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Regulation 2016/1103 on matrimonial property regimes in Croatian courts: an assessment after nearly five years of application

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1. Introduction.

The latest development of the EU private international law was marked with the enactment of two instruments in the field of family and succession law regulating property regimes of cross-border couples. These two instruments are Council Regulations 2016/1103 (hereinafter, the Matrimonial Property Regimes Regulation; the Regulation)[1] and 2016/1104 (hereinafter, the Property Consequences of the Registered Partnerships Regulation)[2], commonly referred to as the twin Regulations.

The road to the adoption of these Regulations was quite challenging, spanning over a decade. Ultimately, they were enacted as a part of the enhanced cooperation mechanism. Nevertheless, they represent a significant stride in providing clarity and certainty for cross-border couples navigating the division of their assets following the dissolution of their relationships[3].

The twin Regulations have entered into force on 29 January 2019. On the verge of a 5-year milestone in their application, the paper is dedicated to the scrutiny of issues which were raised before Croatian courts as the result of the application of the first

This paper is a continuation of the research conducted as a part of the EU Justice project «E-training on EU Family Property Regimes (EU-FamPro)» and builds upon the research published in the paper D. VRBLJANAC, *Application of the Matrimonial Property Regimes Regulation: Croatian Perspective*, in M.J. CAZORLA GONZÁLEZ, L. RUGGERI (edited by), *Cross-Border Couples Property Regimes in Action before Courts, Understanding the EU Regulations 1103 and 1104/2016 in Practice*, Madrid, 2022, pp. 117-128, available *online*.

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[1] Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

[2] Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

[3] See EUROPEAN COMMISSION, *Commission goes ahead with 17 Member States to clarify the rules applicable to property regimes for Europe's international couples*, IP/16/449 of 2 March 2016, available *online*.

«twin»: the Matrimonial Property Regimes Regulation. The paper addresses all the publicly available judgments on the Matrimonial Property Regimes Regulation. The analysis of the judgments is organised into two main chapters, based on the matter addressed in the judgments. The inspected cases deal predominantly with the issue of the scope of application of the Matrimonial Property Regimes Regulation, and one of them concerns the interpretation of the jurisdictional provision in Art. 6(c). Each chapter starts with the outline of the judgment and is followed by the assessment of the judicial reasoning.

2. Scope of application of the Matrimonial Property Regimes Regulation.

2.1. Temporal scope of application.

The temporal scope of application of the Matrimonial Property Regimes Regulation is the matter to which the greatest number of judgments was dedicated. In the first judgment on temporal scope of application, the plaintiff A.G.H. instituted the proceedings against the defendant M.Š. before the Municipal Court in Zadar, Permanent Service in Pag to determine the community of spouses' assets (*bračna stečevina*)[4], which is the default matrimonial property regime under Croatian law[5]. The parties entered into marriage on 21 February 1997 and are still married. During their marriage, they acquired four immovable properties in Croatia. The plaintiff claims that she is entitled to co-ownership of a 1/2 share with respect all of the properties. The parties are German nationals and have registered domicile and residence in Germany. On 1 February 2001 they concluded a matrimonial property agreement in which they chose German law as applicable. The Court correctly relied upon the relevant provision of the 1982 Croatian PIL Act (*Zakon o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima*)[6] on international jurisdiction and applicable law since the proceedings were instituted on 30 March 2018. In addition, the Court cited defendant's claims and added that its conclusion on applicability of German law would not be different under 2017 Croatian PIL Act[7] which in Art. 35 refers to the application of the Matrimonial Property Regimes Regulation.

In the second judgment on temporal scope of application, the plaintiff Z.K. instituted the proceedings against the defendant A.K. for determination of the community of spouses' assets[8]. The parties are Croatian nationals and, at the time of

[4] Municipal Court in Zadar, Permanent Service in Pag, judgment and the decision of 7 July 2022, 73 P Ob-77/18.

[5] See M. BUKOVAC PUVAČA, I. KUNDA, S. WINKLER, D. VRBLJANAC, *Croatia*, in L. RUGGERI, I. KUNDA, S. WINKLER (eds.), *Family Property and Succession in EU Member States, National Reports on the Collected Data*, Rijeka, 2019, pp. 68-92, at pp. 75-77, available *online*.

[6] The 1982 Croatian PIL Act, Official Gazette of the Republic of Croatia, 53/91, 88/01.

[7] The 2017 Croatian PIL Act, Official Gazette of the Republic of Croatia, 101/17, 67/23.

[8] County Court in Zagreb, decision of 8 July 2020, 81 Gž Ob 1137/2019-2.

filing the suit, had a registered domicile in the Republic of Croatia. Assets which form the community of property are located abroad. It is not explicitly stated in the judgment, but parties probably live or have lived abroad. The Municipal Court in Slavonski Brod dismissed the claim due to lack of international jurisdiction. The County Court in Zagreb, which upheld the plaintiff's appeal and referred the case to the first instance court for a retrial, elaborated on the plaintiff's claim that the first instance court should have declared itself competent based on the provisions of the Matrimonial Property Regimes Regulation. The County Court correctly held that, since the proceedings were instituted on 8 March 2017, the jurisdictional provisions from the Matrimonial Property Regimes Regulation are not applicable *ratione temporis*. Instead, the Croatian national private international law rules apply.

The third judgment on the temporal scope of application concerns a claim raised by I.P. against P.P. before the Municipal Court in Pazin which dismissed the claim, since it had no international jurisdiction[9]. The Municipal Court in Pazin relied on Art. 6 of the Matrimonial Property Regimes Regulation which contains jurisdictional criteria applicable when the court has not already been seised with a marital dispute or succession proceedings and parties did not choose the competent court[10]. The Court indicated that the parties are Slovenian nationals residing in the Republic of Slovenia and therefore Slovenian courts are competent based on Art. 6 of the Matrimonial Property Regimes Regulation. The plaintiff I.P. lodged an appeal on the grounds that the matrimonial property assets were acquired before the entry into force of the Regulation and that the subject matter is excluded from the Matrimonial Property Regimes Regulation ambit. The County Court in Zagreb dismissed the plaintiff's appeal as unfounded. In response to the first ground of appeal, the Court stated that the decisive factor is the date of commencement of legal proceedings, in accordance with Art. 69(1) of the Regulation, and not the timing of property acquisition. Regarding the second ground of appeal, the Court indicated that *ratione materiae* scope of application is governed by Art. 1 of the Matrimonial Property Regimes Regulation which is for the competent court to analyse.

The fourth judgment was rendered by the Municipal Court in Novi Zagreb. In his claim filed on 26 May 2021, the plaintiff, V.B., sought from the defendant, E.B., the payment of the amount of 70.409,60 HRK (approximately 9.345,00 EUR)[11]. He alleged that parties are former spouses who, for the purpose of building a house, borrowed a sum of 18.950,00 EUR from family members, which he repaid after the dissolution of their marriage. Consequently, he claims half of this amount from the defendant. In addition, the plaintiff seeks that his ownership of 6/11 share of an immovable property

[9] County Court in Zagreb, decision of 1 July 2021, 40 Gž Ob-123/2021-2.

