only one more factor among many others. In fact, the Spanish case-law has been of late accommodating to the European approach to the concept of 'habitual residence'.

5. International abduction of children

The key issue of the international abduction of children emerged during the discussion on the concept of habitual residence. As known, the proposal for a Brussels IIa Recast Regulation adds new provisions on this issue including new time limits of the return proceeding established by the 1980 The Hague Convention on civil aspects of the international abduction of minors. The attendees to the seminar criticized the departing of the proposal from the maximum six-week period mentioned in the 1980 Convention to the extent that although not realistic, in practice this period puts pressure on courts to finish the return proceeding as soon as possible; the new time-limits risk putting an end to that pressure.

While discussing this issue, a critique was made to the Spanish legislation which has enshrined the crime of international abduction of minors in the Spanish criminal code. This crime is not effective in bringing abducted children back, and it threatens the right of the children to relate to both parents as laid down by Article 9 of the UN Convention on the Rights of the Child. Hence, the attendees to the seminar agreed on the need to delete this crime from the Spanish criminal code.

6. Cross-border placement of children

The attendees also expressed worries as to cross-border placements of children. This issue is dealt with by Article 56 of Brussels IIa Regulation establishing that the Member State of placement has to agree on it before the transfer of the child takes place. However, the delays are so important in a proceeding that ought not to be longer than four weeks, that cross-border placements are done without waiting for that agreement. Spain has participated in a report on this issue conducted under the auspices of the European Parliament, being the outcomes of that research troublesome as there are no official statistics despite the seriousness of the situation. In particular, the remark was made that placement in a residence or a family in another Member State may last until five years in accordance with some Member States' legislations. Moreover, in view of the time spent at the country of placement, attendees wondered where the habitual residence of those minors would be after e.g. one year and thus whether the Member State that ordered the placement still

retains international jurisdiction or it is transferred to the Member State of placement after a period of time.

7. Recognition and enforcement of judgements

The recognition and enforcement of judgements is challenging for the Spanish practice because of the many international instruments dealing with these issues. Moreover, these instruments tackle in very different ways these issues. So, some of those instruments have deleted the exequatur, and it emerged from the discussion that many practitioners do not know anything about European enforcement orders such as those on return of a child and rights of access enshrined in Articles 40 et seq of Brussels IIa Regulation. Other instruments lay down different recognition or/and enforcement proceedings (automatic, incidental and exequatur), meaning that there are no general rules and a case-by-case approach is necessary in order to learn which proceedings are available. In addition to this, not all of these recognition proceedings are well known by the Spanish practice where judicial incidental recognition has been only feasible in the framework of the European regulations until the entry into force of the 2015 Law on international jurisdictional cooperation on civil matters. For this reason, this type of proceeding has been rarely used in practice.

Moreover, the fact that these instruments separate what is deemed in Spanish law to be an only matter - that of family involving e.g. divorce, maintenance, matrimonial property and parental responsibility - poses a further challenge to the extent that the same judgement is to be submitted to different regimes. In this regard, maintenance rulings may go directly to execution if Regulation 4/2009 is applicable. If the judgement deals additionally with matrimonial and parental responsibility matters, the interested party needs to recognize and enforce those parts of the judgement before going to execution where appropriate. Accordingly, it may well happen that the same judgement is recognized or not depending on the applicable Regulation, that´s the reason why the audience celebrated that the proposal for a Recast of Brussels IIa Regulation is in line with the Maintenance Regulation when it comes to recognition and enforcement matters.

As to the grounds for not recognising a foreign judgement, the significance of the minor's right to be heard was also mentioned; in particular reminding that Spain has been condemned by the

European Court of Human Rights for not having heard a thirteen-year old girl.

Despite the abovementioned difficulties, the general understanding is that the Spanish practice is quickly improving. A case in point was one especially difficult involving a Danish couple living in Spain that got a divorce in Bilbao and provisional measures on parental responsibility to be enforced in Spain. Later on, they requested the Spanish courts for the adjustment of those measures to London where the children moved and once already there, to Latin America. The Spanish seized court realized that it was not competent anymore for the latter, but those of London which just needed a week to provide the relevant transfer authorization. This led to the attendees to conclude that it is not only necessary to finish with any undue delays, but also to improve the efficiency and effectiveness of family proceedings in Spain.

Following this thread, the suggestion is made of specializing courts in Spain. In view of the growing complexity and number of international matters, the specialization of some courts could be a way out. However, this is not shared by everyone although the truth is that some steps in that direction have already been given in our country.

IV. ANTEINANCE REGULATION 4/2009

The discussion on a possible further specialization of Spanish courts led to the Joined Cases C400/13 and C408/13, Sanders and Huber, whose subject-matter was about German legislation concentrating jurisdiction in some courts to decide on maintenance claims and thus, departing from the rule laid down in the Maintenance Regulation granting jurisdiction to the place of creditor's habitual residence. Despite the open approach taken by the Court of Justice, some doubts were expressed in the seminar as to whether such concentration and thus specialization would be in line with the European regulations.

