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MODULE III

SUBJECT 7

REGULATION (EC) Nº 2201/2003 (I): International jurisdiction and recognition of decisions in matters of divorce, separation and annulment

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SUBJECT 7: JURISDICTION AND RECOGNITION OF JUDGMENTS IN MATRIMONIAL SEPARATION, ANNULMENT AND DISSOLUTION OF MATRIMONY. *COUNCIL REGULATION (EC) NO. 2201/2003 OF 27 NOVEMBER 2003, ON JURISDICTION, RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN MATRIMONIAL MATTERS AND MATTERS OF PARENTAL RESPONSIBILITY REPEALING REGULATION (EC) 1347/2000* [1].

SUMMARY: 1. Scope of Application of the Regulation. 2. Jurisdiction A) Jurisdictional forums. B) Operation of jurisdictional forums. C) Privileges enjoyed by Community citizens D) Possible discrimination on grounds of nationality. E) Other jurisdictional forums. F) Other questions relating to the determination of jurisdiction. G) Cases in which the Regulation is not applicable. 3. Recognition of judgments. A) Decisions on divorce, legal separation and annulment susceptible to recognition through the Regulation. B) Ecclesiastical decisions on annulment. C) Effects sought and types of recognition. D) Conditions required for the recognition of judgments. E) Cases in which the Regulation is not applicable.

In addition to the autonomous law of each Member State, in all countries the Community Regulation[2] on jurisdiction, recognition and enforcement of judgments in matrimonial matters is also in force and is addressed in the present unit. Parental responsibility, which is also the subject of this Regulation, will be studied in another lesson in the syllabus, therefore here we shall confine our study to separation, annulment and divorce.

The object of the Regulation is to standardise regulations on jurisdiction of European Courts, to facilitate recognition of judgments and to avoid parallel procedures in different Member States in matters of divorce, legal separation and matrimonial annulment and matters relating to parental responsibility for children of both spouses in the event of matrimonial crisis.

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[1] By Ana Paloma Abarca Junco, Professor of Private International Law.

[2] Council *Regulation (EC) No. 2201/2003 of 27 November 2003 on jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No. 1347/2000*. This Regulation does not substantially modify the Regulation it repeals in respect of annulment, separation and divorce. It entered into force on 1 March 2005.

The Regulation incorporates fundamental questions relating to the Brussels II Convention which never entered into force and whose legal basis was Article K3 of the EUT. Following the entry into force of the Treaty of Amsterdam and on the basis of Articles 67, 61 c) and 65 of the ECT, which allows for communitarisation of this matter, a first Community Regulation was adopted and entered into force in March 2001, to be repealed subsequently by Regulation No. 2201/2003.

This Regulation is closely linked to the Brussels Convention of 1968 and to Regulation No. 44/2001 relating to jurisdiction and recognition of judgments in civil and commercial matters, from which it takes its general principles. It is to be interpreted by the Court of Justice of the European Communities and is binding in its entirety and directly applicable in Community countries so that it will be applied by judges in all the States party to the Regulation, replacing the national conventional regulations with the restrictions determined by the Regulation itself. The effect of the entry into force of the Community Regulation on Matrimonial Matters on the law of Member States is enormous, since from its entry into force the question of jurisdiction and recognition of judgments in matters of judicial separation, annulment and divorce will have a dual legal system in the private international law of these countries. The application of one or another system is based on three variables The first is the material scope and the procedures to which the Regulation is applied (1) The second is the operation of the Regulation forums, which will determine whether or not to apply the national law of the Member States, which we shall deal with in the section on jurisdiction (2) and thirdly, the origin of judgments to which the types of recognition contained in the Regulation will be applied and which will determine whether or not the provisions for recognition in the national law or in the Conventions ratified by member countries will be used, which we shall see in the section on recognition (3).

