



PERSONALIZED SOLUTION
IN EUROPEAN FAMILY AND
SUCCESSION LAW

BEST PRACTICES IN EUROPEAN FAMILY AND SUCCESSION LAW

Collection of Abstracts



Pravna fakulteta
Univerza v Ljubljani
100

Univerza v Ljubljani





Pravna fakulteta
Univerza v Ljubljani

100

BEST PRACTICES IN EUROPEAN FAMILY AND SUCCESSION LAW
Collection of Abstracts

Editor:

izr. prof. dr. Jerca Kramberger Škerl

Publisher:

Faculty of Law of the University of Ljubljana
(Boštjan Koritnik, director of the Faculty of Law's Publishing)

Editorial Board of the Faculty of Law of the University of Ljubljana:

prof. dr. Grega Strban, as. Boštjan Koritnik, izr. prof. dr. Primož Gorkič,
prof. dr. Peter Grilc, prof. dr. Igor Kaučič, doc. dr. Aleš Novak,
akad. prof. dr. Marijan Pavčnik, prof. dr. Rajko Pirnat,
izr. prof. dr. Vasilka Sancin, izr. prof. dr. Katja Škrubej,
doc. dr. Tilen Štajnpihler Božič, doc. dr. Luka Tičar, prof. dr. Saša Zagorc,
prof. dr. Katarina Zajc, prof. dr. Viktorija Žnidaršič

Proof-reading and layout:

Dean Zagorac

Printing:

Litteralis, d.o.o.

No. of copies: 150

Price: complimentary copy

© Law Faculty of the University of Ljubljana. All rights reserved.

Reproduction, distribution, public communication, processing or other use of this copyrighted work, or its parts, in any scale or process, including photocopying, printing or storage in electronic format, is prohibited without the written permission of the publisher. Removing this information is punishable.

CIP - Kataložni zapis o publikaciji

Narodna in univerzitetna knjižnica, Ljubljana

347.61/.64(4)(082)

347.65/.68(4)(082)

BEST practices in European family and succession law : collection of abstracts, Ljubljana,
12-13 December 2019 / [editor Jerca Kramberger Škerl]. - Ljubljana : Faculty of Law, 2019

ISBN 978-961-6447-91-1

1. Kramberger Škerl, Jerca

COBISS.SI-ID 302958592



Co-funded by the Justice Programme
of the European Union (2014-2020)



**PERSONALIZED SOLUTION
IN EUROPEAN FAMILY AND
SUCCESSION LAW**

BEST PRACTICES IN EUROPEAN FAMILY AND SUCCESSION LAW

Collection of Abstracts



Pravna fakulteta
Univerza v Ljubljani
100

Univerza v Ljubljani



Ljubljana, 12–13 December 2019

TABLE OF CONTENTS

Speakers & Chairs	9
Foreword.....	13

I. PUBLIC SEMINAR – CREATING A COMMON METHODOLOGY

What is Marriage? (<i>Thalia Kruger</i>)	17
Coordination of Jurisdiction and Conflict Rules in Matters of Divorce and Matrimonial Property Regimes (<i>Claudia Rudolf</i>)	17
The Application of the Succession Regulation in Practice – The View of the European Judicial Network Contact Point (<i>Judita Dolžan</i>)	18
The Definitions of “Third-Country National” and “Family Member” in EU Law: What Interpretation and Practical Implications after Brexit? (<i>Eglė Dagilytė</i>)	19
Complementing EU Private International Law Instruments – The JURE Collection as Source of Related EU and National Case-Law (<i>Gordana Materljan</i>)	19

II. DISSEMINATION MEETING

III. ROUNDTABLE FOR EXPERTS – BEST PRACTICES FOR TRANSNATIONAL FAMILY GROUPS

Matrimonial Property or Maintenance – The Problem of a Characterisation (<i>Aleš Galič</i>)	25
The Interplay between Property Regimes Regulations and Other Legal Principles and Instruments (<i>Mirela Župan</i>)	25
Protection of the Surviving Spouse in French Law (<i>Elsa Berry</i>)	26
Help from the Consulate: Property Issues and Consular Assistance for Transnational and Migrant Families (<i>Ivo Michele Polacco</i>).....	27

Property Relations, Succession and Assets in the Non-Participating Member States – The Example of Poland (<i>Anna Wysocka-Bar</i>)	27
New in Slovenia: Notarial Divorce (Including the Obligatory Prior Regulation of Matrimonial Property Relations) (<i>Nataša Erjavec</i>)	28
Opposite-Sex Registered Partnerships and Recognition Issues (<i>Roberto Garetto</i>)	29
To Marry or to Register – Consequences for the International Jurisdiction (<i>Neža Pogorelčnik Vogrinc</i>)	29
Experience of Croatian Public Notaries with the Application of the Succession Regulation (<i>Paula Poretti</i>)	30
Application of the EU Succession Regulation – An Attorney’s Perspective (<i>Katja Plauštajner Metelko</i>)	31
Lack of Recognition of Civil Partnerships and its Consequences in the Field of Inheritance (<i>Mateusz Wąsik</i>)	31
Experience of Slovenian First-Instance Courts with the Application of the Succession Regulation (<i>Nadja Podobnik Oblak</i>)	32
European Public Policy and the Law Applicable to Succession According to the Succession Regulation – The Contribution of the Courts (<i>Stefano Deplano</i>)	33