[10] For more on hierarchy of rules on international jurisdiction, see I. KUNDA, A. LIMANTĖ, *Jurisdictional Provisions in the Twin Regulations*, in L. RUGGERI, A. LIMANTĖ, N. POGORELČNIK VOGRINC (eds.), *The EU Regulations on Matrimonial Property and Property of Registered Partnerships*, Cambridge, 2022, pp. 71-100.

[11] Municipal Court in Novi Zagreb, judgment of 17 November 2022, 51 P-495/2021-26.

located in Croatia is registered in the land registry. V.B.'s registered address is in Austria, while E.B.'s registered address is in Croatia. The Court did not establish parties' habitual residence. The borrowed sum was paid by the plaintiff in several installments in the time period from 2017 to 2021. When determining applicable law, the Court stated that for obligations arising from 29 January 2019, Arts. 26 and 27(1)(c) and (d) of the Matrimonial Property Regimes Regulation apply. The Court did not explicitly state when the marriage was concluded. However, from the wording of the judgment, it may be concluded that the plaintiff repaid the borrowed sum in installments after the marital union already ended. It does not stem from the judgment that the parties made a choice of law agreement.

The temporal scope of application of the Matrimonial Property Regimes Regulation is regulated by Art. 69. The provision is divided into three paragraphs. The first paragraph governs the temporal scope of application of the rules on international jurisdiction, recognition and enforcement and prescribes that Regulation applies to proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 29 January 2019.

The second paragraph represents the exception from the first paragraph and concerns solely rules on recognition and enforcement. According to it, even if the proceedings in the Member State of origin were instituted before 29 January 2019, decisions rendered after that date will be recognised and enforced according to the provisions of the Regulation, provided that the national jurisdictional rules on which the court of the Member State of origin based its jurisdiction comply with those set out in the Regulation. The provision mirrors the one from Art. 66(2)(b) of the Regulation No 44/2001 (Brussels I Regulation)[12] which is no longer in force[13]. The rationale of Art. 66(2)(b) of the Brussels I Regulation may be borrowed for finding the logic behind the exception prescribed in Art. 69(2) of the Matrimonial Property Regimes Regulation. The aim of the Brussels I provision is to ensure a sufficient level of connection between the proceedings and the court to which the jurisdiction was conferred[14]. The existence of such connection is the precondition for mutual trust among the Member States as a cornerstone of simplified system of the recognition and enforcement in civil and commercial matters. The requirement of compliance in Art. 69(2) of the Matrimonial Property Regimes Regulation should be interpreted as the condition that a particular jurisdictional rule, relied upon by the court of the Member State of origin, should be in accordance with the rules in the Matrimonial Property Regimes Regulation. The exact

[12] Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

[13] It is replaced by the Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Brussels I bis Regulation), which does not contain a comparable provision.

[14] P. MANKOWSKI, *Chapter VI, Transitional Provisions, Article 66*, in U. MAGNUS, P. MANKOWSKI (eds.), *Brussels I Regulation*, Munich, 2007, pp. 727-739, at p. 735.

wording does not have to correspond, however «the purpose and the meaning of the applied rule» should be in accordance with the Regulation[15].

The third paragraph of Art. 69 prescribes that Chapter III on applicable law applies only to matrimonial property regimes of spouses who marry or who specify the law applicable to the matrimonial property regime after 29 January 2019. The limitation to the temporal scope of application is justified by the legitimate expectations of the parties and legal certainty concerning the law applicable to their matrimonial property regime[16]. Such Regulation of the temporal ambit of rules on applicable law generates four possible scenarios. The obvious ones are the situation in which the spouses married on or after 29 January 2019 and either did not choose the applicable law or did so on or after 29 January 2019 and the situation in which the spouses married before 29 January 2019 and either did not choose the applicable law or chose it before the said date. In the former case, Chapter III will apply, while in the latter, national private international law rules on applicable law will apply. If the spouses married prior to 29 January 2019, but made the choice on applicable law on or after that date, the courts should inspect if the choice of law is valid under Matrimonial Property Regimes Regulation. If this is not the case, national private international law rules will apply. On the other hand, if the spouses married on or after 29 January 2019, but made the choice of law agreement prior to that date[17], Chapter III of the Matrimonial Property Regimes Regulation should be applied[18].

The outlined analysis demonstrates that the Croatian courts faced certain challenges in determining the temporal ambit of the Matrimonial Property Regimes Regulations. The County Court in Zagreb in its decision of 1 July 2021, correctly concluded that the time when the assets belonging to matrimonial property were acquired bears no relevance for assessing whether the Regulation applies. The issue whether matrimonial property comprises particular spouses' assets is a matter governed by the law applicable to matrimonial property regime. On the contrary, in the cited decision, the County Court in Novi Zagreb came to the inaccurate conclusion that the provisions of the Matrimonial Property Regimes Regulation on applicable law are relevant for obligations which have arisen from 29 January 2019, even though it is

[15] J. KRAMBERGER ŠKERL, *The Application "Ratione Temporis" of the Brussels I Regulation (Recast)*, in D. DUIĆ, T. PETRAŠEVIĆ (eds.), *Procedural Aspects of EU Law, EU and Comparative Law Issues and Challenges Series (ECLIC)*, 2017, pp. 341-363, at pp. 356-357, available *online*.

[16] G. BIAGIONI, *Article 69, Transitional Provisions*, in I. VIARENGO, P. FRANZINA (eds.), *The EU Regulations on the Property Regimes of International Couples. A Commentary*, Cheltenham, 2020, pp. 483-492, at p. 487.

[17] Art. 22 of Regulation (EU) 2016/1103, cit., allows to future spouses to choose the applicable law. For more on applicable law see N. POGORELČNIK VOGRINC, *Applicable Law in Twin Regulations*, in L. RUGGERI, A. LIMANTĖ, N. POGORELČNIK VOGRINC (eds.), *The EU Regulations*, cit., pp. 118-125.

[18] See F. DOUGAN, J. KRAMBERGER ŠKERL, *Chapter 2, Model Clauses for Registered Partnerships under Regulation (EU) 2016/1104*, in M.J. CAZORLA GONZÁLEZ, L. RUGGERI (eds.), *Guidelines for Practitioners in Cross-Border Family Property and Succession Law, (A collection of model acts accompanied by comments and guidelines for their drafting)*, Madrid, 2020, pp. 37-47, at p. 38.

apparent that the marriage was concluded before that date and no choice of law agreement was made after that date.

2.2. Personal scope of application.

Apart from the temporal scope of application, the Croatian courts had an opportunity to discuss the issues related to the personal scope of application of the Matrimonial Property Regimes Regulation. The Municipal Court in Pula rendered the decision in the dispute between the plaintiff S.D. and the defendant O.D. on determination of community of spouses' assets[19]. The Municipal Court in Pula determined that the plaintiff is a Russian national with a registered domicile, probably in Russia and a place of residence, probably in Croatia in H. It found that the defendant is also a Russian national with a registered domicile, but no registered place of residence in the Republic of Croatia. Finally, the Municipal Court in Pula established that the property subject to the dispute is located in multiple countries[20], and the plaintiff has no knowledge of the defendant having any property in the Republic of Croatia. Based on these findings, the Court concluded that it lacks jurisdiction, and, in accordance with the 1982 Croatian PIL Act dismissed the claim.

