The role of party autonomy in pursuing coordination

Cristina González Beilfuss
University of Barcelona
Party autonomy and coordination

• Party autonomy- freedom of the parties to choose the applicable law
  Rome III- art. 5
  Hague Maintenance Protocol-art. 8
  Matrimonial Property Regulation- art. 22

• Limited party autonomy- the laws that can be chosen are limited
Party autonomy and coordination-2

• Is party autonomy intended to facilitate coordination? What is the rationale for allowing party autonomy?
  – Recital 15 Rome III
    *Increasing the mobility of citizens calls for more flexibility or legal certainty*
  - Para 125 Bonomi Report
    *to secure a measure of stability and foreseeability*
  - Recital 45 MPR
    *To facilitate to spouses the management of their property*
Party autonomy and coordination-3

• Rationale of party autonomy:
  - to allow parties to anticipate the outcome of their (possible) legal dispute.

-coordination is a necessity because the most common scenario is one in which the different matters are interrelated.
Can party autonomy be used in order to achieve coordination?

• The test case:
• Giacomo, of Italian nationality, is married to Carmen, a Spanish citizen. They have two children, aged 8 and 10, and live in Brussels. After 12 years of marriage they decide to divorce.
Can party autonomy be used in order to achieve coordination?

• They can choose the law applicable to the divorce- Choice between Spanish, Italian or Belgian law. Belgian law would apply in the absence of choice.

• The law applicable to the divorce can be designated as the law applicable to maintenance between the spouses.

• The law of the habitual residence or the nationality of either spouse can be chosen as the law applicable to matrimonial property.
Limitations

• There is no party autonomy in parental responsibility matters or as regards maintenance obligations towards children.
  - Belgian law applies.
• The choices will be upheld only if the divorce case is Heard by a Court in a MS bound by Rome III, The Maintenance Protocol or the MPR.
• Brussels II a does not admit prorogation of jurisdiction.
• MPR- The choice of applicable law has only prospective effect unless otherwise provided. And if so, it cannot adversely affect the rights of third parties.
Evaluation

• Difference between coordination at the PIL level and substantive law coordination and concerns.

• Agreements made for the prospect of a future divorce and agreements after the couple has decided to divorce.

• Where do spouses get the right information?