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SORORITY, EQUALITY AND EUROPEAN PRIVATE INTERNATIONAL LAW

Rosario Espinosa Calabuig*

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1. The path to equality through the solidarity between women: the relevance of the sorority

Gender perspective in Private International Law (thereinafter PIL) can be claimed through the so-called *Sorority*: solidarity between women against sexual discrimination. PIL can become an ethical tool to fight for solidarity and against phenomena such as misogyny and sexism, among others. Different topics (such as application of Islamic law by some national authorities, child abduction in cases of gender violence or transnational surrogacy) show how PIL can be a tool to promote equality rights and how sorority can reinforce this equality. So, there is a reciprocal influence between all of them.[1]

The so-called sorority is still today an unknown term for many. My intention is to draw attention to the need to claim equal rights through the PIL as an ethical tool for conflict resolution based on the solidarity, in very different fields of our discipline. In particular, the term *sorority* refers to solidarity between women with respect to gender inequality. It is a pact between women, a support between us, women. The day-to-day reality shows that this support, which actually exists throughout history, is still present today in many aspects of our daily lives and can be extrapolated to the law and also to the PIL.

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* Catedrática de Derecho internacional privado, Universitat de València. E-mail: rosario-espinosa@uv.es.
[1] See https://conflictoflaws.net//2022/virtual-workshop-in-english-on-june-7-rosario-espinosa-calabuig-on-sorority-equality-and-private-international-law/.

Sorority is a concept derived from the Latin *soror*, meaning sister, solidarity between women against sexual discrimination (*sororité* in French, *sororidad* in Spanish, *sorellanza* in italian or *sororität* in German). This neologism is used to refer to the solidarity that exists between women who fight against patriarchal society, the same one that during years has endeavoured to convince us that women cannot be friends or solidarity with each other. Curiously a famous Spanish writer, Miguel de Unamuno, already wondered in the nineteenth century: "*if Fraternal and fraternity come from frater, brother...perhaps we should speak of sisterhood and sororal, for women...*".[2]

Examples of female solidarity are many: just consider helping other women to get out of gender violence, to achieve economic independence, to help other women to break the glass ceiling or to help other women, in general, to fight for the feminist cause. There are also several dimensions of sorority: ethics, politics, and practice[3]. The legal dimension should be added.

Gender equality is fundamental for a more inclusive and sustainable development[4], hence the equal participation of men and women in society, in addition to being a legitimate right, is a social and political necessity to achieve sustainable development.[5] The expansion of the solidarity between women is needed to extend the equality rights as a large-scale Project.[6]

Turning now to the PIL, throughout the history and the evolution of the discipline, it has experienced very different interpretations, which over time have led to a growing demand for solidarity that, however, was initially considered alien. Today the objectives and the functions of the PIL need to be reoriented, opting for foundations that allow not only to reinforce it, but to turn it into an ethical tool for the prevention and solution of many of today's conflicts.[7] This function would be based on the philosophical

[2] In the well-known book "La Tia Tula", published in 1921 (p. 10).

[3] Following prof. Marcela Lagarde pioneer in the use of "sorority" as a political pact between women. See M.J. CARMONA, *De Blancanieves a Marcela Lagarde: así acaba el cuento de la rivalidad femenina*, in www.yorokobu.es, 22.1.2018. See also the information offered by https://parafeministas.com/sororidad/.

[4] In this regard, R. ESPINOSA CALABUIG, *Combatiendo la violencia contra la mujer en casos de sustracción internacional de menores*, in S. BORRÁS PENTINAT, M. FONT MAS, A. GONZÁLEZ BONDÍA, D. MARÍN CONSARNAU, A. PIGRAU SOLER (Dirs), *La comunidad internacional ante el desafío de los Objetivos de Desarrollo Sostenible*, Valencia, 2022, p. 507-527.

[5] See the information provided by https://www.aslegabogados.com/sororidad-derechos-culturales.

[6] In this sense, see the interesting considerations done by J. LITTLER and C. ROTTENBERG, *Feminist solidarities: Theoretical and practical complexities*, in *Gender Work Organ*, 2021, pp. 864–877. They analyse what feminist solidarity means nowadays and how it might proliferate. They examine the various forms of solidarity between women that had derived from different "reactions to, firstly, several decades of neoliberal impoverishment, which have now exposed neoliberal iterations of feminism as fundamentally inadequate; and secondly, and relatedly, the arrival of misogynistic…". They also show that "different approaches to feminist solidarity, as well as an expansion of alliances, are necessary in order to extend contemporary feminism as an effective and large-scale Project".

[7] In particular, a specific ethics of PIL which prof. Ralph Michaels refers to as an ethic of responsivity. See R. MICHAELS, *Private International Law as an Ethic of Responsivity*, in V. RUIZ ABOU-NIGM, M.B. NOODT TAQUELA (eds.), *Diversity and integration in Private international law*, Edinburgh, 2019, pp. 11- 27. Also H. MUIR WATT, *Hospitality, Tolerance, and Exclusion in Legal Form: Private International Law and the Politics of Difference*, in *Current Legal Problems*, 2017, n. 1, pp. 111-147; D.E. CHILDRESS (ed.), *The Role of Ethics in International law*, Cambridge, 2012.

foundations of the PIL and committed to social solidarity; we should place human dignity at the heart of the law.[8] Therefore, that should be the ultimate goal of the PIL and this requires on our part another way of thinking about the discipline according to the new times.

Furthermore, the PIL is connected with one of the objectives of the European integration process established in Article 3.1. of the EU Treaty as that of increasing the quality of life and well-being of the citizens of the Member States[9]. This well-being is also part of the 17 *Sustainable Development Objectives* (*SDO*) adopted in 2015 by the General Assembly of the United Nations within the so-called 2030 Agenda ("Transforming our world: the 2030 Agenda for sustainable development") whose purpose is to carry out an action plan in favour of people, the planet and prosperity, promoting, among others, access to justice of a global nature.[10] Among these *SDO* No. 5 aspires to "achieve gender equality and empower all women and girls".

This objective is integrated into the defensive function of the PIL. It is time to look at the collective protective function of the PIL, beyond the individual, observing the result rather than the norm itself. In these times of crisis, we need a combative law to protect certain vulnerable interests. This protective function is framed in the claim of the PIL as a tool for conflict resolution based on a constructive responsivity towards the "Other" and supported by a protective objective of certain vulnerable groups.[11] Today it is, therefore, possible to claim a specific function of the PIL as an ethical tool to fight for values as solidarity and equality and against phenomena such as misogyny and sexism, as well as xenophobia, Islamophobia, and racism, among others. Misogyny and sexism are issues of the PIL particularly when feminism and multiculturalism clash with a foreign law that discriminates against women as, for example, it would happen with racism and discrimination on the basis of race.[12]

With protection of women's rights and solidarity between women in mind, the idea of *sorority* arises in the field of PIL.

