



Représentant les avocats d'Europe
Representing Europe's lawyers

EUROPEAN CONFERENCE

PRACTISING FAMILY LAW
IN EUROPE

11-12 December 2008

Brussels, Belgium





BARREAU DE BRUXELLES
ORDRE FRANÇAIS DES AVOCATS

On the occasion of the European conference entitled "Practising family law in Europe" organised in Brussels by the CCBE in collaboration with the Academy of European Law, the French-speaking Bar Council of Brussels is pleased to invite participants in this conference to a "vin d'honneur" at the Palais de Justice in Brussels (Vestiaire des Avocats) on **Thursday 11 December 2008 from 7.30 pm.**

The French-speaking Bar of Brussels wishes in this way to express its interest in this event and to call attention to the Bar's involvement in matters of family law.

The French-speaking Bar of Brussels has a family law commission which was originally set up more than fifteen years ago.

The commission is composed of a dozen lawyers appointed by the President of the Bar by reason of their specialisation in the diverse matters covered by family law.

For further information, go to: <http://www.barreaudebruxelles.be/>

The Palais de Justice is situated in Place Poelaert and is accessible by metro line 2 (Louise station) and the 92 tram.

WELCOME

Dear Colleagues,

I am very pleased to welcome you to the Family Law Conference organised by the Council of Bars and Law Societies of Europe in partnership with the Academy of European Law, from the 11 to 12 December 2008 in Brussels.



Cooperation, legal certainty, predictability, flexibility and access to court in civil matters within the European Union are of high importance for the development of the free movement of goods, services and capital. However, there is no doubt that the absence of a clear and comprehensive legal framework in the family law area creates an obstacle to an integrated European market. Family law touches upon the essence of the daily life of citizens. We are aware that the number of cross-border relationships and their consequences for citizens are increasing within the European Union. This means that legal practitioners must become acquainted with the practical as well as the theoretical aspects and developments of European legislation, and of initiatives in family law. European citizens rely on the work of lawyers, and we know that the interests of our clients are always at the core of our professional activities. This conference aims to provide practical information to lawyers facing complex questions arising from the fact that also in cross-border situations citizens cannot rely on the continuity of their family relationships when changing residence in Europe.

On the first day, there will be roundtables providing information on existing European legislation in the area of family law, and an overview on European draft legislation. The second day will contain many interesting workshops and discussions relating to the practical aspects of European family law.

We believe that at the end of the conference you will have benefited from our work together, which you will be able to apply in your everyday practice.

Once again, let me welcome you to Brussels; please enjoy the hospitality, the fruitful exchanges between fellow practitioners and legal experts, and the international atmosphere of the European capital.

Anne Birgitte GAMMELJORD
First Vice-President of the CCBE

As family ties are being formed increasingly between nationals and residents of different member states – as a consequence of the mobility of citizens within the European Union – the national legal practitioner is being confronted more than ever with complex legal questions arising from cross-border family and parental responsibility cases.

Responding to this phenomenon, the amount of legislation existing at EU level is considerable (Brussels II bis and beyond, the mediation Directive etc.) and it is likely to be supplemented in the near future by further instruments (on rights of the child, maintenance obligations, Rome III and Rome IV).

We therefore welcome CCBE's initiative of organising this major conference in Brussels, which ERA is very proud to be associated with. The aim of this event is to promote knowledge of the existing instruments among the lawyers involved in such cases who are responsible for applying them in the member states.

ERA is also keen to fulfil its mission and to provide information and training to legal practitioners from all over Europe, particularly – but not exclusively – on issues relating to family law.

Angelika FUCHS
Head of Section,
Academy of European Law



CONFERENCE

Thursday, 11 December 2008

- 13.00 - 14.00 Registration
- 14.00 - 14.15 Welcome address by Anne Birgitte GAMMELJORD - CCBE First Vice-President
- 14.15 - 14.30 Welcome address by Angelika FUCHS - Head of Section, Academy of European Law

14.30 - 16.00 **Brussels II bis Regulation**

Moderator: Béatrice WEISS-GOUT

- Conflict of laws: Which jurisdiction for divorce?
 - Thalia KRUGER (South Africa)
- Which jurisdiction for parental responsibility? (general rules and rules with regard to child abduction)
 - Peter Mc ELEAVY (Scotland)
- Enforcement of decisions concerning children
 - Peter Mc ELEAVY (Scotland)