IV. ROUNDTABLE FOR RESEARCHERS – COLLECTING BEST PRACTICES IN EUROPEAN FAMILY AND SUCCESSION LAW

First Experiences in the Cross-Border Use of the European Certificate of Succession (<i>Paolo Pasqualis</i>)	37
The Effectiveness of the European Certificate of Succession in View of its Comparison with National Certificates of Succession (<i>Vassiliki Marazopoulou</i>)	37
The Meaning of <i>Renvoi</i> in the Succession Regulation (<i>Helena Mota</i>) ...	38
Dutch and International Succession Law and Usufruct with the Right to Dispose and to Consume (<i>Freek Schols</i>)	38
Succession, Real Estate and Taxation – A View from Brussels (<i>Eva Kukovec Kuhelj</i>)	39

Devolution of Inheritance in Europe: The Role of (European and National) Certificates of Succession (<i>Tereza Pertot</i>)	39
European Certificate of Succession and Rights of the Surviving Spouse (<i>Giovanna Di Benedetto</i>)	40
Legacy by Vindication: How to Manage Rights in Rem Issues (<i>Giovanni Russo</i>)	41
Habitual Residence According to the Succession Regulation – The Case of EU Expat Retirees (<i>Davor Pindulić</i>)	42
Cross-Border Successions, Conflicts of Taxation and Profiles of Tax Law (<i>Salvatore Antonello Parente</i>).....	42
Mediation in Cross-Border Disputes regarding Matrimonial Property and Property of Registered Partners in the EU (<i>Vassiliki Koumpli</i>)	43
Cross-Border Issues regarding the Distribution of Property after Divorce or Separation of Spouses or Registered Partners (<i>Urban Vrtačnik</i>).....	43
Patrimonial Regime Deriving from a <i>de facto</i> Partnership: Comparable to That of Spouses? (<i>Vincenzo Bonanno</i>)	44
Cross-Border Marriages and Divorces in Europe: Same Conflicts with Different Solutions (<i>Maria José Cazorla González & Isabel Espin Alba</i>)	45
Cross-Border Successions Including Unliquidated Matrimonial Property of a Dissolved Marriage (<i>Belén Barrios Garrido-Lestache</i>)	45
Matrimonial Property and Succession – The Interplay between Matrimonial Property Regimes Regulation and the Succession Regulation (<i>Filip Dougan</i>)	46
Legal Uncertainty regarding the Determination of Law Applicable to Maintenance Obligations after Divorce (<i>Francesco Giacomo Viterbo</i>) ...	46
Universal Access to Health Care in Slovenia and Italy with Focus on Cross-Border Families/Couples (<i>Barbara Rajgelj</i>)	47
European Families’ Social Security Rights and Their Denial by Intersectional Discrimination (<i>Federico Pascucci</i>).....	48

SPEAKERS & CHAIRS

Ivana Kunda is an associate professor at the University of Rijeka (Croatia).

Thalia Kruger is an associate professor at the University of Antwerp (Belgium) and an honorary research associate at the University of Cape Town (South Africa).

Claudia Rudolf is an associate professor at the University of Vienna (Austria).

Judita Dolžan is the under-secretary at the Bureau for International Cooperation and International Legal Assistance at the Slovenian Ministry of Justice.

Eglė Dagilytė is a senior lecturer in law at the Anglia Ruskin University (United Kingdom).

Juan Ignacio Signes de Mesa is a legal secretary at the Court of Justice of the European Union.

Gordana Materljan is a legal officer at the European Commission, Publications Office of the European Union.

Simona De Simone is a project manager at the University of Camerino (Italy).

Primož Gorkič is an associate professor and Vice-Dean for Economic Affairs and Research at the Faculty of Law, University of Ljubljana (Slovenia).

HE Paolo Trichilo is the Ambassador of the Republic of Italy to Slovenia.

Špelca Mežnar is a judge of the Constitutional Court of the Republic of Slovenia and an assistant professor at the International School for Social and Business Studies in Celje (Slovenia).

Fabio Padovini is a full professor at the University of Trieste (Italy) and president of the PSEFS Advisory Board.

Manuela Giobbi is head of PSEFS Team Fondazione Scuola di Alta Formazione Giuridica, Camerino (Italy).

Lucia Ruggeri is a full professor at the University of Camerino (Italy) and head of the PSEFS Project.

Jerca Kramberger Škerl is an associate professor and Vice-Dean for Curricular Affairs at the Faculty of Law, University of Ljubljana (Slovenia), and head of the PSEFS Team Ljubljana.

Aleš Galič is a full professor at the University of Ljubljana (Slovenia).

Mirela Župan is a full professor at the J.J. Strossmayer University of Osijek (Croatia).

Elsa Berry is an associate professor at the University of Poitiers (France).

Mateja Končina Peternel is a judge at the Supreme Court of the Republic of Slovenia.

Ivo Michele Polacco, counsellor, is the deputy head of mission at the Italian Embassy in Ljubljana (Slovenia).

Nenad Hlača is a full professor at the University of Rijeka (Croatia).

Barbara Novak is a full professor and Vice-Rector at the University of Ljubljana (Slovenia).

