

**JUXTAPOSING LEGAL SYSTEMS AND THE PRINCIPLES OF
EUROPEAN FAMILY LAW ON PARENTAL RESPONSIBILITIES**

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Edited by

ESİN ÖRÜCÜ and JANE MAIR



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PREFACE

We considered it worthwhile to produce once again an edited volume with the aim to assess the reality of legal systems in view of the Principles, and the Principles in view of the reality of these legal systems, following the publication of “Principles of European Family Law Regarding Parental Responsibilities” by the Commission on European Family Law (CEFL).

In the hope of creating a source of inspiration for legislators in the process of modernising their national family laws, the CEFL seeks “functional equivalence” and adopts both the “common core” and “better law” approaches. As a rule, the drafters choose “the best”, “the more functional” and the “most efficient” rules. Their touchstone is the modernisation of the law. Therefore, these CEFL Principles are not merely restatements of family laws in Europe, but contributions towards the establishment of a European Family Law.

Believing that 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, we launched into our project. For our purposes, it was deemed appropriate first to test the Principles in the untested: Scotland, a mixed jurisdiction that has gained popularity within the European Union; Malta, a more recent EU member with a conservative background, Estonia, another more recent EU member with a socialist background; Romania, a new comer into the EU with a socialist background but a socio-culture different to Estonia; and finally Turkey, a country bridging eastern and western values and aspiring to membership of the EU. Next, the Principles were re-tested in two legal systems already considered by the CEFL: Denmark, a variation on the civilian theme, where changes have occurred in 2007 after the national report was prepared and the Principles formulated; and England, the mother of the common law tradition, where there are also some new developments.

The volume starts with an introductory overview and closes with a comparative assessment of our findings. Though this part considers the Principles as harmonious ideals, it is also critical of the shortfalls in the ideals as presented, and views the obstacles to harmonisation.

Our colleague Joelle Godard who had undertaken to contribute to our volume by juxtaposing the Principles to French law, as she had done in the previous volume on Divorce and Maintenance Between Former Spouses, recently suddenly passed away and we would like to dedicate this volume to her.

Jane Mair and Esin Örüçü
1 April 2009

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