16.00 - 16.15 *Coffee break*

16.15 - 16.45 **Brussels I Regulation**

Moderator: Béatrice WEISS-GOUT

- Cyril NOURISSAT (France)

16.45 - 18.30 **Draft proposals**

- Maintenance obligations
 - Diana WALLIS (European Parliament)
- Rome III
 - Fernando Rui PAULINO PEREIRA (Council of the European Union)
- Mediation
 - Fernando Rui PAULINO PEREIRA (Council of the European Union)
- Matrimonial regimes
 - Olivier TELL (European Commission)

WORKSHOPS

Friday, 12 December 2008

9.00 - 10.30	Practical Workshops
	- Brussels II bis - Practical Divorce cases (with 2 interpreters)
	<ul style="list-style-type: none"> - H�el�ene POIVEY-LECLERCQ (France) - Fredric RENSTR�OM (Sweden)
	- Overview and mutual recognition of partnerships in Europe (in English)
	<ul style="list-style-type: none"> - Richard FRIMSTON (United Kingdom) - Mia REICH-SJ�ORGEN (Sweden)
10.30 - 11.00	<i>Coffee break</i>
11.00 - 12.30	Workshops which look to the future
	- Future of family contracts, comparative law and European law (with 2 interpreters)
	<ul style="list-style-type: none"> - Luis ZARRALUQUI (Spain) - Giuseppe CONTE (Italy) - Michel BENICHOUE (France)
	- Maintenance obligations: conflicts of laws, conflicts of jurisdictions, enforcement of judgments (The Hague Convention and the future European regulation) (in French)
	<ul style="list-style-type: none"> - Philippe LORTIE (The Hague Conference) - Marina BLITZ (Belgium) - Marie SALORD (Permanent Representation of France to the EU)
12.30 - 14.00	<i>Lunch</i>

14.00 - 15.30	Practical Workshops
	<ul style="list-style-type: none"> - Brussels IIbis and The Hague Convention (illegal removal of children) / Practical cases <i>(with 2 interpreters)</i> - Véronique CHAUVEAU (France) - Anne Marie HUTCHINSON (United Kingdom) - Liis HALLIK (Estonia)
	<ul style="list-style-type: none"> - Divorce under common law and under civil law: convergences and differences <i>(in English & in French)</i> - Tim AMOS (United Kingdom) - Isabelle REIN-LESCASTEREYRES (France) - Béatrice WEISS-GOUT (France)
15.30 - 15.45	<i>Coffee break</i>
15.45 - 17.15	Workshops which look to the future
	<ul style="list-style-type: none"> - The child in the proceedings: hearing of the child and other issues, European and international conventions <i>(with 2 interpreters)</i> - Eva BECKER (Germany) - Kerstin NIETHAMMER-JÜRGENS (Germany) - Malgorzata KOZUCH (Poland)
	<ul style="list-style-type: none"> - Alternative dispute resolution: comparative law and European law <i>(in English)</i> - Emma RIES (United Kingdom) - Rachael KELSEY (United Kingdom)
17.30	<p>Conclusions</p> <p>Reflection of the CCBE on the role of the lawyer in a European family by Béatrice WEISS-GOUT</p> <p><i>Translation will be available in English and French in the plenary session; otherwise language in the workshops is as indicated on this programme</i></p>

BACKGROUND TO THE EUROPEAN UNION LEGISLATION IN THE AREA OF FAMILY LAW

I. The Brussels II bis Regulation

14.30 - 16.00

Introduction

Cross-border litigation enters a new stage with the coming into force of Regulation 2201/2003, better known as the Brussels II bis Regulation, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000. It retains the solutions of the former Regulation regarding jurisdiction and the recognition of decisions in matters of divorce, but it adds a series of new rules for parental responsibility, child custody and access rights and the civil aspects of international child abduction. The regulation applies to all Member States with the exception of Denmark.

1. Conflict of laws: Which jurisdiction for divorce?

The Regulation applies to divorce, legal separation and annulment, but it should not apply to matters such as the causes of divorce or the assets of the marriage. As a general rule, jurisdiction lies with the courts of the Member State in which the spouses are habitually resident.

A difficulty arises regarding whether the dissolution of civil partnerships is covered by the regulation, since these are not formally marriages.

In the event that the Rome III Regulation passes into law, the provisions of Regulation 2201/2003 will be amended. Amendments will be made concerning jurisdiction and applicable law in matrimonial matters.