Anna Wysocka-Bar is a senior lecturer at the Jagiellonian University in Krakow (Poland).

Nataša Erjavec is a notary in Slovenia.

Roberto Garetto is a research fellow at the University of Camerino (Italy).

Neža Pogorelčnik Vogrinc is an assistant professor at the University of Ljubljana (Slovenia).

Paula Poretti is an assistant professor at the J.J. Strossmayer University of Osijek (Croatia).

Katja Plauštajner Metelko is an attorney in Slovenia.

Mateusz Wąsik is an attorney in Poland.

Nadja Podobnik Oblak is a judge and head of the Successions and Non-Contentious Department at the Local Court of Ljubljana (Slovenia).

Stefano Deplano is a tenure track researcher at the University of Campania Luigi Vanvitelli (Italy).

Paolo Pasqualis is a notary in Italy.

Vassiliki Marazopoulou is an attorney, teaching fellow and postdoctoral researcher at the National and Kapodistrian University of Athens (Greece).

Helena Mota is an assistant professor and researcher at the University of Porto (Portugal), Centre for Legal and Economic Research (CIJE).

Freek Schols is a full professor at the Radboud University (the Netherlands) and an associate professor at the University of Curaçao (Curaçao).

Eva Kukovec Kuhelj is a legal officer at the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs at the European Commission.

Tereza Pertot is a postdoctoral researcher at the University of Bayreuth (Germany) and external expert at the University of Camerino (Italy).

Giovanna Di Benedetto is an attorney and student at the School of Specialization in Civil Law at the University of Camerino (Italy).

Biserka Čmrlec Kišić is a notary in Croatia.

Giovanno Russo is a doctoral student at the University of Camerino (Italy).

Davor Pindulić is an attorney in Croatia.

Salvatore Antonello Parente is a research fellow at the University of Bari Aldo Moro (Italy).

Sandra Winkler is an assistant professor at the University of Rijeka (Croatia) and head of the PSEFS Team Rijeka PRAVRI.

Vassiliki Koumpli is a senior foreign law and EU law expert at the Hellenic Institute of International and Foreign Law (Greece), attorney and mediator.

Urban Vrtačnik is an attorney in Slovenia.

Vincenzo Bonanno is an attorney and student at the School of Specialization in Civil Law at the University of Camerino (Italy).

Maria José Cazorla González is a full professor at the University of Almeria (Spain) and head of PSEFS Team Almeria.

Isabel Espin Alba is a full professor at the University of Santiago de Compostela (Spain).

Bélen Barrios Garrido-Lestache is a notary in Spain.

Filip Dougan is a teaching and research assistant at the University of Ljubljana (Slovenia).

Francesco Giacomo Viterbo is an associate professor at the University of Salento (Italy).

Barbara Rajgelj is an assistant professor at the University of Ljubljana (Slovenia).

Federico Pascucci is a research fellow at the University of Camerino (Italy).

FOREWORD

The Project Personalized Solution in European Family and Succession Law (PSEFS) officially began in November 2018. The preparations, however, started well before its official beginning. It has been a rich and exciting journey throughout, both from a scientific as well as from a personal perspective. I am very proud of the Project's current results, which can be viewed at the Project's webpage. They could only be achieved in close cooperation and through mutual trust among Project partners, now friends from Camerino, Rijeka and Almería, and under the kind leadership of the Project coordinator, Professor Lucia Ruggeri. I look forward to the continuation of our cooperation within and beyond the PSEFS Project.

We now find ourselves roughly at the middle of the PSEFS Project and it is the turn of the Ljubljana PSEFS Team to take over the role of the host. Just like events organised by other Project partners, the Ljubljana events are aimed at bringing together experts and stakeholders in the field of the cross-border regulation of property relations within European families. On the one hand, the task is easier, since we can build on the experience of the Camerino and Rijeka teams which organised the first two public events, on the other hand, it is more difficult, since, given the success of the past events, the bar is now set very high.

We are very honoured and happy that so many experts and colleagues accepted our invitation to be a part of the Ljubljana PSEFS events. The participation of every single one of them is crucial for the illumination of the Project topic from every possible angle and perspective. The property issues of cross-border families are not a topic that could be studied in isolation, only within specific specialised groups of experts. It is of utmost importance to hear and bring together different profiles of legal and other experts, as well as the representatives of cross-border couples and families. We sincerely appreciate the cooperation of all the speakers in the preparation of the programme and this Collection of Abstracts. We strongly believe that the Ljubljana PSEFS events will be an interesting and enjoyable experience for everyone.

I would finally like to express my deepest gratitude to the members of the Organising Committee of the Ljubljana PSEFS events: Assistant Professor

Neža Pogorelčnik Vogrinc, Teaching Assistant Filip Dougan, Teaching Assistant Luka Mišič, and Ms. Darja Rabzelj, the Faculty's International and Project Officer. Their professionalism, resourcefulness, hard work, reliability and patience have been an inspiration and made it all possible. Special thanks for their work on the Project and for the continuous support and excellent ideas presented during preparations of the events naturally also go to other Ljubljana PSEFS team members: Professor and Dean of the Law Faculty in Ljubljana Grega Strban and Assistant Professor at the Faculty of Social Sciences in Ljubljana Barbara Rajgelj.