1. SCOPE OF APPLICATION

The Regulation restricts its scope of material application to the principal effect of the Judgment, that is, to the constitutive effect: the change in the bond itself. It is not therefore applied to any other question deriving from divorce, separation or annulment (maintenance, financial relations etc). Member countries will apply either multilateral or bilateral Conventions or their national law to these issues depending on the matter in question. The problem of using various legal texts is the most serious one posed by the Regulation. With regard to procedures to which the Regulation applies, both judicial and non-judicial procedures admitted in Union countries are included. However, religious procedures are not included, although Article 63 safeguards State Agreements with the Holy See as is the case of the Concordats of Spain, Portugal, Italy and Malta.

2. JURISDICTION

Regarding jurisdiction, there is no prerequisite for application. In the event of a claim for annulment, separation or divorce with international implications, the Judge shall be required to make use of the Regulation. It is the judge who will state when and how the Regulation is to be applied, and when national law should be employed and even on occasion how this shall be applied and when it will not be possible to do so, even if no Community court is competent according to the jurisdictional forums of the Regulation.

A) Jurisdictional forums

There are seven jurisdictional forums contained in Article 3: the habitual residence of the spouses at the time the claim is filed, the final communal habitual residence when one of them still resides in that place, the habitual residence of the respondent, the residence of one or the other provided that the claim has been jointly submitted, the habitual residence of the claimant provided that it has been prolonged for a year prior to presentation of the claim, the customary residence of the claimant six months prior to the claim provided that that person is a national of that State and finally, the common nationality of both

spouses, or in the case of the United Kingdom or Ireland, the fixed marital “domicile” (with the meaning accorded to this term in those countries). It is in this sense that the term “domicile” is used in the Regulation. The main objective of these forums is to facilitate divorce actions considering that the change of residence of the couple following a matrimonial crisis is a frequent occurrence, and they are based on the person having sufficient contact with a Member State.

B) Operation of jurisdictional forums.

The jurisdictional forums are exclusive (that is, they comprise an exclusive and closed list), and alternative, since there is no hierarchy. Provided that the conditions of any of them are fulfilled, the court where the claim was lodged must hear the divorce, separation or annulment. Should the court hearing the claim not have jurisdiction according to the Regulation forums, if another Community court were competent, the first court shall declare of its own motion that it has no jurisdiction. In the event that no Community court were competent, the court at which the claim was lodged shall hear the case based on its national jurisdictional forums provided that the defendant is not a Community national or is "domiciled" in a Member State, or of course a resident (as in this case a Community court would be competent under Article 3). In these cases, national jurisdiction forums may not be used. Therefore, a claim may only be lodged against a national or "domiciled" Community resident pursuant to the Regulation forums and, if the conditions of these are not fulfilled, the claimant will have to wait until the forums are met in order to file a claim.

> For example, let us take the case of a Spanish woman married to a French man and residing in France. Following matrimonial crisis, both change their residence. The husband goes to the USA. If the woman decides to establish her residence in another country of the Union she will be required to wait a year or six months if she establishes her residence in Spain, in order to file a claim.

In the event that the national law were applicable (because the respondent is not a Community national and no Community tribunal is competent pursuant to the Regulation Forums) the Community-national claimant may use the forums of national law in the country of their residence in the same way as if he was a national of that State, thus making use of the same advantages that the national forums grant to their own nationals.

> For example, a German national in this case could use the forum provided in Article 22-3 of the Organic Law of the Judiciary in matters of separation and divorce which accord jurisdiction to the Spanish courts when the claimant is “a Spanish national domiciled in Spain”

Thus, and in the light of the prerogative of Article 7.2 of the Regulation, the terms of the aforementioned Article 22.3 of the Spanish Organic Law of the Judiciary "... when the claimant is Spanish and customarily resides in Spain” should be reinterpreted to include the case for Community nationals. Therefore, and with the entry into force of the Regulation, this paragraph should read as follows: ”when the claimant is a Community national and customarily resides in Spain”. The same will occur in respect of the national jurisdictional forums of the legislations of Member states.