2. Which jurisdiction for parental responsibility? (General rules and rules with regard to child abduction)

Under the Brussels II bis Regulation, the notion of parental responsibility covers custody and access rights and the legal representation of a minor, including the different systems of protection and the measures for protection of the child concerning the administration, conservation or disposal of the child's property. It should be noted that in general, the child's right to maintain regular contact with each of the parents is a priority of the Regulation. In consequence, children will have the right to be heard on all questions of parental responsibility, having regard to their age or degree of maturity. In general, jurisdiction in cases of parental responsibility will lie in the Member State in which the child has habitual residence. However, there are exceptions to this general rule. In the event of a change in the child's residence, the Regulation invokes the principle of "perpetuatio fori", jurisdiction remaining with the courts of the Member State in the child's former habitual residence.

Further, the regulation has introduced a rule to encourage combined actions. The jurisdiction which is competent to hear an application for divorce, legal separation or annulment is also competent in matters of parental responsibility, subject to certain conditions. The Regulation also entitles parents to agree to seise the jurisdiction of another Member State with which the child has a close connection, for example based on nationality. The Regulation also governs the question of jurisdiction in cases of wrongful removal or retention of a child. As a general rule, jurisdiction lies in the State of habitual residence of the child prior to the wrongful removal or retention.

3. Enforcement of decisions concerning children

The Brussels II bis Regulation establishes the conditions for the enforcement of judgments falling within its scope. For the enforcement of judgments in respect of a child, the particular provisions applicable to access rights and child abduction should be considered.

The aim of the Regulations is to encourage cross-border access in the spirit of the European Council of Tampere which established an area of freedom, security and justice in the European Union. The revolutionary measure introduced by the Regulation is the automatic and immediate enforcement of foreign judgments on access rights. More exactly, the judgment of the state of origin is automatically enforceable without any further formalities; and equally, as a general rule, it is impossible to appeal against its recognition. The judgment should be accompanied by a certificate from the judge in the State of origin which facilitates automatic recognition and enforcement. It should also be noted that the suppression of exequatur only applies to judgments authorising access, whereas judgments refusing access continue to be subject to common law.

II. Brussels I Regulation

16.15 - 16.45

The provisions of the Brussels Convention on jurisdiction and the enforcement of foreign judgments have been replaced by Regulation 44/2001, known as Brussels I, in all Member States of the European Union with the exception of Denmark (the Agreement between the EC and Denmark, OJ L 299/61, 16.11.2005; the provisions of the Brussels I Regulation applied to Denmark as from 1 July 2007). The Regulation governs jurisdiction and the recognition and enforcement of judgments in civil and commercial matters within the European Union.

It states that the judgments given in a Member State should be recognised in the other Member States without the need for any further procedures, except in the event of derogation. The scope of the Regulation covers civil and commercial matters, but not fiscal, customs or administrative matters. The Regulation falls within the remit of the Jurisdiction of the Court of Justice of the European Communities.

As a general rule, jurisdiction lies in the Member State where the defendant has his domicile, regardless of his nationality. In certain cases, the applicant may derogate from this general rule and summon the defendant before another jurisdiction than that of his domicile, by reason of a linking factor with this jurisdiction. In contractual matters, the applicant may summon the defendant before the local court in the place where the obligation on which the demand is based was or should be performed. The provisions regarding consumer contracts and individual employment contracts constitute important innovations for legal practitioners. Judgments made in a Member State are recognised in the other Member States, except in very specific cases, for example a threat to public policy. The parties may appeal against the declaration of enforceability, but in no event may the foreign judgment be reviewed as to its substance. With these measures, the Brussels I Regulation constitutes a significant step towards the creation of an area of freedom, security and justice in the European Union.

III. Draft proposals

16.45 - 18.30

1. Maintenance obligations

The proposed regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations is aimed at removing obstacles to the recognition and enforcement of maintenance obligations within the EU. The regulation aims to facilitate the realisation of the legitimate expectations of maintenance creditors in a quicker and easier way. The Proposal is the follow-up of the Green Paper on maintenance obligation in 2004. The objective of this Green Paper was to launch a public consultation on legal and practical questions arising in situations with an international element in matters of maintenance obligation. The scope of the European Commission's draft regulation covers all maintenance obligations arising from family relationships or relationships deemed by the law applicable to such relationships as having comparable effects. Rather than listing the types of relationships covered, the proposal uses a generic concept of family maintenance obligation without seeking to impose either a broad or a restrictive concept of family.