*Jerca Kramberger Škerl,
Head of the Ljubljana PSEFS Team*

I.

Public Seminar

Creating a Common Methodology

WHAT IS MARRIAGE?

 THALIA KRUGER

The Matrimonial Property Regulation, Council Regulation (EU) 2016/1103, does not define “marriage”. Same stands for other Regulations in the field of international family law, such as the Council Regulation (EC) No 2201/2003 (Brussels II*bis*) and Council Regulation (EU) No 1259/2010 (Rome III). None of these Regulations governs the recognition of marriages in the European Union. The matter is left to national law. Of course, it is sensitive mainly insofar as the marriages between persons of the same gender are concerned. The question “what is a marriage” is, however, an essential preliminary question for the application of all these Regulations. It, for instance, determines the delimitation between Regulation 2016/1103 and Council Regulation (EU) 2016/1104. This solicits the question: should legal systems be allowed to reclassify a marriage to a civil partnership and vice versa? What is the consequence of such reclassification? Is a uniform definition of “marriage” in the EU something that has become inevitable? Is the Court of Justice of the European Union *Coman* judgment relevant in this regard?

Keywords: marriage, registered partnership, matrimonial property, Regulation 2016/1103, Regulation 2016/1104, *Coman* case-law.

COORDINATION OF JURISDICTION AND CONFLICT RULES IN MATTERS OF DIVORCE AND MATRIMONIAL PROPERTY REGIMES

 CLAUDIA RUDOLF

Whereas the jurisdiction rules for divorce and the law applicable to divorce are regulated in two instruments, namely the Brussels IIa Regulation and the Rome III Regulation, the Regulation on matrimonial property regimes, Council Regulation (EU) 2016/1103, is covering both the jurisdiction and the applicable law. Unlike the Brussels IIa Regulation, the Rome III Regulation and Regulation 2016/1103 only apply to those Member States who agreed on enhanced cooperation. Unfortunately, the number of the partaking Member States is not congruent. The purpose of all abovementioned Regulations is to provide EU citizens with appropriate outcomes in terms of

legal certainty, predictability and flexibility as to their divorce and matrimonial property. In the contribution, I will focus on the question, to what extent this target is achieved, with particular respect to the function of the prorogation of jurisdiction and the agreement on the choice of applicable law.

Keywords: jurisdiction, applicable law, Regulation (EU) 2016/1103, divorce, legal certainty.

THE APPLICATION OF THE SUCCESSION REGULATION IN PRACTICE – THE VIEW OF THE EUROPEAN JUDICIAL NETWORK CONTACT POINT

 JUDITA DOLŽAN

Since the beginning of the application of the Regulation (EU) No 650/2012 in August 2015, many questions have been raised in practice. The European judicial network in civil and commercial matters (EJN) that facilitates networking of judicial authorities in the European Union Member States aims for the improvement of judicial cooperation and eases effective access to justice through providing information on EU instruments, plays a vital role for the Regulation's effective implementation. Already during the beginning of its application, the EJN produced a citizen's guide for cross-border successions that helps EU citizens to understand how the Regulation works. To facilitate requests for information under Article 66(5) of the Regulation, the EJN is preparing factsheets with information on national registers that will help competent authorities to request the information necessary for issuing the European certificate of succession. Contact points of the EJN, designated by the Member States, assist practitioners and citizens by providing general information concerning the Regulation and by seeking solutions for practical difficulties arising with its application. Most of the questions concern the European certificate of the succession and the recognition and enforcement of national decisions in third states.

Keywords: European Judicial Network (EJN), contact point, judicial cooperation, facilitating the implementation, access to justice.

THE DEFINITIONS OF “THIRD-COUNTRY NATIONAL” AND “FAMILY MEMBER” IN EU LAW: WHAT INTERPRETATION AND PRACTICAL IMPLICATIONS AFTER BREXIT?

 EGLÈ DAGILYTĖ

Whether the United Kingdom (UK) leaves the European Union (EU) with or without a deal, one thing is clear: both EU citizens living in the UK and the UK nationals living in the EU will lose most of their substantial rights guaranteed by EU citizenship, as they will fall under fragmented legal regimes provided by national laws, international agreements and several pieces of EU legislation. The contribution focuses on the future of the UK nationals in the post-Brexit EU, who will become third-country nationals under EU law, with some being related to EU citizens living in the EU-27. It touches on the possible legal and practical problems that currently exist in the EU law, which may cause difficulties for British-EU families to benefit from rights now guaranteed by EU citizenship and free movement law.

Keywords: EU citizenship, family members, Brexit, third-country nationals.