C) Privileges enjoyed by Community nationals

We have seen some of the privileges accorded to Community nationals in some cases. We now complete this perspective: at least in three cases, the Community national clearly receives favourable treatment in respect of non-Community third parties. The first of these may be deduced from the terms of the previous paragraph and is found in the aforementioned Article 7 of the text.

Even at the risk of dwelling too much on the terms of this precept, we should recall that it states the requirement of claiming against a spouse who is a Community national on the basis of regulatory jurisdictions. This means that the respondent, due to the mere fact of having the nationality of an EU Member

State, may only be summoned before the courts of a Member State when these have based their international jurisdiction on regulatory jurisdictions. And this is irrespective of whether or not that person customarily resides in a third State.

This fact in itself is an important guarantee -rather than a privilege– for a Community national, since it ensures that no claim shall be made against him based on an exorbitant jurisdiction. This possibility can, however, affect non-Community nationals who do not customarily reside in the European Union (Article 7).

The second privilege is found in Article 3.1 b) of the Regulation, which grants international jurisdiction to the Courts of the Member State of the common nationality of both spouses. It constitutes a privilege inasmuch as its application is not subject to any other condition. That is, it does not require habitual residence of the spouses either in that State or in any other State of the Union.

The third privilege is found in Article 7.2, which we saw in the previous section. As a result of this Article, any Community national may make use -when the respondent has neither Community nationality nor residence in the European Union– of the internal jurisdiction of the Member State in which he resides, as if he was a member of that State.

This is, in our opinion, the most relevant prerogative for two main reasons. Firstly, due to the important advantage it supposedly gives to the Community national in that he/she is able to make use of the national jurisdictions of his/her State of residence, and those courts shall be competent even if the term of one year stipulated by the Regulation is not fulfilled. Secondly, because this circumstance requires that the judge reinterpret the regulations of international jurisdiction from the internal source in matrimonial matters as we saw in the previous section.

D) Possible discrimination on grounds of nationality.

As Profesor Gómez Jene[3]has pointed out, relating this section of Article 7 with two of the jurisdictions contained in Article 3 –specifically with those which consider the competence of the courts of the place of residence of the claimant–, a possible discrimination is noted between citizens of the Union on grounds of nationality. It should be noted that in virtue of these jurisdictions, the courts where the claimant has his/her customary residence shall be competent provided that said residence complies with minimum terms of residence. These terms are, respectively, six months when the claimant possesses the nationality of the State in question, and one year for all other cases.

The difference between terms thus conceived –that is, based on the claimant's nationality– could be pertinent in those cases where the claimant is not a Community national. However, it is far more difficult to understand in those other cases in which the claimant is a national of a Member State, as this suggests unequal treatment on the grounds of nationality between citizens of the Union. This circumstance contrasts with the privilege contained in Article 8.2, and therefore the resulting legal framework seems somewhat incongruous.

The legal basis of this instrument is found in Article 65 ECT, which in turn is framed in Treaty Title IV on "visas, asylum, immigration and other policies related to the free movement of persons". And non-discrimination on grounds of nationality is a basic principle for the construction of this area in which the free movement of persons is guaranteed. The Regulation effectively covers discrimination of this type, as it requires –in order to activate the *forum actoris*-- different terms of residence depending on the nationality of the claimant. In effect, a citizen of the European Union who, following a matrimonial crisis decides –or for employment reasons is obliged— to move to a third community State which differs from his/her national State or from his/her most recent matrimonial home will receive, from an international jurisdictional perspective, harsher treatment than someone who, in contrast, decides to remain in the State of matrimonial residence or return to the State of his/her nationality. And a

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Gomez Jene M. "The Community Regulation in matrimonial matters: criterion of personal application, privileges of Community nationals and discrimination on grounds of nationality" *La Ley,* no. 5321 (1 June 2001), pp 1-6.

study of case law laid down by the EUCJ in this respect confirms the existence of this discrimination.

