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

Edited by
Esin Örücü and Jane Mair
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.
Preface

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 Örücü
1 April 2009
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TABLE OF CONTENTS

PREFACE .....................................................................................................................................................v

LIST OF AUTHORS......................................................................................................................................vii

INTRODUCTORY OVERVIEW

CATERING FOR DIVERSE CULTURES THROUGH HARMONISED NORMS
Es’n Örücü and Jane Mair ......................................................................................................................... 3

1. Introducing the topic ............................................................................................................................ 3
   1.1. The European scene and the work of the Commission on European Family Law ......................... 4
   1.1.1. The European Scene .................................................................................................................. 4
   1.1.2. The work of the Commission on European Family Law (CEFL) ............................................. 6

2. The general outline of the principles .................................................................................................... 8

3. The aim of the present research ......................................................................................................... 12
   3.1. Inception ........................................................................................................................................ 12
   3.2. Choice of systems ............................................................................................................................ 13
   3.3. Assessment of legal systems and CEFL principles ........................................................................ 14

4. Concluding remarks ............................................................................................................................ 15

PART ONE – TESTING THE UNTESTED: CAN THERE BE ONE WAY FORWARD?

PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING PARENTAL RESPONSIBILITIES AND THEIR IMPLICATIONS FOR ESTONIA
Liis Hallik, Triin Göttig and Triin Uusen-Nacke .................................................................................... 19

1. General .................................................................................................................................................. 19

2. Contents of parental responsibilities .................................................................................................. 21
   2.1. Care ............................................................................................................................................... 21
   2.2. Determination of residence ......................................................................................................... 22

Intersentia ix
## Table of Contents

2.3. Education ................................................................. 23  
2.4. Religious upbringing .................................................. 24  
2.5. Disciplinary measures and corporal punishment .......... 25  
2.6. Medical treatment ...................................................... 26  
2.7. Statutory representation .............................................. 26  
2.8. The child’s right to be heard ......................................... 27  
2.9. The right to administer the child’s property ................. 28  
3. Attribution of parental responsibilities ............................... 30  
3.1. Married and unmarried parents .................................... 30  
3.2. Other persons ............................................................ 34  
4. Exercise of parental responsibilities ................................... 39  
4.1. Interests of the child .................................................... 39  
4.2. Joint and sole parental responsibilities .......................... 40  
5. Contact ............................................................... 41  
5.1. Contact with parents and other persons ...................... 41  
5.2. Contact arrangements .............................................. 43  
5.3. Breach of the right to contact ...................................... 45  
6. Delegation of parental responsibilities ............................... 45  
7. Termination of parental responsibilities .............................. 45  
8. Discharge of parental responsibilities ................................. 46  
9. Procedural issues .......................................................... 49  
9.1. Competent authorities ............................................... 49  
9.2. Alternative dispute resolution mechanisms .................. 50  
9.3. The position of a child in proceedings .......................... 52  
9.4. Enforcement of agreements and orders ....................... 53  
10. Summary ................................................................. 55

**PRINCIPLES RELATING TO PARENTAL RESPONSIBILITY AND AUTHORITY IN MALTA**  
**RUTH FARRUGIA** .......................................................... 61

1. Introduction ................................................................. 61  
2. Definitions ................................................................. 62  
3. Rights of the child ........................................................ 70  
4. Parental responsibilities of parents and third persons ......... 74  
5. Exercise of parental responsibilities ................................. 77  
5.1. Parents ................................................................. 77  
5.2. Third persons ........................................................ 80  
6. Content of parental responsibilities ................................. 80  
6.1. The child’s person and property .................................. 80  
6.2. Maintenance of personal relationships ........................ 89  
7. Termination of parental responsibilities .............................. 91  
8. Discharge and restoration of parental responsibilities .......... 93

x  
**Intersentia**
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Procedure</td>
<td>96</td>
</tr>
<tr>
<td>10</td>
<td>Conclusion</td>
<td>99</td>
</tr>
<tr>
<td></td>
<td><strong>PARENTAL PROTECTION IN ROMANIAN LAW JUXTAPOSED</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>TO THE CEFL PRINCIPLES</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Flavius A. Baias, Marieta Avram and Cristina Nicolescu</strong></td>
<td>103</td>
</tr>
<tr>
<td>1</td>
<td>General issues</td>
<td>103</td>
</tr>
<tr>
<td>2</td>
<td>The content of parental protection</td>
<td>110</td>
</tr>
<tr>
<td>3</td>
<td>The attribution of parental protection</td>
<td>123</td>
</tr>
<tr>
<td>3.1</td>
<td>The situation of married parents</td>
<td>123</td>
</tr>
<tr>
<td>3.2</td>
<td>The situation of unmarried parents</td>
<td>126</td>
</tr>
<tr>
<td>3.3</td>
<td>Other persons</td>
<td>128</td>
</tr>
<tr>
<td>4</td>
<td>The exercise of parental responsibilities</td>
<td>131</td>
</tr>
<tr>
<td>4.1</td>
<td>Interests of the child</td>
<td>131</td>
</tr>
<tr>
<td>4.2</td>
<td>Joint parental responsibilities</td>
<td>134</td>
</tr>
<tr>
<td>4.3</td>
<td>Sole parental responsibilities</td>
<td>142</td>
</tr>
<tr>
<td>5</td>
<td>Contact</td>
<td>144</td>
</tr>
<tr>
<td>6</td>
<td>Delegation of parental responsibilities</td>
<td>149</td>
</tr>
<tr>
<td>7</td>
<td>Discharge of parental responsibilities</td>
<td>150</td>
</tr>
<tr>
<td>8</td>
<td>Procedural issues</td>
<td>153</td>
</tr>
<tr>
<td></td>
<td><strong>SCOTS LAW AND THE CEFL PRINCIPLES REGARDING PARENTAL RESPONSIBILITIES: HARMONY IN PRINCIPLE</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Jane Mair and Ian Sharpe</strong></td>
<td>161</td>
</tr>
<tr>
<td>1</td>
<td>Introduction</td>
<td>161</td>
</tr>
<tr>
<td>2</td>
<td>Responsibilities and rights</td>
<td>162</td>
</tr>
<tr>
<td>3</td>
<td>Rights of the child</td>
<td>163</td>
</tr>
<tr>
<td>4</td>
<td>Parental responsibilities of parents and third parties</td>
<td>171</td>
</tr>
<tr>
<td>5</td>
<td>Exercise of parental responsibilities</td>
<td>175</td>
</tr>
<tr>
<td>5.1</td>
<td>Parents</td>
<td>175</td>
</tr>
<tr>
<td>5.2</td>
<td>Third persons</td>
<td>176</td>
</tr>
<tr>
<td>6</td>
<td>Content of parental responsibilities</td>
<td>178</td>
</tr>
<tr>
<td>6.1</td>
<td>The child’s person and property</td>
<td>178</td>
</tr>
<tr>
<td>6.2</td>
<td>Maintenance of personal relationships</td>
<td>185</td>
</tr>
<tr>
<td>7</td>
<td>Termination of parental responsibilities</td>
<td>187</td>
</tr>
<tr>
<td>8</td>
<td>Discharge and restoration of parental responsibilities</td>
<td>188</td>
</tr>
<tr>
<td>9</td>
<td>Procedure</td>
<td>189</td>
</tr>
<tr>
<td>10</td>
<td>Concluding remarks</td>
<td>192</td>
</tr>
</tbody>
</table>

