

Class

**Unification of Law - Uniform Law
(Rechtsvereinheitlichung)**

Summer term 2019

Time schedule of the class

11.04.2019 Basics of unification of law: notion, purposes, history

18.04.2019 Neighbouring disciplines, literature. Institutions of unification of law

25.04.2019 Sources of uniform law. Methods of research and solving cases in the field of uniform law

02.05.2019 Methods of research and solving cases in the field of uniform law (cont'd.). Uniform sales law (CISG) I

09.05.2019 CISG II. Uniform law in other parts of the law of obligations

16.05.2019 CISG + PICC: case study

23.05.2019 Uniform credit security law

30.05.2019 Holiday

06.06.2019 Uniform transport law

13.06.2019 Uniform information technology (IT) law

20.06.2019 Approximation of laws in Europe, in particular the EU

27.06.2019 Unification of the law of civil procedure

04.07.2019 Unification of insolvency law

11.07.2019 Case law analysis

Types of exam questions in SP 5

- **Abstract topic**

E.g. Please give an analysis of (some issue) of conflict of laws, international civil procedure, comparative law, uniform law

- ***Solution of practical case***

- ***Case law analysis (on conflict of laws, international civil procedure, comparative law of uniform law)***

Methodological approaches to answering research tasks on uniform law

- Understand and give exact answer to research question
- Define relevant sources (may have to be compared, interrelationship?)
- Build synopses
- Define relevant issues and prioritise them
- Find good structure (balanced! focused!)
- **Introduction into problem – overview of sources and contents – issues – outcome/summary and perspectives**
- Find and use relevant literature
- Find and use relevant case-law, possibly arbitral practice. Prioritise and select case-law, e.g. on comparative basis
- Correct quotations
- Write clearly! Shorten your text! Read it through again several times! Ask somebody else to read it and invite comment.

Bitte analysieren Sie nach Art einer
Entscheidungsbesprechung das Urteil
des Europäischen Gerichtshofs vom
16.1.2019 in der Rechtssache C-
368/17, Liberato ./ Grigorescu.

Please give an analysis of the judgment
of the ECJ of 16 Jan. 2019, C-368/17,
Liberato ./ Grigorescu.

Case law analysis, e.g. international courts, national courts, several courts in comparison

Introduction - The problem

The **facts** (*short + relevant, in your own words*)

The **decision**: contents, structure, procedure (e.g. *preceding decisions*), argumentation. **In case of the Court of Justice of the EU: see also opinions of Advocates General**

The **issues in context** of the relevant legal norms and other jurisprudence. *Make good structure + prioritise! Is already commentary available? Correct quotations! Has relevant legislation changed or is change planned?*

Critique?

Possibly comparison

Conclusions, e.g. evaluation of the decisions, legislative proposals. *Think beyond the decision!*

JUDGMENT OF THE COURT (First Chamber) 16 January 2019

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction and recognition and enforcement of judgments on maintenance obligations — Regulation (EC) No 44/2001 — Article 5(2) — Article 27 — Article 35(3) — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 19 — Lis pendens — Article 22(a) — Article 23(a) — Non-recognition where the decisions are manifestly contrary to public policy — Article 24 — Prohibition of review of jurisdiction of the court of origin — Ground for the non-recognition based on a breach of the rules of lis pendens — Absence)

In Case C-386/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 26 October 2016, received at the Court on 27 June 2017, in the proceedings **Stefano Liberato v Luminita Luisa Grigorescu**,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice-President, acting as President of the First Chamber, J.-C. Bonichot, A. Arabadjiev, E. Regan and C.G. Fernlund (Rapporteur), Judges

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Liberato, by F. Ongaro and A. Castellani, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, and by P. Pucciariello, avvocato dello Stato,
- the Czech Government, by M. Smolek and J. Vláčil and by A. Kasalická, acting as Agents,
- the European Commission, by E. Montaguti and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 September 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

2 The request has been made in proceedings between Mr Stefano Liberato and Ms Luminita Luisa Grigorescu concerning a request for recognition in Italy of a judgment in matrimonial matters, matters of parental responsibility and maintenance obligations delivered in Romania.