We recall that Art. 12 ECT, which states the general prohibition on any discrimination on grounds of nationality, is in addition, directly applicable to this case. The fact is that in virtue of established case law of the EUCJ, the aforementioned Article "*applies independently only to situations governed by Community law for which the Treaty lays down no specific non-discrimination rules"* (see, among others, Judgment of 8 March 2001, Case C-397/98, Section 38; Judgment of 13 April 2000, Case C-176/96, Section 37; Judgment of 13 April 2000, Case C-251/98, Section 23; Judgment of 28 October 1999, Case C-55/98, Section 16; Judgment of 29 April 1999, Case C-311/97, Section 20; Judgment of 25 June 1997, Case C-131/96, Section 10). And Community case law on Article 12 ECT provides a key as to how this discrimination should be understood.

Thus, the Court of Justice has manifested on numerous occasions that Article 6 of the ECT (currently Article 12) «*requires each Member State to ensure that persons in a situation governed by Community law be placed on a completely equal footing with its own nationals*» (Judgment of 24 November 1998, Case C-274/96, Section 14; Judgment of 2 February 1989, Case 186/87, Section 10). And in line with this case law the EUCJ has further stated that *«nationals of another Member State can no longer be made subject to a procedural rule which discriminates on grounds of nationality, provided that such a rule comes within the scope of ratione materiae of the EC Treaty. »* (Judgment of 2 October 1997, Case C-122/96, Section 14).

Therefore it is clear that certain international jurisdictions contained in the Community Regulation, since they establish differentiation between terms on grounds of nationality, do not by any standards treat European Union citizens in an equal manner. And seeing that they are procedural regulations included in the scope of material application of the ECT, they should not discriminate specific Community citizens with respect to others.

However, if so far everything points to an effective discrimination on grounds of nationality, we should also now ask what motives might justify this. Or in other

words, is there any cause which actually justifies this differentiation between the six months' residence required of the national claimant of the State where the claim is filed, and the one year required of the Community claimant who is not a national of the State where the claim is filed?

From the perspective of free movement of persons there is no reason –not even for political motives– which would seriously justify this discrimination.

This has also been seen as such by an area of case law which has deemed that considerations based on historic reasons, legal security, coincidence between *forum* and *ius,* or even proportionality, in no case justify recourse to the connection of nationality in order to establish jurisdictions of international judicial competence in the Community area. There are various arguments to support this position, of which we choose two. The first of these arises directly from The Court of Justice of the European Communities case law and we believe that it is self explanatory: *"A residence requirement of that kind can be justified only if it is based on objective considerations independent of the nationality of the persons concerned and is proportionate to the legitimate aim of the national provisions" (*Judgment of 24 November 1998, Case C-274/96, Section 27. And in a similar sense see Judgment of 15 January 1998, Case C-15/96, Section 21. 31).

The second argument, based on the search for minimum congruence between the same provisions of the Regulation, we find –as we mentioned earlier- in Article 7.2.

Earlier on, when describing the privilege that this precept bestows on Community nationals, we drew attention to the fact that domestic jurisdictions should in the future be reinterpreted in order to accommodate in their assumptions of fact all those EU citizens who reside in a Member State. And since it is thus conceived for cases of non-Community members, the immediate question would be: How is it possible that for those cases -hypothetically unconnected with the principle of free movement of persons- the Regulation assimilates the regulations of domestic international jurisdiction for all citizens of the European Union residing in that State -and therefore places them on an equal footing- and yet denies this in the case of strictly Community residents?

In addition to the difficulty of giving a satisfactory response to this question, what is really relevant for our purposes is to state that the legislator sees no motives for discriminating against Community nationals within the framework of extra-Community cases. And if this is the case, there should be even less likelihood for seeing such grounds to justify a discrimination of this type within the strict Community sphere.

This completes the arguments for demonstrating discrimination on grounds of nationality on the part of regulatory jurisdictions which regulate the *forum actoris.* Arguments which, *mutatis mutandis,* are also applicable to the jurisdiction decided by the international jurisdiction of the State of nationality of both spouses [Art. 3.1 (b)]. Arguments which, in turn, are sufficiently important to obtain -through preliminary ruling- the opinion of the Court, given that the importance of this issue would, in our opinion, recommend such a procedure.

