

PRINCIPLES OF EUROPEAN FAMILY LAW  
REGARDING PROPERTY,  
MAINTENANCE AND SUCCESSION  
RIGHTS OF COUPLES IN *DE FACTO* UNIONS

European Family Law Series

Published by the Organising Committee of the  
Commission on European Family Law

Prof. Katharina Boele-Woelki (Utrecht)

Prof. Frédérique Ferrand (Lyon)

Prof. Cristina González Beilfuss (Barcelona)

Prof. Maarit Jänterä-Jareborg (Uppsala)

Prof. Nigel Lowe (Cardiff)

Prof. Dieter Martiny (Frankfurt/Oder)

Prof. Velina Todorova (Plovdiv)

PRINCIPLES OF EUROPEAN  
FAMILY LAW REGARDING  
PROPERTY, MAINTENANCE  
AND SUCCESSION RIGHTS  
OF COUPLES IN *DE FACTO* UNIONS

Katharina BOELE-WOELKI  
Frédérique FERRAND  
Cristina GONZÁLEZ BEILFUSS  
Maarit JÄNTERÄ-JAREBORG  
Nigel LOWE  
Dieter MARTINY  
Velina TODOROVA

*In collaboration with*

MASHA ANTOKOLSKAIA, ANNE BARLOW, MARGARETA BRATTSTRÖM, NINA DETHLOFF,  
RÓBERT DOBROVODSKÝ, FRANÇOISE HILGER, MILANA HRUSAKOVÁ,  
ACHILLES KOUTSOURADIS, INGA KUDINAVIČIŪTĒ-MICHAILOVIENĒ,  
INESE LĪBIŅA-EGNER, INGRID LUND-ANDERSEN, ANDRZEJ MĄCZYŃSKI,  
JANE MAIR, BARBARA NOVAK, GUILHERME DE OLIVEIRA, MARIA DONATA PANFORTI,  
BRANKA REŠETAR, MARIANNE ROTH, WENDY SCHRAMA, INGEBORG SCHWENZER,  
GEOFFREY SHANNON, SALLA SILVOLA, TONE SVERDRUP, FREDERIK SWENNEN,  
ORSOLYA SZEIBERT, TRIIN UUSEN-NACKE



INTERSENTIA

Intersentia Ltd  
8 Wellington Street | Cambridge  
CB1 1HW | United Kingdom  
Tel.: +44 1223 736 170  
Email: mail@intersentia.co.uk  
www.intersentia.com | www.intersentia.co.uk

*Distribution for the UK and Ireland:*

NBN International  
Airport Business Centre, 10 Thornbury Road  
Plymouth, PL6 7PP  
United Kingdom  
Tel.: +44 1752 202 301 | Fax: +44 1752 202 331  
Email: orders@nbninternational.com

*Distribution for Europe and all other countries:*

Intersentia Publishing nv  
Groenstraat 31  
2640 Mortsel  
Belgium  
Tel.: +32 3 680 15 50 | Fax: +32 3 658 71 21  
Email: mail@intersentia.be

*Distribution for the USA and Canada:*

Independent Publishers Group  
Order Department  
814 North Franklin Street  
Chicago, IL 60610  
USA  
Tel.: +1 800 888 4741 (toll free) | Fax: +1 312 337 5985  
Email: orders@ipgbook.com

*Distribution for Germany and Switzerland:*

Stämpfli Verlag AG  
Wölflistrasse 1  
Postfach 5662  
3001 Bern  
Switzerland  
Tel.: +41 31 300 66 77  
Email: verlag@staempfli.com

Principles of European Family Law Regarding Property, Maintenance and Succession  
Rights of Couples in *de facto* Unions

© Katharina Boele-Woelki, Frédérique Ferrand, Cristina González Beilfuss, Maarit Jänterä-Järeborg, Nigel Lowe, Dieter Martiny, Velina Todorova 2019

The authors have asserted the right under the Copyright, Designs and Patents Act 1988, to be identified as authors of this work.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Intersentia at the address above.

