

JUXTAPOSING LEGAL SYSTEMS AND THE PRINCIPLES OF
EUROPEAN FAMILY LAW ON DIVORCE AND MAINTENANCE

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DIVORCE AND MAINTENANCE**

Edited by
ESİN ÖRÜCÜ and JANE MAIR



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PREFACE

Following the publication of *Principles of European Family Law Regarding Divorce and Maintenance Between Former Spouses* by the Commission on European Family Law (CEFL) that was set up in September 2001 with a team of specialists from twenty-two jurisdictions to carry out research in the field of comparative family law, it was considered worthwhile to produce an edited volume to assess the reality of legal systems in view of the Principles, and the Principles in view of the reality of these legal systems.

The CEFL hoped to create a source of inspiration to legislators in the process of modernising their national family laws. “Functional equivalence” was sought and both the “common core” and “better law” approaches were adopted. The drafters chose “the best”, “the more functional” and the “most efficient” rules, their touchstone being the modernisation of the law. So, these CEFL Principles are not merely restatements of family laws in Europe, but contributions towards the establishment of a European Family Law.

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. For our purposes, after an introductory overview, it was deemed appropriate first to re-test the Principles in a sample of legal systems already considered by the CEFL: France, one head of the civilian tradition; Scandinavia, a variation on the civilian theme; England, the mother of the common law tradition, Scotland, a mixed jurisdiction that has gained popularity within the European Union as a model; and then, to test the Principles in the untested: Malta, a new EU member with a conservative background; Estonia and Lithuania, two new EU members with a socialist background but different socio-cultures; and Turkey, a country bridging two cultures and aspiring to membership of the EU.

The final part of the volume is a comparative assessment of our findings. One study looks at the Principles as harmonious ideals, the other looks at the shortfalls in the ideals as presented and the obstacles to harmonisation.

ESİN ÖRÜCÜ and JANE MAIR
1 March 2007

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TABLE OF CONTENTS

PREFACEv

LIST OF AUTHORS..... vii

INTRODUCTORY OVERVIEW

COMMON CULTURES AND DIVERSE LAWS – COMMON LAWS AND DIVERSE CULTURES

ESİN ÖRÜCÜ and JANE MAIR.....3

1. Introducing the topic3

1.1. The European scene, the Commission on European Family Law and its work.5

1.1.1. The European Scene5

1.1.2. Commission on European Family Law (CEFL) and its work.....7

2. The general outline of the principles11

3. The aim of this research.....12

3.1. Inception of the research12

3.2. Choice of systems.....13

3.3. Assessment of Legal Systems and CEFL Principles14

4. Concluding remarks.....15

PART ONE – RE-TESTING THE TESTED: THE SAME AND THE DIFFERENT

FRANCE AND THE PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING DIVORCE AND MAINTENANCE BETWEEN FORMER SPOUSES

JOËLLE GODARD and GAËL HENAFF19

1. Introduction.....19

2. Divorce20

2.1. General Principles20

2.2. Divorce by mutual consent.....22

- 2.3. Divorce without the consent of one of the spouses25
- 3. Maintenance between former spouses.....29
 - 3.1. General Principles29
 - 3.2. Conditions for the Attribution of Maintenance31
 - 3.3. Specific Issues33
- 4. General conclusion35