[8] Following H. BATIFFOL, *Aspects philosophics du Droit international privé*, Paris, 1956, and the edition of 2002, that I have consulted. See H. MUIR WATTS, *Batiffol*, in J. BASEDOW AND OTHERS (eds.), *Encyclopedia of Private international law*, vol. 1, Cheltenham, UK, Northampton, M.A. USA, 2017, p. 170.

[9] L.F. PACE, *La natura giuridica dell'Unione europea: teorie a confronto. L'Unione ai tempi della pandemia*, Bari, 2021, p. 15.

[10] http://www1.undp.org/content/undp/es/home/sustainable-development-goals.html.

[11] Following R. MICHAELS, *op. cit.*, pp. 11-27.

[12] *Ibidem*.

2. Protection of equality rights and the role of the sorority in the European Private International Law: some examples

From an approximation to the PIL with women's eyes, with feminist eyes, we find that even today there are many open fronts in our discipline in the struggle for women's rights and, as already said, the introduction of a gender perspective in the PIL, both by legislators and by the authorities, is urgent.

The right of access to justice needs a legal analysis from a gender perspective. The process (civil and criminal) was designed by men and for men's problems, and the progressive updating of the law through jurisprudence has been highlighting this necessary analysis if justice is to be applied to women, both as actors and passive.[13] This same perspective must be given to PIL to guarantee a protective legal system for women.[14] Besides, the gender perspective must be granted in any case in a transversal way if we want to have any real and global result.

The revision of the PIL from a feminist perspective would allow to focus the analysis of our discipline on social issues and to encourage judges to have a more active role in appreciating the needs and interests of the actors and communities involved in cross-border issues.[15] This perspective presupposes relying on the values of solidarity among women and beyond.

The recognition of equal rights by European texts, conventional and internal, is, of course, an important basis for the advancement of this gender perspective. However, the fact that, for example, the Conference of Islamic States has promoted its own Declarations of Human Rights, based on Sharia, or that the 1979 Convention[16] itself is the one that has received the most reservations from Islamic countries, calls into question the effectiveness of some of these texts.[17]

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[13] See E. MARTINEZ GARCÍA, *Mujer y Derecho. Jornadas de igualdad de la facultad de Derecho. Universitat de València*, Valencia, 2011, p. 6.

[14] See in this sense R. ESPINOSA CALABUIG, *La (olvidada) perspectiva de género en el Derecho internacional privado*, in *Freedom, Security & Justice. European Legal Studies*, n. 3, 2019, pp. 36-57; C. AZCÁRRAGA MONZONÍS, *Private International Law from a gender perspective: how is this field of law contributing to protect women against discrimination?*, in M. EYSYMONNTT, L. GUILLAMÓN, *Women, Society and Law: from roman law to digital age*, Varsaw, Elipsa, 2022, p. 148-159; C. VAQUERO LÓPEZ, *Mujer, matrimonio y maternidad: cuestiones de Derecho internacional privado desde una perspectiva de género*, in *Cuadernos de Derecho Transnacional*, 2018, n. 1, p. 441; C. AZCÁRRAGA MONZONÍS, *Situaciones privadas internacionales: una puerta abierta a la discriminación por razón de sexo*, in E. MARTINEZ GARCÍA, *Mujer y Derecho*, cit., p. 225 ff.

[15] Following R. BANU, *A relational feminist approach to conflict of laws*, in *Michigan Journal of Gender and Law*, 2017, pp. 1-52. The author considers that Feminism (specifically relational feminism) could help reframe the tension that PIL usually generates between public policy and autonomy and between internal and international public policy. In this way, Roxane Banu advocates a fruitful dialogue between academics and international-privatists feminist to reconstruct the PIL from a new perspective. PIL academics should be encouraged to review and expand their methodologies in the light of a feminist vision.

[16] In particular, the Convention on the elimination of all forms of discrimination against women, New York, 18 December 1979. Entry into force: 3 September 1981, in accordance with article 27(1). See https://www.ohchr.org/.

[17] In http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm. See broadly C. VAQUERO LÓPEZ, *op. cit.*, p. 441; J. ROSELL, *Estados islámicos y Derechos de la mujer*, in A. MOTILLA DE LA CALLE

The limitations against women's rights come from many fronts. Let us think for instance, the very ambitious and complete proposal that was made in 2017 by The Hague Conference of PIL on child abduction in cases of violence against women in relation to article 13.1.b of the 1980 Hague Convention. Finally, it was not reflected in the final text published in 2021 that now is really limited[18] and this causes disappointment and perplexity. There have been several claims by some delegations that have finally failed.

Many times, the state courts, and public authorities, despite the advances, continue to provide answers to disputes about the private and family life of women by perpetuating a generic female identity that identifies us, women, more with a maternal function than with a protective function of our personal freedom.[19]

Cases as such as *González Carreño v. Spain* must be avoided. In that occasion, in 2014, Spain was accused of following a pattern of action that "obeys stereotypes and minimizes the situation of victims of domestic violence placing them in a situation of special vulnerability".[20] Unfortunately, some years later, on the 9th of December of 2021, the Spanish government was called to attention – in this occasion by the United Nations – to work harder to ensure that the courts overcome prejudices against women and apply a child-centred and gender-centred approach.[21] These claims have been done in the context of countries that, as Spain, have modern legislations for the protection of women rights. This fact also causes perplexity if we compare it with other countries where there is no law protecting women's rights.

Having into account the limitations that still now exist in the protection of women rights we propose 3 examples to show that PIL can be the tool to promote equality rights and how sorority can be also a tool to reinforce this equality. So there is a reciprocal influence between all of them.

(dir.), *Islam y Derechos Humanos*, Madrid, 2006, pp. 147-150; M.V. CUARTERO RUBIO, *La protección internacional de los derechos de las mujeres*, in M. SUÁREZ OJEDA (Coord.), *Género y mujer desde una perspectiva multidisciplinar*, Madrid, 2012, p. 443; C. AZCÁRRAGA MONZONÍS, *La mujer inmigrante en la extranjería y el asilo*, in R. VERDERA IZQUIERDO (dir.), *El principio de igualdad ante el derecho privado: una visión multidisciplinar*, Madrid, 2013, pp. 237-262.

[18] See the "Draft Guide to Good Practice on Article 13(1)(b) of The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction", HCCH, Permanent Office, Doc. Prel. No 3 June 2017, Annex 2, pp. 11-14. Please see https://www.hcch.net/ to compare both texts and see the big differences between them.

