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THE REMODELING OF ARTICLE 22 OF THE ORGANIC LAW 6/1985 OF JULY 1, 1985. SPANISH LAW ON INTERNATIONAL LEGAL COMPETENCE

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The rules on International Legal Competence ("**ILC**") determine whether the internal courts are competent or not in a litigation in the scope of civil and commercial law. ILC is regulated by a plurality of legal texts: International Conventions, European Regulations and internal norms. The Spanish Organic Law 6/1985 of July 1, 1985 on the Judicial Power ("**LOPJ**") forms the internal regulation on ILC in Spain. The ILC rules in the LOPJ apply only on two occasions: firstly, when there is no international regulation in the matter, and secondly, when the international rules refer to the internal regulation. We can conclude, that the application of the LOPJ is only subsidiary.

Article 22 in the LOPJ has been remodeled by the Organic Law 7/2015 of July 21, 2015, which amended Organic Law 6/1985 of July 1, 1985 on the Judicial Power, and entered into force on October 1, 2015. The renewal was well needed due to gaps in the old Article 22. The composition of the new article is modified, and it is now divided into nine sub articles. The method, on the other hand, is maintained as well as the distinction between general (art. 22 bis), exclusive (art. 22), and special *forums*. The article now contains a reference to the insolvency law (art. 22 septies), a rule on control of competition (art. 22 octies), precautionary and provisional rules, and finally an empty rule on connectedness and *lis pendens* (art. 22 nonies).

Among the improvements there is an unravelment of the criteria of the last domicile of a disappeared person in art. 22 quater (a), as well as a suppression of the place where the contract was celebrated as a criteria of competence in contractual matters in art. 22 quinquies (a). Also the adjustments made in art. 22 sexies entail amelioration by elucidating the dominant interpretation of the doctrine of Spanish courts' competence to adopt interim or provisional measures. The introduction of a special *forum* in cases of multiple defendants in 22 ter, which eliminates a regulative gap in the old article, is interesting news as well.

On the other hand, some amendments are questionable for several reasons. The plurality of sources forms one of the most significant characteristics in the repartition of ILC. Therefore it is of importance that the rules indicating legal *forum* and choice of law are clear. The new lengthy setup does not benefit this objective, but makes the article more complex. Ambiguity also affects the legal predictability as well as the legal protection, and counteracts the efforts to modernize the regulation. The fact that the new rules refer to EU law does not compensate for the paucity of legal security and predictability.

Some of the new rules imply a lack of coordination with EU law, more specifically the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of December 12, 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("**Brussels Regulation**"). As a result, a significant part of the new rules are not applicable in practice at all or only with residual character. This is due to the Commission delegated regulation (EU) 2015/281 of November 26, 2014, which makes the Brussels Convention the only applicable regulation from January 10, 2015 in cases of prorogation of competence in favor of a Spanish court within the scope of application of said Convention. One example is art. 22 bis (1), that explains the concepts of express and tacit submission, mainly reproducing art. 25 and 26 in the Brussels Regulation.

The new rules are also unclear in some aspects, which forces to considerable interpretive efforts. Especially article 22 bis contains a paragraph that is even absurd. The article stipulates that agreements admitting legal competence to Spanish courts contrary to articles 22, 22 quarter, 22 quinquies, 22 sexies and 22 septies, shall be considered null. Regarding the fact that the mentioned paragraphs are all unilateral norms that assign legal competence to Spanish courts; how can an agreement designating competence to these courts possibly be contrary to the mentioned paragraphs? Hence, article 22 bis must partly be interpreted through *interpretatio abrogans*. Another example is the use of different expressions for what appears to be the same concept (e.g. "*center of administration*" and "*central administration*" in 22 ter), which can cause confusion.

In conclusion, the remodeling of article 22 is welcome because it fills gaps in the old article and clarifies some of the unclear concepts. In practice, the modifications are mainly inconsequential due to the LOPJ's subsidiary application. Then again, the fact that the application of most of the LOPJ rules today is scarce, does not make it non-existing. The lengthy and complex structure as well as the use of different wording for what seems to be the same concept counteracts the efforts to modernize the cross-border regulation, and frustrates the legal principles of legal predictability and legal protection. The main issue with the remodeled article is the format, not the content.

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