The Proposal is based on two main objectives: simplicity and legal certainty. The future regulation aims to eliminate existing ambiguities and unnecessary procedures in the enforcement of a decision. The harmonisation of the conflict law rules has a vocation to promote legal predictability. The main achievement for legal practitioners is to abolish exequatur procedure and enable maintenance creditors to bring an action before an authority in the country of residence of the creditor. Once the decision has been delivered, measures will be taken to ensure that it is recognised automatically in any Member States without further formality.

The Report of the European Parliament on this regulation was adopted in November 2007. The Council of Ministers of Justice and Home Affairs in October 2008 has reached a political agreement so the text will be adopted during the next presidency.

2. Rome III

The aim of the draft EU regulation Rome III is to allow couples to choose the Member State where they wish to divorce, if they have other defined links with it, for example the place of marriage, usual domicile, and nationality or if it is their last country of residence. The future regulation is a follow-up of the European Commission's Green Paper on di-

voiced in 2005. The CCBE has participated in the consultation and the CCBE response to the Green Paper can be found at http://www.ccbe.org/fileadmin/user_upload/NTCdocument/ccbe_response_to_gre1_1182255272.pdf

The Commission Proposal aims to harmonise conflict-of-law rules in matter of divorce and legal separation to enable spouses to easily predict which law will be applied to their matrimonial proceeding as a consequence to strengthen legal predictability. The Proposal does not seek to create a standard EU-wide divorce system but to harmonise the rules on disputes, which until now have been unclear. The result is sometimes a form of “forum shopping” when one person starts a divorce procedure in a country where he/she thinks that their interests will be the best protected. Malta and Sweden are the most hesitant to accept the future system. The strongly Catholic Malta does not recognise divorce and Sweden is afraid of the fact that such a harmonisation on EU level would affect its liberal family law.

Since the unanimity required adopting the regulation seems to be impossible to obtain, nine member states initiated a so called enhanced cooperation. The method of the enhanced cooperation was introduced by the Amsterdam Treaty creating a possibility of setting up a closer cooperation between member states. The mechanism will stay open to other member states willing to join in the future.

The European Parliament published its legislative resolution concerning the proposal on the 21 October 2008 in the frame of the consultation procedure. The European Parliament included some precision in the proposed text.

3. Mediation

As a step to the establishment of an area of freedom, security and justice where business and individuals can exercise their rights freely, a new European directive on certain aspect of mediation in civil and commercial matters was published in May 2008. The scope of the new directive includes mediation in family, consumer and employment matters.

The directive is a follow-up of the European Commission’s Green Paper on alternative dispute resolution in civil and commercial matters in 2002 which was followed by a European code of conduct for mediators developed by a group of experts collaborating with the European Commission in 2004. Also, the Council of Europe adopted a Recommendation on family mediation on 21 January 1998 which covers the special principles of family mediation.

The new European directive has a double objective. On one hand, it is dedicated to facilitate access to dispute resolution. On the other hand, the directive is providing the ne-

cessary tools for national courts to promote mediation without making it obligatory for them. The main reason why mediation is a preferred way of dispute resolution is that it often offers a quicker, simpler and, last but not least, more efficient method in comparison to litigation. The agreement reached by mediation will be more respected because it reflects the will of both parties.

The practical contribution of this directive for European lawyers is mainly the possibility in case of a cross-border commercial or civil dispute to turn to a professional mediator who helps to resolve the problem without starting a procedure before the court. The directive allows the parties to request the written settlement resulting from the mediation process to be made enforceable, unless the agreement is contrary to the law of the member state where the request is made or if the law of that state does not provide for its enforceability. The provisions of the directive have to be implemented by EU Member States by May 21st 2011.

4. Matrimonial regimes

Matrimonial property regimes are excluded from Community instruments adopted so far. The Hague Convention on the law applicable to matrimonial property regimes of 14 March 1978 has been ratified only by France, Luxembourg and the Netherlands.