Upon the plaintiff's appeal, the County Court in Zagreb repealed the decision of the Municipal Court in Pula and referred the case for a retrial[21]. In its reasoning the County Court in Zagreb, among other issues, indicated that the 1982 Croatian PIL Act was replaced by the 2017 Croatian PIL Act which entered into force on 29 January 2019. However, the Court explained that for determining international jurisdiction, neither the provisions of the 2017 Croatian PIL Act are relevant, since the Matrimonial Property Regimes Regulation takes precedence. The first-instance court, in the contested decision, stated that the Regulation applies exclusively to EU nationals. The County Court in Zagreb found this legal interpretation to be incorrect. It indicated that the first-instance court did not cite any of the provision as the basis for such understanding and that its stance does not derive from the provisions of the Regulation. The County Court in Zagreb pointed out that the Matrimonial Property Regimes Regulation applies regardless of the nationality of the spouses. It is applicable even if the spouses are not nationals of the EU and reside outside of the EU. It concluded that in cases with cross-border elements initiated before a court of a Member State applying the Matrimonial Property Regimes Regulation, the court of the Member State is obliged to apply it and determine whether it has jurisdiction according to the jurisdictional criteria prescribed by the Regulation.

[19] Municipal Court in Pula, decision of 1 July 2022, Ob-129/2022-2.

[20] In this judgment, the names of the parties, the countries of residence and countries where the property is located have been anonymised.

[21] County Court in Zagreb, decision of 5 September 2022, 17 Gž Ob-787/2022-2.

In another case before the County Court in Varaždin, Permanent Service in Koprivnica[22], the Court applied the Matrimonial Property Regimes Regulation to matrimonial property claim raised by the plaintiff who was a national of Bosnia and Herzegovina and the defendant who was a national of Austria, but previously had nationality of Bosnia and Herzegovina. Both of them were habitually resident in Austria, so the Court declared it has no competence relying on Art. 6 of the Matrimonial Property Regime Regulation.

The Matrimonial Property Regimes Regulation, along with its twin Regulation on property Consequences of Registered Partnerships follows the example of other Regulations in the area of family and succession law which do not limit their personal scope of application[23]. Since it applies regardless of the nationality, domicile or habitual residence of the spouses[24], the standing of the County Court in Zagreb and the County Court in Varaždin, Permanent Service in Koprivnica was correct.

2.3. Territorial scope of application.

I.Č. with the registered address in Croatia, instituted the proceedings against L.P. with the registered address in Switzerland before the Municipal Court in Pula for the determination of the community of spouses' assets[25]. In the claim raised on 18 February 2022, I.Č. sought from the Court to establish that immovable properties located in Croatia, registered solely to the defendant's name belong to the community of spouses' assets (*bračna stečevina*)[26]. In response to the claim, the defendant stated that parties concluded marriage on 7 May 2010, in Dielsdorf, Switzerland. The divorce was

[22] County Court in Varaždin, Permanent Service in Koprivnica, decision of 7 March 2023, Gž Ob-9/2023-2.

[23] See Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations; Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession; Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast).

In fact, the only EU private international law instrument which contains a limitation of its personal scope of application is the above-cited Regulation (EU) No 1215/2012. The personal scope of application of the Brussels I-*bis* Regulation is limited to defendants with the domicile in the EU (Art. 4). However, there are multiple exceptions from the personal scope of application rule. See in this respect H. LITH VAN, *Jurisdiction – General Provisions*, in A. DICKINSON, E. LEIN (edited by), *The Brussels I Regulation Recast*, Oxford, 2015, pp. 113-130, at pp. 124-126. In addition, there are scholarly debates about the suitability of extending all Brussels *I-bis* Regulation provisions to defendants domiciled in Third States. See T. LUTZI, E. PIOVESANI, D. ZGRABLJIĆ ROTAR (edited by), *Jurisdiction Over Non-EU Defendants, Should the Brussels Ia Regulation be Extended?*, Oxford, 2023.

[24] M.J. CAZORLA GONZÁLEZ, M. SOTO MOYA, *Main Concepts and Scope of Application of the Twin Regulations*, in L. RUGGERI, A. LIMANTĖ, N. POGORELČNIK VOGRINC (eds.), *The EU Regulations*, cit., pp. 41-70, at p. 53.

[25] Municipal Court in Pula, judgment of 1 June 2023, P Ob-22/22-15.

[26] For more on matrimonial property regimes under Croatian law, see M. BUKOVAC PUVAČA, I. KUNDA, S. WINKLER, D. VRBLJANAC, *Croatia*, cit., pp. 75-77.

finalised by the judgment of the District Court in Dielsdorf of 11 September 2019, which became final on 4 October 2019. In the judgment, it is stipulated that the parties have already been fully satisfied in terms of community of spouses' assets and retain what they currently possess from the community of property, i.e. what is registered in their names.

The Court dismissed the plaintiff's claim. In its reasoning the Court referred to Art. 5(1) of the Matrimonial Property Regimes Regulation which prescribes that where a court of a Member State is seised to rule on an application for divorce, legal separation or marriage annulment pursuant to Brussels II-*bis* Regulation (now Brussels II-*ter* Regulation), the courts of that State have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that application. The Court then indicated that the court hearing the divorce case is in the country where the plaintiff has his habitual residence, and it is undisputed between the parties that they lived together in Switzerland. As for the applicable law, the Court relied on Art. 26 (1)(a) of the Matrimonial Property Regimes Regulation, and established that Swiss law was applicable as law of the country of the spouses' first common habitual residence after the conclusion of the marriage, since it is evident from the parties' statements that they lived together in Switzerland, and their marital union ended 3 or 4 years after the marriage.

In addition, the Court referred to Art. 36 of the Matrimonial Property Regimes Regulation which prescribes that a decision given in a Member State is recognised in other Member States without any special procedure being required. According to the Court, this means that, in the Republic of Croatia, with respect to provisions regarding matrimonial property regimes, such a decision does not have to be recognised, but produces effects from the time when it is rendered or when it becomes final. In this specific case, as it concerns an agreement between the parties, the Court indicated that it had to interpret the intentions of the parties from the agreement in the judicial decision of the Swiss court of 11 September 2019. The Court concluded that it is clear that the spouses have divided their matrimonial property and retained assets which are currently registered in their name.