CONCLUSIONS

- The application of international instruments on family matters has clearly improved in Spain despite some pitfalls.
- The Spanish judiciary lacks specialization in private international matters thereby the international element is disregarded in many cases. Nevertheless, this 'fear of the international' is being slowly overcome, and the establishing of networks of experts to whom seized courts may pose their doubts is greatly helping in this endeavour.
- There seems to be though a mismatch in the application of international jurisdiction and conflict-of-laws rules when it comes to matrimonial matters; while the former are being correctly applied, the latter are disregarded in many cases either because the court and the parties fail to identify the international element or because the domestic conflict rule is applied.
- The Spanish jurisdiction is not an active one in posing prejudicial questions to the Court of Justice of the European Union in this field of law. It would be important to promote technical support in drafting the questions.
- As a matter of coherence among international instruments it ought to be considered the inclusion in a future Brussels IIa Recast Regulation of a rule similar to article 13 of Rome III Regulation or article 9 of the regulation 2016/1103 on matrimonial property regimes in relation to same sex couples.
- Same sex couples ought to have access to a jurisdiction to hear about their judicial separation or divorce, not being this guaranteed in the current state of affairs. The legislature should pay attention to this legal void when amending the Brussels II bis Regulation.
- The express submission forum, within the framework of so many alternative forums, could promote legal certainty and contribute to avoid the problem of *forum shopping*, bearing in mind that Rome III Regulation does not apply to all member States.
- However, the number of couples interested in practice in *forum selection* in Spain is limited.
- Practice proves that it is essential to modify the Brussels IIa Regulation on matrimonial matters, but only if such modification means a clear improvement and there is unanimity, otherwise, it is better to remain as we are.
- The proposal for a Brussels IIa Recast Regulation should include effective and clear rules of coordination and relations between matrimonial and parental responsibility matters.

- Practitioners in Spain find many problems regarding the notification to the defendant as well as the location of her habitual residence. These problems generate much insecurity among lawyers and practitioners.
- The proposal for a Brussels IIa Recast Regulation ought to include subsidiary criteria of jurisdiction avoiding the referral to domestic jurisdiction rules. Article 22 quater c) of the LOPJ would be the one applicable if the defendant did not have the nationality of, or the residence in, a Member State according to article 7 as amended by the proposal. Unfortunately, the domestic provision copies article 3 of the Brussels IIa Regulation, i.e. the reference to Spanish jurisdiction rules does not help those EU citizens that does not find jurisdiction in accordance with the Regulation.
- As to the conflict of laws, the preference of the connecting point 'habitual residence' over that of nationality was celebrated. Nevertheless, it was interestingly suggested as a good practice that of making a reference as *obiter dicta* to the law of the common nationality in those cases in which it would help recognising the Spanish judgment in the spouses' country of origin.
- The fact that family matters are split in different regulations, not always coordinated between them, is deemed to be problematic by the Spanish practitioners to the extent that family matters are usually dealt with in an only proceeding in Spain. By the same token, the fact that the regulations, in particular the Brussels IIa and Maintenance Regulations, may grant jurisdiction to different courts in specific cases, in particular because of the different treatment of party autonomy, is deemed to be problematic by Spanish practitioners. In general, the conclusion was drawn that all regulations dealing with family matters need to be much better coordinated.
- Judicial cooperation needs to be greatly improved in the European area of justice as key to a successful application of the regulations, in particular when it comes to their provisions on jurisdiction.
- As many practical difficulties arise from the comparative analysis of family and procedure law, the role of the European Judicial Network needs to be reinforced and a better toolbox on foreign family law developed to overcome the forthcoming misunderstandings.
- The application of article 12 of Brussels IIa Regulation in Spain is smooth and as a good practice it can be mentioned that it is treated as if it were a tacit submission, meaning that the Spanish jurisdiction is establish only if none of the parties to the proceeding challenges the jurisdiction of the court; otherwise, international jurisdiction based on Article 12 is not accepted.

The same applies if one of the spouses remains absent to the proceeding in which case the jurisdiction is verified *ex officio* and Spanish courts decline to rule on parental responsibility matters.

- As another best practice, the assessment of all circumstances of fact specific to the case is essential in establishing the minor's habitual residence, and not only the parents' intention as it used to be in past judgements. In other words, courts have to motivate where the child's habitual residence is and why it is there in their judgments.
- The change of the child's habitual residence during ongoing parental responsibility proceedings should be clarified in order to avoid surprises such as striking transfers of jurisdiction.
- The EU legislature ought not to modify the six-week period laid down in the 1980 The Hague Convention.
- As a best practice it was suggested to enhance coordination between Member States when it comes to cross-border placement of children, and in particular to reduce time-limits when it comes to the Member State's acceptance of that placement in its territory.
- Cross-border placement of children may last for more than one year, and this poses doubts as to whether the habitual residence of those children are. This issue ought to be taken into account by both the Member State of origin and that of placement in order to better protect the children.
- The many differences between regulations as to the rules on recognition and enforcement of judgments and those on European enforcement generate many difficulties and uncertainties in their practical application for which reason their coordination would be very welcome by practitioners. In particular, the proposal for a Brussels IIa Recast Regulation is celebrated as a step forward in the right direction to the extent that it assimilated these rules to those of the Maintenance Regulation.
- As to the grounds for not recognising a foreign judgement, the minor's right to be heard is fundamental. The Spanish practice shows that this is frequently ignored for which reason more efforts have to be made at all levels in order to enhance its application.
- It is necessary to enhance access to foreign law by improving cooperation in the European area of justice and simplifying the proof of foreign law.