Getting to know Spanish PIL Particularities

One of the most particular traits of the Spanish legal system results from art. 149.1.8 of the Constitution, under which "1. The State has exclusive jurisdiction over the following matters: 8- Civil legislation, without prejudice to the preservation, modification and development by Autonomous Communities of civil rights (…), where they exist."

Due to this possibility Spain has become a State characterized by legal pluralism; it is a "plurilegislative" State, that is, a single sovereign territory where several civil law coexist- though not, however, several jurisdictions.

The coexistence of different systems of civil law generates inter-regional conflicts. Only the State is empowered to make rules in relation to them. As said by art. 149.1.8: "In any case, [The State has exclusive jurisdiction over] the (…) rules for resolving conflicts of law (…)". The Autonomous Communities do not have competence on the subject.

The clarity of this provision has not prevented regional lawmakers from including criteria determining the spacial scope of the autonomous rules (see eg art. 188 of the Civil Law of Galicia, "Galicians are allowed to make a joint will either in Galicia or outside Galicia"), although, as repeatedly pointed out by the authors, in doing so they may be invading the exclusive jurisdiction of the State . In some cases, this trespass on the State exclusive competence has led to a constitutional complaint before the Constitutional Court.

Art. 16 Civil Code (Cc) contains the rule for solving inter-local conflicts: "Conflict of Laws that may arise from the coexistence of different civil laws in the country will be resolved according to the rules contained in Chapter IV". This means that the lawmaker has chosen to extend the Spanish solution for private international situations to inter-local conflicts. The option has been criticized in academic circles, where the need for a specific solution has been highlighted considering the lack of analogy between the conflicts.

At any rate, art. 16 Cc must be understood beyond its literal meaning, that is, the reference to "the rules contained in Chapter IV" extends to any rule conceived to

solve a conflict of laws in autonomous PIL system, and encompasses all solutions, regardless of the legislative technique used (eg, conflictual or unilateral) . Much more controversial is what happens with conventional (or European Community) regulation. The issue requires a detailed review for which we hope we will get an expert opinion sometime later this year.

In order to apply Chapter IV of the Civil code to inter-regional situations, art. 16 Cc replaces the nationality as connecting factor: "Personal Law will be determined by civil neighbourhood (*vecindad civil*)". Regulation of the civil neighbourhood is a matter of exclusive jurisdiction of the State (see arts. 14 and 15 Cc).

Finally, art. 16 Cc excludes the provisions of paragraphs 1, 2 and 3 of Article 12 Cc: the rules on characterisation, renvoi and public policy will not apply to inter-local situations. Conversely, that apparently means that the prohibition of fraud (art. 12.4 Cc) remains in effect. However, despite some case law supporting the opposite view, scholars and academics reject that the fraud rule be applicable in merely inter-local situations. Another issue that we must leave open, to be (hopefully) explained by an expert contribution.