[19] C. VAQUERO LÓPEZ, *op.cit.*, p. 441.

[20] Opinion of 16 July 2014 of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Comunication n. 47/2012), according to which Spain has failed to fulfil its obligations as a State party. Such breaches relate to obligations to prevent situations of gender-based violence and obligations to redress. The ECJ with the decision of 1.3.2011, case C-236/09, noted that the difference in treatment between men and women is no longer permissible. Also at the last session in The Hague in 2019 of the Institute of International Law, the prohibition of any type of discrimination in the PIL was highlighted. See J. BASEDOW, *Droits de l'homme et droit international privé*, in *Annuaire de L'institut de droit international, Session de La Haye, Travaux preparatoires*, Paris, 2019, p. 35.

[21] Http://www.ohchr.org.

It is true that in the field of PIL in many countries there has been considerable progress towards equal rights, but there are still reminiscences of the past and their development has not been helped by the practical difficulties inherent in our discipline.

Among others, I focus only on 3 subjects as the application of Muslim law by national authorities, the children abduction by a mother who has been a victim of gender violence and finally the transnational surrogacy. All of them will show that there is still a long way to do to promote equality rights but at least the foundations are laid and the efforts done in many countries are elogiable. But there is much to do…

2.1. Protection of equality rights in the context of the application of Muslim law by national authorities

The disparities in Muslim law, that contradict the *lex fori* of countries as that of the EU, start from the absence of a general principle of equivalence and allude to the regulation of certain singularities referring to issues such as religious impediment, marital consent, polygamy or the dissolution of marriage by unilateral repudiation. These disparities persist, although reforms are being undertaken in some Islamic countries.[22]

The conflicts arising from these disparities are observed with special emphasis, for example, on Spanish-Moroccan relations that give rise to multiple situations that clearly affect Moroccan women in Spain.[23] For example, Islamic religious impediment implies that a Muslim woman can only marry a Muslim man, since the child always inherits the father's religion and must be educated in that religion, according to Muslim law. If a woman marries a non-Muslim man, the marriage is null and void (moreover, if the woman is aware of the step she is taking, she is punished with forty lashes).[24]

On the other hand, the provision of Islamic marriage consent implies that the man must always give his consent, while the woman's consent can be supplied without problems by the will of the father or guardian, which can lead to a valid marriage against the will of the woman. In this regard, it is difficult for the administrative authorities to verify the veracity of the marriage consent at the time of registration of the marriage, so that the mere processing of the file cannot serve to combat one of the greatest discriminations against women, such as a forced marriage. This practice can be associated with poverty, sometimes for the payment of an outstanding debt, or in rural areas for reasons of honour or family honour, but sometimes the existence of a forced marriage is

[22] See D. ENGELCKE, *Reforming family Law*, Cambridge, Nueva York, 2019, p. 10 ff., in relation to Jordania and Maroco; P. DIAGO DIAGO, *El islam en Europa y los conflictos ocultos en el ámbito familiar*, in *Revista electrónica de estudios internacionales* (REEI), 2015, n. 30.

[23] M. MOYA ESCUDERO (Coord.), *Familia y sucesiones en las relaciones hispano-marroquíes*, Valencia, Tirant lo Blanch, 2015; M. MOYA ESCUDERO, *Desplazamiento "ilegal" a Marruecos de los hijos e hijas de madres marroquíes*, in C. RUIZ SUTIL, R. RUEDA VALDIVIA (coords.), *La situación jurídico-familiar de la mujer marroquí en España*, Junta de Andalucía, 2008, pp. 291-306.

[24] E. OLMOS ORTEGA, *Mujer, matrimonio y religión*, in E. MARTINEZ GARCÍA, *Mujer y Derecho*…, *op. cit.*, pp. 74-75.

manifested through gender-based violence, crimes against personal freedom or genital mutilation.[25]

Along with the above mentioned, Islam admits, on the one hand, polygamy, in its variety of polygyny, which means that men can have up to a maximum of four women, provided that all receive equal and fair treatment in terms of care and time. On the other hand, the dissolution of marriage by unilateral act of the husband is also allowed, that is, repudiation, which does not require any judicial process. In the latter case, the husband decides on his own and without any cause the breakdown of the marriage, pronouncing the formula of talak. Therefore, the woman can only apply for divorce (in the malekita and schafeita schools), resorting to the judge (qadi) whenever she alleges reasons such as the antecedent and incurable impotence of the man, failure to pay the dowry by the husband or if he is unable to maintain her, the impossibility of cohabitation due to physical or mental illness and the absence of the husband for more than one year. It would also be possible for the woman to request a divorce if this had been stated in the marriage contract. There is even the figure of repudiation by the woman, both without economic compensation (talmik repudiation) and with compensation (khol repudiation)[26], which would solve the problem of the violation of her rights of defence when her will to separate is evident.[27]

The incompatibility of the repudiation with many occidental systems derives from its contrariety to basic constitutional principles and the absence of judicialization. The absence of a process where women can be heard to assert their rights as well as its revocable character are contrary to many occidental legislations.[28] All this puts a strain on many PIL systems, because if the repudiation or certain types of repudiation such as the Khol are not accepted, in the end the woman is the most damaged.

But in practice and notwithstanding the incompatibilities described between Muslim law and other State rights, some States recognize certain effects to institutions contrary to the international public policy of the forum such as polygamy or repudiation.[29] This is by virtue of the so-called attenuated public policy. It is not, therefore, a question of recognizing for example the repudiation, but of giving it effects (or recognizing some like the aforementioned Khole) as a way to protect women and grant them possibilities in the forum that they may not have in their country of origin.[30]

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[25] M.J. ELVIRA BENAYAS, *Matrimonios forzosos*, in *Anuario Español de Derecho Internacional Privado*, t. X, 2010, pp. 707-715.

[26] Articles 89 and 115-120 respectively of the Family Code of Maroco.

[27] E. OLMOS ORTEGA, *op. cit*., pp. 72-74; C. AZCÁRRAGA MONZONÍS, *Situaciones privadas*…, *op. cit*., p. 233.

[28] J. CARRASCOSA GONZÁLEZ, *Divorcios extranjeros sin intervención judicial: práctica del Tribunal Supremo*, in A.L. CALVO CARAVACA, J.L. IRIARTE ÁNGEL, *Estatuto personal y multiculturalidad de la familia*, Madrid, 2000, p. 39.

[29] R. ESPINOSA CALABUIG, *La (olvidada) perspectiva de género*…, *op. cit*., p. 43 in relation to Spanish case law.