The Court's reference to Art. 5(1) of the Matrimonial Property Regimes Regulation was incorrect since, as the Court established, the divorce proceedings were concluded and the decision was final. For Art. 5(1) of the Matrimonial Property Regimes Regulation to be applicable, the divorce proceedings have to already be pending before or at the same time when the matrimonial property regime claim is being raised[27]. Even if the divorce proceedings were still pending, Art. 5(1) of the Matrimonial Property Regimes Regulation would not have been applicable, since Switzerland is a Third State. The Matrimonial Property Regimes Regulation was

[27] See E. KAVOLIŪNAITĖ-RAGAUSKIENĖ, *The Twin Regulations: Development and Adoption*, in L. RUGGERI, in A. LIMANTĖ, N. POGORELČNIK VOGRINC (eds.), *The EU Regulations*, cit., pp. 25-37.

enacted as a part of the enhanced cooperation mechanism[28]. Therefore, only Member States which decided to participate in the enhanced cooperation concerning these instruments are bound by their provisions[29]. Art. 5(1) of the Matrimonial Property Regimes Regulation is not applicable when divorce proceedings are pending before the court of a Third State or a Member State not participating in the enhanced cooperation[30]. Despite the fact that the Municipal Court in Pula invoked the wrong jurisdictional provision of the Matrimonial Property Regime Regulation, it could still be competent based on Art. 6(d) of the Matrimonial Property Regimes Regulation. It is clear that the parties have Croatian background and even though it is not explicitly stated in the judgment, they may have common Croatian nationality. For the reasons stated above, the reference to Art. 36 of the Matrimonial Property Regimes Regulation is inaccurate, as well. The Chapter IV of the Regulation on recognition, enforceability and enforcement of decisions is applicable only when a decision of a participating Member State is being invoked in another participating Member State[31]. Due to the universal application principle enshrined in Art. 20 of the Matrimonial Property Regimes Regulation, the Court's conclusion on applicability of the Swiss law is accurate.

2.4. Material scope of application.

2.4.1. International element.

Croatian courts had the chance to assess whether the Matrimonial Property Regimes Regulation is applicable due to (non) existence of an international element in the case before the Commercial Court in Rijeka.

The plaintiff N.D. with registered address in Italy, initiated legal proceedings before the Commercial Court in Rijeka, against her husband, M.M., with registered address in Croatia. She requested the court to confirm that both she and the defendant hold ownership of a share in the company M.M. d.o.o., registered in Croatia under N.D.'s name. The Commercial Court in Rijeka dismissed the plaintiff's claim[32]. Subsequently, following the plaintiff's appeal, the High Commercial Court of the

[28] See E. KAVOLIŪNAITĖ-RAGAUSKIENĖ, *The Twin Regulations*, cit.

[29] Currently 18 Member States are participating in the enhanced cooperation. See Recital 11 of the Matrimonial Property Regimes Regulation.

[30] R. GARETTO, *Article 5, Jurisdiction in cases of divorce, legal separation or marriage annulment/dissolution or annulment*, in L. RUGGERI, R. GARETTO (eds.), *European Family Property Relations, Article by Article Commentary on EU Regulations 1103 and 1104/2016*, Naples, 2021, pp. 83-90, at p. 86; R. FRIMSTON, *Jurisdiction: Articles 4-19*, in U. BERGQUIST, D. DAMASCELLI, R. FRIMSTON, P. LAGARDE, B. REINHARTZ, *The EU Regulations on Matrimonial and Patrimonial Property*, Oxford, 2019, pp. 47-94, at p. 56.

[31] J. KRAMBERGER ŠKERL, *Recognition, Enforceability and Enforcement of Decisions under the Twin Regulations*, in L. RUGGERI, A. LIMANTĖ, N. POGORELČNIK VOGRINC (eds.), *The EU Regulations*, cit., pp. 129-155, at pp. 134-135.

[32] Commercial Court in Rijeka, judgment of 16 May 2019, P-423/2018-26.

Republic of Croatia overturned the first instance decision and remanded the case for a retrial[33]. It instructed the court to determine the specifics of Italian substantive law, particularly whether the chosen regime of separate property by the parties applies exclusively to property in Italy. In the retrial, the Commercial Court in Rijeka established that N.D. and M.M. chose the matrimonial regime of separate property under Art. 215 of the Italian Civil Code when they concluded marriage in Italy[34]. Concerning the applicability of the Matrimonial Property Regimes Regulation, the Commercial Court in Rijeka reached a correct conclusion that, due to the proceedings being initiated before 29 January 2019, the Regulation does not apply. However, it is worth noting that the Commercial Court in Rijeka briefly mentioned in its reasoning that Matrimonial Property Regimes Regulation could not be applied as the parties were not considered an «international couple».

In another judgment, the plaintiff was J.K. who had registered address in Slovenia instituted the proceedings against D.K. with registered address in Slovenia for determining community of spouses' assets before the Municipal court in Pula. The Court rendered the judgment dismissing the plaintiff's claim by which she sought from the court to determine that the assets belong to the community of spouses' assets, with 3/4 belonging to her and 1/4 to the defendant. Upon the plaintiff's appeal, the County Court in Split overturned the judgment[35]. In the reasoning of the decision, it is substantially stated that the court failed to establish the crucial facts on which its jurisdiction and applicable law depend, citing the Matrimonial Property Regimes Regulation. The Municipal Court in Pula to which the case was referred for a retrial correctly concluded that, at the time of filing the claim, the Matrimonial Property Regimes Regulation was not in force. In addition, the Court stated that since the defendant is a Croatian national and the property is located in Croatia, Matrimonial Property Regimes Regulation cannot be applied, without taking into consideration the fact that the plaintiff had Slovenian nationality, both parties had registered address in Slovenia and, based on the testimony of the witnesses, resided in Slovenia, at least for some time[36].

These statements underline the difficulties that courts and authorities encounter when deciding if a particular case involves an international or cross-border element and whether the Matrimonial Property Regimes Regulation, or other private international law sources, should be applied[37].

[33] High Commercial Court of the Republic of Croatia, decision of 1 December 2020, Pž-4707/2019-2.

[34] Commercial Court in Rijeka, judgment and decision of 26 November 2021, 5 P-97/2021-44.

[35] County Court in Split, decision of 22 February 2018, Gž Ob-569/17.

[36] Municipal Court in Pula, judgment of 4 March 2019, 8 P Ob-96/2018-39.

[37] This observation is supported by research on the implementation of the above-cited Regulation (EU) 650/2012 in the Republic of Croatia and Slovenia, revealing that there is not always a consensus among Croatian and Slovenian practitioners regarding whether particular succession proceedings have an international element. See S. ARAS KRAMAR, M. TURK, K. VUČKO, *Završno izvješće o provedenom istraživanju o primjeni Uredbe o nasljeđivanju u Hrvatskoj i Sloveniji*, 2019, pp. 11-16, available online.

The Matrimonial Property Regimes Regulation, just like its «twin», the Property Consequences of the Registered Partnerships Regulation, does not define the international or cross-border element. Twin Regulations, in this respect, align with the approach taken by most EU family and succession private international law instruments, which do not define this term[38]. Recitals 11 and 13 mention «international couples», while Recital 14 of the Matrimonial Property Regimes Regulation explains that the Regulation should apply in the context of matrimonial property regimes having cross-border implications, without elaborating on what constitutes a cross-border element. The Proposal on twin Regulations may be used as guidance on what constitutes an international element. The Proposal indicates that Regulations are aimed at solving practical problem with which «international couples» and «couples with international dimension» are faced, explaining that international couples and couples with international dimension are those living in a Member State of which they are not nationals, owning assets in different Member States, or divorcing or dying in a country other than their own[39].

