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RODRÍGUEZ RODRIGO, Juliana, *El matrimonio y la pareja de hecho internacionales: regulación y jurisprudencia, europea y de producción interna española. Problemas y soluciones*, Atelier, Barcelona, 2025.

This review refers to a monograph written by Professor Juliana Rodríguez Rodrigo, Professor of Private International Law at Carlos III University in Madrid, entitled "International marriage and partnerships: European and Spanish domestic laws and case law. Problems and solutions," published by Atelier Libros Jurídicos and consisting of 241 pages. The book is available in two formats: a paper version and a free electronic version, which can be accessed via the *atelieropenaccess* website. This is the second review written by the author of these lines on a monograph by the aforementioned author, so as I stated on the first occasion, it is a task that I accept with great pleasure, because reading her inquiries never leaves one indifferent, but always teaches something that invites reflection. It is therefore no coincidence that the dedication of her book refers to the culture of effort, a characteristic that precisely defines the author herself.

This monograph is structured in two distinct parts, without prejudice to the synergies and connections between them. On the one hand, it addresses the concept of marriage and, in this regard, contains three sections that comprehensively cover all current and essential aspects of its subject matter, such as the European context in which it operates, Spanish domestic legislation, and, thirdly, proposed solutions to the existing situation. The part is consequently organized into three chapters, which can be described as coherent, appropriate, and intuitive, something that all readers of the work will appreciate. Together with this, Professor Juliana Rodríguez Rodrigo addresses the phenomenon of partnerships in the second part, by a division of three chapters as well. The following lines will be aimed at a critical-analytical review of each of its parts, trying to find an adequate balance between highlighting the main conclusions reached in them and not "revealing" too much in order to avoid any hint of spoilers.

The first part stems from an indisputable reality: marriage continues to be the most common choice for people who wish to constitute a family. If we add to this the increasing number of cross border elements in legal relationships, there is no doubt about the current need to study "international marriage," as this first part is in fact titled. This is where the first of the paradoxes that the author rightly points out throughout her work arises: we have a wide range of European regulations on family and succession law — Regulations (EU) No. 2019/1111, 1259/2010, 4/2009, 2016/1103, and 650/2012 — but, curiously, there is no institutional instrument regulating marriage as such. In other words, the current legal context refers to the existence of European regulations based on the premise of the existence of marriage, when in fact there is no consensus on this preliminary issue: Member States, because they are in fact the ones who continue having jurisdiction over substantive family law — which includes the institution of marriage — understand marriage in different ways, particularly with regard to the sex of its members. Nevertheless, as Professor Juliana Rodríguez Rodrigo herself points out,

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"...we are not calling for substantive regulation of marriage at the European level, but rather for regulation under private international law...".

The current situation gives rise to various legal problems, all of which are clearly explained and also resolved by the author. The first one is the relativity of solutions: depending on the competent forum dealing with a particular case, the response offered will differ within the European Union. Clearly, this is neither convenient nor desirable in an apparently common and integrated space. This leads to the possible undermining of the free movement of persons (Article 21 TFEU), in accordance with European Union law. Underlying this, once again, is one of the perversions of the current system of sources and jurisdiction: the concept of marriage, broadly speaking, is part of public policy in the Member States, but an indiscriminate use of it can hinder the exercise of the free movement of persons, particularly with regard to rights derived from such a legal relationship, such as the right to obtain a permission of residence or the recognition of a parent-child relationship. Professor Juliana Rodríguez Rodrigo points out that the collision of such issues has been addressed by the CJEU in the *Coman* and *Pancharevo* cases, in which it concludes, jointly, that "...national legislation should give way to European legislation and, therefore, should not be applied if it contradicts the latter." Another right explored by the author as potentially affected by the absence of compatible treatment among Member States with regard to marriage is that relating to the respect for private and family life (Art. 7 CFREU and Art. 8 ECHR). Professor Juliana Rodríguez Rodrigo, referring the most relevant case law of the European Court of Human Rights, points out that this right may be affected if a marriage validly celebrated under the law of any country regardless of the sex of its members is not recognized under the ECHR, which includes EU member states.