[30] In this regard, see C. STAATH, *La excepción de orden público internacional como fundamento de denegación del reconocimiento del repudio islámico*, in *Anuario Español de Derecho Internacional Privado*, t. X, 2010, pp. 717-729.

With regard to polygamy and in order to assess the contrariety of public order, it is also necessary to take into account real or currently polygamous marriage, contrary to certain State decisions. In them the authorities have prevented the registration of marriages already celebrated under legislation that admits polygamous marriages because they have prioritized the foreign control rather than the opposition to this form of marriage that discriminates against women.[31]

Finally, there is also discrimination on grounds of sex in some countries of Islamic tradition, where women often inherit half as much as men, or have limitations on their right to obtain financial rights after divorce. This collides with many occidental legislations especially when nationality was the connecting factor used in the conflict rules. With the Regulation (EU) 650/2012[32] this criterion is accompanied by other *criteria* that allow more flexible solutions without having to resort to the figure of public policy. This figure will continue to be the mechanism for monitoring solutions that may be discriminatory.

In practice, the public policy will have an important role, also in support of the equality and solidarity values. Public policy will act in a very subtle way to minimize a conflict since it will be directed not against foreign law itself, but against the result of its application in the State of the forum, taking into account, not universal values, but only those of that State. On the other hand, the exception will only operate when there are sufficient connections with the forum State.[33] Values as the equality and no discrimination against women legally recognized in that State must be defended and the sorority can help to strengthen those values.

2.2. Protection of equality rights in the context of Children abduction in cases of violence against the abducting mother

A complex sector of the PIL where a gender perspective should be provided and, above all, the inter-State cooperation and the training of specialists should be strengthened, refers to gender-based violence in the field of child abduction.[34] Gender violence circumscribed in this field can manifest itself in different ways. In principle, it usually refers to allegations of domestic/family violence or child abuse where the child may be exposed to a serious risk after return. These are cases in which there is: 1) Violent or inappropriate behaviour against the child after return, or 2) An exposure of the child to

[31] For example, in Spain some resolutions of the Dirección General de Registros y del Notariado as that of 28.8.2015. See the critics done by P. OREJUDO PRIETO DE LOS MOZOS, in *Anuario Español de Derecho Internacional Privado*, T. XVI, 2016, pp. 1322-1325.

[32] Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201, 27.7.2012.).

[33] See R. MICHALES, *op. cit.*, pp. 15-27.

[34] See broadly R. ESPINOSA CALABUIG, *Combatiendo la violencia contra la mujer*…, *op. cit.*, pp. 507-527.

domestic violence between his parents after restitution, or 3) Harm caused to the abducting mother at the hands of the father deprived of the child after return, 4) Gender-based violence may also affect the abducting parent's inability to return to the extent that it would expose the child to a serious risk deriving, for example, from possible criminal or other prosecution in the State of habitual residence prior to the abduction for the unlawful act committed; or other causes relating, for example, to the health of the child or to the economic situation of the abductee after return.[35]

It should be remembered that the Istanbul Convention of 11 May 2011 states that the "*de iure and de facto* equality" between women and men becomes "the key element of the prevention of violence against women".[36] However, the report prepared by the Fundamental Rights Agency (FRA) on gender-based violence in the EU shows a serious reality present in all Member States.[37] The protection of the right to equality between women and men as a way to promote cross-border protection of women victims of gender-based violence should be analysed in the context of the United Nations CEDAW Committee and in the European context (EU and Council of Europe). In particular, Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime (replacing Council Framework Decision 2001/220/JHA) is essential[38], as well as the aforementioned Istanbul Convention to which the EU has acceded.

In practice, however, there is a gap between what the Istanbul Convention calls for and the Directive on the protection of victims of gender violence in the Member States. They set high quality standards to address gender-based violence in Member States, taking into account that institutional violence is another form of gender violence that must be avoided by all means. In countries such as Spain, with Ley orgánica 1/2004, of 28 December, known as the Law on Gender Violence[39], Spanish society was put in the position of a change of culture, of recognition of the situation of women and the violence they suffer by private subjects, but also by the institutions themselves. This requires us to relearn generally as citizens, but also as professionals, how to make the already mentioned *SDO* number 5 a reality (in particular number 5.2.).[40] The latest reform operated in Spain

[35] *Project Guide to Good Practice*, pp. 74-79. This work focuses on the abduction committed by the mother victim of violence, since the majority of victims of violence and those who usually suffer serious harm are precisely the mothers. But gender-based violence can affect child abduction in other ways, for example, when the aggressor parent transfers the child as a form of psychological abuse to the other parent; or when either parent transfers the daughter to a country at risk of gender-based violence (genital mutilation, forced marriage...). See *Project Guide to Good Practice*…, pp. 11-14.

[36] As set out in the Preamble to the Council of Europe Convention on preventing and combating violence against women and domestic violence, done at Istanbul on 11 May 2011, which recalls that "violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men, and to the prevention of the full advancement of women".

[37] See www.violenciagenero.igualdad.mpr.gob.es/.../Otros/*FRA*/home.htm.

[38] DO L 315, 14.11.2012.

[39] BOE n. 313, 29.12.2004.

[40] Following E. MARTÍNEZ GARCÍA, M.J. JORDÁN DÍAZ RONCERO, E. SIMÓ SOLER, *Reflexiones y experiencias sobre la respuesta integral del sistema judicial a las víctimas de violencia de género en al ámbito de la provincia de Valencia*, Valencia, 2021, p. 10.

with Ley Orgánica 8/2021[41] has gone further in the fight against gender violence. This objective must be undertaken with the same force with the tools of the PIL in the complex sector of international child abduction.

Unfortunately, comparative case law (visit *INCADAT-International child abduction data base of the Hague Conference*)[42] shows that many times judicial responses ignore or minimize the violence – physical or mental – against the woman who has wrongfully abducted the child. Obviously, there are cases that have taken it into account[43]. Such responses are often covered by the legal limitations derived from the same regulatory texts as the Hague Convention 1980[44] or the Brussels II bis regulation[45] (some changes can be appreciated in this sense in Brussels II ter regulation) in relation to the specific problem of gender violence. Sadly, the failure of claims in favour of making changes in some texts as The Hague Convention (with the mentioned Draft 2017 Good Practice Guide) reflects the lack of continued sensitivity in the interpretation of the regulations governing this sector by many legal operators. Besides, there are other persistent problems such as the differences between the procedural rights of States and the cultural differences between them.

At this point, it is necessary to refer to the real challenges faced in preventing and combating violence against a woman in situations in which she has committed an international abduction, classified as illegal, of one or more of their children.

a) First challenge regarding "visible" and complex problems in the fight against violence committed against the abducting mother.