E) Other jurisdictional forums

The Regulation determines the competent courts in respect to other issues, such as the conversion of separation into divorce or counterclaims and, more importantly, provisional measures, which are contained in Article 20. These shall only be adopted in urgent cases and shall address matters not included in the Regulation. They may be adopted by a court even when the court of another member state is competent to hear the case. That is, the claimant may accede directly to the court of the place where the measures are to be enforced, without prejudice to the fact that the main proceedings have been initiated in another State. Therefore, they are not subject to the jurisdiction forums specified in Article 3 of the Regulation. These measures may be included in the legal system of the court adopting them, they shall relate to persons and assets in that State and shall not have effect outside that territory. The measures relating to matters included in the Regulation shall cease when a judgment has been delivered by the competent court in respect of the main issue. These measures refer basically to those relating to parental responsibility. In matters of

annulment, separation and divorce, since the material scope of application of the Regulation is only the state itself, its mere possibility may be debatable.

F) Other questions relating to determination of jurisdiction

Finally, the Regulation also addresses other questions in respect of determination of international jurisdiction, the solution of which will be provided by the subsequent recognition of the judgment, and which may also lead to considerable differences in respect of the national laws of Member States. And thus, in the first place in respect of verification of jurisdiction and admissibility -the former as we have seen-, it is carried out of its own motion, and the second allows for a suspension of the procedure until it has been ascertained that the respondent has been able to receive the brief of complaint or equivalent with sufficient time to defend him/herself, or that all the enquiries have been duly made for that purpose (if the brief of complaint had to be sent to another country the Community Regulation will be applicable in respect of notification or service of judicial and extrajudicial documents in civil or commercial matters in Member States of the European Union or, if this is not applicable, then the Hague Convention of 15 November 1965). And secondly, in order to avoid parallel procedures at the courts of Member States in matrimonial matters, the Regulation includes in Section 3 of Title II, Lis pendens and dependent actions. In order to implement Article 19 Paragraph 1, identity of the parties is required. However, neither the same issue or case are required, since actions may be pertinent to either annulment, or separation or divorce. It is therefore necessary for the action to be between the same parties and also that the actions should be brought before courts of different Member States. The court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. Once this occurs the second court shall give way to the first. Therefore it is a question of matrimonial actions between the same parties being resolved by the same court. In these cases the claimant lodging the complaint in second place may seek action in the Court declared competent even if this did not conform to Article 3 and the mechanisms shall be put into place provided that they are Community Courts without taking into account whether they have heard the case or not, pursuant to the Regulation.

Article 16 determines when, for the purposes of this third section, a procedure is deemed to be seised at a court.

G) Cases in which the Regulation is not applicable

In cases where the Regulation is not applicable, determination of jurisdiction in questions of annulment, separation or divorce shall be decided by the national legislations of Member States.

3. RECOGNITION OF JUDGMENTS

A) Judgments on divorce, legal separation and annulments susceptible to recognition by means of the Regulation

In the field of recognition, application of the Regulation depends on the origin of the judgment. Decisions proceeding from a jurisdictional body of a Community country shall be subject to the recognition systems provided in the Regulation. Jurisdictional body is understood to be any competent Authority in the matter in a Member State, and judgment is deemed to be only positive divorce, separation or annulment judgments (dismissals are not recognised through the Regulation) and of course only in terms of matrimonial matters. This system extends to judgments of annulment in marriages regulated by various Concordats with the Holy See (Italy, Spain, Portugal and Malta)

B) Ecclesiastical annulments

As is known, these judgments are provided for in an *ad hoc* regime in Regulation 2201/2003 and formerly in Regulation 1347. Ecclesiastical decisions in annulment procedures and on unconsummated marriage are included in