Scholarly discussions suggest that the cross-border aspect of a couple's property relations arises from intrinsic factors (personal, objective, and territorial elements) or external elements, i.e. when parties choose a foreign court as competent or foreign law as applicable[40]. Instances of an international element encompass scenarios such as couples with different nationalities, domicile or habitual residence, property located in another country, marriage celebrated abroad or a couple living in a country different than that of their nationality[41]. In situations where all other factors are tied to one specific country, a cross-border aspect can still arise if there are creditors, debtors, or third parties located in different countries[42]. There are more challenging situations in which the presence of an international aspect may be debatable. This includes cases in

[38] The only two regulations which do provide for such definition are Regulation (EC) 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure and Regulation (EC) 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure. According to Art. 3 of both Regulations, a cross-border case is the one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised. These definitions have limited significance in comprehending the cross-border aspects concerning the Twin Regulations, primarily because they are tailored to specific proceedings which they regulate.

[39] Proposal for a Council Decision authorising enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions on the property regimes of international couples, covering both matters of matrimonial property regimes and the property consequences of registered partnerships, COM(2016) 108 final of 2 March 2016, p. 7, para. 30.

[40] A. RODRIGUEZ BENOT, *Article 1, Scope*, in I. VIARENGO, P. FRANZINA (edited by), *The EU Regulations on the Property Regimes of International Couples, A Commentary*, cit., pp. 17-28, at p. 20.

[41] H. PEROZ, E. FONGARO, *Droit international privé patrimonial de la famille*, Paris, 2017, p. 1; M.J. CAZORLA GONZÁLEZ, M. SOTO MOYA, *Main Concepts and Scope of Application of the Twin Regulations*, in L. RUGGERI, A. LIMANTĖ, N. POGORELČNIK VOGRINC (eds.), *The EU Regulations*, cit., pp. 41-70, at p. 50; F.G. VITERBO, *Article 1, Scope*, in L. RUGGERI, R. GARETTO (eds.), *European Family Property Relations*, cit., pp. 9-10.

[42] A.M. SANCHEZ-MORALEDA, *The Questions of the Primary Matrimonial Regime and the Application of Regulation 2016/1103*, in *Cuadernos de Derecho Transnacional*, 2020, no. 1, pp. 259-285, at p. 260, available *online*.

which the couple owns shares in a foreign-registered company or had international ties during their time working abroad, but no longer maintain such connections[43].

An international or cross-border element is a necessary prerequisite for application of the private international law rules. However, not every international element will be relevant enough to trigger the application of private international law sources[44]. In today's interconnected world, it's rare to come across a set of circumstances that does not include at least a minor foreign component[45]. In *E.E.*, the CJEU discussed the relevance and existence of a cross-border element in a succession case[46]. It clarified that the situation in which the deceased, a national of one Member State, was residing in another Member State at the date of his or her death but had not cut ties with the first of those Member States, in which the assets making up his or her estate are located, while his or her successors have their residence in both of those Member States, constitutes «succession with cross-border implications».

Another case worth noting is the case of *Hypoteční banka*[47], which pertained to the Brussels I Regulation. The case concerned a Czech bank which instituted proceedings against Mr. Lindner, a German national, seeking payment related to a mortgage loan granted to Mr. Lindner. The contract contained a prorogation clause conferring jurisdiction to «the local court of the bank». When the contract was initially concluded, Lindner was domiciled in the Czech Republic, but his domicile became unknown when the proceedings were initiated. The CJEU emphasized the distinction between the jurisdictional criteria outlined in the Brussels I Regulation and the elements that introduce a cross-border aspect into a dispute. Even if the Brussels I Regulation does not explicitly recognise a particular element as relevant for establishing international jurisdiction, that element can still be a crucial factor in characterising the dispute as international. Regarding Mr. Lindner's foreign nationality, the CJEU clarified that nationality is not among the jurisdictional criteria specified in the Brussels I Regulation. However, it could still be a factor that introduces an international nature to the dispute[48].

Based on the outlined discussion, one might deduce a minimum threshold for the relevance of the international element that would trigger the application of private international law sources. This minimum threshold conclusion would suggest that while it is not mandatory to base the assessment of the cross-border element solely on the jurisdictional criteria defined in the Brussels I-*bis* Regulation, it is essential to consider

[43] J. GRAY, *Party Autonomy in EU Private International Law, Choice of Court and Choice of Law in Family Matters and Succession*, Cambridge, 2021, p. 72.

[44] H. PEROZ, E. FONGARO, *Droit international privé patrimonial de la famille*, cit., p. 1.

[45] A.D.J. CRITCHLEY, *The Application of Foreign Law in the British and German Courts*, Oxford, 2022, p. 31.

[46] Court of Justice, judgment of 20 July 2020, case C-80/19, *E.E.*, EU:C:2020:569.

[47] Court of Justice, judgment of 17 November 2011, case C-327/10, *Hypoteční banka*, EU:C:2011:745.

[48] Case *Hypoteční banka*, cit., paras. 31-34.

the jurisdictional criteria when determining whether the dispute is international in nature.

Applying the minimum threshold conclusion derived from the *Hypoteční banka* case into the field of property regimes of international couples would mean that in any case where a cross-border element is introduced through an element which forms the basis of jurisdictional criteria or connecting factors, the Matrimonial Property Regimes Regulation will have to be applied. It stems that both Croatian cases outlined in this chapter had a cross-border element of a sufficient level of relevance for the Matrimonial Property Regimes Regulation to be activated.

2.4.2. Delimitation between the matrimonial property regime and succession.

The Municipal Court in Pazin, Permanent Service in Buje[49] was confronted with the case in which it had to establish whether the subject matter of the dispute was covered by the material scope of application of the Matrimonial Property Regimes Regulation.

M.L.K., with the registered address in Piran, Slovenia, raised a claim with the aim of declaring an agreement on support until death (*ugovor o dosmrtnom uzdržavanju*) as partly null and void. In addition, the plaintiff sought her co-ownership of fifty percent of the immovable property situated in Istria, Croatia to be registered in the land registry. The plaintiff's late ex-husband I.K. with registered address in Momjan, Croatia, entered with the third party S.G., whose address is registered in Piran, Slovenia, into the support-until-death agreement. Based on the agreement, immovable property located in Istria, which was registered to late I.K. was transferred to S.G., as well as the valuable paintings and works of art created by M.L.K. The plaintiff also sought the recovery of these works of art in her claim, stating that these items constituted her personal assets, and do not form part of the community of spouses' assets. In addition to S.G., who had no familial ties with any of the involved parties, the defendants included M.L.K. and I.K.'s daughters as universal heirs of the deceased I.K, L.K. with registered address in Kopar, Slovenia, and A.M. with registered address in Ljubljana, Slovenia.

The Municipal Court in Pazin, Permanent Service in Buje, characterised the claim as a matter of matrimonial property regime, citing the definition of matrimonial property regime prescribed in Art. 3(1)(a) of the Matrimonial Property Regimes Regulation. The Court explained that the defendant S.G. was a third party and a maintenance provider to whom the late I.K. allegedly transferred a part of assets which belonged to the community of spouses' assets. In Croatian law, support-until-death agreement (*ugovor o dosmrtnom uzdržavanju*), as well as the lifelong support agreement (*ugovor o doživotnom uzdržavanju*) are often used for estate planning and circumventing the rules of Croatian succession law on forced shares.