The first challenge refers to a visible and complex problem that encompasses two aspects: on the one hand, the proof of gender violence and its impact on the eventual return order of the minor. On the other hand, the protective measures to be taken in the event that, whether or not violence is proven, the child is ordered to return to the Member State where he or she was habitually resident before his or her abduction.

[41] LO 8/2021, 4.6.2021 *de protección integral de la infancia y la adolescencia frente a la violencia* (BOE n. 134, 5.6.2021).
[42] See http://www.incadat.com.
[43] Very illustrative is the comparative jurisprudence collected and critically commented by authors such as M. KAYE, *The Hague Convention and the Flight from Domestic Violence: How Women and Children are being returned by Coach and Four*, in *International Journal of Law, Policy and the Family*, 1999, pp. 191-212, as well as M. REQUEJO ISIDRO, *Secuestro de menores y violencia de género en la Unión Europea*, in *Anuario Español de Derecho Internacional Privado*, t. VI, 2006, pp. 179-194.
[44] Article 13.1.b., which excludes the return of the minor in case of a proven "serious risk" on his person, does not contemplate the risks derived from a situation of violence against the mother or another relative. Although some delegations at The Hague Conference have claimed the inclusion of gender-based violence in this exception (on the understanding that, although the child does not suffer physical or psychological harm, he may be exposed to an intolerable situation), in the end they have not prospered (this was the case at the 14th Session of the Conference, volume III, Child Abduction, p. 302).
[45] Although the EU Regulations base many of their rules on those of the 1980 Hague Convention, they may even be more limited by not providing for possibilities such as Article 20 of the Convention. See M. REQUEJO, *op. cit.*, pp. 190-191.

In practice, there are several points to be taken into account in relation to evidence in the context of child abduction.[46] On the one hand, it is essential to gather information on pending legal actions against the parent (alleged abuser), police reports, records of consulates or embassies, reports of shelters for victims of domestic violence and medical certificates relating to incidents of violence. Even, possible e-mails or other correspondence can be useful in proving the existence of an abuse. On the other hand, direct judicial communications should be strengthened to verify, for example, whether a foreign court found the existence of violence against women and to verify whether protection orders were issued or whether there were legal proceedings as a result of violations of such orders. Depending on the circumstances, expert reports should be requested and, where appropriate, the child's opinion heard. The latter aspect is reinforced in the Brussels II ter Regulation – with the art. 21 – although it may give rise to practical problems given the traditional divergences between States on this point.[47]

However, there are many difficulties in the system of evidence in proceedings for gender violence when referring to acts carried out in a strictly private sphere, mainly in the privacy of the domestic or family environment, without third parties outside the family, so there are usually no direct witnesses. This means that the victim's statement is the main (if not the only) evidence against the aggressor. To this, behaviours of the victim that hinder the veracity of the facts are added. Sometimes the relationship of submission or dependence on the aggressor, the affective ties that still exist, the fear of reprisals, among others, support this behaviour of the victim of gender violence.[48]

Also the proof of the connection between the violence against the mother and the interest of the child is not clear in many States. It is not the case of Spain where the Law considers, since 2022 (LO 8/2021), that gender violence done with the objective of causing harm to the women includes the violence against children.

In this context, the speed of the procedure for the return of the child after the abduction, designed in the interest of the child, does not help in a procedure of gender violence (Brussels II ter regulation refers to the maximum period of 6 weeks from when the lawsuit was filed), by reducing the period for the proof of violence and possible information or communications between States. In this regard, the *Good Practice Guide* published in 2021 by the HCCH states that the obligation to act urgently does not mean that the court should neglect the proper assessment of the issues raised, including cases where the serious risk exception is opposed. However, it does require that the court only collects information and/or evidence sufficiently relevant to the case, as well as that it

[46] See HCCH *Project of Good Practices*..., cit., p. 12.

[47] See M. VÖLKER, *Le règlement "Bruxelles II bis" du point de vue d'un juge aux affaires familiares allemand*, in H. FULCHIRON, C. NOURISSAT (Dirs.), *Le nouveau droit communitaire du divorce et de la responsabilité parentale*, Paris, 2005, pp. 293-302; R. ESPINOSA CALABUIG, *Custodia y visita de menores en el espacio judicial europeo*, Marcial Pons, 2007, pp. 201-204.

[48] See A. MONTESINOS GARCÍA, *Especifidades probatorias en los procesos por violencia de género*, in *Revista de derecho penal y criminología*, 2017, n. 17, pp. 127-165.

examines such information and/or evidence, including evidence or expert opinions, in a prompt and highly accurate manner.[49]

Other difficulties in this context can derive from the restitution order and the EU rule based on the elimination of exequatur, regulated by Brussels II bis regulation and, although with changes, by Brussels II ter regulation. This rule can become an obstacle in relation to restitution of the child orders after a wrongful abduction committed by a mother victim of gender violence not only because of the speed implied by this rule but also because of the assessment made of the best interests of the child. The debate between the ECJ and the ECtHR – with cases as *Sofia Povse*[50] or *Aguirre Zagarra*[51], among others[52], on what is considered to be the best interests of the child in each specific case, demonstrates the problems referred to.

In addition, one should consider the fact that the restitution order, as well as the jurisdiction rule based on the habitual residence prior to the unlawful act (Article 9 of Brussels II ter[53]), becomes in reality an asset of the abuser, by placing the victim back in its territory, if she decides to return. In this way, the State and the public authorities become accomplices in the perpetuation of violence.[54]

The extraterritorial effectiveness of victim protection measures must also address the difficulties arising from differences between systems in regulating and dealing with gender-based violence[55]. If the return of the child is finally ordered despite the violence suffered by the mother, several aspects must be taken into account, such as: (a) Whether a restraining order should be issued; (b) Whether contact with the child is to be prohibited or provided for under supervision; (c) Whether other protective measures can be taken

[49] See p. 24.

[50] ECtHR, judgment of 18.6.2013, n. 3890/11, *Sofia Povse and Doris Povse c. Austria*, http://hudoc.echr.coe.int/eng?i=001-122449. Previously, on 1.7.2010, the ECJ had decided the case C-211/10 PPU, *Povse*, ECLI:EU:C:2010:400.

[51] Court of justice, judgment of 22.12.2010, Case C-491/10 PPU, *Aguirre Zárraga*, ECLI:EU:C:2010:828.