ISBN 978-1-78068-788-9

D/2019/7849/85

NUR 822

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

# PREFACE

## *The Commission on European Family Law and its Principles of European Family Law*

The Commission on European Family Law (CEFL), which was established in September 2001, drafts common principles that are thought to be the most suitable for the harmonisation of family law in Europe.<sup>1</sup> The Principles of European Family Law Regarding Divorce and Maintenance between Former Spouses were published in 2004,<sup>2</sup> the Principles Regarding Parental Responsibilities in 2007<sup>3</sup> and the Principles Regarding Property Relations Between Spouses in 2013.<sup>4</sup> This book contains the Principles Regarding Property, Maintenance and Succession Rights of Couples in *de facto* Unions.

### *Aims and objectives*

The CEFL's activities are intended to produce results that may be used for specific practical and academic purposes. First and foremost, the Principles are addressed to national legislators in their quest to modernise their national family law. They also function as a source of inspiration for both the European and international legislatures. The Principles are spelt out in provisions but these must be read in conjunction with the comments, which elucidate the rules and offer comparative information. These comments are part and parcel of the Principles. The Principles could considerably facilitate the task of legislators because, on the one hand, CEFL's in-depth and comprehensive comparative research is easily accessible and, on the other hand, many of the rules have been drafted in a manner that legislators often consider to be appropriate. Some, but not all, of the Principles have been drafted so that they could be implemented in a national system. Second, research into the effectiveness of national solutions in the field of family law can largely profit from the CEFL's results. The drafting of the Principles is based on an evaluation of the legal institutions, legal solutions

---

<sup>1</sup> BOELE-WOELKI, 'The Commission on European Family Law: Taking Stock After Almost 20 Years', in: BOELE-WOELKI/MARTINY (eds), *Plurality and Diversity of Family Relations in Europe*, European Family Law series, Vol. 45, 2019.

<sup>2</sup> European Family Law series, Vol. 7.

<sup>3</sup> European Family Law series, Vol. 16.

<sup>4</sup> European Family Law series, Vol. 33.

and norms of the various legal orders, which express the hierarchy of values inherent in every legal order, although to different degrees. It is to be expected that future scientific research in the field of the harmonisation of family law in Europe to be carried out by individual researchers or eventually research teams will necessarily refer to and compare national solutions with the CEFL Principles. Third, the CEFL's comparative material contains comprehensive information about initially 22 and currently 29 family law systems in Europe and it has been regularly consulted by practitioners. Specific information about, for instance, the divorce grounds in GREECE or the position of the new partner of the parent who holds parental responsibilities in respect of the child under FINNISH law or the administration of community property in THE NETHERLANDS is easily accessible and may help in those cases where lawyers seek information about the precise content of foreign family law. In addition, all national reports are written in English, which in most cases facilitates access to those national systems where the official language is not English, French or German. The often difficult legal translations have thus already been done by national experts.

### *Organisation*

The CEFL is a Foundation according to Dutch law. It has its seat at Utrecht University's Molengraaff Institute for Private Law, Newtonlaan 201, NL – 3584 BH Utrecht, [www.ceflonline.nl](http://www.ceflonline.nl). Charlotte Mol, PhD researcher at the Utrecht Centre for European Research into Family Law (UCERF) of the Molengraaff Institute for Private Law at Utrecht University's School of Law, heads CEFL's secretariat and holds the position of webmaster.

### *Organising Committee and Experts*

The CEFL comprises of the *Organising Committee* (Katharina Boele-Woelki (chair), Frédérique Ferrand, Cristina González Beilfuss, Maarit Jänterä-Jareborg, Nigel Lowe, Dieter Martiny and Velina Todorova) and the *Expert Group*, which at present has 33 persons. The Organising Committee prepares and coordinates the work of the CEFL as a whole. The Expert Group comprises specialists in the field of family and comparative law from most of the Member States of the European Union with the involvement of experts from other European countries, such as Norway, Russia and Switzerland. The members of the Organising Committee are also members of the Expert Group.

