

**JUXTAPOSING LEGAL SYSTEMS AND THE PRINCIPLES OF
EUROPEAN FAMILY LAW ON PARENTAL RESPONSIBILITIES**

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Edited by

ESİN ÖRÜCÜ and JANE MAIR



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Esin Örucü and Jane Mair (eds.)

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PREFACE

We considered it worthwhile to produce once again an edited volume with the aim to assess the reality of legal systems in view of the Principles, and the Principles in view of the reality of these legal systems, following the publication of “Principles of European Family Law Regarding Parental Responsibilities” by the Commission on European Family Law (CEFL).

In the hope of creating a source of inspiration for legislators in the process of modernising their national family laws, the CEFL seeks “functional equivalence” and adopts both the “common core” and “better law” approaches. As a rule, the drafters choose “the best”, “the more functional” and the “most efficient” rules. Their touchstone is the modernisation of the law. Therefore, these CEFL Principles are not merely restatements of family laws in Europe, but contributions towards the establishment of a European Family Law.

Believing that 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, we launched into our project. For our purposes, it was deemed appropriate first to test the Principles in the untested: Scotland, a mixed jurisdiction that has gained popularity within the European Union; Malta, a more recent EU member with a conservative background, Estonia, another more recent EU member with a socialist background; Romania, a new comer into the EU with a socialist background but a socio-culture different to Estonia; and finally Turkey, a country bridging eastern and western values and aspiring to membership of the EU. Next, the Principles were re-tested in two legal systems already considered by the CEFL: Denmark, a variation on the civilian theme, where changes have occurred in 2007 after the national report was prepared and the Principles formulated; and England, the mother of the common law tradition, where there are also some new developments.

The volume starts with an introductory overview and closes with a comparative assessment of our findings. Though this part considers the Principles as harmonious ideals, it is also critical of the shortfalls in the ideals as presented, and views the obstacles to harmonisation.

Our colleague Joelle Godard who had undertaken to contribute to our volume by juxtaposing the Principles to French law, as she had done in the previous volume on Divorce and Maintenance Between Former Spouses, recently suddenly passed away and we would like to dedicate this volume to her.

Jane Mair and Esin Örüçü
1 April 2009

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TABLE OF CONTENTS

PREFACE	v
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LIST OF AUTHORS.....	vii
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INTRODUCTORY OVERVIEW

CATERING FOR DIVERSE CULTURES THROUGH HARMONISED NORMS

ES'İN ÖRÜCÜ and JANE MAIR	3
1. Introducing the topic.....	3
1.1. The European scene and the work of the Commission on European Family Law	4
1.1.1. The European Scene.....	4
1.1.2. The work of the Commission on European Family Law (CEFL)	6
2. The general outline of the principles.....	8
3. The aim of the present research	12
3.1. Inception.....	12
3.2. Choice of systems	13
3.3. Assessment of legal systems and CEFL principles.....	14
4. Concluding remarks.....	15

PART ONE – TESTING THE UNTESTED: CAN THERE BE ONE WAY FORWARD?

PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING PARENTAL RESPONSIBILITIES AND THEIR IMPLICATIONS FOR ESTONIA

LIIS HALLIK, TRIIN GÖTTIG and TRIIN UUSEN-NACKE	19
1. General	19
2. Contents of parental responsibilities	21
2.1. Care.....	21
2.2. Determination of residence.....	22

2.3. Education	23
2.4. Religious upbringing.....	24
2.5. Disciplinary measures and corporal punishment	25
2.6. Medical treatment	26
2.7. Statutory representation	26
2.8. The child’s right to be heard.....	27
2.9. The right to administer the child’s property	28
3. Attribution of parental responsibilities	30
3.1. Married and unmarried parents	30
3.2. Other persons.....	34
4. Exercise of parental responsibilities.....	39
4.1. Interests of the child.....	39
4.2. Joint and sole parental responsibilities.....	40
5. Contact	41
5.1. Contact with parents and other persons.....	41
5.2. Contact arrangements	43
5.3. Breach of the right to contact.....	45
6. Delegation of parental responsibilities	45
7. Termination of parental responsibilities	45
8. Discharge of parental responsibilities.....	46
9. Procedural issues.....	49
9.1. Competent authorities.....	49
9.2. Alternative dispute resolution mechanisms.....	50
9.3. The position of a child in proceedings	52
9.4. Enforcement of agreements and orders	53
10. Summary.....	55

PRINCIPLES RELATING TO PARENTAL RESPONSIBILITY AND AUTHORITY IN MALTA

RUTH FARRUGIA	61
1. Introduction.....	61
2. Definitions.....	62
3. Rights of the child.....	70
4. Parental responsibilities of parents and third persons.....	74
5. Exercise of parental responsibilities.....	77
5.1. Parents.....	77
5.2. Third persons	80
6. Content of parental responsibilities	80
6.1. The child’s person and property.....	80
6.2. Maintenance of personal relationships	89
7. Termination of parental responsibilities	91
8. Discharge and restoration of parental responsibilities	93