[52] See M. GONZÁLEZ MARIMÓN, *El principio del interés superior del menor en supuestos de sustracción ilícita internacional: la jurisprudencia del TJUE y del TEDH*, in M.C. GARCÍA GARNICA, N. MARCHAL ESCALONA, *Aproximación interdisciplinar a los retos actuales de protección de la infancia dentro y fuera de la familia*, Madrid, 2019, p. 637.

[53] In the case *MCP* (ECJ 24.3.2021, C-603/20 PPU, ECLI:EU:C:2021:231), the CJEU recalled that this rule was the result of a delicate balance by the EU legislator between two extremes that are in the attribution of jurisdiction in cases of international child abduction: "on the one hand, the need to prevent the abductor from obtaining a benefit from his unlawful act and, on the other hand, the desirability of allowing the court closest to the child to hear actions relating to parental responsibility". See H. VAN LOON, *The Brussels IIa Regulation: towards a review?*, *European Parliament, Cross-border activities in the EU- Making life easier for citizens, Workshop for the JURI Committee*, *Directorate General for internal policies. Policy Department C: Citizens' Rights and Constitutional Affairs*, 2015, pp. 178-207, http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510003/IPOL_STU(2015)510003_EN.pdf, p. 185; M. GONZÁLEZ MARIMÓN, *Competencia judicial internacional ante un caso de sustracción internacional de menores de un Estado miembro de la UE a un Estado tercero: comentario a la STJUE de 24 de marzo de 2021*, in *RGDE*, no. 55, 2021, pp. 229-244.

[54] Following M. REQUEJO ISIDRO, *op. cit.*, p. 185.

[55] See P. BLANCO-MORALES LIMONES, *La eficacia internacional de las medidas de protección en materia de violencia de género*, in *Diario La Ley*, no. 8427, 24.11.2014 (D-390), p. 826. The author refers to the 4 commitments of the EU Directive 2012/29 in the fight against violence against women, i.e., prevention, protection, prosecution, and comprehensive policies.

not only for the child but also for the abducting mother, such as prohibiting entry into places where she decides to reside or frequents or prohibiting any contact with her; (d) Including whether other protective provisions are envisaged in relation to aspects such as the establishment of a separate and secure dwelling after return.[56]

In practice, differences between States on protection measures and their way of assessing and applying them, on their very nature (civil, administrative, precautionary or criminal), their scope of protection or the competent authorities, become the main obstacle to ensuring the extraterritorial effectiveness of such measures.[57] To this, the disparity between legislations in the very conception and definition of gender violence is added, including those that do not even incorporate a concept of gender violence, nor of domestic or family violence.[58]

In the improvement of the regulatory regime of the measures of protection of the minor – and of the abducting mother – in the State of habitual residence of the child prior to his removal or retention, it will be important to reconcile the application of the Brussels II bis Regulation with Regulation EU 606/2013 on the European Protection Order (EPO) in cases of violence against women (regulated by Directive 2011/99/EU)[59], without forgetting the differences between the two texts (the first, on measures issued in criminal matters, and the second, in civil field). Also other rules such as the aforementioned Directive 2012/29/EU, of 25 October, on the protection of the victim of crime[60] and the legislations of the Member States should be considered.

In practice, Regulation 606/2013 should not interfere with the application of the Brussels II bis Regulation. Decisions taken pursuant to the latter shall be recognised and enforced in accordance with it. However, a coordination between the two regulations and the directive is not so simple. The heterogeneity of protection measures in the face of gender-based violence between Member States, reflecting legal and cultural traditions, creates problems when it comes to harmonizing the protection of victims. In addition, the diversity between criminal regulations and the complexity of the mutual recognition procedure provided for by the Directive could also reduce the practical effectiveness of the EPO, which depends on the attitude and willingness to collaborate between Member States and the coordination exercised from the EU.[61]

It will be necessary to avoid situations in which an order for the return of the child is issued because it has not been possible to prove in time, in the country where the child is detained, the situation of violence produced in the country of habitual residence prior to the unlawful act and an EPO issued against the alleged abuser has not been recognized in

[56] *Project Guide to Good Practices*, cit., p. 35 ff.
[57] T. FREIXES, L. ROMÁN, *Protección de las víctimas de violencia de género en la Unión Europea. Estudio preliminar de la Directiva 2011/99/UE sobre la orden europea de protección*, Tarragona, URV, UAB, 2014, pp. 14-17.
[58] V. MERINO, *La concepción de la violencia de género en los ordenamientos de los Estados miembros*, in T. FREIXES, L. ROMÁN (Dirs.), O. OLIVERAS, R. VAÑÓ (Coord.), *La Orden Europea de Protección. Su aplicación a las víctimas de violencia de género*, Madrid, 2015, pp. 50-58.
[59] OJ, L 181, 29.6.2013.
[60] OJ, L 315, 14.11.2012.
[61] T. FREIXES, L. ROMÁN, *op. cit.*, p. 17.

time. It is therefore essential, as already mentioned, to establish a strengthened and effective framework for inter-State cooperation, as well as a coordinated use, where appropriate, of the aforementioned regulations. Along with this, the promotion of training and intervention of professionals specialized in gender violence, together with awareness campaigns, will be essential.

b) Second challenge regarding "invisible" problems in the fight against violence committed against the abducting mother.

Along with all these above mentioned "visible" problems, it is important to combat other "invisible" problems, deeply rooted, that are a challenge in the fight against gender violence and, in general, for equal rights. I am referring to the responses of many authorities and legal operators, many times a reflection of a part of society. These responses derive from a vision of women anchored in stereotypes, which must gradually disappear. Institutional violence is another form of gender violence that must be avoided by all means[62].

There are still judicial responses that can not be accepted anymore in the field of children abduction. Responses that qualify the mother who has been a victim of violence, as "hostile and manipulative"[63] or as in the Rivas case, "who didn't show repentance" or who was "an unworthy mother"[64].

In this sense, one more time, solidarity between women can be a tool – in the long term – to combat this kind of legal answers and many social beliefs against other women.

2.3. Protection of equality rights in the context of Transnational surrogacy

The debate on women's rights in relation to transnational surrogacy is still open as well as the clear absence of a gender perspective in this context.[65] It should be noted,

[62] In line with the aforementioned claim made on 9.12.2021 by the United Nations against Spain, the Spanish Association of Women Judges has requested on 10.12.21 the necessary measures to be adopted to ensure effective compliance with the regulations for the protection of children and adolescents against any form of violence… See Http://www.mujeresjuezas.es.

[63] As appointed by M. KAYE, *op. cit.*, pp. 197-198 and M. REQUEJO ISIDRO, *op. cit.*, p. 185 regarding some judgments.

