JUXTAPOSING LEGAL SYSTEMS AND THE PRINCIPLES OF EUROPEAN FAMILY LAW ON DIVORCE AND MAINTENANCE
European Family Law Series

Published by the Organising Committee of the
Commission on European Family Law

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DIVORCE AND MAINTENANCE

Edited by
Esin Örücü and Jane Mair

intersentia
Antwerpen – Oxford
Juxtaposing Legal Systems and the Principles of European Family Law on Divorce and Maintenance
Esin Örücü and Jane Mair

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Antwerpen – Oxford
http://www.intersentia.com

D/2007/7849/43
NUR 822

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PREFACE

Following the publication of *Principles of European Family Law Regarding Divorce and Maintenance Between Former Spouses* by the Commission on European Family Law (CEFL) that was set up in September 2001 with a team of specialists from twenty-two jurisdictions to carry out research in the field of comparative family law, it was considered worthwhile to produce an edited volume to assess the reality of legal systems in view of the Principles, and the Principles in view of the reality of these legal systems.

The CEFL hoped to create a source of inspiration to legislators in the process of modernising their national family laws. "Functional equivalence" was sought and both the "common core" and "better law" approaches were adopted. The drafters chose "the best", "the more functional" and the "most efficient" rules, their touchstone being the modernisation of the law. So, these CEFL Principles are not merely restatements of family laws in Europe, but contributions towards the establishment of a European Family Law.

Only by empirical testing of the Principles in a number of legal systems can one demonstrate whether they are acceptable and/or are regarded as an improvement on existing national laws. For our purposes, after an introductory overview, it was deemed appropriate first to re-test the Principles in a sample of legal systems already considered by the CEFL: France, one head of the civilian tradition; Scandinavia, a variation on the civilian theme; England, the mother of the common law tradition, Scotland, a mixed jurisdiction that has gained popularity within the European Union as a model; and then, to test the Principles in the untested: Malta, a new EU member with a conservative background; Estonia and Lithuania, two new EU members with a socialist background but different socio-cultures; and Turkey, a country bridging two cultures and aspiring to membership of the EU.

The final part of the volume is a comparative assessment of our findings. One study looks at the Principles as harmonious ideals, the other looks at the shortfalls in the ideals as presented and the obstacles to harmonisation.

Esin Orucu and Jane Mair
1 March 2007
LIST OF AUTHORS

Dr Ruth Farrugia
Advocate and Senior Lecturer in Civil Law, University of Malta

Ms Joëlle Godard
Lecturer in Law – University of Edinburgh

Ms Triin Göttig
LL.M. (Kiel); Research Fellow of Civil Law, University of Tartu, Estonia

Ms Liis Hallik
mag. iur.; Adjunct Instructor, Institute of Law, University of Tartu; Counsellor of the Civil Chamber, Supreme Court of the Republic of Estonia

Dr. Gaël Henaff
Maître de conférences à l’Université de Rennes 2, France

Prof. Dr. Urpo Kangas
Professor in Civil Law, Faculty of Law, University of Helsinki, Finland

Dr Inga Kudinaviciute-Michailoviene
Lecturer in Civil and Commercial Law, Mykolas Romeris University, Lithuania

Dr. Jane Mair
Senior Lecturer in Law, University of Glasgow, School of Law, Scotland, UK.

Prof. Dr. Esin Örücü
Professorial Research Fellow and Professor Emerita of Comparative Law, University of Glasgow, Professor Emerita of Comparative law, Erasmus University Rotterdam and Visiting Professor of Comparative Law, University of Yeditepe, Istanbul, Turkey.

Dr. Rebecca Probert
Lecturer of Private law, University of Warwick, England.

Dr. Triin Uusen-Nacke
Adjunct Instructor, Institute of Law, University of Tartu; Counsellor of the Civil Chamber, Supreme Court of the Republic of Estonia
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