9.	Procedure	96
10.	Conclusion	99

PARENTAL PROTECTION IN ROMANIAN LAW JUXTAPOSED TO THE CEFL PRINCIPLES

	FLAVIUS A. BAIAS, MARIETA AVRAM and CRISTINA NICOLESCU	103
1.	General issues	103
2.	The content of parental protection	110
3.	The attribution of parental protection	123
	3.1. The situation of married parents	123
	3.2. The situation of unmarried parents	126
	3.3. Other persons	128
4.	The exercise of parental responsibilities	131
	4.1. Interests of the child	131
	4.2. Joint parental responsibilities	134
	4.3. Sole parental responsibilities	142
5.	Contact	144
6.	Delegation of parental responsibilities	149
7.	Discharge of parental responsibilities	150
8.	Procedural issues	153

SCOTS LAW AND THE CEFL PRINCIPLES REGARDING PARENTAL RESPONSIBILITIES: HARMONY IN PRINCIPLE

	JANE MAIR and IAN SHARPE	161
1.	Introduction	161
2.	Responsibilities and rights	162
3.	Rights of the child	163
4.	Parental responsibilities of parents and third parties	171
5.	Exercise of parental responsibilities	175
	5.1. Parents	175
	5.2. Third persons	176
6.	Content of parental responsibilities	178
	6.1. The child's person and property	178
	6.2. Maintenance of personal relationships	185
7.	Termination of parental responsibilities	187
8.	Discharge and restoration of parental responsibilities	188
9.	Procedure	189
10.	Concluding remarks	192

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

THE CEFL PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING PARENTAL RESPONSIBILITIES AND DANISH LAW

	ANNETTE KRONBORG and CHRISTINA G. JEPPESEN DE BOER	195
1.	Introduction.....	195
2.	Parental responsibilities.....	197
2.1.	Definitions.....	197
2.2.	Rights of the child	198
2.3.	Parental responsibilities of parents and third persons	200
2.4.	Exercise of parental responsibilities	202
2.5.	Third persons	205
2.6.	Content of parental responsibilities	205
2.7.	Maintenance of personal relationships.....	207
2.8.	Termination of parental responsibilities.....	209
2.9.	Discharge and restoration of parental responsibilities.....	209
2.10.	Procedure.....	210
3.	Final assessment.....	211

A MORE PRINCIPLED APPROACH TO PARENTAL RESPONSIBILITY IN ENGLAND AND WALES?

	REBECCA PROBERT, STEPHEN GILMORE and JONATHAN HERRING	213
1.	Introduction.....	213
2.	The concept of parental responsibility.....	213
3.	Parental responsibility and the rights of the child.....	215
4.	The possession of parental responsibility.....	218
5.	The exercise of parental responsibility.....	221
6.	The content of parental responsibility	223
7.	Ending parental responsibilities	228
8.	Procedure	229
9.	Conclusion	230

PART THREE – AN ASPIRANT CANDIDATE: DO VALUES CLASH?**HOW DOES TURKISH FAMILY LAW FARE COMPARED TO THE PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING PARENTAL RESPONSIBILITIES?**

ESİN ÖRÜCÜ and CANAN ARIN	235
1. Introductory overview	235
2. Setting the Turkish scene today	237
3. Turkish family law juxtaposed to the principles of European family law	238
3.1. Definitions	238
3.2. Rights of the child	243
3.3. Parental responsibilities of parents and third persons	247
3.4. Exercise of parental responsibilities	249
3.4.1. Parents.....	249
3.4.2. Third Persons	251
3.5. Content of parental responsibilities.....	252
3.5.1. The child's person and property.....	252
3.5.2. Maintenance of personal relationships	257
3.6. Termination of parental responsibilities.....	260
3.7. Discharge and restoration of parental responsibilities	262
3.8. Procedure.....	262
4. Concluding remarks	265

PART FOUR – COMPARATIVE ASSESSMENT**HARMONISED NORMS OF PARENTAL RESPONSIBILITIES FACING REALITY**

JANE MAIR and ESİN ÖRÜCÜ	269
1. Introduction.....	269
2. Domestic state of harmony?	270
2.1. Parental responsibilities	271
2.2. Content of parental responsibilities.....	274
2.3. Parents and third parties.....	276
3. Ideal principles?.....	279
3.1. Better principles?	280
3.2. Modern principles?.....	282
3.2.1. Parental responsibilities and responsible parents	283
3.2.2. Parents, third parties and de facto parenting	285

4.	Ideals in practice?.....	288
4.1.	A child-centric model.....	289
4.2.	Parental separation and continuing relationships.....	292
5.	Concluding remarks.....	294

ANNEXES: THE QUESTIONNAIRE AND THE PRINCIPLES

QUESTIONNAIRE	299
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PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING PARENTAL RESPONSIBILITIES	307
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