DIVORCE SYSTEM AND MAINTENANCE OF FORMER SPOUSES IN SCANDINAVIAN COUNTRIES

- URPO KANGAS37
- 1. The myth of joint Scandinavia and the myth of the joint legislation in Nordic Countries.37
- 2. The compulsory end of joint family life during and after marriage38
- 3. General principles of divorce39
 - 3.1. Permission of divorce39
 - 3.2. Procedure by law and competent authority.....41
 - 3.3. Types of divorce42
 - 3.4. Divorce by mutual consent.....42
 - 3.5. Divorce without the consent of one of the spouses 44
 - 3.6. Exceptional hardship to the petitioner.....45
 - 3.7. Determination of the consequences46
- 4. Maintenance between spouses47
 - 4.1. Maintenance during the marriage47
 - 4.2. Maintenance between former spouses48
 - 4.3. Conditions for the attribution of maintenance.....49
 - 4.4. Determining claims for maintenance.....49
 - 4.5. Method of maintenance provision51
 - 4.6. Exceptional hardship to the debtor spouse51
 - 4.7. Specific issues52
 - 4.7.1. Multiplicity of maintenance claims52
 - 4.7.2. Limitation in time52
 - 4.7.3. Termination of the maintenance obligation53
 - 4.7.4. Maintenance agreement.....53
- 5. Conclusion54

ENGLAND AND WALES JUXTAPOSED TO THE EUROPEAN PRINCIPLES OF FAMILY LAW

REBECCA PROBERT	55
1. Introduction	55
2. Reforming divorce law	55
2.1. The principle that the law should permit divorce and that no duration of the marriage should be required	56
2.2. The principle that divorce should be granted by a competent body	59
2.3. The principle that the law should permit divorce by mutual consent without any period of separation	60
2.4. The principle that the law should permit unilateral divorce after a period of separation, save where delay would cause exceptional hardship to the petitioner	62
3. Maintenance between former spouses	65
3.1. The principle that maintenance is not dependent on the type of divorce	66
3.2. The ideal of self-sufficiency	66
3.3. Needs-based maintenance	67
3.4. Factors to be taken into account	67
3.5. The mode of providing maintenance	68
3.6. Circumstances in which maintenance should be denied	68
3.7. Multiplicity of maintenance claims	69
3.8. Time-limited	70
3.9. Circumstances in which maintenance should cease	70
3.10. Maintenance agreements	71
4. Conclusion	72

COMMON PRINCIPLES AND PURPOSES? SCOTS LAW AND THE COMMISSION ON EUROPEAN FAMILY LAW

JANE MAIR	75
1. Divorce in Scots law: an introduction	75
2. The CEFL principles: divorce	77
2.1. General Principles	77
2.2. Types of divorce	79
2.2.1. Divorce by mutual consent	80
2.2.2. Reflection period and agreements	80
2.2.3. Divorce without consent	81
2.2.4. Exceptional hardship to the petitioner	82

2.2.5. Agreements.....	.83
2.3. Scots law and the CEFL Principles: Some Conclusions.....	.84
3. Maintenance – Financial provision in Scots law; an introduction.....	.85
3.1. Spousal aliment and separation of property.....	.86
3.2. Financial provision on divorce.....	.87
3.3. The 1985 Act: orders and principles.....	.88
3.4. Maintenance and Financial Provision: Common Purposes?.....	.91
4. Conclusions.....	.95

PART TWO – DIVERSITY IN THE NEW MEMBERS OF THE EUROPEAN UNION: CAN THERE BE ONE WAY FORWARD?

THE POSITION IN MALTA JUXTAPOSED TO THE PRINCIPLES OF EUROPEAN FAMILY LAW: DIVORCE AND MAINTENANCE

RUTH FARRUGIA.....	.99
1. Introduction.....	.99
2. Matrimonial Breakdown.....	100
2.1. Marriage.....	100
2.1.1. History – Canon Law – the Constitution.....	100
2.1.2. Marriage Act 1975 Chapter 255-Laws of Malta.....	101
2.2. Annulment.....	103
2.2.1. Definition.....	103
2.2.2. Effects of Annulment.....	104
2.2.3. Recognition of canonical annulments.....	105
2.2.4. Marriages of Convenience.....	108
2.3. Divorce.....	108
2.3.1. Position in Malta.....	108
2.3.2. Registration of foreign divorce judgement.....	109
2.4. Personal Separation.....	110
2.4.1. Chapter 16 – Laws of Malta.....	110
2.4.2. Grounds.....	111
2.4.3. Effects according to Grounds.....	111
3. Maintenance.....	113
3.1. Spouses.....	114
3.1.1. Competition for maintenance.....	114
3.1.2. Loss of right to maintenance.....	114
3.1.3. Quantum of maintenance.....	115
3.1.4. Lump sum payments.....	115