The Regulation 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matter of parental responsibility does not cover the property consequences of the dissolution of marriage. For all of these reasons, the European Commission has launched a public consultation in July 2005 in the form of a Green Paper on conflict of laws in matters concerning matrimonial property regimes including the question of jurisdiction and mutual recognition in order to address the problems that international couples have to face. The Green Paper tackles the problem of applicable law, mutual recognition and execution of decision concerning matrimonial property regimes. The CCBE has participated in the consultation; the response of the CCBE can be found http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_divorce_ccbe_resp1_1182240859.pdf

Since at this stage, the harmonisation of substantive law is not possible, future legislation seeks to harmonise the conflict-law rules on matrimonial property regimes. To make the matter easier for citizen and legal practitioners the future legislation could envisage offering the partners a choice regarding the applicable law. The scope of the future proposition will cover the questions concerning the property consequences of the dissolution of marriage as well as the dissolution of registered partnerships. As a follow-up to the Green Paper the European Commission has created a group of experts on the property consequences of marriage which is in charge of the elaboration of future legislation.

CONTENT OF THE WORKSHOPS

Brussels II bis—Practical divorce cases

Practical workshop 1 9.00 - 10.30

During the workshop we will focus on practical opportunities and also problems that have arisen in two practitioners' work because of the introduction of Brussels II bis.

We will discuss some of the issues that we would consider when choosing (if not forum shopping) an appropriate forum to hear the matter of divorce etc.

We will do that by introducing some "normal" family situations where we are approached by one of the spouses in possibly one of the biggest life crises they have experienced, in which they see no other alternative than to seek a divorce from the person to whom they have promised to be married "until death do them apart".

1. Mr Sven Svensson, a Swedish citizen, calls you. He is married to a French woman. In 1995 they married in France. Just before they married they signed a marriage contract (amongst others) choosing French Jurisdiction in a possible divorce and furthermore choosing French as law applicable on their financial relations in case of divorce (and death). After having moved from France, they lived in Texas, USA, for 5 years, and then after another move they have lived in China for one year. They are still residents in China.

Mr Svensson seeks your advice as to where in Europe (if at all) he can seek a divorce? He also naturally wants to know what financial consequences he would face on a possible divorce in the possible forums? Etc.

2. Mrs Dupont, a French citizen, is married to Mr Dupont, another French citizen. They have lived in England during the whole marriage. Mrs Dupont believes that Mr Dupont has been having an affair. She wants to know "her rights", and wants your advice. What do you suggest to her?

3. Mr Smith, an American citizen is married to a Swedish girl, Eva. They live in France. Mr Smith wants to know where he (or his wife) could apply for a divorce and where he would be better off.

4. Mrs Bond, an Italian citizen, is married to an Irish citizen, Mr Bond, and they are resident in Ireland. They have two children, Steve and Sue. She calls you from Italy to

where she has moved (without the consent of Mr Bond), with the children. How would you advise her? What questions would arise? In which country would she be able to seek relief?

5. Mr Olsson, a Swedish citizen, is married to a Greek citizen, Mrs Olsson. They moved to China shortly after the marriage. Mrs Olsson moved to Germany and has lived there for two months when Mr Olsson contacts you. He has himself moved to Turkey, because of his job. They have a Swedish marriage contract. He wants a divorce. Can he apply in Sweden? Or in Germany? Or elsewhere? What other issues would have to be considered? If they have children and they have moved with their mother to Germany, which forum would be applicable? In which country would the question about maintenance for the wife and the children be heard? And which law would be applicable?

We will of course also be open to discussions about similar questions with reference to the introduction of Brussels II bis and also the possible effects of future work within the EU.

Overview and mutual recognition of partnerships in Europe

Practical workshop 2 9.00 - 10.30

Cohabitees Act

Sweden has a Cohabitees Act which entered into force July 1, 2003, which replaced an act from 1987 then called the Joint Home Act.

The Act has a generally applicable and clear definition of the concept of cohabitees, and it also specifies when a cohabitee relationship shall be considered to have ended.

The legislation provides a minimum protection for the weaker party when a relationship ends.

The regulation only regulates the division of the joint home and the joint property, the right to take over a home not included in the division of property and some limitations on the right to dispose their joint home.

There is also an act regulating registered partnerships which will be considered, and legislation in other Nordic countries in regard to cohabitation and registered partnerships.

The question as to whether a cohabitee relationship or registered partnership in another country is recognized in Sweden will also be dealt with.

Marriage and Non-Marital Registered Partnerships - A European Perspective of Private International Law

Overview and mutual recognition of partnerships in Europe

- Private international law: classification, applicable law, recognition, enforcement;
- Marriage: formalities, capacity, recognition, polygamous marriages, Hague Convention, European Convention, Matrimonial Property Regimes, Same Sex Marriage;
- Non-Marital Registered Relationships (NMRR): formalities, capacity, recognition, strong/weak, quasi / Semi – marriage, ICCS Convention 32 Munich 5 September 2007, Family Property Regimes, mixed sex NMRR;
- EU, Harmonisation and Property Regimes: Brussels III.

