

The Impact of Cross-Border Mobility on the Family

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Abstract: *Determining the national law that will apply to a legal relationship with an element of foreign law is a central objective of private international law. This involves the use of conflict-of-law rules to identify the most appropriate law, given the nature and specific characteristics of the legal relationship in question. Determining the competent court to resolve disputes involving elements of foreign law is essential for the functioning of the international legal system. This objective includes identifying the court that has jurisdiction and can deliver a valid judgment in an international context.*

The rules of international jurisdiction determine which national courts are competent to bear a cross-border dispute. These rules are essential for avoiding conflicts of jurisdiction and ensuring the efficient resolution of disputes.

Ensuring that judgments given in one state can be recognized and enforced in another state is a crucial objective of private international law. This mechanism prevents the need for retrials in other jurisdictions and ensures legal continuity and stability. The procedures and criteria by which foreign judgments are recognised and enforced vary between jurisdictions, but generally include verification of: the competence of the court that issued the judgment; respect for the right to a fair trial; and the conformity of the judgment with the public policy of the requested State. Ensuring respect for the fundamental rights of the parties involved in international legal relations is another major objective. This includes guaranteeing a fair trial, respecting the principle of non-discrimination and ensuring the protection of personal data. Private international law must ensure that conflict-of-law rules and judicial procedures respect the fundamental rights of the persons involved, including the right to a fair trial, non-discrimination and the protection of personal data. Promoting coherence and uniformity in the application of international legal rules through international conventions and treaties is essential to reducing conflicts of laws and facilitating international cooperation.

Keywords: *cross-border mobility; private international law; migration; principle of non-discrimination.*

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Introduction

Establishing the limits of applicability of private international law is crucial for protecting the integrity of national legal systems and ensuring respect for fundamental principles of justice. These limits help to maintain the balance between the application of foreign law and the protection of essential state values. The limits of applicability of private international law also ensure that cross-border legal relations are regulated in a manner that respects the sovereignty of States and the fundamental rights of the parties involved.

The benefits of establishing the limits of applicability of private international law include the protection of public order, respect for peremptory norms, international legal coherence and the maintenance of the sovereignty of States. These benefits help to ensure the fair and efficient resolution of cross-border disputes, promoting stability and predictability in international legal relations.

Cross-border mobility has become an increasingly frequent phenomenon in contemporary society, with multiple implications for personal and family life. In private international law, this issue raises numerous legal challenges. Cross-border mobility often involves situations where family members live, work or travel in different states. This leads to: legal pluralism, meaning that families are subject to different legal systems depending on their place of residence, nationality or place of conclusion of legal acts; and difficulties in defining the family because the notion of family varies between states. Some recognize consensual unions, same-sex marriages or civil partnerships, others do not.

Family dynamics in a cross-border context

Causes of cross-border mobility: Cross-border family mobility refers to the situation in which members of a family move or establish their residence in a state other than their home state. This phenomenon is increasingly common in the context of globalization and European integration, with significant implications for the rights and obligations of parents and children. Cross-border family mobility generates numerous legal challenges, in particular with regard to determining the applicable law, the jurisdiction of the courts and the recognition and enforcement of court decisions (Stark,2005,45-47). According to the International Organization for Migration (IOM), in 2020, approximately 281 million people lived outside their countries of origin, representing 3.6% of the global population.

Of these, a significant percentage migrated for economic reasons, and others due to conflict and political instability (International Organization for Migration).

Economic reasons: One of the main reasons for cross-border mobility is the search for better economic opportunities. Families often migrate to access more favourable labour markets, higher wages or better working conditions. In developing countries, migration can be essential for economic survival, opening up access to new sources of income and sending remittances to households in their countries of origin (Sheehan et al., 2012). For example, in the European Union, recent studies show that many citizens from Eastern Europe migrate to Western European countries to find better-paid jobs. A 2020 Eurostat report indicates that in 2019, around 17.9 million EU citizens lived in a Member State other than their home country, with the majority moving in search of better economic conditions (Eurostat, Annual Report 2020).