[49] Municipal Court in Pazin, Permanent Service in Buje, judgment and decision of 24 August 2020 P-1262/2019-53.

Lifelong support agreement and the support-until-death agreement are regulated by the Croatian Obligations Act[50]. In both agreements, the maintenance provider undertakes to support the maintenance recipient until his or her death. In return, the maintenance recipient transfers all or a part of his or her assets to the maintenance provider. The main difference between the two agreements is that, in the case of the lifelong support agreement, the transfer of assets takes place at the moment of the recipient's death, whereas, in the case of the support-until-death agreement, the assets are transferred during recipient's life[51]. The lifelong support agreement was regulated by the previous Succession Act[52], while the support-until-death agreement was first regulated in 2005 by the Obligations Act. However, it was possible to enter into such agreement even prior to the entry into force of the 2005 Obligations Act[53].

Given the position and the role of these agreements in Croatian law, cases such the described one, raise characterisation issues. In other words, should the claim by which the plaintiff seeks to declare the support-until-death agreement partly null and void because it concerns assets which form part of the community of spouses' assets be characterised as a matter of matrimonial property regime or an issue pertaining to succession? In the case of the former, the Matrimonial Property Regimes Regulation should be used for all private international law matters, while in the case of the latter, the Succession Regulation[54] is applicable. To address this dilemma, the autonomous interpretation of these instruments' scope of application should be inspected.

The material ambit of the Matrimonial Property Regimes Regulation is regulated by Art. 1(1) by simply stating that it encompasses matrimonial property regime. Recital 18 offers additional guidance in this respect by stating that Matrimonial Property Regimes Regulation covers all civil-law aspects of matrimonial property regimes, both the daily management of matrimonial property and the liquidation of the regime, in particular as a result of the couple's separation or the death of one of the spouses. The term «matrimonial property regime» is defined in Art. 3(1)(a) as a set of rules concerning the property relationships between the spouses and in their relations with third parties, as a result of marriage or its dissolution. Art. 27 of the Matrimonial Property Regimes Regulation may be used for further guidance on issues which are covered by its material ambit. The non-exhaustive list provided therein mentions the effects of the matrimonial property regime on a legal relationship between a spouse and

[50] Croatian Obligations Act, Official Gazette of the Republic of Croatia, 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22.

[51] Lifelong support agreement is regulated by Arts. 579-585 of the Croatian Obligations Act and the support-until-death agreement is regulated by Arts. 586-589.

[52] Croatian Succession Act, Official Gazette, 52/71, 48/78, 56/00.

[53] D. KLASIČEK, S. ŠIMLEŠA VUČEMILOVIĆ, *Certain Issues Concerning Contracts on Support for Life and Contracts on Support until Death*, in D. DUIĆ, T. PETRAŠEVIĆ (eds.), *EU and Member States - Legal and Economic Issues, EU and Comparative Law Issues and Challenges Series (ECLIC)*, 2019, no. 3, pp. 747-777, at p. 748, available *online*.

[54] Regulation (EU) 650/2012, cit.

third parties in point (f). The limitation of the Matrimonial Property Regimes Regulation ambit is contained in Art. 1(2).

The Succession Regulation's ambit is defined by the concept of «succession to the estates of deceased individuals», as found in Art.1(1) of the Succession Regulation. For further understanding of the Succession Regulation's scope, the definition of the succession from Art. 3(1)(a) should be consulted. According to it, «succession» means succession to the estate of a deceased person and covers all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession. Again, the provision on scope of applicable law from Art. 23 may be borrowed for listing some of the matters which should be covered by the Succession Regulation. The Succession Regulation follows the example of other European private international law sources, including the Matrimonial Property Regimes Regulation, and contains a list of exclusions limiting its scope of application in Art. 1(2) such as matters related to matrimonial property regimes and property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage.

CJEU judgment in *Mahnkopf*[55] represents the most important tool for drawing the line between the material scopes of application of the twin Regulations and the Succession Regulation. In the case, the CJEU interpreted the German Civil Code rule based on which the surviving spouse's share which was one quarter, was increased by an additional quarter since both spouses were subject to the matrimonial property regime of community of accrued gains. The respective provision was characterised as a matter pertaining to succession.

The CJEU emphasised that the notions of matrimonial property and succession are to be interpreted autonomously from any national concept, and uniformly throughout the EU. This means that any interpretation according to national laws, as exemplified by the position taken by the German Government in the course of these proceedings, asserting that the Civil Code provision in question primarily addresses matrimonial property rather than succession, does not ultimately determine the legal characterisation. The CJEU, aligning with the Advocate General's viewpoint, clarified that the German Civil Code provision in question is not primarily focused on the allocation or settlement of assets within the matrimonial property regime. Instead, its primary purpose is to determine, upon the death of one of the spouses, the portion of the estate to be designated for the surviving spouse in relation to the other heirs. The provision is only applicable when the marriage comes to an end because of death of a spouse. The aim of the fixed portion is to compensate for the disadvantage that results from the statutory property regime of community of accrued assets being interrupted by the death of a spouse, and avoiding the necessity to determine the exact value of the assets at the beginning and end of the marriage disrupted by a spouse's death.

[55] Court of Justice, judgment of 1 March 2018, case C-558/16, *Mahnkopf*, EU:C:2018:138.

Therefore, its main concern is succession and not the matrimonial property regime. This distinction is particularly significant in light of the provision in Art. 1(2)(d) of the Matrimonial Property Regimes Regulation, which explicitly excludes «succession to the estate of a deceased spouse» from the scope of the Matrimonial Property Regimes Regulation.

CJEU's standing in *UM (Contrat translatif de propriété mortis causa)*[56] is also relevant for the characterisation purposes of the case at hand. The case concerns a contract made in 1975 in which UM's father agreed to transfer ownership of land in Austria to UM and his wife upon his death, subject to certain conditions. The contract specified that Austrian law would apply and that all parties were residents in Germany at the time. The conditions included building a house, remaining married, and the wife staying alive. If these conditions weren't met, UM would be the sole beneficiary. In 2018, UM and his wife had divorced and she had subsequently died. After that, UM's father passed away in 2018, and UM applied to have his title registered in the land register, claiming to be the sole beneficiary. The court in Austria rejected the application, stating that Austrian law applied and that the property transfer could not be performed without proof that the house was built according to the contract.

One of the matters the CJEU analysed is whether a contract that involves the future transfer of ownership of immovable property upon death to other parties is an agreement as to succession in the sense of Art. 3(1)(b) of the Succession Regulation. The CJEU decided that such a contract falls under the definition of the agreement as to succession. The CJEU noted that the Succession Regulation excludes property rights, interests, and assets created or transferred by means other than succession from its scope of application. Agreements as to succession, as defined in Art. 3(1)(b), are dispositions of property upon death. The provision refers generally to any agreement which creates rights to the future estate or estates. It means that a contract which provides for the future transfer of ownership upon death and grants rights in the future estate to other parties falls under the definition of an agreement as to succession. Such interpretation aligns with the Regulation's objective of avoiding the fragmentation of succession and establishing a uniform regime for cross-border successions. The exclusion of assets transferred by means other than succession, like gifts, should be interpreted strictly. Therefore, contracts involving the future transfer of immovable property upon death fall within the scope of the Succession Regulation[57].

