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The next stops on the European international family law train

Ian Sumner*

The private international family law landscape in Europe has changed dramatically since the ratification of the Treaty of Amsterdam in 1997. Long gone are the days where reference to the Hague Conference on Private International Law was sufficient. Since 1997, there is a new player on the block, and that new player has slowly begun to dominate the legislative playing field. An ever-growing body of legislative instruments have been added to the family law arsenal. The entry into force of the Brussels II*bis* Regulation (No. 2201/2003) in 2001 sparked the advent of a new era for legal practitioners across the European Union dealing with private international issues in family law cases. This instrument was the first time that family law practitioners had to get to grips with the Europeanisation of private international family law rules. The Rome III Regulation 650/2012), the Matrimonial Property Regulation (No. 2016/1103), the Registered Partnership Property Regulation (No. 2016/1104) and the recast of the Brussels II*bis* Regulation, the so-called Brussels II*ter* Regulation (No. 2019/1111) have all since been added to the pallet of family law instruments. Alongside these specific family law instruments, the family law practitioner is also confronted with other instruments in the field of general civil and commercial law (Brussels I*bis* Regulation (No. 1215/2015) and the European Protection Order Regulation (No. 6060/2013), the EU Evidence Regulation (No. 2020/1783, repealing Regulation No. 1206/2001) and the EU Service Regulation (No. 2020/1784, repealing Regulation No. 393/2007). To make matters even more complicated a number of the family law instruments have been adopted using the enhanced co-operation mechanism provided for in EU law, ensuring that the geographical application of these instruments is not also identical.

Who could ever have thought that anno 2023, European private international law would dominate the regulation of cross-border family law cases. The continuing legislative unification of European private international family law is, however, not yet complete. Two new proposals have recently been put forward by the European Commission dealing with as yet areas of law currently unregulated by European legislation. The first is the Adult Protection Regulation (COM(2023) 280). Although the Hague Conference has long since adopted the Hague Adult Protection Convention 2000, protection within the European Union is not uniform. Some Member States have ratified this Convention, whilst others have failed to do so. Ratification of the Convention by the European Union itself is not possible (unlike the Hague Maintenance Convention 2007) due to the lack of a provision allowing Regional Economic Integration Or-

* Ian Sumner is Professor of Family Law and Private International Law at Tilburg University, District Court Judge (Family and Juvenile division) at the District Court Zeeland-West-Brabant and editor of the journal.

ganisations to ratify the Convention.[1] The proposed EU Regulation introduces a streamlined set of rules that govern all the traditional private international law questions of jurisdiction, applicable law, recognition and enforcement of judgments, as well as the administrative co-operation. Furthermore, it proposes a set of practical tools including the facilitation of digital communication, the introduction a European Certificate of Representation, and interconnected registers. A second instrument proposed by the European Commission is a Council Decision aimed at obliging Member States to become (or remain) a party to the Hague Adult Protection Convention 2000 (COM(2023) 281). The Commission has opted for two instruments as the objective of these instruments is different, namely that the regulation provides for content-related rules regarding private international law matters in this field, whereas the decision contains the obligation on Member States to ratify the Hague Adult Protection Convention 2000. These two instruments together aim to ensure that vulnerable adults across the European Union are afforded protection in cross-border situations. The call for the European Union to act in this field has been present for many years, with study after study have been conducted calling on the European Union to act.[2] The proposals put forward by the Commission aim to ensure that the legal protection afforded to vulnerable adults (for example suffering from Alzheimer's or other forms of dementia) in cross-border situations is not only more certain but also more uniform across the Union. The proposals, if successful, would ensure that the legal system of protection afforded under the Hague Convention is not replaced within the European Union, but instead supplemented. One example of such interaction is the creation of a European Certificate of Representation. This certificate aims, in a similar fashion to the European Certificate of Succession, to ensure uniform protection for citizens across the Union. All in all, the proposals are long overdue and although there are certainly areas within the proposals that could be further improved upon (for example ensuring that the protection enshrined in the UN Convention for Persons with a Handicap is properly addressed in the proposal), the regulations would provide an enormous step forward in this field of law.

A second initiative is that in the field of parentage; the European Commission has published a proposal aimed at unifying the private international rules in the field of parentage across the European Union (COM(2022) 695). Whether this proposal will see the light of day in legislative form anytime soon is difficult to say. With the EU Presidency in the hands of Hungary (July-December 2024) and Poland (January-June 2025) and given the reticence of these two Member States to further develop rules in the field of cross-border surrogacy, the chances are slim that this proposal will be placed high on the agenda in the upcoming period. However, regardless of the lack of political support for this proposal, the proposal itself requires serious review in my opinion. The current proposal includes for example a set of rules on jurisdiction drafted in a similar fashion to the jurisdictional rules for divorce (based on Article 3 Brussels II*ter* Regulation). Although in the field of divorce a system of alternative bases for jurisdiction can provide for increased flexibility for divorcing couples, in the field of parentage this can lead to rather perverse results. The fact that a child was born in France, should in my opinion, certainly not provide an eternal basis for jurisdiction of the French courts in dealing with all

1 L. Frohn & I. Sumner, 'Protecting vulnerable adults across borders: where do we stand?', *NIPR* 2022, p. 631-649.

2 See references contained in the most recent EU report dealing with the issue: EU Commission, *Study on the Cross-Border Legal Protection of Vulnerable Adults in the EU*, Brussels 2021.

subsequent issues of parentage. If none of the parties are currently residing in France, none of the parties are French citizens and the disputed parentage issue does not have any further connection with France, then the fact that birth took place in France, should not provide a ground for jurisdiction. Problems also arise with respect to the rules on applicable law. According to the proposal in its current form, no clear distinction is drawn between the creation of legal familial ties (in and outside of marriage), and the denial or annulment of such ties (for example the denial of paternity and the nullification of a recognition). One choice of law rule is proposed dealing with all aspects of parentage. The multi-faceted system currently applicable in the Netherlands, whereby a different choice of law rule is applicable depending on how the parental bond is to be established, ensures a more nuanced approach to the establishment and annulment of legal familial ties. These issues are just two of the many issues that will need to be addressed should this proposal be placed on the political agenda in the upcoming years. It is, finally, to be hoped that the European Union will ultimately not opt for the application of enhanced co-operation to further its goals in these two areas. The European private law landscape is already complicated enough, without adding other layers of complexity.[3]

This issue of the Netherlands Journal of Private International Law provides for a varied collection of articles. In the first contribution, Van Houtert analyses the similarities and differences between Dutch communal law and the principle laid down in the new 2019 Hague Judgments Convention. In the second contribution, Krzemiński makes several critical remarks regarding the proposal of the Dutch Standing Committee for Private International Law for a new Article 431 Dutch Code of Civil Procedure (the provision dealing with the recognition and enforcement of foreign decisions in the Netherlands not governed by a supranational instrument). Sequiera deals with a very different issue in the third contribution when examining the applicable law to business-related human rights torts under the Rome II regulation. The content-related contributions are rounded-off with an annotation of the recent CJEU decision in *RJR/ Registrų centras VĮ* (C-354/21) by our own editorial board member, Mathijs ten Wolde. Finally, this issue of *NIPR* is completed with a report of the symposium 'Large-scale national and international claims for damages in criminal procedures: best practices and lessons from the MH17 procedure'. Enjoy reading!

3 See I. Sumner, *Coherence and consistency*, Inaugural address, Tilburg University, 2018.