Social reasons: In addition to economic reasons, migration can be influenced by social reasons, such as family reunification or access to education. Families may move to reunite with family members who have previously migrated or to provide their children with access to higher-quality educational institutions. In the European context, family reunification is an important reason for migration. According to Eurostat data, in 2018, approximately 500,000 residence permits were granted in the EU for family reunification reasons, representing approximately 28% of all permits issued.

Access to education is also a determining factor. Families often move to provide their children with high-quality education. A relevant example is internal and external migration to Romania, where parents send their children to study in large cities or abroad, in countries such as the UK, Germany or France, or, where educational systems are perceived as being more advanced (Howard & Okyere, 2020).

One aspect that cannot be ignored is the **political reason**, as armed conflicts, political persecution and political instability are other major reasons for cross-border mobility. Families flee their home countries to escape violence, oppression or seek asylum and international protection. In recent years, Europe has witnessed a significant wave of refugees and asylum seekers, mainly from the Middle East and Africa. According to the UN Refugee Agency (UNHCR), in 2020, around 1.2 million people applied for asylum in Europe, most of them coming from countries affected by conflicts such as Syria, Afghanistan and Iraq. An illustrative example is the case of Syrian refugees. According to Eurostat, in 2019, about 570,000 Syrians were living in Germany after fleeing because of the civil war in Syria. This

migration has had a significant impact on family structures and social integration in host countries (Howard & Okyere, 2020; UNHCR report; Eurostat Annual Report, 2020).

The Effects of mobility on family structure: Cross-border mobility can have a profound impact on the structure and dynamics of families, influencing the roles and responsibilities of family members, adapting to new cultural and socio-economic, socio-economic, and social media, and generating possible tensions and conflicts. These effects can vary significantly depending on the socio-economic and cultural context of the host country, as well as the reasons underlying migration (Howard & Okyere, 2020)

The Impact on roles and responsibilities of family members: Migration can dramatically change the roles and responsibilities of family members. In many cases, one parent, often the father, migrates alone initially to find work, leaving the other family members in the country of origin. This can lead to a change in family dynamics, with additional responsibilities falling on the shoulders of the mother or other extended family members. A relevant example is the situation of migrants from Eastern Europe to Western European countries. According to a 2019 European Commission report, parental migration has led to a phenomenon known as “left-behind children”, where children are left in the care of relatives, which can affect their emotional and educational development (European Commission, 2019)

Adapting to new cultural and socio-economic environments: Cross-border migration often involves adapting to a new cultural and socio-economic context, which can be challenging for families. Cultural differences, language barriers and discrimination can make the integration process more difficult and affect family cohesion. A 2018 study by the Migration Policy Institute found that migrants from the Middle East and North Africa who settled in European countries faced significant difficulties adapting to new cultures and finding work. These difficulties led to stress and tension within families, particularly affecting children and teenagers, who were often exposed to discrimination at school (Sheehan et al., 2012).

In the context of socio-economic adjustment, migrant families often face economic uncertainty, inadequate housing and limited access to social and health services. For example, a 2019 OECD report found that migrants from non-EU countries who settled in Germany had higher unemployment rates and were more likely to live in poverty compared to the local population (Howard & Okyere, 2020).

Socio-economic and cultural changes

Cross-border mobility brings with it significant changes in the socio-economic and cultural status of families. These changes influence access to social and educational services, cultural integration and adaptation to new economic environments. Analyzing these aspects is essential to fully understand the impact of migration on families.

Economic status of the family: Cross-border migration has a direct impact on the economic status of families. Often, families migrate in search of better working conditions and a higher standard of living. However, the reality can be different from expectations, and many families face significant economic challenges in the destination countries. A 2021 OECD report shows that migrants from non-EU countries who settle in European Union Member States often have higher unemployment rates and are more likely to live in poverty compared to the local population. For example, in Germany, the unemployment rate among non-EU migrants was 13%, compared to 5% among German citizens. On the other hand, remittances sent by migrants to families back home can have a positive impact on their economic status. According to the World Bank, in 2019, global remittances reached \$689 billion, with a significant portion going to low- and middle-income countries. In Romania, for example, remittances are an important source of income for many families, contributing to improving living conditions and reducing poverty (Migration Policy Institute, 2018)