Against this backdrop, the second chapter of the first part contains an analysis of Spanish domestic conflict of law rules. The author first reviews articles 9.1, 49, and 50 of the Spanish Civil Code, which refer to the capacity and consent of spouses and the validity of marriage, respectively. This section highlights the different scenarios arising from the impact of international public policy, including matrimonial capacity, the impediments to marriage regulated by Spanish law and the fundamental principles/rights protected by the Spanish Constitution that exist therein, as well as, in the case of consent, the impact of marriages of convenience or arranged marriages. The four scenarios that arise from a combined reading of articles 49 and 50 of the Spanish Civil Code with regard to the valid form of celebration are also reviewed.

The third chapter of the first part is very interesting, because Professor Juliana Rodríguez Rodrigo sets out, in a reasoned manner, her proposed solutions to the current situation. Here, the author discusses the limits and possibilities of the recognition method, as well as the adoption of an autonomous concept of marriage for the purposes of applying European regulations and, as a more ambitious proposal, the drafting of a European regulation on matrimonial matters, regulating the three sectors with the necessary adaptations of our discipline. In the area of international jurisdiction, she proposes that spouses should be allowed to choose the Member State in which they wish to marry. Nevertheless, she acknowledges the difficulty of this proposal, since in the case of the nullity of a marriage, it should be remembered that choice of court agreements are not permitted under the Brussels IIter Regulation. In the area of

applicable law, Professor Juliana Rodríguez Rodrigo indicates that the law applicable will be determined by the officiating authority, which will apply its own law to this issue, so that the conflict of law rules will then be referred to issues such as capacity and consent, for which the preferred connection should be the habitual residence. Thirdly, the extraterritorial validity of decisions is addressed, referring in this case to public documents recording the celebration of marriage. The chapter concludes with solutions proposed beyond the context of the European Union, with particular emphasis on the reality of polygamous marriages.

It is now time to address the second part of the work, which deals with international partnerships. As mentioned above, Professor Juliana Rodríguez Rodrigo uses the same structure as for marriages, in the sense that the overall content, including the title of each chapter, addresses the same types of issues, obviously with the necessary adaptations. We would like to emphasize that we consider this methodology to be very appropriate.

As a result, is begins by analyzing the current situation of this legal institution in the context of the European Union. It should be remembered that diversity is the main characteristic among Member States, although today most of them, in one way or another, already allow or regulate it. At the regulatory level, there is a significant global gap in the regulation of this concept, with two important exceptions. The first is Regulation (EU) No. 2016/1104 on the property consequences of registered partnerships, which we note does offer a definition of registered partnership, at least for the purposes of applying the institutional instrument in question. The second is (EU) Directive 2004/38, which, as it is well known, includes as a family member the member of a registered partnership created in accordance with the legislation of a Member State, provided that the requirements established by the host Member State are met. For its part, as the author points out, there is also case law from the CJEU, from which it can be inferred that partnerships cannot be treated in a discriminatory manner with respect to marriages, as well as case law from the ECHR in favor of the importance of protecting them. Professor Juliana Rodríguez Rodrigo concludes this first chapter of the second part by warning of the consequences of the lack of regulation at a European level.

Chapter V of the work starts from the reality of the Spanish legal system with regard to partnerships: there is a lack of both substantive and conflict of law rules in a national level. In Spain, it has been the Autonomous Communities that have dealt with their regulation in their regional regulations, in accordance with the powers they can constitutionally assume, giving rise to a varied landscape around them. Based on this reality, Professor Juliana Rodríguez Rodrigo addresses several problems, two of which will be highlighted in this review.