On those grounds, the Court (First Chamber) hereby rules:

The rules of *lis pendens* in Article 27 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and Article 19 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 must be interpreted as meaning that where, in a dispute in matrimonial matters, parental responsibility or maintenance obligations, the court second seised, in breach of those rules, delivers a judgment which becomes final, those articles preclude the courts of the Member State in which the court first seised is situated from refusing to recognise that judgment solely for that reason. In particular, that breach cannot, in itself, justify non-recognition of a judgment on the ground that it is manifestly contrary to public policy in that Member State.

[Signatures]

Brussels Ia Regulation (2012)

CHAPTER II JURISDICTION

SECTION 1 General provisions: *e.g. domicile of defendant*

SECTION 2 Special jurisdiction (Articles 7 et seq.)

...

SECTION 6 Exclusive jurisdiction

SECTION 9 Lis pendens I— related actions

Article 29

1. Without prejudice to Article 31(2), where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

CHAPTER III RECOGNITION AND ENFORCEMENT

SECTION 1 Recognition

SECTION 3 Refusal of recognition and enforcement

Subsection 1 Refusal of recognition

Article 45

1. On the application of any interested party, the recognition of a judgment shall be refused:

(a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;

3. ... the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction.

Brussels I Regulation (2001)

Section 9 Lis pendens - related actions

Article 27

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

Brussels Ila Regulation (2003)

Article 19 Lis pendens and dependent actions

1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are 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.

2. Where proceedings relating to parental responsibility relating to the same child and involving the same cause of action are 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.

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

CHAPTER II: JURISDICTION

Article 12 Lis pendens

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

Preliminaries

First: Read the case exactly. Try to understand it.

- What is the **holding** of the court?
- On which **legal provisions** is the judgment grounded in its merits? Which other legal provisions have been used by the court? Read these provisions and try to understand them. *Are these provisions still applicable or is there now more recent legislation? Does it differ?*
- In the case of an ECJ judgment: check the **opinion of the Advocate General** in that case? Does the ECJ follow the Advocate General or does it deviate (in holding and/or in reasoning?) If necessary, make a synopsis.

Try to understand the **facts**. Underline important elements. Make a graphic for your own better understanding.

Try to understand the **reasoning** of the court. Underline important parts.

Are there **any points which seem to you difficult to understand or problematic** at your first impression of reading the case? Any possible points of critique? Note them in your first observations.

Are there **any commentaries** on the judgment already available? E.g. on the Internet or in legal journals. In foreign languages, e.g. **English**? Copy them.

Case law analysis

- **Introduction** - The problem
- The **facts**
- The **decision**
- **Critique?**
- **Conclusions.** *Think beyond the decision!*

Why not try to solve the case (briefly/quickly) on your own (on the basis of the facts given in the judgment)?

Are there any issues, which have not been addressed in the judgment? Maybe the Court overlooked a problem. Or the Court did not have to deal with a certain aspect, but the aspect seems important enough to be mentioned in the analysis of the case, e.g. in the conclusion.

OPINION OF ADVOCATE GENERAL
BOT
delivered on 6 September 2018 (1)

Case C-386/17

Stefano Liberato
v
Luminita Luisa Grigorescu

(Request for a preliminary ruling from the Corte suprema di cassazione (Supreme Court of Cassation, Italy))

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 5(2) — Article 27 — Article 35(3) — Jurisdiction, recognition and enforcement of judgments on maintenance obligations — Regulation (EC) No 2201/2003 — Articles 19 and 24 — Jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility — *Lis pendens* — Breach of the rules on *lis pendens* — Consequences — Prohibition of review of jurisdiction of the court of origin)

1. This request for a preliminary ruling concerns the interpretation of Articles 19 and 24 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. (2)
2. The request has been made in the context of proceedings between Mr Stefano Liberato and Ms Luminita Luisa Grigorescu concerning the recognition by the Italian courts of a judgment of the Romanian courts concerning marriage, parental responsibility and maintenance obligations.
3. This case will give the Court the opportunity to clarify whether a breach of the rules on *lis pendens* by the court second seised can constitute a ground for non-recognition of a judgment made by that court.
4. At the conclusion of my analysis, I will propose that it should be held, primarily, and consistently with the judgment of 19 November 2015, *P*, (3) that Article 35(3) of Council Regulation (EC) No 44/2001 (4) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (5) and Article 24 of Regulation No 2201/2003 must be interpreted as precluding that a breach of the rules on *lis pendens*, contained in Article 27 of Regulation No 44/2001 and Article 19 of Regulation No 2201/2003, by the court second seised should constitute a ground for withholding recognition of a judgment delivered by that court, on the basis of an infringement of public policy of the Member State in which recognition is sought.