3.2.	Children	116
3.2.1.	Parental responsibility	116
3.2.2.	Court intervention	117
4.	Link to Brussels II – Regulation 2201/2003	117
4.1.	Jurisdiction	118
4.2.	Recognition and enforcement	119
5.	Juxtaposition and Comparison with Principles	119
5.1.	Permission of divorce: Principle 1:1	119
5.2.	Divorce procedure: Principle 1.2	120
5.3.	Types of divorce: Principle 1:3	120
5.4.	Mutual consent: Principle 1:4	120
5.5.	Reflection period: Principle 1:5	121
5.6.	Content and form of the agreement: Principle 1:6	121
5.7.	Determination of the consequences: Principle 1:7	122
5.8.	Factual separation: Principle 1:8	122
5.9.	Exceptional hardship to the petitioner: Principle 1:9	122
5.10.	Determination of the consequences: Principle 1:10	123
5.11.	Relationship between maintenance and divorce: Principle 2:1	123
5.12.	Self sufficiency: Principle 2:2	124
5.13.	Conditions for maintenance: Principle 2:3	124
5.14.	Determining claims for maintenance: Principle 2:4	124
5.15.	Method of maintenance provision: Principle 2:5	125
5.16.	Exceptional hardship to the debtor spouse: Principle 2:6	126
5.17.	Multiplicity of maintenance claims: Principle 2:7	126
5.18.	Limitation in time: Principle 2:8	127
5.19.	Termination of the maintenance obligation: Principle 2:9	127
5.20.	Maintenance agreement: Principle 2:10	127

DIVORCE AND MAINTENANCE BETWEEN FORMER SPOUSES IN ESTONIA AND THE CEFL PRINCIPLES

	TRIIN GÖTTIG, LIIS HALLIK and TRIIN UUSEN-NACKE	129
1.	Introduction	129
1.1.	History of Divorce law	129
1.2.	Contemporary divorce law	132
2.	Divorce	133
2.1.	General	133
2.1.1.	General principles of divorce	133
2.1.2.	About divorce statistics in Estonia	134

2.1.3.	Competent authorities in the divorce proceedings and the date of termination of marriage upon divorce	135
2.2.	Agreement as a ground for divorce	136
2.2.1.	Divorce by mutual consent as an independent ground for divorce	136
2.2.2.	Divorce proceedings upon divorce by mutual consent	137
2.2.3.	Reflection period	138
2.2.4.	Agreement of spouses on the consequences of divorce	138
2.3.	Dissolution of marriage as a ground for divorce	141
2.3.1.	Ascertainment of dissolution of marriage	141
2.3.2.	Factual separation	143
2.3.3.	Reflection period	144
2.3.4.	Agreement of spouses on the consequences of divorce	146
3.	Maintenance between former spouses	147
3.1.	General remarks on maintenance between former spouses	147
3.1.1.	The principle of self-sufficiency and state assistance	147
3.1.2.	Right to receive maintenance from a family member, including a former spouse	149
3.1.3.	Relationship between a former spouse's right to maintenance and joint property regime and the grounds for divorce	151
3.2.	Specific issues concerning maintenance between former spouses	152
3.2.1.	Creation of the right to receive maintenance	152
3.2.2.	Termination of the maintenance obligation	155
3.2.3.	Payment of maintenance	157
3.2.4.	The amount of support	159
3.2.5.	Exemption from and restriction of maintenance obligation	161
3.2.6.	Multiplicity of maintenance claims	161
3.2.7.	Maintenance agreement	163
4.	Conclusions	164

LEGAL REGULATION OF DIVORCE IN THE CIVIL CODE OF THE REPUBLIC OF LITHUANIA AS COMPARED TO THE CEFL PRINCIPLES

INGA KUDINAVICIUTE-MICHAILOVIENE167

1.	Introduction	167
2.	Divorce	168
3.	Maintenance between former spouses	174

4. Conclusion	180
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PART THREE – AN ASPIRANT CANDIDATE: DO VALUES CLASH?