The first refers to the applicable laws for determining whether a foreign partnership can be recognized as valid in Spain, for which it correctly distinguishes between intra-European partnerships (created in accordance with the legislation of a Member State) and extra-European partnerships (the opposite scenario). With regard to the former, the author considers that, based on the case law of the CJEU and the ECHR, there can be no doubt that they must be recognized in the other Member States. With regard to the latter, and based on Article 12.1 of the Civil Code in the sense of using the categories of the forum in order to select the applicable law, it is assumed that a partnership constitutes a family relationship outside of marriage, and therefore the

most appropriate provision for its regulation is article 9.1 of the Spanish Civil Code and, failing that, article 9.10 of the Spanish Civil Code, adapting them to the fact that it is not one member, but two, who are affected by the applicable law.

The second issue addressed concerns the application of Spanish law to international partnerships, with the difficulty that our legal system is a multi-legislative one in matters related to this area. Professor Juliana Rodríguez Rodrigo first addresses the issue of succession, explaining the problems posed by the general conflict rules of Regulation (EU) No. 650/2012 and article 36.1, which is responsible for determining the specific Spanish legislation applicable. The second effect selected by the author is the post-separation maintenance, for which she refers to the 2007 Hague Convention. Thirdly, the property effects are addressed, analyzing the aforementioned Regulation (EU) No. 206/1104, including in particular its Article 33.1 and the reference it makes as a first rule to the internal conflict of law rules of the law designated, i.e., Spanish law. With regard to these three effects, the author takes into account that there will be many Autonomous Communities that lack regulation on these matters — those that lack powers of legislating in civil matters by virtue of Article 149.1.8 of the Spanish Constitution — for which it will be necessary to consult Spanish case law regarding the possibility of the surviving partner having any inheritance rights; whether any type of compensatory pension can be applied, as well as the specific effects on the couple's assets. Here, Professor Juliana Rodríguez Rodrigo rigorously addresses the most recent case law of the Supreme Court and, when necessary, of the Constitutional Court.

The limited protection offered by Spanish law to partnerships, and the legal uncertainty that this entails, gives the author the opportunity to make a series of proposals for improvement. In general, she recommends the enactment of a national law on partnerships, similar to the French PACS, thus offering people who wish to form a union two clearly defined legal alternatives — without prejudice, of course, to those who wish to live completely outside any regulation —: marriage, on the one hand, and partnership, on the other. In relation to the latter, Professor Juliana Rodríguez Rodrigo refers to the fact that this national legislation would regulate not only the effects of the partnership as such, but also its validity and existence, as well as the incorporation of a national registry of them. From a conflict of law perspective, and referring particularly to property effects, the author also considers the need for regulation, both to resolve cases not included in the scope of Regulation (EU) No. 2016/1104 and those that are, but in which the model of reference to multi-unit States leads to the application of Spanish conflict of law rules — which, we emphasize, do not exist today —. In general, it is recommended that the national conflict of law rule should be inspired by the European one, i.e., the use of limited party autonomy will be offered first — choosing between nationality or habitual residence or the law of the State of creation of the partnership — and, in the absence of choice, opting as an objective connecting factor for the law of the State under whose law the partnership was created.

The author concludes with some findings that truly demonstrate the quality of her work. She reminds us that the institution of marriage and partnerships deserve to be studied and regulated, as both are necessary prerequisites for subsequently addressing related family law issues, such as property regimes and maintenance obligations. The same can be said of the inheritance rights of the surviving spouse/member of a

partnership. The author calls for attention in two aspects: both material — obviously focusing on partnerships, as there is a lack of general state law in Spain — and private international law ones, in this latter case with solutions from both international (particularly European) and domestic sources.

All of the above leads us to invite those interested in studying both legal institutions to read the work of Professor Juliana Rodríguez Rodrigo. We can guarantee that her work will provide many of the answers to the questions raised and, where appropriate, will also provide a starting point for the new challenges that she raises with soundness and expertise.

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