Regulation 1347 for the purposes of recognition. That is, once they have been approved by the national (civil) courts competent to make canonical decisions effective. Therefore, as Professor Mónica Guzmán Zapater[4] points out and in respect of the Order by which the civil effects of ecclesiastical judgments are recognised in cases of annulment and unconsummated marriage, the rules of lis pendens are not operative in the inter-community area. Nevertheless, in the recognition phase of an already certified ecclesiastical decision, there may well be grounds for preventing its recognition. Some grounds derive from cases of irreconcilable judgments, particularly when the ecclesiastical annulment authorisation procedure has been completed and a divorce procedure is in progress between the same parties in another country. These decisions are basically irreconcilable, since in the first case the marriage never existed, whereas in the cases of dissolution of the state through divorce the previous matrimonial state is broken. As a criterion for resolving this problem, the idea has arisen among canonical experts of the systematic prevalence of the decision of "greater intensity", a criterion through which the decision of ecclesiastical annulment will always prevail. However, it would appear more effective to adhere to the rules of Article 22 c and d of Regulation 2201/2003 which, without requiring the identity of the action, does require the identity of the parties, thus introducing a dual criterion, that of prevalence of the forum or of the judgment issued in the State required for the recognition and that of temporary priority, when the irreconcilability arises from two or more judgments issued in the Member States or between a Judgment of a Member State and a third State.

Finally, public order encounters in this area a fertile terrain for grounds of non-recognition. Emphasis is placed on procedural particularities of canonical processes as was brought to light in the important ECHR judgement of 2001 in the *Pellegrini* case, which found the Italian State guilty of giving effect to a Vatican decision on a non-consummated marriage, in which guarantees concerning the hearing of evidence had been infringed. It is possible that civil effects would not be admissible in a canonical judgment in which the respondent in the main canonical process had not entered an appearance in

[4] Guzmán Zapater, M., "Recogntion of ecclesiastical judments on matrimonial annulment::

any of the stages. Nor is it admissible in some Member State constitutions to force the party to enter an appearance when it does not accept ecclesiastical jurisdiction which is, after all, a confessional jurisdiction.

Other “particularities” of canonical procedures are concerned with the right to judicial protection. Particularities which, like the non-compulsory nature of the summons or the failure to serve the claim to the party who has not brought the annulment action, or even the figure of the “defender of the state” as “third party” who may occupy the procedural position of the party who does not enter an appearance in the main proceedings. Public policy could perhaps have another broad field in the actual grounds of annulment, for example in the case of Spain as, even though legislation requires “adjustment to the law of the State”, the grounds for annulment of canonical law conform to a much wider spectrum. Having transferred judgments for approval to the Community sphere, it will not be strange for foreign courts before which recognition of civil judgments are brought (Spanish, Italian and Portuguese) to activate the public policy whenever these infringe European regulations on human rights, as occurred in the aforementioned Pellegrini case.

C) Intended effects and types of recognition.

The purpose of the Regulation (to facilitate recognition of judgments) is reflected in Title III on one hand in the possibility of making use of automatic recognition, that is, without the need for recourse to any procedure, and on the other when the special procedure provided in the Regulation is used, in the few grounds provided for rejecting recognition of a judgment.

The types of recognition provided in the Regulation are various, depending on the effects required.

1) The Regulation is based on the system of automatic recognition, that is, without any need for a special procedure (Art. 21-1) when what is required is the invocation of the judgment before any jurisdictional body or public register.

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innovations in the procedural field”, *REDI*, 2002, no. 1, pp. 225-242.

However, “automatic recognition” does not mean the absence of control of regularity of the judgment. All judgments should comply with a series of conditions without which they cannot be recognised and to which we shall refer later. This type of recognition is made under the sole responsibility of the authority controlling those conditions and therefore has a relative value (for the sole purposes of the register or the jurisdictional body to which it is proposed) and also provisional (insofar as recognition is not made through a special procedure). a) Thus no procedure will be necessary when the judgment invoked at the Civil Registry for its recording or in general for updating purposes (provided that the judgments do not admit further appeals in the countries of origin). The abolition of the exequatur in this context is perhaps the most important part of the Regulation.