THE CEFL PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING PARENTAL RESPONSIBILITIES AND DANISH LAW
Annette Kronborg and Christina G. Jeppesen de Boer .................... 195
1. Introduction .......................................................................................................195
2. Parental responsibilities ................................................................................... 197
   2.1. Definitions .................................................................................................197
   2.2. Rights of the child .................................................................................... 198
   2.3. Parental responsibilities of parents and third persons ....................... 200
   2.4. Exercise of parental responsibilities ......................................................202
   2.5. Third persons ............................................................................................205
   2.6. Content of parental responsibilities ......................................................205
   2.7. Maintenance of personal relationships ...................................................207
   2.8. Termination of parental responsibilities...............................................209
   2.9. Discharge and restoration of parental responsibilities ....................... 209
   2.10. Procedure ....................................................................................................210
3. Final assessment .................................................................................................211

A MORE PRINCIPLED APPROACH TO PARENTAL RESPONSIBILITY IN ENGLAND AND WALES?
Rebecca Probert, Stephen Gilmore and Jonathan Herring ........... 213
1. Introduction .......................................................................................................213
2. The concept of parental responsibility ........................................................... 213
3. Parental responsibility and the rights of the child ....................................... 215
4. The possession of parental responsibility .......................................................218
5. The exercise of parental responsibility ...........................................................221
6. The content of parental responsibility ...........................................................223
7. Ending parental responsibilities ..................................................................... 228
8. Procedure ...........................................................................................................229
9. Conclusion .........................................................................................................230
PART THREE – AN ASPIRANT CANDIDATE: DO VALUES CLASH?

HOW DOES TURKISH FAMILY LAW FARE COMPARED TO THE PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING PARENTAL RESPONSIBILITIES?

Esİn Örücü and Canan Arın ................................................................. 235

1. Introductory overview ................................................................. 235
2. Setting the Turkish scene today .................................................. 237
3. Turkish family law juxtaposed to the principles of European family law ................................................................. 238
   3.1. Definitions ................................................................................... 238
   3.2. Rights of the child ...................................................................... 243
   3.3. Parental responsibilities of parents and third persons .......... 247
   3.4. Exercise of parental responsibilities ........................................ 249
       3.4.1. Parents .............................................................................. 249
       3.4.2. Third Persons ................................................................. 251
   3.5. Content of parental responsibilities ......................................... 252
       3.5.1. The child’s person and property ....................................... 252
       3.5.2. Maintenance of personal relationships ............................ 257
   3.6. Termination of parental responsibilities ................................. 260
   3.7. Discharge and restoration of parental responsibilities .......... 262
   3.8. Procedure ................................................................................... 262
4. Concluding remarks ........................................................................ 265

PART FOUR – COMPARATIVE ASSESSMENT

HARMONISED NORMS OF PARENTAL RESPONSIBILITIES FACING REALITY

Jane Mair and Esİn Örücü ................................................................. 269

1. Introduction ................................................................................... 269
2. Domestic state of harmony? .......................................................... 270
   2.1. Parental responsibilities .......................................................... 271
   2.2. Content of parental responsibilities ......................................... 274
   2.3. Parents and third parties .......................................................... 276
3. Ideal principles? ............................................................................. 279
   3.1. Better principles? ................................................................. 280
   3.2. Modern principles? ............................................................... 282
       3.2.1. Parental responsibilities and responsible parents .......... 283
       3.2.2. Parents, third parties and de facto parenting ............... 285
4. Ideals in practice? .............................................................................................................. 288
   4.1. A child-centric model .............................................................................................. 289
   4.2. Parental separation and continuing relationships .............................................. 292
5. Concluding remarks ...................................................................................................... 294

ANNEXES: THE QUESTIONNAIRE AND THE PRINCIPLES

QUESTIONNAIRE .............................................................................................................. 299

PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING PARENTAL RESPONSIBILITIES ................................................................. 307