COMPLEMENTING EU PRIVATE INTERNATIONAL LAW INSTRUMENTS – THE JURE COLLECTION AS SOURCE OF RELATED EU AND NATIONAL CASE-LAW

 GORDANA MATERLJAN

The JURE collection (Jurisdiction, recognition and enforcement of judgments in civil and commercial matters) on EUR-Lex contains judgments delivered under the New Lugano Convention (2007) and other EU private international law instruments. It offers an overview of the national case-law of the Contracting States to the Lugano Convention (the EU Member States, Iceland, Norway, Switzerland) and a complete and reliable insight into the case-law of the Court of Justice of the European Union (CJEU) dealing with EU law instruments governing the jurisdiction, recognition and enforcement of judgments in civil and commercial matters. The competent authorities of the Contracting States have the obligation, pursuant to Article 3 of Protocol 2 to the New Lugano Convention, to transmit the relevant

decisions to the Publications Office, managing the collection on behalf of the European Commission. The transmitted decisions are available in their original language. Moreover, a summary of each decision is provided in English, French and German, as well as in the original language when provided by the state in question. The JURE collection is a valuable source of national and CJEU case-law dealing with cross-border families since it already contains decisions delivered under Regulation (EU) No 650/2012 and future decisions dealing with Council Regulation (EU) 2016/1104 and Council Regulation (EU) 2016/1103 will also be relevant for the collection.

Keywords: jurisdiction, recognition and enforcement of judgements, civil and commercial law, JURE Collection, EUR-Lex, case-law, CJEU.

II.

Dissemination Meeting

Introductory Addresses

Primož Gorkič

H.E. Paolo Trichilo

Špelca Mežnar

Fabio Padovini

Manuela Giobbi

Presentation of the Working Paper (eBook)

Lucia Ruggeri

Presentation of the Taxonomy

Jerca Kramberger Škerl

III.

*Roundtable for Experts
Best Practices for
Transnational Family Groups*

MATRIMONIAL PROPERTY OR MAINTENANCE – THE PROBLEM OF A CHARACTERISATION

 ALEŠ GALIČ

On the face of it, a question whether a particular matter decided in the course of divorce proceedings relates to maintenance or to matrimonial property is not difficult. Upon divorce, maintenance is usually determined by way of instalments, paid monthly, to the (ex-)spouse in need, whereas the allocation of ownership over property, including orders of transfer of ownership to a (sole) property of one of the spouses should be a matter of matrimonial property. However, in numerous (in particular *common law*) systems, an order of a lump sum (one-time) payment and even an order for transfer of ownership of assets, e.g. of a house or an apartment, can be perceived as a method of determining maintenance. In its judgment in *van den Boogaard*, which remains relevant today, the ECJ ruled that such orders should be characterised as relating to »maintenance« if the court's decision depends on whether the provision awarded is designed to enable one spouse to provide for himself or if the needs of each of the spouses are taken into consideration in the determination of its amount.

Keywords: maintenance, matrimonial property, international private law, EU law, characterisation.

THE INTERPLAY BETWEEN PROPERTY REGIMES REGULATIONS AND OTHER LEGAL PRINCIPLES AND INSTRUMENTS

 MIRELA ŽUPAN

As the number of cross-border couples is continuously raising, law is developing additional tools to assure their regulation and legal security. European Union regulations specifically addressing property regime are a drop to it. The interplay of law unification, residual domestic law and established case-law adds to the complexity of the case-law in the Member States. It eventually mirrors the everyday life of citizens. Application of property regulations must acknowledge that this piece of *acquis* is part of a package coexisting with other legal norms and standards applicable in the Members States. Hence, the general EU principles and practice developed in the framework of other civil

justice regulations and wider may equally be applied in cross-border property regimes resolution (such as: prohibition of discrimination based on citizenship; prohibition of discrimination based on sexual orientation; interpretation of the notions of seizing of a court, lis pendens, provisional measures). Conversely, private international law issues of the general part have never been unified in EU civil justice area but were a matter of interpretation of Court of Justice of the European Union. In this respect, the application of the property Regulations requires consideration of general doctrine and previously established practice (matters such as characterisation, preliminary issues, public policy).

Keywords: property regulations, EU legal principles, EU Civil Justice Area, Court of Justice, *acquis*.

PROTECTION OF THE SURVIVING SPOUSE IN FRENCH LAW

 ELSA BERRY

The protection of the spouse may be both a reason to submit to French law as well as a motivation to try to escape it. While French inheritance law has recently sought to give everyone more freedom to anticipate the transmission of their estate, it still guarantees children a reserved portion in the deceased's estate. This guarantees them a minimum share in his or her estate. However, the mechanisms protecting this reserve are subject to legal adjustments when spouses wish to organise the protection of the couple's survivor, either by submitting to a conventional matrimonial regime or by giving themselves gifts that improve the legal succession of the spouse. This ensures a balance between the protection of the spouse and that of the compulsory heirs. Seeming not to be satisfied, several famous French people living abroad have recently sought to escape French law to be able to give their surviving spouses an advantage beyond these limits at the expense of children from the first French marriage.

Keywords: conventional matrimonial regime, surviving spouse, reserve, gift.

HELP FROM THE CONSULATE: PROPERTY ISSUES AND CONSULAR ASSISTANCE FOR TRANSNATIONAL AND MIGRANT FAMILIES

 IVO MICHELE POLACCO

The local Italian consulate is often the first destination when a transnational or migrant family with at least one Italian member requires help, including help with property issues, especially in demanding situations such as divorces or deaths in the (extended) family. This is true both when the property in question is in Italy and when it is in the Country of residence. The role of the Consulate is, therefore, that of a key intermediary, guaranteeing that the issue at hand is routed towards a solution through the proper channels, minimising lost time and unnecessary expenses. While the Vienna Convention and the Italian consular law limit the active involvement of the Consular Officer, he or she can and should still deploy a range of formal and informal acts, such as: suggesting a competent lawyer or notary, clarification of procedures and requests, acting as a notary, or—in exceptional cases—issuing direct requests to local or Italian authorities through both formal and informal channels.