The case before the Municipal Court in Pazin, Permanent Service in Buje, concerned the claim by which the plaintiff sought the declaration that support-until-death agreement was partly null and void due to the fact that the assets belonged to the community of property. The Court correctly characterised the matter as pertaining to matrimonial property. Under the support-until-death agreement, the property is

[56] Court of Justice, judgment of 9 September 2021, case C-277/20, *UM (Contrat translatif de propriété mortis causa)*, EU:C:2021:708.

[57] Case *UM*, cit., paras. 26-36.

transferred during the maintenance recipient's life. In accordance with *Mahnkopf* and *UM* formula, since such transfer does not affect estate or future estate it is quite clear that it cannot be characterised as a matter pertaining to succession, even though this agreement is often used for estate planning in Croatia. The question which poses itself is would the characterisation change if the plaintiff's claim concerned the lifelong support agreement. As it was already established, in lifelong support agreement, the transfer of property is deferred until the maintenance recipient's death. It follows that such agreements affect the future estate. In cases in which one of the spouses enters into lifelong support agreement concerning assets belonging to community of spouses' assets, such agreement will only impact the matrimonial property regime at the time of the death of a spouse. At the first glance, it may seem that such agreements should therefore fall under the definition of the agreement as to succession[58]. However, the doctrine suggests that a differentiation should be made between donations due to death (*mortis causa*), on one hand, and donations in which the donor's death merely marks the starting point for the transfer, but the purpose of the contract is not planning one's future succession[59], on the other. The same principle should be extended to contracts which are not donation. The causal justification of the lifelong support agreement, as well as support-until-death agreement, lies in the need of the maintenance recipient for appropriate assistance and care, typically due to his or her age and health condition, which prevents him or her from taking care of herself. The maintenance provider is a person who can provide such assistance and care by ensuring food, clothing, medications, and expert medical care, covering bills etc. In return for such support, the recipient transfers ownership of his or her movable and/or immovable property to the maintenance provider[60]. For this reason, lifelong support agreements should be understood to be covered by Art. 1(2)(g) of the Succession Regulation which excludes property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts, joint ownership with a right of survivorship, pension plans, insurance contracts and arrangements of a similar nature from the material ambit of the Succession Regulation[61].

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[58] Frimston refers to the Waters report for the discussion on which disposition are covers by the Succession Regulation: see R. FRIMSTON, *Chapter I: Scope and Definitions*, in U. BERGQUIST, D. DAMASCELLI, R. FRIMSTON, P. LAGARDE, F. ODERSKY, B. REINHARTZ (eds.), *EU Regulation on Succession and Wills, Commentary*, Cologne, 2015, pp. 38-63, at p. 55; and D.M.V. WATERS, *Convention on the law applicable to succession to the estates of deceased persons*, Hague, 1990, p. 543, para. 41, available *online*.

[59] I. RIVA, *The Italian Perspective on the Implementation of the Private International Law of Successions*, in M.J. CAZORLA GONZÁLEZ, L. RUGGERI (edited by), *Cross-Border Couples Property Regimes*, cit., pp. 185-198, at p. 196 ff.

[60] M. BUTKOVIĆ, *Ugovor o doživotnom i dosmrtnom uzdržavanju u sudskoj praksi*, in *Prilozi Hrvatske javnobilježničke komore*, 2012, no. 3, pp. 3-8, at p. 4, available *online*.

[61] The respective agreement cannot be characterised as maintenance obligations other than those arising by reason of death from Art. 1(2)(e) of the Succession Regulation. The term maintenance obligation should be interpreted as corresponding exclusions in Art. 1(2)(b) of the Regulation (EC) 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), and Art. 1(2)(a) of Regulation (EC) No 864/2007 of the European

It follows from the analysis that if the claim is raised for declaring the lifelong support agreement null and void because it concerns assets belonging to community of property, the matter should be characterised as a matter pertaining to matrimonial property regime. On the contrary, if the dispute concerning the lifelong support agreement or support-until-death agreement is unrelated to matrimonial property regime, the dispute should be characterised as a civil and commercial matter governed by Brussels I-*bis* Regulation for international jurisdiction and either Rome I or Rome II Regulation for applicable law, depending on whether the claim is a contractual or non-contractual one. This understanding is corroborated by the view of the Croatian authors who explain that lifelong support agreement represents an agreement which creates civil law obligations instead of legal basis for succession[62].

3. Scope of the jurisdictional rule of Art. 6(c).

In the discussed case before the Municipal Court in Pazin, Permanent Service in Buje, the Court declared it had jurisdiction under Art. 6(c) of the Matrimonial Property Regimes Regulation given that S.G., the defendant, was habitually resident in Istria, Croatia[63]. It was already established that the Court correctly characterised the dispute as falling under the material scope of application of the Matrimonial Property Regimes Regulation. In this respect, it has to be noted that disputes on matrimonial property regimes, do not necessarily involve spouses. Third parties may also appear as parties to the proceedings[64]. This clearly follows from the definition of «matrimonial property regimes» from Art. 3(1)(a) of the Matrimonial Property Regimes Regulation stating that the term encompasses a set of rules concerning the property relationships between the spouses and in their relations with third parties. However, the question is whether the court's jurisdiction can be established based on the habitual residence of the defendant, who is not one of the spouses, based on Art. 6(c) of the Matrimonial Property Regimes Regulation. The term «respondent» appears solely in point (c) of Art. 6 in the

Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), i.e. in the sense of the Council Regulation (EC) 4/2009, cit. See M. WELLER, *Article 1, Scope*, in A.-L. CALVO CARAVACA, A. DAVI, H.-P. MANSEL (edited by), *The EU Succession Regulation, A Commentary*, Cambridge, 2016, pp. 73-111, at p. 93.

[62] N. GAVELLA, V. BELAJ, *Nasljedno pravo*, 3rd ed., Zagreb, 2008, p. 435; V. BELAJ, *Ugovor o doživotnom uzdržavanju prema novom Zakonu o nasljeđivanju*, in *Pravni vjesnik*, 2003, no. 1-2, pp. 211-224, at p. 213. As the authors point out, the differentiation between lifelong support agreement and support until death agreement, on one hand, and succession agreements and legacy agreements, on the other, is important since the latter are null and void under Croatian law (see Arts. 102 and 103 of the Croatian Succession Act).

[63] Moreover, the Court relied on Art. 10 of the Matrimonial Property Regimes Regulation as the legal basis for establishing jurisdiction. When it comes to determining the applicable law, the Court made a passing reference to Art. 26(3)(b) without delving into it extensively. In its ruling, the Court concluded that the provisions of Croatian and Slovenian laws governing matrimonial property regimes are essentially identical.

[64] I. KUNDA, A. LIMANTĖ, *Jurisdictional Provisions in the Twin Regulations*, in L. RUGGERI, A. LIMANTĖ, N. POGORELČNIK VOGRINC (eds.), *The EU Regulations*, cit., pp. 71-100, at p. 98.