I. Legal context
A. European Union law
1. Regulation No 44/2001

5. Article 5(2) of Regulation No 44/2001 provides:

Extract from the opinion of the Advocate General

1. This request for a preliminary ruling concerns the interpretation of Articles 19 and 24 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. (2)
2. The request has been made in the context of proceedings between Mr Stefano Liberato and Ms Luminita Luisa Grigorescu concerning the **recognition by the Italian courts of a judgment of the Romanian courts concerning marriage, parental responsibility and maintenance obligations.**
3. This case will give the Court the opportunity to clarify **whether a breach of the rules on *lis pendens* by the court second seised can constitute a ground for non-recognition of a judgment** made by that court.
4. **At the conclusion of my analysis, I will propose** that it should be held, primarily, and consistently with the judgment of 19 November 2015, *P*, (3) that Article 35(3) of Council Regulation (EC) No 44/2001 (4) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (5) and Article 24 of Regulation No 2201/2003 must be interpreted as precluding that a breach of the rules on *lis pendens*, contained in Article 27 of Regulation No 44/2001 and Article 19 of Regulation No 2201/2003, by the court second seised should constitute a ground for withholding recognition of a judgment delivered by that court, on the basis of an infringement of public policy of the Member State in which recognition is sought.

The dispute in the main proceedings and the questions referred for a preliminary ruling

17 Mr Liberato and Ms Grigorescu married in Rome (Italy) on 22 October 2005 and lived together in that Member State until the birth of their child on 20 February 2006. The matrimonial relationship deteriorated progressively and the mother took the child with her to Romania and did not return to Italy.

18 By application of 22 May 2007 to the Tribunale di Teramo (Italy), Mr Liberato sought legal **separation** from Ms Grigorescu and **custody** of the child. Ms Grigorescu, who entered an appearance before the court, sought to have that application dismissed on the merits and lodged a **counterclaim** seeking a contribution from the father to the child's maintenance. By **judgment of 19 January 2012**, that court pronounced **legal separation** of the spouses, for which it held Ms Grigorescu responsible, and, by a **separate order**, referred the case back for a decision on the opposing claims concerning **parental responsibility**.

19 While those proceedings concerning **parental responsibility** brought before the Tribunale di Teramo were **still pending in Italy**, Ms Grigorescu brought **proceedings before** the Judecătoria Bucureşti (Court of First Instance, **Bucharest**, Romania) on 30 September 2009, seeking a **divorce**, sole **custody** of the child and a contribution from the father to the child's **maintenance**.

20 Mr Liberato entered an appearance before that court, raising the **objection of *lis pendens***, arguing that he had already brought proceedings for legal separation and parental responsibility in Italy. However, by **judgment of 31 May 2010**, that **court pronounced the divorce**, awarded **custody** of the child to the **mother**, fixed the arrangements for the exercise of the father's rights of access to the child and set the amount of **maintenance** to be paid by the latter for the child.

The dispute in the main proceedings and the questions referred for a preliminary ruling (cont'd 1)

21 That judgment (*Bucharest*) acquired the force of *res judicata* following a judgment of the Curtea de Apel București (Court of Appeal, Bucharest, Romania) of 12 June 2013, which confirmed the judgment of the Regional Court, Bucharest) of 3 December 2012....

22 By judgment of 8 July 2013, the **separation proceedings** before the **Tribunale di Teramo** were subsequently concluded. That court granted **sole custody of the child to the father** and ordered the immediate return of the child to Italy. That court also determined the arrangements for the exercise of the mother's rights of access to the child in Italy and ordered **her** to make a **contribution for maintenance of the child**.

23 In particular the Tribunale di Teramo **dismissed the incidental application** by which Ms Grigorescu had applied, on the basis of Regulation No 2201/2003 for **recognition in Italy of the divorce judgment** of the Tribunalul București (Regional Court, Bucharest) of 3 December 2012. The Tribunale di Teramo (District Court, Teramo) observed that the divorce proceedings in Romania had been commenced after the legal separation proceedings brought in Italy and that, consequently, the **Romanian courts had infringed Article 19 of Regulation No 2201/2003 by failing to stay the proceedings**.