TURKISH FAMILY LAW FACING THE PRINCIPLES OF EUROPEAN FAMILY LAW

ESİN ÖRÜCÜ	183
1. Introduction	183
2. Setting the Turkish Scene	185
2.1. The Importance of Civil Marriage for the Official Legal System ..	185
2.2. A Woman’s Surname	187
3. Specific Issues Relevant to our Research Areas	188
3.1. Matrimonial Property	188
3.2. Grounds for Divorce	190
3.3. Consequences of Divorce	196
3.4. Parental Rights and Custody	198
4. Assessment thus far	198
5. Turkish Family Law Juxtaposed to the Principles of European Family Law	201
5.1. Divorce	201
5.1.1. General Principles	201
5.1.2. Divorce by Mutual Consent	202
5.1.3. Divorce without the consent of one of the spouses	203
5.2. Maintenance Between Former Spouses	204
5.2.1. General Principles	204
5.2.2. Conditions for the attribution of maintenance	205
5.2.3. Specific Issues	207
6. Concluding Remarks	208

PART FOUR – COMPARATIVE ASSESSMENT

THE NATIONAL LEGAL SYSTEMS JUXTAPOSED TO THE CEFL PRINCIPLES: HARMONIOUS IDEALS?

JANE MAIR	213
1. Chapter I: Divorce	215
1.1. Part I: General Principles	215
1.1.1. Principle 1:1	215
1.1.2. Principle 1:2	216

1.1.3.	Principle 1:3	217
1.2.	Chapter II	217
1.2.1.	Principle 1:4	217
1.2.2.	Principle 1:5	220
1.2.3.	Principle 1:6	221
1.2.4.	Principle 1:7	222
1.3.	Chapter III.	224
1.3.1.	Principle 1:8	224
1.3.2.	Principle 1:9	225
1.3.3.	Principle 1:10	225
2.	Part II: Maintenance.	226
2.1.	Chapter I: General Principles.	226
2.1.1.	Principle 2:1	226
2.1.2.	Principle 2:2	227
2.2.	Chapter II: Conditions for the attribution of maintenance	228
2.2.1.	Principle 2:3	228
2.2.2.	Principle 2:4–2:7	229
2.2.3.	Principle 2:8 and 2:9	230
2.2.4.	Principle 2:10	230
3.	Conclusions	230

**THE PRINCIPLES OF EUROPEAN FAMILY LAW PUT TO THE TEST:
DIVERSITY IN HARMONY OR HARMONY IN DIVERSITY?**

	ESIN ÖRÜCÜ	233
1.	Introduction.	233
2.	Harmony may be necessary but CEFL Principles have short-falls	234
2.1.	Divorce.	235
2.1.1.	General Principles.	235
2.1.2.	Divorce by mutual consent	237
2.1.3.	Divorce without the consent of one of the spouses	240
2.2.	Maintenance.	241
2.2.1.	General Principles.	241
2.2.2.	Conditions for the attribution of maintenance	242
2.2.3.	Specific issues.	246
3.	Harmonisation is rejected as a top-down model.	250

ANNEXES: THE QUESTIONNAIRE AND THE PRINCIPLES

**QUESTIONNAIRE: GROUNDS FOR DIVORCE AND MAINTENANCE
BETWEEN FORMER SPOUSES 257**

**PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING DIVORCE
AND MAINTENANCE BETWEEN FORMER SPOUSES. 265**