Future of family contracts, comparative law and European law

Workshop which looks to the future 1 11.00 - 12.30

Future of family contracts, comparative law and European law - Guido Alpa *kindly represented by Giuseppe Conte*

Within the legal systems of the European Members States, family law is founded upon a plethora of extremely varied legal sources. In order to reconstruct the system of sources with regard to agreements involving the family, all of the following need to be taken into account: principles of Community law, and in this regard the Charter of Nice, which has been granted the status of a legally binding document; national constitutional principles; rules laid down in civil codes and statutes; and rules created by judges through case law. In this respect, agreements relating to the family sphere intersect with constitutional values, social values and, in so far as applicable to such agreements, with the ordinary law of contract.

For these reasons, I believe that Community intervention in this matter is to be hoped for, at least in order to govern relations of a transnational nature, while it is also desirable that common legal rules should be drawn up which, as proposed for contract law, may also cover the family law of European Union citizens.

Prenuptial Agreements - Luis Zarraluqui

Marriage breakups are quite frequent and their personal and financial situations are becoming increasingly complex, and therefore it is highly recommended to prevent the consequences of such breakups.

Such preventative action requires either member of the couple to provide more information and to sign an agreement which is not influenced by feelings altered by the causes of the crisis.

Firstly, prenuptial agreements should specifically set out the matrimonial property regime, in order to exclude the application of subsidiary laws, which depend on unknown or sometimes uncertain factors. That would bring legal certainty.

Secondly, these agreements should include provisions on the consequences of divorce as regards any common elements arising from the marriage: children, family home and

their respective financial positions.

At present, these agreements are not regulated by law, and there is no consolidated case law that may allow to foresee whether the applicability of such agreements will be accepted by the Courts. That need is absolutely essential in order to recommend such pre-nuptial agreements, particularly since legal scholars do not agree as regards their limits and requirements.

The recommendation for the Member States to specify their position on the matter is also based on the fact that such agreements would reduce litigation and would be beneficial for families.

Family contracts and the legally certified act - Michel Benichou

Family law seemed to be incompatible with the French notion of contract. It was considered rather that family contracts were an aspect of public policy, and that the parties had few opportunities to avoid them. Certainly property aspects could be a matter for a notarised deed (matrimonial property regime contract).

French lawyers recommend the introduction of a legally certified act (*acte sous signature juridique*) which would be the prerogative of legal professionals.

This act would be drafted by a lawyer in a regulated profession. It would be signed in person by this lawyer, without the option of delegation. It would have strengthened probative force in comparison with the ordinary act, and its date would be certain. It should be preserved under the same conditions as notarised acts.

In family law, this legally certified act could be developed for both property and non-property aspects.

Thus, far from the cumbersome ritual of the notarised act, it is possible to devise new solutions based on the legally certified act which will enable the lawyer to play his full part in the service of the public and individual interests.

Maintenance obligations: conflicts of laws, conflicts of jurisdiction, enforcement of judgments (The Hague Convention and the future European regulation)

Workshop which looks to the future 2 11.00 - 12.30

At international level, litigation on maintenance obligations increases due to the increase of the number of divorce and births outside marriage and to the movement of persons. The creditors of maintenance obligations are, in the international context, often helpless. Three new international instruments will bring serious benefits.

At international level, The Hague Conference has two additional treaties on maintenance obligations since 23 November 2007. After more than four-year long negotiations, more than 70 States, including the European Community, signed the new Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and the first Protocol on the Law Applicable to Maintenance Obligations.

The Convention relies on a solid system of administrative cooperation under which central authorities transmit to each other requests of establishment, recognition, enforcement, and modifications of maintenance judgements. The access to procedures on maintenance established by the Convention is nearly free of charge. The Convention is a flexible instrument which provides for a detailed system of recognition and enforcement fit for all national systems of recovery of maintenance. It offers modern solutions for enforcement and enables public bodies to benefit from the system.

The Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations includes rules which will help the judges to decide on the law application to international litigation on maintenance.