Access to social and educational services: Access to social and educational services is another crucial aspect of the socio-economic changes caused by cross-border migration. In many cases, migrants face difficulties in accessing these services in destination countries, due to language, bureaucratic barriers or discrimination. A study by the Migration Policy Institute in 2020 highlighted that children of migrants often have limited access to quality education in host countries. In Italy, for example, the school dropout rate among migrant children was 35%, compared to 14% among Italian children. Access to health services is also problematic for many migrant families. In Spain, a 2019 report by Médicos del Mundo showed that undocumented migrants had limited access to health services, which led to serious health problems in migrant communities (OECD, *Settling In 2019*).

Cultural integration: Cultural integration is a major challenge for migrant families, who have to adapt to new cultural and social environments. Cultural differences and language barriers can make the integration process difficult and can lead to feelings of isolation and discrimination. A relevant example is the integration of Syrian refugees in Germany. A study by the

Deutsches Institut für Wirtschaftsforschung (DIW) in 2018 showed that although many Syrian refugees were able to learn German and find jobs, the process of cultural integration was slower, mainly due to cultural differences and traumatic experiences before migration.

In France, a 2019 report by the National Institute for Demographic Studies (INED) showed that migrants from North Africa faced significant difficulties in the process of cultural integration, due to discrimination and language barriers. This led to higher unemployment rates and limited access to social and educational services for these communities.

Comparative studies between countries of origin and destination

To better illustrate the differences and challenges faced by migrant families, it is useful to present comparative studies between countries of origin and destination.

A 2020 Eurostat report compared the economic and social situation of migrants from Romania settled in Spain and Italy. In Spain, Romanian migrants had better access to jobs and social services compared to Italy, where they faced significant difficulties in accessing these services due to language barriers and discrimination. A 2019 study by the Organisation for Economic Co-operation and Development (OECD) also compared the cultural integration of Turkish migrants in Germany and France. In Germany, Turkish migrants had better access to language and professional integration programmes, while in France, the integration process was more difficult due to restrictive policies and discrimination on the labour market.

The socio-economic and cultural changes generated by cross-border mobility have a profound impact on migrant families. Economic status, access to social and educational services, and cultural integration are essential aspects to analyze to fully understand the challenges and opportunities these families face in their new environments.

Conclusions

The Impact of Cross-Border Mobility on the Family is a very complex subject that concerns certain specific legal issues, such as:

- marriage and divorce, because the issue of recognition of cross-border marriages arises. Differences in the laws of the states can cause problems, especially in the case of marriages between persons of the same sex or concluded according to religious traditions. Furthermore, the establishment of jurisdiction in divorces comes into play. The choice of the competent forum and the applicable law (*lex fori* or *lex domicilii*) is often problematic in cross-border cases.

- parental authority: Decisions on child custody are influenced by factors such as the place of habitual residence of the child and the legislation of the state involved. Enforcement issues also arise, in the sense that court decisions on parental authority taken in one state may encounter difficulties in recognition and enforcement in another state.

- international child abduction: The 1980 Hague Convention is the main international legal instrument dealing with parental child abduction. However, its application is not uniform and there are conflicts of jurisdiction between States.

- maintenance obligations: EU regulations (such as Regulation No 4/2009) facilitate the cross-border recognition and enforcement of maintenance obligations. However, outside the EU, coordination is more difficult.

Cross-border mobility can lead to physical distancing between members, with emotional effects on children and partners. In addition, differences in cultural values and practices between states can strain family relationships. There is an added economic impact, as transferring maintenance obligations between states can delay the financial support needed by the family.

In order to reduce legal uncertainties and conflicts, it is crucial to strengthen cooperation between states through international instruments, standardize the concepts of "habitual residence" and "best interests of the child", and facilitate the rapid recognition and enforcement of cross-border court decisions.

Cross-border family mobility represents a complex challenge in private international law, requiring flexible legal solutions, international collaboration and approaches focused on protecting the interests of family members.

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