24 Ms Grigorescu appealed against that judgment ...

25 By **judgment of 31 March 2014**, the Corte d'appello di L'Aquila (Court of Appeal, L'Aquila, Italy) varied the judgment of the Tribunale di Teramo of 8 July 2013 and **upheld the objection relating to the acquisition of the force of *res judicata* of the divorce decision delivered by the Romanian courts**, which also concerned custody of the child and maintenance contributions for him. That court held that the breach of the rules of *lis pendens* under EU law, by the judicial authorities of the Member State second seised, in this case Romania, was not relevant for the purposes of examining the conditions for recognition of the definitive measures adopted by that Member State and that there was **no ground, in particular relating to public policy**, preventing the recognition of the Romanian judgment.

26 **Mr Liberato brought an appeal in cassation against that judgment of the Corte d'Appello di L'Aquila** (Court of Appeal, L'Aquila).

The dispute in the main proceedings and the questions referred for a preliminary ruling (cont'd 2)

27 The *referring court* points out that the judgment delivered in Romania governs the questions of the marriage ties, parental responsibility and maintenance obligations. In the proceedings for legal separation initiated in Italy, the same claims had been made, except the claim relating to the marriage ties which was not the same because the Italian legal system requires, prior to the *divorce*, that the legal requirements relating to *legal separation* of the spouses have been met.

28 That court [=Italian Corte di cassazione] states that there are no grounds based on Article 22(c) of Regulation No 2201/2003, Article 23(e) thereof or Article 34(4) of Regulation No 44/2001 precluding the recognition of the Romanian judgment as regards, respectively, matrimonial status, parental responsibility and maintenance obligations.

29 According to the *referring court*, it is necessary to examine whether an infringement, which it considers manifest, of the provisions relating to *lis pendens* in EU law, laid down in Article 19 of Regulation No 2201/2003 and Article 27 of Regulation No 44/2001 by the courts which issued the decision which is the subject of the request for recognition, may be regarded as being a ground for withholding recognition of that judgment by reason of the fact that it is contrary to public policy.

The dispute in the main proceedings and the questions referred for a preliminary ruling (cont'd 3)

30 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation, Italy) decided to stay its proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does an infringement of the rules on *lis pendens* contained in Article 19(2) and (3) of Regulation No 2201/2003 affect only the determination of jurisdiction, with the consequent application of Article 24 [thereof] or, on the contrary, may it constitute a ground for withholding recognition, in the Member State whose court has been seised first, of a judicial ruling made in the Member State whose court has been seised at a later stage, in the light of procedural public policy, having regard to the fact that [that Article 24] refers only to the rules determining jurisdiction contained in Articles 3 to 14 of that regulation and not to the subsequent Article 19 thereof?’

(2) Does the interpretation of Article 19 of Regulation No 2201/2003, seen only as a test for the conferral of jurisdiction, conflict with the EU-law concept of “*lis pendens*” and with the function and purpose of that provision, which is intended to lay down a set of binding rules, reflecting procedural public policy, thereby guaranteeing the creation of a common area characterised by reciprocal procedural trust and fairness between the Member States, within which the automatic recognition and free movement of judicial decisions may operate?’

On those grounds, the Court (First Chamber) hereby rules:

The rules of *lis pendens* in Article 27 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and Article 19 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 must be interpreted as meaning that **where, in a dispute in matrimonial matters, parental responsibility or maintenance obligations, the court second seised, in breach of those rules, delivers a judgment which becomes final, those articles preclude the courts of the Member State in which the court first seised is situated from refusing to recognise that judgment solely for that reason.** In particular, that breach cannot, in itself, justify non-recognition of a judgment on the ground that it is manifestly contrary to **public policy** in that Member State.

[Signatures]

Problems addressed and solved (?) in the judgment

- **Does breach of the lis pendens rule mean that a judgment cannot be recognised?**
- **Context**
- International civil procedure (EU): *Brussels Ia Regulation, Brussels IIa Regulation and others*
- International family law:
- recognition of judgment (Romania); divorce (v. separation), child custody, alimony;
- jurisdiction
- lis pendens

Ideas for problem analysis and evaluation of the judgment

- **What is the central problem here?**
- *For the Court?*
- *For a general analysis?*
- **Recognition of foreign judgment or lis pendens or jurisdiction?**
- **Possible problems/specifics of the case**
- **Family law context: welfare of the child**
- **Long-lasting proceeding in Italy!!!**
- Dubious proceeding in Romania? Was Romanian decision right or wrong?
- Is the law, which was applied by the Court, still applicable? See EU Maintenance Regulation 2008. Does this influence the relevance of the judgment today?