Keywords: transnational families, migrant families, consular law, consular representative.

PROPERTY RELATIONS, SUCCESSION AND ASSETS IN THE NON-PARTICIPATING MEMBER STATES – THE EXAMPLE OF POLAND

 ANNA WYSOCKA-BAR

Member States of the European Union (except Denmark, the United Kingdom and Ireland) all apply Regulation (EU) No 650/2012, but only some of them, since 29 January 2019, apply the twin regulations on property matters adopted within the enhanced cooperation. Poland, which is a non-participating Member State, applies the Succession Regulation to cross-border succession cases and applies its own “domestic” private international law rules (or bilateral conventions) to cross-border property matters of spouses/partners. Transnational families acquiring assets, especially immovable property, in a non-participating Member State, should always take this mosaic

of legal sources and its consequences into account. In case a transnational family has assets in a non-participating Member State, the following question should be asked: Will a court, located in a participating Member State, that is hearing the (property or succession) case be equally competent concerning assets located in Poland? Will such judgment be recognised/enforced in Poland? Is it necessary to initiate a separate proceeding in Poland concerning assets located in Poland? If yes, which law will be applied? When discussing the above examples, does it matter that Poland does not regulate registered partnerships and same-sex marriages? The contribution aims to give tentative answers to the above questions.

Keywords: property, succession, enhanced cooperation, non-participating Member State.

NEW IN SLOVENIA: NOTARIAL DIVORCE (INCLUDING THE OBLIGATORY PRIOR REGULATION OF MATRIMONIAL PROPERTY RELATIONS)

 NATAŠA ERJAVEC

In April 2019, the new Family Code began to apply in Slovenia. One of the novelties it introduced is the possibility of a consensual divorce before a notary. It is only available to spouses without joint underage children who agree on all relevant consequences of the divorce. In the preliminary phase, the spouses have to conclude three agreements: one on the division of co-owned property, one on the decision, who will remain the tenant of the home they live in, and one on the maintenance of the spouse with no means for a living. I will focus on the first of these agreements, particularly when dealing with cross-border spouses and civil union partners. The final phase of the divorce consists of signing a notarial act on the agreement of the spouses to divorce. I will look at some practical experiences obtained so far, including both cross-border spouses and civil union partners, as well as those, whose relationship does not consist of a cross-border element.

Keywords: consensual divorce, notary, cross-border partners, division of co-owned property, Slovenian Family Code.

OPPOSITE-SEX REGISTERED PARTNERSHIPS AND RECOGNITION ISSUES

 ROBERTO GARETTO

Registered partnerships allow two people who live together as a couple to register their relationship in the country of residence. Differences between European Union Member States in this field are enormous. In 15 Member States, a same-sex couple can make the partnership official through registration without having to get married. Only in 10 Member States, however, can an opposite-sex couple enter into a registered partnership. Thus, a significant issue surfaces concerning the recognition of an opposite-sex registered partnership contracted abroad, in case the couple establishes residence in a Member State that provides regulation on same-sex registered partnerships only. If the opposite-sex couple in case of partnership dissolution opted to apply the law concerning property consequences of registered partnerships as regulated by the Member State of residence, discriminatory rules would exclude the applicability of advantages provided only to same-sex couples. In some Member States, for example in Italy, the remedy for such discriminatory treatment could come in the form of raising a question of constitutional legitimacy.

Keywords: registered partnership, property regime, discrimination, same-sex couples, opposite-sex couples.

TO MARRY OR TO REGISTER – CONSEQUENCES FOR THE INTERNATIONAL JURISDICTION

 NEŽA POGORELČNIK VOGRINC

When deciding how to formalise their relationship, partners consider different circumstances and personal wishes. Legal possibilities offered in a specific EU Member State (e.g. can a same-sex couple marry or an opposite-sex couple register a partnership), and general belief that marriage is a stronger form of formalisation compared to registered partnership, also have a significant role. In such situations, partners usually do not foresee that their decision will be of a more substantial impact. The form they choose for their relationship within the Member States participating in enhanced cooperation regarding Council Regulation (EU) 2016/1103 and Council Regulation (EU) 2016/1104 will influence the choice of rules used to decide on jurisdiction and conflict-of-law provisions. When the conflict regarding their

property arises, the outcome regarding the jurisdiction and the applicable law will be significantly different based on the fact whether they got married or they registered their partnership.

Keywords: Regulation (EU) 2016/1103, Regulation (EU) 2016/1104, jurisdiction, applicable law, property matters, marriage, registered partnership.

EXPERIENCE OF CROATIAN PUBLIC NOTARIES WITH THE APPLICATION OF THE SUCCESSION REGULATION

 PAULA PORETTI

When Croatian public notaries assumed competence in cross-border succession proceedings under Regulation (EU) No 650/2012 or the Succession Regulation, it was a kind of an ‘initiation’ into their participation in the judicial cooperation in civil and commercial matters. Along with the adjustment to the new and complex dimension of exercising the judicial function, Croatian public notaries face several challenges in conducting cross-border succession proceedings. Some of the challenges stem from the incomplete coordination of Croatian legislation with the Succession Regulation. Others arise from the requirements envisaged in some of its rules. The divergences in the interpretation of provisions of the Succession Regulation in different jurisdictions also create difficulties in its application. Therefore, a case-law analysis will serve to demonstrate the modalities of overcoming these challenges and to examine their appropriateness. Its results may provide a basis for stimulating discussion on solutions applied in similar situations in different Member States and the possibility to harmonise their application at European Union level.