[64] *El País*, 16.12.2021, *Cuatro catedráticos de penal diseccionan el auto de Juana Rivas: "Lo del Juez Piñar es gravísimo, supura veneno"*, www.elpais.com. About this case, see L.A. PÉREZ MARTÍN, *Protección de los menores en el ámbito internacional: Reflexiones sobre la sustracción internacional de menores y la violencia de género en torno al caso de Juana Rivas*, in V. BASTANTE GRANELL (coord.), *La protección del menor: Situación y cuestiones actuales*, Granada, 2019, pp. 73-88.

[65] Among others, D. COESTER-WALTJEN, *A case for harmonization of Private international law? Juggling between Surrogacy, Interest of a Child and Parenthood*, in H. MUIR WATT AND OTHERS, *Global Private International Law*, Cheltenham, UK, 2019, pp. 504-510; R. ESPINOSA CALABUIG, *La (olvidada) perspectiva de género…*, *op.cit.*, p. 36; C. AZCÁRRAGA MONZONÍS, *Private International Law from a gender perspective…*, *op. cit.*, pp. 148-159; K. TRILHA, *Surrogacy in the context of Private international law? Cross-border effects of international reproductive agreements*, in H. MUIR WATT AND OTHERS, *op.*

however, that recently the Spanish Supreme Court issued a ruling that for the first time seems to grant a gender focus in relation to the interest of the woman, specifically the surrogate mother, in addition to the best interests of the child[66]. But in general, there is no gender perspective in this regard.[67]

The conflict of interest produced by this phenomenon (the interest of being a father/mother, the interest of the child and the interest of the surrogate mother) has led to relevant, although debatable, decisions by the ECtHR with cases such as, for example, *Mennesson v. France*[68] and *Paradiso and Campanelli v. Italy*.[69] On 10.4.2019, the ECtHR, at the request of the French Supreme Court, issued the first Advisory Opinion on the *status* of children born by surrogacy.[70] All this situation has led to the Hague Conference of PIL to debate about the need to regulate this figure.[71]

Most of the existing legal proposals focus mainly on children (or the idea of family), but they seem to overlook women's rights and the violation of these by the progressive existence of reproductive tourism. In this sense, the European Parliament has included surrogacy among "Other forms of exploitation" in the Report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.[72] At the same time, however, the United Nations Population Fund, in the State of World Population 2021 under the title "My body belongs to me" seems to show a favourable opinion of this technique within a section entitled "Childbirth as work".[73]

For the time being, the public policy exception has become the last obstacle to recognizing the link between the child born by surrogacy and the intended parents. In practice, the discourse on the existence or not of the genetic link, on the one hand, and

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cit., pp. 495-504. Broadly see K. TRIMMINGS, P. BEAUMONT, *International Surrogacy Arrangements: Legal regulation at the international level*, Oxford, 2013, p. 20 ff.

[66] Judgment 277/2022, 31st March, that rejected the inscription of the child in the Spanish registry in relation to a surrogacy done in Mexico regarding a woman without providing genetic material. The Supreme Court rules that surrogacy contracts violate the fundamental rights of pregnant women and children. The sentence is similar to that of 6.2.2014.

[67] See the considerations done during the workshop "Gender and Private international law" organized by the Max Planck Institute of Hamburg in May 2021: https://www.mpipriv.de/gender-and-pil.

[68] ECtHR, judgment of 26.06.2014, app. no. 65192/11.

[69] ECtHR, judgment of 24.01.2017, app. no. 25358/12.

[70] Request n. P16-2018-001, relatif à la reconnaissance en droit interne d'un lien de filiation entre un enfant né d'une gestation pour autrui pratiquée à l'étranger et la mère d'intention (in https://hudoc.echr.coe.int/eng#{"itemid":("003-6380431-8364345")). See L. RICCARDI, *Il primo parere consultivo della Corte europea dei diritti dell'uomo tra maternità surrogata e genitorialità "intenzionale": il possibile impatto nell'ordinamento giuridico italiano*, in this *Journal*, 2019, pp. 160-183; A. DI BLASE, *Il riconoscimento della genitorialità a favore del genitore non biologico nel parere della Corte europea dei diritti dell'uomo del 10 aprile 2019*, in *Sidiblog.it*, http://www.sidiblog.org/2019/05/16/il-riconoscimento-della-genitorialita-a-favore-del-genitore-nonbiologico-nel-parere-della-corte-europea-dei-diritti-delluomo-del-10-aprile-2019/. See also https://www.courdecassation.fr/jurisprudence_2/assemblee_pleniere_22/638_5_40365.html.

[71] https://www.hcch.net/en/projects/legislative-projects/parentage/surrogacy.

[72] 2020/2029(INI).

[73] https://www.unfpa.org/sites/default/files/pub-pdf/SoWP2021_Report-ES_v3312.pdf. In particular, pp. 66-69. See R. ESPINOSA CALABUIG, *Derecho internacional privado europeo y protección de grupos vulnerables*, in *Revista General de Derecho Europeo*, 2021, pp. 1-18.

respect for the *status familiae* of Article 8 ECtHR[74], on the other, seems to have a great influence on the final effective function of public policy. By 2023, most EU countries prohibit or do not regulate surrogacy. Others, such as the United Kingdom, Greece or Portugal are pioneers in regulating it, legitimising the practise only under certain conditions such as the altruistic nature of it.

In the perspective of the protection of women's rights and with the idea of solidarity as an instrument of such protection, a question arises: could the law of a State in which surrogacy is prohibited intervene to protect such women? How? The possibilities could be several.

The first possibility would be to prohibit this practice in both internal and international relations thinking of surrogate mothers, who are the most vulnerable in this private international relationship. The second possibility would be to elaborate a regime with a legal *status* (not, as in Spain, through the Instruction of the Dirección General de Registros y del Notariado). This regime would contemplate the recognition of the filiation but with strong restrictions and controlling the existence of a "true and valid consent" of the surrogate mother (not vitiated/defective by poverty). Until now control is delegated to the foreign court decision.[75]

In fact, in recent years the debate seems to focus on defending a model of recognition subject to the control of conditions as, for example, that the intended parents have chosen the country for the birth of the child on an altruistic and non-commercial basis and that the surrogate mother has given her consent freely (this would be the case of the regulation in Portugal).

This model could be achieved, albeit with difficulty, by means of State techniques of PIL. In particular, if it is not possible to verify the policy of the country where surrogacy takes place, the State whose recognition is requested will have two possibilities: either to accept its effects out of consideration of the interest of the child or to oppose it according to the public policy exception. In its favour, it is argued that this could promote international cooperation in line with the Hague Conference Project.[76] However, it does not seem a very realistic solution and it does not resolve issues such as the role of public policy in cases where there is no genetic link between the child and the intended parents, as happened in *Paradiso and Campanelli*.