Consideration of the questions referred (part 1)

31 It must be observed, as a preliminary point, that the questions from the referring court concern exclusively the interpretation of Regulation No 2201/2003. However, since ... maintenance obligations are not covered by that regulation, but by Regulation No 44/2001, it follows from the decision to refer that the case in the main proceedings concerns the recognition of a judgment which concerns not only matrimonial matters and parental responsibility, but also maintenance obligations. Therefore, the questions referred must be answered in the light of **Regulations No 2201/2003 and No 44/2001**.

32 **By its questions, which must be examined together**, the referring court asks essentially, whether the rules of *lis pendens* set out in Article 27 of Regulation No 44/2001 and Article 19 of Regulation No 2201/2003 must be interpreted as meaning that, where, in a dispute concerning matrimonial matters, parental responsibility or maintenance obligations, the court second seised delivers a judgment which becomes final, in breach of those rules, the courts of the Member State in which the court first seised is situated may refuse to recognise that judgment on the ground that it is manifestly contrary to public policy.

33 *In that connection, it should be recalled that, on 30 September 2009, Ms Grigorescu brought an action before a Romanian court seeking a divorce from Mr Liberato, an application for custody of their child and a claim for maintenance contributions from the latter, whereas the Italian court was seised prior to that date of an application for legal separation and for custody of the child brought by Mr Liberato, and a cross-claim for maintenance contributions for the child brought by Ms Grigorescu.*

34 **Basing its decision on the difference in the subject matter of the claims relating to matrimonial matters, one relating to divorce and the other to legal separation, the Romanian court held that there was no *lis pendens***, within the meaning of Article 19 of Regulation No 2201/2003, and that it had jurisdiction to hear the action brought by Ms Grigorescu.

35 **As the Court has already held**, while, in accordance with the wording of Article 19(1) of Regulation No 2201/2003, in matrimonial matters the proceedings must involve the same parties, they may have a different cause of action, provided that they concern judicial separation, divorce or marriage annulment. The Court thus infers that *lis pendens* or dependent actions may arise, within the meaning of Article 19 of Regulation No 2201/2003, where two courts of different Member States are seised of legal separation proceedings in one case and divorce proceedings in the other. In such circumstances and where the parties are the same, the court second seised is of its own motion to stay its proceedings until such time as the jurisdiction of the court first seised is established (**judgment of 6 October 2015, A, C-489/14, EU:C:2015:654, paragraphs 33 and 34**).

36 Furthermore, and as the Advocate General noted in points 56 and 57 of his Opinion, if in matrimonial proceedings there are claims relating to parental responsibility, the rules on *lis pendens* relating to the dissolution of marriage will apply. The same is true of matters relating to maintenance when the matter is ancillary to proceedings concerning the status of a person, pursuant to Article 5(2) of Regulation No 44/2001. It follows that the former claims fall within Article 19(1) of Regulation No 2201/2003, whereas the latter are governed by Article 27(1) of Regulation No 44/2001.

37 ...

38 It follows that, in a situation such as that at issue in the main proceedings, the **court second seised** of an application for divorce and claims related to parental responsibility and maintenance obligations which refuses to stay its proceedings and considers that it has jurisdiction to hear those claims **infringes the provisions of Article 19 of Regulation No 2201/2003 and those of Article 27 of Regulation No 44/2001**.

39 In order to answer the questions from the referring court, it must be observed that **Article 19 of Regulation No 2201/2003 is drafted in terms similar to those used in Article 27 of Regulation No 44/2001** and establishes a mechanism for dealing with cases of *lis pendens* that is equivalent to that provided for by the latter article. Therefore, **account must be taken of the findings of the Court with regard to Regulation No 44/2001** for the interpretation of Regulation No 2201/2003 (see, to that effect, judgment of 6 October 2015, A, C-489/14, EU:C:2015:654, paragraph 27).

40 The mechanism established by Regulation No 2201/2003 must also be explained.

41 That **regulation is based on judicial cooperation and mutual trust**, which lead to mutual recognition of judicial decisions, the cornerstone for the creation of a genuine judicial area (judgment of 15 February 2017, *W and V*, C-499/15, EU:C:2017:118, paragraph 50 and the case-law cited).