Keywords: public notaries, succession regulation, case-law, cross-border situations, succession.

APPLICATION OF THE EU SUCCESSION REGULATION – AN ATTORNEY’S PERSPECTIVE

 KATJA PLAUSTAJNER METELKO

Since the application of the Succession Regulation, Regulation (EU) No 650/2012, the latter has proven to be an essential instrument not only in the practice of courts but also in the practice of lawyers. In matters of succession with a cross-border element, the role of lawyers begins already at the stage of advising clients about drafting a will, in particular with the choice of law clauses. This requires not only knowledge of the Succession Regulation, but also knowledge of succession law of other relevant countries. Once an inheritance procedure has been instituted, the questions, which arise in practice, most often relate to determination of the habitual residence and the jurisdiction, as well as to the use of the European Certificate of Succession (ECS). An ECS, issued by foreign courts, will mostly be used concerning real estate, located in Slovenia. In this context, some of the relevant issues are, for example, to what extent an ESC should be translated since the translation can represent a considerable cost for the heirs, or submission of an ESC for levying of inheritance tax before registering a change of ownership in the land register.

Keywords: succession, cross-border element, role of an attorney, jurisdiction, European Certificate of Succession.

LACK OF RECOGNITION OF CIVIL PARTNERSHIPS AND ITS CONSEQUENCES IN THE FIELD OF INHERITANCE

 MATEUSZ WĄSIK

The contribution presents consequences in the field of inheritance resulting from the lack of recognition of registered partnerships and same-sex marriages in some European Union Member States, such as Poland. The lack of recognition is commonly perceived as discrimination on the grounds of sexual orientation, but the emphasis is usually given to its consequences concerning human rights. The author mostly focuses on discriminatory aspects regarding the inheritance ground in the absence of a will. Namely, a lack of appropriate provisions on inheritance ground produces adverse effects con-

cerning taxation obligations of such couples. To determine discriminatory aspects, the author analysed the domestic rules differentiating couples living in marriage and couples not possessing the right to marry. Due to lack of case-law on inheritance discrimination resulting from sexual orientation, the author recalled relevant case-law of the Court of Justice of the European Union and the European Court of Human Rights revealing possible violations of fundamental freedoms and tax discrimination.

Keywords: civil partnership, inheritance, recognition, taxation, discrimination.

EXPERIENCE OF SLOVENIAN FIRST-INSTANCE COURTS WITH THE APPLICATION OF THE SUCCESSION REGULATION

 NADJA PODOBNIK OBLAK

The Succession Regulation, Regulation (EU) No 650/2012, significantly changed the role of the first-instance judge in successions procedures. In Slovenia, the succession procedure is instituted *ex officio* as soon as the court learns that a person has died. The court must ensure that the rights of the affected parties are determined and protected. By opening the borders and competence in matters of succession concerning property rights in other EU Member States, judges had to adopt new ways of cooperating with foreign institutions, e.g. obtaining information about foreign procedures and lists of assets. So far, experiences have mostly been positive, but it is often difficult to obtain relevant information from the parties, especially when they try to manipulate the jurisdiction to their own interests. Since August 2015, the Local Court has issued more than 340 European certificates of succession. The practice has thus become well established even if the Court rarely receives any feedback. However, in practice the judges still have many questions about the applicability of Article 12 regarding assets in third states, which represents one of the critical issues of this contribution.

Keywords: court procedure, first-instance judge, access to information, European Certificate of Succession, assets in the third states.

EUROPEAN PUBLIC POLICY AND THE LAW APPLICABLE TO SUCCESSION ACCORDING TO THE SUCCESSION REGULATION – THE CONTRIBUTION OF THE COURTS

 STEFANO DEPLANO

Regulation (EU) No 650/2012 admits that the testator can apply to his succession the law of his or her habitual residence. Consequently, the succession can be regulated by the law of an EU Member State but also by the law of a third country. In the latter case, it can happen that the devolution of the succession as regulated by the law selected by the testator may clash with the public order of a Member State. Such situation, expressly provided for by Article 35 of the Regulation, raises particularly interesting questions and deserves to be analysed as it may limit the scope of the Regulation. The author addresses the protection of the person and, in particular, the principle of non-discrimination as a limit to the applicable law. In particular, the judgement of French Court of Cassation is analysed, which applied the European Charter of Human Rights to a succession governed by Saudi law.

Keywords: final will, applicable law, public policy, ECHR, non-discrimination principle.

IV.