In this context, the protection of women rights under the idea of sorority could have two different interpretations: a) The first one refers to the (minor) cases in which the surrogate mother consents the surrogacy by reasons of solidarity with another woman or

[74] See broadly R. ESPINOSA CALABUIG, *La fragilidad de las relaciones privadas internacionales y sus efectos sobre el derecho a una vida privada y familiar*, in R. RUEDA VALDIVIA (Dir.), *Nuevos horizontes de la movilidad internacional de personas en el Siglo XXI. Libro homenaje a la profesora Mercedes Moya Escudero*, Tirant lo Blanch, 2023, pp. 141-169.

[75] C. AZCÁRRAGA MONZONÍS, *La gestación por sustitución en el Derecho Internacional Privado español. Un ejemplo más de la controvertida aplicación de conceptos jurídicos indeterminados*, in *Anuario Español de Derecho Internacional Privado*, 2017, n. 17, p. 680.

[76] See C. AZCÁRRAGA MONZONÍS, *Private International Law from a gender perspective…*, *op. cit.*, pp. 154-156.

couple to have a child; b) The second interpretation is based on the idea that surrogacy supposes in most cases a commodification or objectification of women. Then the idea of sorority or solidarity between women leads clearly to rejecting surrogacy.

3. Final considerations: the sorority as a tool to promote the equality rights of women

I finish as I started: claiming for the gender perspective to the PIL and strongly believing that our discipline can be the ethical instrument to fight against discrimination and inequality of rights, including those that happen – even today – by the fact of being a woman. In this sense, the solidarity and in particular the *sorority* can be a useful tool to work in favour of the equality and in doing changes which are necessaries in this context and beyond this.

The idea of solidarity leads to claiming that judges and authorities (men and women) can judge and act "with sense and sensitivity" in so many day-to-day issues. In this sense, *sorority* should be understood as an open and inclusive concept, not closed and exclusive, but as a tool that should ultimately serve human dignity as well as PIL (Battifol's idea). The application of this tool to the PIL could contribute to the objective of equality.

It would be possible to distinguish between the role of *sorority* as a "hermeneutic tool" in the application of the PIL and *sorority* as a "political tool" for the development of the PIL.[77] In its first interpretative function, the *sorority* would focus on concrete and individual issues of the PIL, trying to empathize, to be receptive and to appreciate the gender perspective. In this context, the idea of women's solidarity emerges as an effective support on the road to real and progressive equality between men and women.

Sorority could guide us in the interpretation of some habitual PIL issues, as we have exposed in this work and others. For example, if we focus on the area of recognition of a wife's repudiation by her husband in the countries where this is regulated, we should focus on that woman, her needs and interests. This would mean that when she is the party applying for recognition, the court should grant such recognition. If, on the other hand, the husband so requests, it can be assumed that he would not grant it unless it were demonstrated that this would not prejudice the interests of the wife. In that case, the court should redress the inequality inherent in repudiation by treating the wife and husband differently.[78]

[77] I warmly appreciate the "online conversations" with Prof. Hans Van Loon as well other relevant and dear colleagues regarding the ideas of equality and sorority in PIL in the framework of the already mentioned workshop organized by the *Max Planck Institute* on June 2022 (see note number 1).

[78] One could go a step further, and reason that sorority/equality should prohibit outright giving effect to such a foreign law: in *Sahyouni* (CJEU 20 December 2017, C-372/16) the Advocate General suggested that the prohibition of discrimination against women is so serious that it justifies the unqualified rejection of foreign law allowing divorce by talaq, with no exceptions on a case-by-case basis, even if the wife accepts the divorce. The CJEU avoided the issue by ruling that the Rome III Regulation does not cover such divorces. The Court should have realised that following the Advocate General would result in a decision which, although "pure" in theory, would be unfair in practice, especially when it is the woman who is seeking recognition of the divorce, for example because she wishes to remarry.

Another example leads to the problem of deciding whether to recognise the effects of a cross-border surrogacy agreement. In this case, the court would pay particular attention to the question of whether the surrogate mother has actually consented to the agreement in a free, well-advised and informed manner. This does not automatically mean that her interests necessarily prevail in the specific case, because the child must also be taken into account as well as the intended mother/parents. Then *sorority* emerges as an interpretive tool, although will not be the key to solving this kind of problems. But it would be directly connected with the human dignity of women and the necessity of protecting their rights.

The idea of *sorority* as a promoter of the equality could guide us also in the interpretation and application of rules as, for example, the Article 8(4) and (5) of The Hague Maintenance Protocol of 23 November 2007 in cases where a woman had accepted the law applicable to a maintenance agreement: judges/authorities (men and women) would put themselves in that woman's place when applying those provisions.

Another example would refer to the application of a foreign law to an employment contract with a working woman. In these cases, the court would check whether the application of the foreign law leads to a result that gives her the same rights as a man under that foreign law (serving equality between the sexes).

The solidarity aspect of *sorority* comes to the fore in its second function: sorority as a policy-making tool. However, it is difficult to imagine that *sorority* might play some role in designing new PIL standards. Most of the time, PIL does not deal with substantive issues, but with more abstract "traffic rules" that indirectly point to substantive laws.

At the abstract level of the PIL rules, it is difficult to see the role of the *sorority*. Of course, the fact that the husband's nationality has been replaced by a gender-neutral connecting factor is positive, and in retrospect, equality values have supported that replacement. But in any case, the idea of solidarity in this context could contribute to reinforce in practice that values based on equal rights between men and women. And these values can have effect over the notion of public policy in many legislations.

Sorority may have an important role in the design of substantive law norms, in all areas: family law, labour law, administrative law, etc. In all these fields, much work remains to be done to solve the problems posed by the lack of listening, empathy and appreciation of women and their rights.

Therefore, while maintaining *sorority* as an interpretative tool for the application of the PIL, it could be considered to expand the topic of *sorority* beyond the scope of the PIL, applying it to private substantive law and other areas of law.

ABSTRACT: Gender perspective in Private International Law can be claimed through the so-called "sorority": solidarity between women against sexual discrimination. Private International Law can become an ethical tool to fight for solidarity and against such phenomena as misogyny and sexism, among others. Several topics (such as the application of Islamic law by some national authorities, child abduction in cases of gender violence or transnational surrogacy) show how our discipline can be an

instrument to promote equal rights for women and how sorority can reinforce this equality. So, there is a reciprocal influence between all of them.

KEYWORDS: Sorority – Equality – Women's rights – Gender perspective – Child abduction – Transnational surrogacy.