42 In that context, the **rules of *lis pendens* play an important role**.

43 As the Court has previously held, in the **interests of the sound administration of justice within the European Union**, those **rules are intended to prevent parallel proceedings** before the courts of different Member States **and to avoid conflicts between decisions** which might result therefrom. For that purpose, the EU legislature intended to put in place a mechanism which is clear and effective in order to resolve situations of *lis pendens*, based on the chronological order in which the courts are seised (see, to that effect, judgment of 6 October 2015, A, C-489/14, EU:C:2015:654, paragraphs 29 and 30 and the case-law cited, and, by analogy, as regards Regulation No 44/2001, judgment of 27 February 2014, *Cartier parfums-lunettes and Axa Corporate Solutions assurances*, C-1/13, EU:C:2014:109, paragraph 40).

44 ...

45 **Second, under Article 24 of Regulation No 2201/2003, the jurisdiction of the court of the Member State of origin may not be reviewed** (judgment of 9 November 2010, *Purrucker*, C-296/10, EU:C:2010:665, paragraph 85). The same is true under Regulation No 44/2001, in accordance with Article 35(3) thereof.

46 Third, in accordance with recital 21 of Regulation No 2201/2003, that **regulation** is based on the idea that the recognition and enforcement of judgments given in a Member State should be based on the **principle of mutual trust** and the grounds for non-recognition should be kept to the minimum required (judgment of 19 November 2015, *P*, C-455/15 PPU, EU:C:2015:763, paragraph 35).

47 In the light of those considerations, it must be examined whether the fact that a judgment which has become final delivered in breach of the rules of *lis pendens* ... constitutes a ground of public policy which, on the basis of Article 34 of Regulation No 44/2001 and Article 22(a) and Article 23(a) of Regulation No 2201/2003, precludes recognition of that judgment ...

48 In that connection it must be recalled that, according to the wording of **Article 24** of Regulation No 2201/2003, the **test of public policy** referred to in Article 22(a) and Article 23(a) **may not be applied to the rules relating to jurisdiction** set out in Articles 3 to 14 thereof.

49 Therefore, it must be determined whether the rules of *lis pendens* constitute rules on jurisdiction in the same way as those in Articles 3 to 14 of that regulation.

50 In that connection, although it is true that the rules of *lis pendens* laid down in Article 19 of Regulation No 2201/2003 do not appear among the rules of jurisdiction expressly mentioned in Article 24 of that regulation, **Article 19 is in Chapter II of that regulation, entitled ‘Jurisdiction’**.

51 **Further, as the Advocate General observed in point 77 of his Opinion**, where, as in the dispute in the main proceedings, the court first seised, ruling on an **incidental claim for recognition**, examines whether the rules on *lis pendens* have been correctly applied by the court second seised and, therefore, the reasons why it has not declined jurisdiction, the court first seised is reviewing the jurisdiction of the court second seised. As stated in paragraph 45 of the present judgment, Article 24 of Regulation No 2201/2003 does not allow such a review to be carried out.

52 ...

53 **Those findings are also applicable to the rules of *lis pendens* in Article 27 of Regulation No 44/2001 in matters relating to maintenance obligations**, since **Article 35(3)** thereof also provides that the jurisdiction of the court of the Member State of origin may not be

Case law analysis

- **Introduction** - The problem
- The **facts**
- The **decision**
- **Critique?**
- **Conclusions.** *Think beyond the decision!*

Als Thema der Arbeit war die Besprechung eines aktuellen Urteils des EuGH über eine Fragestellung aus dem internationalen bzw. europäischen Zivilverfahrensrecht in Familiensachen aufgegeben.

Die Arbeit ist klar strukturiert und gut zu lesen. Auf eine Einleitung (A.) folgt ein beschreibender, etwas überlanger Abschnitt (B.) über die zu besprechende EuGH-Entscheidung. In einem gesonderten Abschnitt (C.) wird die Entscheidung einer Bewertung unterzogen, von der Entscheidung abweichende bzw. diese ergänzende Lösungsansätze werden in einen kurzen eigenen Abschnitt (D.) eingestellt. Die Arbeit schließt mit einem Fazit (E.).