However, this type of recognition is confined to judgments having access to Civil Registers of Member States and in addition this type of recognition is not only fragile, due to its relative value but, like all automatic procedures, this fragility is accentuated since control of all the conditions required in the special procedure is not provided for. For example, the fact that the judgment does not affect public policy or that two judgments are irreconcilable. The efficacy of the recorded judgment is therefore provisional, since the spouse who opposes it, or in the case of a new marriage, one of the spouses may make use of the special procedure requesting that the judgment should not be recognised on one of the grounds for non-recognition. Thus it would be possible not to recognise a divorce which had already been recorded in the civil register and a new marriage could be held, or annulment of such a marriage be obtained.

In this “recognition of the register”, the conditions to be fulfilled by the judgment are reduced to presentation of the documents required in Article 37 (the certificate included in Article 39, copy of the judgment having all the requirements for determining its authenticity if the judgment had been delivered in default, the document which accredits delivery or notification or any document attesting to the fact that the respondent has accepted the judgment and a document which provides proof that the judgment cannot be appealed).

Legalisation or translation shall not be required unless the Judge requests it. b) If the intention is to invoke the foreign judgment at a court of a Member State as incidental, the Regulation includes incidental recognition: the Court which is hearing another case in which recognition of a judgment could be raised could declare in this respect. That is, it would not be necessary either to make use of any procedure (exequatur), although there would be a need to comply with a series of conditions which are the same as those required in the special procedure (or exequatur) as contained in the Regulation (Art. 22) and which we shall see later. This is the case when the judgment is invoked as an exception of res iudicata in proceedings on the same subject or when the court before which it is invoked is hearing another case and recognition is of interest for the purposes of the judgment.

2) Therefore, if the recognition is to have general value in the State required (the only means for judgments which cannot be recorded in the Civil Registry) it will be necessary to make use of the special procedure of the Regulation (Sections 2 and 3 -enforcement and provisions common to recognition and enforcement-). Any interested party may request recognition or non-recognition of the judgment.

D) Conditions required for recognition of judgments.

Both general recognition, that is, through the procedure contained in the Regulation, and also incidental recognition of judgments should be subject to regulatory control: compliance with the conditions required in Article 22. This control is exercised in the first case by the court appointed in the special procedure and in the second by the court hearing the main action. Few conditions or, more precisely, grounds considered for refusal of recognition of a judgment from a Community country are required. Some of these are expressly rejected 1) and others are admitted however, as grounds for refusal of recognition 2).

1) The Regulation expressly prohibits non recognition of a judgment on the grounds of differences in the law applied by the original court. Specifically when the judgment has been based on facts in which the law of the State required would not authorise divorce, legal separation or annulment of matrimony (Art. 25) and once it has been recognised, a new marriage of the ex-spouses cannot be prevented even when their national law prohibits this. It also prohibits a review of the judgment with respect to the merits of the case (Art.26) and finally in Art. 24, the Regulation excludes the confirmation on jurisdiction of the court of origin, a matter to which the exception of public policy cannot be applied.

2) Recognition shall be refused on the grounds contained in Article 22 namely: if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought, if it was given in default of appearance (if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence) or if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought, irrespective of the prior or subsequent date thereof; or if it is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought. In this last case we have two judgments, neither of which is from the State where recognition is sought and priority is given to time, irrespective of whether both judgments are from Community countries or only one (that for which recognition is sought) and the other being from a third State. We refer specifically to Regulation (EC) No. 44/2001, thus the conditions and concepts are the same in both.

E) Cases where the Regulation is inapplicable

In the event that the systems of recognition contained in the Regulation are not applicable, either because the judgment is given by a court of a non-Member state or because it is necessary to recognise (if it is delivered by a Community country) in addition to the dissolution of the state (which would be

carried out by means of the Regulation) other effects which, although included in the Judgment, are not within the material scope of the Regulation (maintenance, pensions, dissolution of the financial system, etc.) the autonomous law of each Member State shall be applied.