Matrimonial Property Regimes Regulation. The situation is the same under the Property Consequences of the Registered Partnerships Regulation. Art. 6 of the Matrimonial Property Regimes Regulation contains jurisdictional rules applicable in cases where the concentration of jurisdiction rules from Arts. 4 and 5 cannot be applied, and when the spouses have not designated the competent court. Remaining jurisdictional criteria in Art. 6 mention either both spouses or one of the spouses.

Jurisdictional criteria in Art. 6 of the Matrimonial Property Regimes Regulation mirror the jurisdictional criteria from Art. 3 of the Regulation 2019/1111 (hereinafter, the Brussels II-*ter* Regulation), which represents a jurisdictional rule for marital disputes. An Art. 6(c) Matrimonial Property Regimes Regulation counterpart may be found in the provision of Art. 3(1)(a), third indent of the Brussels II-*ter* Regulation, which confers jurisdiction to the court of the Member State in which the respondent is habitually resident. Proposal for the Brussels II-*ter* Regulation[65], its predecessors[66], as well as the Proposal for the twin Regulations[67] are silent on whether the respondent refers solely to spouses. The CJEU did not have an opportunity of clarifying this matter. It did, however interpret the term «applicant» from the fifth and sixth indents of the Brussels II-*bis* Regulation. In *Mikolajczyk*[68], the third party instituted the proceedings for the annulment of the marriage based on the jurisdictional rule found in Art. 3(1)(a), fifth indent of the Brussels II-*bis* Regulation, the predecessor of the Brussel II-*ter* Regulation. The CJEU clarified that a person other than one of the spouses who brings an action for annulment of marriage may not rely on the grounds of jurisdiction set out in those provisions. The rationale behind this decision rested on the purpose of the relevant jurisdictional rules. These rules aim to safeguard the interests of spouses and create an adaptable framework for addressing the mobility of spouses, especially in cases where one spouse relocates from the Member State of their common habitual residence. Simultaneously, these rules ensure that there exists a genuine connection between the party concerned and the competent court[69]. The CJEU's decision was met with a certain extent of criticism[70].

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[65] Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), COM(2016) 411 final of 30 June 2016.

[66] Proposal for a Council Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility repealing Regulation (EC) No 1347/2000 and amending Regulation (EC) No 44/2001 in matters relating to maintenance, COM(2002) 222 final of 27 August 2002; and Proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children, COM(1999) 220 final of 31 August 1999.

[67] COM(2016) 108 final, cit.

[68] Court of Justice, judgment of 13 October 2016, case C-294/15, *Mikołajczyk*, EU:C:2016:772.

[69] Case *Mikołajczyk*, cit., paras. 49-50. For more on the aim and the purpose of the fifth and sixth indent of the Art. 3(1)(a) of the Brussels II-*ter* Regulation, see V. TOMLJENOVIĆ, I. KUNDA, *Uredba Rim III: treba li Hrvatskoj*, in I. KUNDA (ed.), *Obitelj i djeca: europska očekivanja i hrvatska stvarnost/Family and children: European expectations and national reality*, Rijeka, 2014, pp. 207-247, at p. 225.

[70] A. BORRÁS, *Article 3*, in U. MAGNUS, P. MANKOWSKI (eds.), *Brussels IIbis Regulation*, Cologne, 2017, pp. 89-98, at p. 95.

The aim and the purpose of jurisdictional rules in Art. 6 of the Matrimonial Property Regimes Regulation may be found in the Explanatory Memorandum of the Proposal for the twin Regulations. There, it is stated that the proposed criteria include the habitual residence of the spouses, their last habitual residence if one of them still resides there or the habitual residence of the respondent and that these widely used criteria frequently coincide with the location of the spouses' property[71]. In addition, Recital 35 which contains a clarification on jurisdictional criteria in the Matrimonial Property Regimes Regulation, does not provide any indication as to whether Art. 6 pertains to individuals beyond the spouses. A part of the doctrine has suggested that the interpretation of Art. 6(c) of the Matrimonial Property Regimes Regulation should be interpreted in the manner that it refers only to spouses, not third parties, invoking the requirements of proximity and certainty, as well as the risk of multiplication of competent courts in case of multiple defendants[72]. On the other hand, there are opposing perspectives which are based on the argument that the Matrimonial Property Regimes Regulation ambit covers also proceedings initiated by or directed against third parties and therefore Art. 6(c) extends beyond just spouses[73]. Perhaps the most convincing argument tipping the scale towards more extensive interpretation of Art. 6(c) of the Matrimonial Property Regimes Regulation is the fact that it embodies the maxim *actor sequitur forum rei*, a widely accepted and reasonable jurisdictional principle. In any case, in the dispute before the Municipal Court in Pazin, Permanent Service in Buje, expanding the application of Art. 6(c) to include defendants who are not spouses did not yield adverse outcomes in terms of establishing a satisfactory link between the court and the dispute.

4. Conclusion.

The Matrimonial Property Regimes Regulation, in conjunction with its counterpart, the Property Consequences of the Registered Partnerships Regulation, marks a significant addition to the legal landscape of EU private international law sources pertaining to family and succession matters. While the volume of Croatian case law on the Matrimonial Property Regimes Regulation is still modest, at least the portion that is publicly available, certain issues on application of the Matrimonial Property Regimes Regulation emerged before Croatian courts. These instances provided opportunities to delve into various matters on the private international law dimensions

[71] Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, COM(2016) 106 final of 2 March 2016.

[72] A. BONOMI, *Article 6, Autres compétences*, in A. BONOMI, P. WAUTELET (eds.), *Le droit europeen des relations patrimoniales de couple: commentaire des Reglements (UE) nos 2016/1103 et 2016/1104*, Bruxelles, 2021, pp. 411-428, at p. 426.

[73] M. MAKOWSKY, *Artikel 6, Züstandigkeit in anderen Fällen*, in R. HÜßTEGE, H.-P. MANSEL (eds.), *BGB*, Vol. 6, *Rom-Verordnungen - EuErbVO – HUP*, Baden-Baden, 3rd ed., 2019, pp. 893-899, at p. 898.

of matrimonial property regimes. Predominantly, these challenges pertain to the scope of application of the Matrimonial Property Regimes Regulation, and that includes all four aspects of the scope of application: territorial, personal, material, and temporal.

Given the relative novelty of the Regulation, Croatian case law has generally exhibited a sound interpretation and application of this legal instruments. It will be interesting to monitor future judicial developments, especially concerning issues which have been addressed.

ABSTRACT: Regulation 2016/1103 on Matrimonial Property Regimes has entered into force on 29 January 2019 along with its twin, Regulation 2016/1104 on Property Consequences of Registered Partnerships. The Republic of Croatia is one of the Member States participating to the enhanced cooperation in the framework of which the twin Regulations have been enacted. Since the date which marks the five years of application of the Matrimonial Property Regimes Regulation is approaching, the paper inspects the challenges which Croatian courts have faced in applying this new addition to EU private international law, with a special focus on all four aspects of its scope of application: territorial, personal, material, and temporal.

KEYWORDS: cross-border couples; EU family and succession law; matrimonial property regimes; twin Regulations.