Das Literaturverzeichnis ist gut, enthält aber leider keine fremdsprachlichen Nachweise. In die Ausführungen wird auch die dem Urteil vorausgehende Stellungnahme des Generalanwalts einbezogen.

Die **Einleitung (A., S.1)** führt knapp, aber in der Sache zutreffend zu dem Thema hin. Der beschreibende **Abschnitt (B., S.1 - 17)** ist intensiv untergliedert und im Verhältnis zum Gesamtumfang der Arbeit überdimensioniert und etwas unübersichtlich. Die Substruktur (I: Gerichtliche Angaben, II: Rechtlicher Rahmen, III: Sachverhalt, IV: Prozessgeschichte, V: “Charakteristische Darstellung” des Urteils und seiner Gründe) ist zwar stimmig, hätte sich aber straffen lassen. Bei der Darstellung des rechtlichen Rahmens wird zwar zutreffend darauf hingewiesen, dass die Entscheidung teilweise auf der Grundlage früherer Rechtsvorschriften ergangen ist (Brüssel I-VO statt Brüssel Ia-VO, ergänzend hätte auch auf die EuUnterhaltsVO verwiesen werden können). Es hätte nahegelegen, an späterer Stelle (zB. in Abschnitt D. oder E.) das Urteil des EuGH auch im Lichte der betreffenden Neuregelungen zu untersuchen. Anstelle einer Kurzcharakterisierung des EuGH-Urteils stellt Bearb. in Abschnitt B. die Argumentation des EuGH bereits weitgehend im Detail vor. Die von Bearb. gewählte Struktur führt dazu, dass Abschnitt C. der Arbeit, die eigentliche Analyse des Urteils, an Gewicht verliert.

...

Der analytische Kern der Arbeit liegt in der Bewertung des EuGH-Urteils in **Abschnitt C.** (S.17 – 29). Bearb. gliedert Abschnitt C. nicht nach den durch die Entscheidung aufgeworfenen Sachfragen, sondern nach den Positionen der verschiedenen involvierten Gerichte (S.17 ff, 23 ff). Die Sachfragen werden nur im Rahmen der jeweiligen Ausführungen erkennbar. Besser wäre es gewesen, bereits in der Gliederung die drei grundsätzlichen, durch die Entscheidung angesprochenen Themenkreise zu unterscheiden: 1) Anerkennung ausländischer Entscheidung als Rahmenfrage, 2) Rechtshängigkeit als zentrales Problem im Rahmen der Anerkennung, 3) Zuständigkeit als Teilelement bzw. Vorfrage der Anerkennungs- wie auch der Rechtshängigkeitsprüfung. Der logische Aufbau dieser Prüfung war nicht ganz einfach., Bearb. hat sich durch die Gliederung nach den Gerichten dieser Aufbauthematik äußerlich entzogen, sie aber letztlich nicht gelöst. Die Argumentationen des EuGH wie auch der anderen in dem Verfahrenskomplex involvierten Gerichte werden von Bearb. gut erschlossen. Die vom EuGH in seinem Urteil zitierte anderweitige Rechtsprechung und einige weitere Entscheidungen werden zutreffend angesprochen und ansprechend in die Beurteilung einbezogen. Die Thematik der autonomen Auslegung der Tragweite der Rechtshängigkeit (verwandt auch: der Rechtskraft) wird zwar berührt, hätte argumentativ starker entwickelt werden können.

In **Abschnitt D.** (S.29-32) und im kurzen Fazit (**Abschnitt E.**, S.32 – 33) kommt Bearb. auf die wesentlichen Gesichtspunkte des langen Dauer des italienischen Erstverfahrens und den Gesichtspunkt des Kindeswohls zu sprechen. Diese Gesichtspunkte hätten von Bearb.in der Argumentation bereits an früherer Stelle eingebracht und starker akzentuiert werden können. Gerade an Fällen überlanger Verfahrensdauer zeigt sich, das ein Einbezug der Außerachtlassung von Rechtshängigkeitsvorschriften in den anerkennungsrechtlichen ordre public neues Unrecht begründen könnte. Der EuGH hat diesen Gesichtspunkt allerdings in seiner Entscheidung nicht thematisiert. Dies wäre möglicherweise ein Ansatz für eine kritische Diskussion.

In der Gesamtbetrachtung handelt es sich um eine ordentliche Arbeit mit leichten Gewichtungsebenenheiten, die ich mit ... bewerte.