The following experts contributed to the drafting of the Principles Regarding Property, Maintenance and Succession Rights of Couples in *de facto* Unions through the writing of a national report and taking part in the discussions at the CEFL expert meeting. Several experts wrote their national reports together with

co-authors. Their names are mentioned both on the CEFL's website and listed in the integrated version of all national reports.<sup>5</sup>

AUSTRIA	<i>Prof. Marianne Roth</i> University of Salzburg
BELGIUM	<i>Prof. Frederik Swennen</i> University of Antwerp
BULGARIA	<i>Dr. Velina Todorova</i> Plovdiv University
CROATIA	<i>Dr. Branka Rešetar</i> University of Osijek
CZECHIA	<i>Prof. Milana Hrusaková</i> Palacký University, Olomouc
DENMARK	<i>Prof. Ingrid Lund-Andersen</i> University of Copenhagen
ENGLAND AND WALES	<i>Prof. Anne Barlow</i> University of Exeter <i>Prof. em. Nigel Lowe</i> University of Cardiff
ESTONIA	<i>Dr. Triin Usen-Nacke</i> Tartu County Court
FINLAND	<i>Dr. Salla Silvola</i> Ministry of Justice
FRANCE	<i>Prof. Frédérique Ferrand</i> University Jean Moulin Lyon 3
GERMANY	<i>Prof. Nina Dethloff</i> University of Bonn <i>Prof. em. Dieter Martiny</i> European University Viadrina
GREECE	<i>Prof. Achilles G. Koutsouradis</i> University of Thessaloniki
HUNGARY	<i>Dr. Orsolya Szeibert</i> Eötvös Loránd University

<sup>5</sup> BOELE-WOELKI/MOL/VAN GELDER, *European Family Law in Action, Volume V: Informal Relationships*, European Family Law series, Vol. 38, 2019, pp. xvii–xx.

IRELAND	<i>Prof. Geoffrey Shannon</i> Law Society of Ireland
ITALY	<i>Prof. Maria Donata Panforti</i> University of Modena and Reggio Emilia
LATVIA	<i>Dr. Inese Lībiņa-Egner</i> Vice-president of the Latvian Parliament
LITHUANIA	<i>Dr. Inga Kudinavičiūtė-Michailovienė</i> Mykolas Romeris University
LUXEMBOURG	<i>Dr. Françoise Hilger</i> University of Luxembourg
THE NETHERLANDS	<i>Prof. Wendy Schrama</i> Utrecht University
NORWAY	<i>Prof. Tone Sverdrup</i> University of Oslo
POLAND	<i>Prof. Andrzej Mączyński</i> Jagiellonian University of Kraków
PORTUGAL	<i>Prof. Guilherme de Oliveira</i> University of Coimbra
RUSSIA	<i>Prof. Masha Antokolskaia</i> Free University of Amsterdam
SCOTLAND	<i>Prof. Jane Mair</i> University of Glasgow
SLOVAKIA	<i>Dr. Róbert Dobrovodský</i> Ministry of Justice, Trnava
SLOVENIA	<i>Prof. Barbara Novak</i> University of Ljubljana
SPAIN	<i>Prof. Cristina González Beilfuss</i> University of Barcelona
SWEDEN	<i>Prof. Margareta Brattström</i> Uppsala University <i>Prof. Maarit Jänterä-Jareborg</i> Uppsala University
SWITZERLAND	<i>Prof. Ingeborg Schwenzer</i> University of Basel



### *Meetings*

The meetings of the Organising Committee during which the Principles Regarding Property, Maintenance and Succession Rights of Couples in *de facto* Unions were prepared and drafted took place in:

BONN	29 August 2013
CARDIFF	13–15 June 2014
LYON	4–6 September 2015
HAMBURG	1–3 April 2016
HAMBURG	8–12 February 2017
SOFIA	31 August–3 September 2017

The meeting of the *Expert Group* during which the draft of the Principles on *de facto* Unions was discussed took place in:

HAMBURG	1 November 2018
---------	-----------------

The views expressed by the Expert Group were discussed by the Organising Committee in:

LYON	25–26 February 2019
------	---------------------

### *Conferences*

The essence of the work carried out by the CEFL is such that it needs constant backing in a broader academic forum. For this purpose, the CEFL organises family law conferences on a regular basis. All conference proceedings were published in the European Family Law series. To date the following conferences took place:

