

Why do we need uniform private international law in Europe? The emergence of EU PIL

Lecture 1

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1. PIL matters in the absence of uniform rules

The story of the Dutch-Hungarian couple

- A Dutch groom and a Hungarian bride envisage marrying in Hungary.
- After the conclusion of the marriage, they want to settle in Hungary but they may move to the Netherlands afterwards.
- The Hungarian bride has considerable property (several real estates) in Hungary. The Dutch groom has no property at all.
- The bride is concerned that she would lose half her ownership over the real estates due to the marriage.
- Hungarian law follows the community of gains system.
- Dutch law follows the universal (full) community of property system.
- Which law would govern matrimonial property?
- *I promise to be true to you in good times and in bad, in sickness and in health. I will love you and honour you all the days of my life. ...By the way: where shall we divorce?*

If the proceeding is launched in Hungary...

- The law applicable is
 - the common personal law of the spouses at the time of adjudication, failing this,
 - the last common personal law, failing this,
 - the place of the spouses' last common place of living, failing this,
 - the *lex fori* (Hungarian law).
- There is no party autonomy

If the proceeding is launched in the Netherlands...

- Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes (France, Luxembourg, the Netherlands)
- Party autonomy (nationality/habitual residence of one of the spouses)
- In the absence of the parties' choice:
 - first habitual residence,
 - common nationality in certain cases,
 - closest connection.

2. EU competences

EU competences to adopt PIL legislation

- Before the Treaty of Amsterdam the EU had no general competence to adopt PIL rules
- The Treaty of Amsterdam (1997/1999) authorized to EU to adopt PIL legislation
- 'Reservations': UK/Ireland; Denmark
- Before the Treaty of Amsterdam MSs adopted closed multilateral treaties:
 - 1968 Brussels Convention on jurisdiction and recognition/enforcement in civil and commercial matters
 - 1980 Rome Convention on the law applicable to contractual obligations
- Both conventions empowered the ECJ to interpret their provisions through preliminary rulings.

3. Fields and sources of EU PIL

Most important pieces of legislation (1)

- Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation);
- Regulation 1346/2000 on insolvency proceedings (Insolvency Regulation).
- Regulation 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II Regulation);
- Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (Maintenance Regulation)

Most important pieces of legislation (2)

- Regulation 593/2008 on the law applicable to contractual obligations (Rome I Regulation)
- Regulation 864/2007 on the law applicable to non-contractual obligations (Rome II Regulation)
- Regulation 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III Regulation)

Some general features of application

- Jurisdictional rules of Brussels I and Brussels II Regulation
 - only if the defendant is 'from the EU' (place of living/seat- Brussels I; place of living/nationality – Brussels II).
- Recognition/enforcement:
 - if the judgment was rendered by a MS court.
- Conflict rules:
 - universal application.

Legislation under preparation

- Proposal for a COUNCIL REGULATION on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes {COM(2011) 125 final}
- Proposal for a COUNCIL REGULATION on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships {COM(2011) 125 final}
- Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession {SEC(2009) 410}

4. The term 'private international law'

How much? 30! What is 30? What is how much?

- Austrian and German law: strict conceptual delimitation between private international law (in German: '*internationales Privatrecht*') and international procedural law (in German: '*internationales Zivilprozessrecht*')
- English, French and US law: these fields (conflict rules, on the one hand, and jurisdiction, as well as recognition and enforcement, on the other) are normally dealt with jointly.
- EU terminology: broad grasp of PIL

Thank You for your attention!

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