At Community level, the future regulation on maintenance obligations will consist of a comprehensive instrument which will bring solutions to each step in the litigation. Besides the determination of the jurisdiction and the law applicable, the regulation will establish a system of administration cooperation and of legal aid. Furthermore, decisions on maintenance obligations will benefit from the removal of exequatur.

The workshop will present the new instruments and aims to find practical solutions to questions raised by the practitioners.

Brussels II bis and The Hague Convention (illegal removal of children) - Practical cases

Practical workshop 3 14.00 - 15.30

Cross borders abduction are common, whereas the child's best interest requires that access to both parents is protected. For the founding member states of the Hague Convention on civil aspects of international child abduction, the child should be protected against a savage relocation in violation of the custody rights of the other parent. A simple *sui generis* procedure aims to put back the child to the *status quo ante* in order for the court of his habitual residence to rule on the merits. Whereas this convention was signed in 1980, it took 23 years for the European member states to agree on jurisdiction issues in divorce and custody cases and recognition rules. The European regulation 2201/2003 dated 27 November 2003 not only establishes clear rules of jurisdiction on parental responsibility but improves the process of the Hague, granting to the State of habitual residence the "last word" when return is refused on the basis of article 13(b), when a child is seen as endangered by the requested return. Now 27 States are to work together, thus creating a new stable environment for children, granting parents security through automatic recognition of orders on access. England, Estonia and France are all Member States of Europe. We shall, through practical cases, see how their jurisdictions would solve the same questions.

Divorce under common law and in civil law: convergences and divergences

Practical workshop 4 14.00 - 15.30

As France and Germany are poised to finalise a bilateral convention concerning an optional matrimonial property regime of elective community of acquired gains, as a blue-print for possible future European-wide harmonisation of the substantive law of matrimonial finance, this workshop will look at the cultural differences which inform the divergence between the common law and civil law systems (with particular reference to France and England/Wales) and also at the reassuring convergences which exists between French and English law.

The workshop will start by considering the fundamental cultural difference-of-approach to the subjects of party autonomy and the continuation of marital obligations after divorce, in particular in relation to marital contracts, maintenance, and the matrimonial home.

It will go on to examine a number of practical case examples both for comparison and in order to discuss the different approaches of the two legal systems in dealing with commonplace scenarios in family law. And it will demonstrate how enhanced knowledge of the different approach of another legal culture informs the practitioner not only how to deal better with an international family law case in the home jurisdiction but also to understand better the needs of the international client who is involved in a case in a foreign jurisdiction.

The child in the proceedings: hearing of the child and other issues, European and inter-national conventions

Workshop which looks to the future 3 15.45 - 17.15

Children are the most important subject – the heart - of parenting disputes and therefore they are very often involved in legal proceedings. Regarding the safeguard of their welfare the question to be answered is still how the child itself should be represented in the proceedings.

So the intention of the work-shop is to become acquainted with different national and the international legal systems dealing with children in the proceedings and to exchange practical experiences on this field.

Therefore the speakers first will give an introduction to the topic by means of national reports on the current situation with a special focus on custody of children, their situation in the proceedings and the implication of international regulations.

The exchange of practical experiences and a debate on these issues will follow.

As a result of the workshop it is intended to formulate recommendations for principles that are to be observed to protect children and to safeguard their welfare in the proceedings.

Alternative dispute resolution: comparative law and European law

Workshop which looks to the future 4 15.45 - 17.15

This workshop is intended to be an interactive session covering the following:

- Exploring the different methods of ADR in family disputes throughout Europe
- Particular focus on mediation, collaborative law and arbitration in England, Scotland and other parts of Europe
- Brief history of how ADR has developed in England and Scotland and the different types of practice available
- How mediation and collaborative law have been incorporated into domestic and European legislation
- Consideration of the European directive on mediation
- How ADR methods fit in with the practice of international family law
- Other European legislation (in particular the Brussels 1 and Brussels II regulations)
- Comparison of mediation, collaborative law and arbitration including benefits and disadvantages
- Practice of ADR and representative bodies e.g. in England, Resolution and CALM and Family Mediation Scotland in Scotland
- The Future of ADR in Europe

LIST OF SPEAKERS



Mr. Tim Amos QC

Barrister: Family Law, Fellow of the International Academy of Matrimonial Lawyers
London, United Kingdom



Ms. Eva Becker

Lawyer, Junggeburth & Becker: family law
Berlin, Germany



Mr. Michel Benichou

President of the Commission for European and International Affairs of the Conseil National des Barreaux, France
Bordeaux, France



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