UTRECHT	11–14 December 2002
UTRECHT	9–11 December 2004
OSLO	7–9 June 2007
CAMBRIDGE	8–10 April 2010
BONN	29–31 August 2013
HAMBURG	1–3 November 2018

*European Family Law series*

The CEFL's Organising Committee established the *European Family Law* series which includes comparative legal studies and materials as well as studies on the effects of international and European law-making within the national legal systems in Europe. The books in this series are published by the Belgian publisher Intersentia (Antwerp-Cambridge-New York) in cooperation with the Swiss publisher Stämpfli (Bern). Since March 2003, 45 volumes have been published in the series. Further information is available at CEFL's website, [ceflonline.net](http://ceflonline.net).

*Financial support*

In 2011, Katharina Boele-Woelki received the Anneliese Maier Research Award of the Alexander von Humboldt Foundation (Bonn) for the period 2012–2017. The expenses incurred by the CEFL meetings and the CEFL conferences of 2013 and 2018 were met by this grant.

Katharina Boele-Woelki

Chair of the Commission on European Family Law

# CONTENTS

<i>Preface</i> .....	v
The Work of the Commission on European Family Law .....	1
Introduction to the Principles Regarding Property, Maintenance and Succession Rights of Couples in <i>de facto</i> Unions .....	7
Preamble .....	51
Chapter I: Definitions and Scope of Application .....	55
Principle 5:1 Definitions .....	55
Principle 5:2 Scope of application .....	64
Principle 5:3 Existing formal relationships .....	66
Chapter II: General Rights and Duties .....	69
Principle 5:4 Equality of the partners .....	69
Principle 5:5 Contribution to the expenses of the household .....	72
Principle 5:6 Protection of the family home and household goods .....	82
Principle 5:7 Freedom to enter into agreements .....	94
Chapter III: Agreements .....	103
Principle 5:8 Timing of agreements .....	103
Principle 5:9 Scrutiny by the competent authority .....	105
Chapter IV: Property and Debts .....	113
Principle 5:10 Property relationship between partners .....	113
Principle 5:11 Acquisition of property .....	121
Principle 5:12 Presumption of joint ownership .....	128
Principle 5:13 Personal and joint debts .....	138
Principle 5:14 Recovery of debts .....	142
Chapter V: Separation .....	147
Principle 5:15 Property rights upon separation .....	147
Principle 5:16 Compensation for contribution to the property, business or profession of the other partner .....	154

Principle 5:17 Compensation for contributions to the household . . . . .	162
Principle 5:18 Family home and household goods . . . . .	168
Principle 5:19 Self-sufficiency. . . . .	172
Principle 5:20 Maintenance . . . . .	175
Principle 5:21 Limitation in time and method of payment . . . . .	191
Chapter VI: Death . . . . .	195
Principle 5:22 Right to occupancy of the family home. . . . .	195
Principle 5:23 Testamentary succession . . . . .	201
Principle 5:24 Succession upon intestacy . . . . .	216
Principle 5:25 Right of claim against the deceased's estate. . . . .	223
Chapter VII: Disputes . . . . .	229
Principle 5:26 Treating disputes as a family matter. . . . .	229
Principle 5:27 Alternative dispute resolution. . . . .	235
Principles of European Family Law Regarding Property, Maintenance and Succession Rights of Couples in <i>de facto</i> Unions . . . . .	241
Principes de droit européen de la famille relatifs au patrimoine, à l'entretien et aux droits de succession des couples vivant en union de fait . . . . .	247
Prinzipien zum Europäischen Familienrecht betreffend Vermögen, Unterhalt und Erbrechte für Paare in faktischen Partnerschaften . . . . .	253
Beginselen van Europees Familierecht betreffende vermogen, alimentatie en erfrechten voor paren in <i>de facto</i> partnerschappen . . . . .	261
Principios de derecho de familia europeo relativos a la propiedad, los alimentos y los derechos de sucesión de parejas en una unión de hecho. . . . .	267
Europeiska Familjerättsprinciper rörande rättigheter till egendom, underhåll samt arv i faktiska partnerskap mellan par. . . . .	275