*Roundtable for Researchers
Collecting Best Practices in
European Family and Succession Law*

FIRST EXPERIENCES IN THE CROSS-BORDER USE OF THE EUROPEAN CERTIFICATE OF SUCCESSION

 PAOLO PASQUALIS

The early years of experience in the use of the European Certificate of Succession (ECS) have already provided examples of the most relevant issues faced by courts and legal practitioners. Beyond the cases already addressed and decided by the Court of Justice of the European Union (CJEU), there exist numerous practical examples of how the use of the certificate has met effective solutions through the intervention of the practitioners who have dealt with it. Now, thanks to the solutions provided by the CJEU and the experience of the practitioners, the challenge is to develop a common reading, interpretation and application of the European rules, very often still influenced by those existing in different national legal systems.

Keywords: international successions, European Certificate of Succession, national certificates, public registers, interpretation of EU law.

THE EFFECTIVENESS OF THE EUROPEAN CERTIFICATE OF SUCCESSION IN VIEW OF ITS COMPARISON WITH NATIONAL CERTIFICATES OF SUCCESSION

 VASSILIKI MARAZOPOULOU

The European Certificate of Succession was established by the Regulation (EU) No 650/2012, the so-called Succession Regulation. At the same time, national succession certificates may still be issued, while under particular prerequisites, they too circulate within the European Judicial Area by the Succession Regulation provisions. The Succession Regulation does not give priority to the European Certificate of Succession, nor to the national succession certificates. Thus, a “co-existence” regime of succession certificates is created within the European Judicial Area. Against this background, possible scenarios of conflict between the European Certificate of Succession and national certificates shall be examined in this contribution, fore and foremost in view of assessing the overall effectiveness of the European Certificate of Succession.

Keywords: European succession law, national certificates, European Certificate of Succession, European Judicial Area.

THE MEANING OF *RENOI* IN THE SUCCESSION REGULATION

 HELENA MOTA

Regulation (EU) No 650/2012 creates a comprehensive legal framework on international successions. The universal application of its conflict-of-law rules may lead to the application of the law of a third State. Unlike all other Regulations on international family matters, Regulation 650/2012 accepts the *renvoi* to other laws in so far as it ensures “international consistency”. This solution (provided in Article 34) will not come without problems and doubts on its interpretation and meaning, for example compromising the aim of having just one law to govern the whole succession (Article 21) and the understanding of the *renvoi* on one or two degrees.

Keywords: successions, Regulation (EU) No 650/2012, private international law, *Renvoi*.

DUTCH AND INTERNATIONAL SUCCESSION LAW AND USUFRUCT WITH THE RIGHT TO DISPOSE AND TO CONSUME

 FREEK SCHOLS

Usufruct usually grants a person the right to make use of one or more assets and to enjoy the fruits produced by these assets that belong to someone else. In the Dutch legal order, usufruct with the right to dispose and to consume exists. It is often granted to the (*de facto*) spouse by testamentary disposition. Is this right in rem unknown in other European Union Member States? If so, what is the closest equivalent right in rem? See Article 31 of the Regulation (EU) No 650/2012: “Where a person invokes a right in rem to which he is entitled under the law applicable to the succession and the law of the Member State in which the right is invoked does not know the right in rem in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right in rem under the law of that State, taking into account the aims and the interests pursued by the specific right in rem and the effects attached to it.” When the right in rem has to be adapted in the right in rem that is less comfortable for the *de-facto* spouse, does he or she have a (personal) right of claim against the heirs?

Keywords: usufruct, right to dispose and to consume, right to make use of, right in rem, Regulation (EU) No 650/2012.

SUCCESSION, REAL ESTATE AND TAXATION – A VIEW FROM BRUSSELS

 EVA KUKOVEC KUHELJ

Under the Protocol on the Privileges and Immunities of the European Union, moveable property belonging to EU officials and situated in the territory of the Member State where they reside is exempt from death duties in that Member State. For the assessment of death duties, such property is considered to be located in the Member State of domicile for tax purposes. However, as the Protocol does not apply to immovable property, real estate located in Belgium is subject to Belgian inheritance tax, irrespective of the official status of the deceased or their domicile, with rates currently going up to thirty per cent in the first order of succession and up to sixty-five per cent in the second. Moreover, there is a possibility of multiple taxations. There is thus an important silent heir in succession—the State—whose share is often unpredictable, decreasing legal certainty provided by Regulation (EU) No 650/2012. The uncertainty is due to the multiplicity of applicable tax systems and the continuously changeable tax legislation. It is further exacerbated by the fact that inheritance tax rates may be far lower in the Member State of origin of EU officials who thus may not foresee the large share of the State in the real estate they acquire in Belgium. This contribution argues that tax law, therefore, constitutes a unique element of legal (un)certainty in the context of cross-border successions.

Keywords: succession regulation, EU officials, legal certainty, inheritance tax, real estate.

DEVOLUTION OF INHERITANCE IN EUROPE: THE ROLE OF (EUROPEAN AND NATIONAL) CERTIFICATES OF SUCCESSION

 TEREZA PERTOT

There exist different models of devolution of inheritance in Europe. Estate may devolve upon heirs directly or indirectly after the liabilities have been paid by a personal representative. Legal orders where direct devolution of inheritance exists may be further divided into two categories. In some domestic legal orders, the estate passes on to the heirs automatically upon the

deceased's death, while in some an additional act (acceptance of the heirship or a court decision) is needed to assign the inheritance. Differences can also be found regarding the mechanisms of proof of heirship. In some domestic legal orders, an inheritance certificate is foreseen for this purpose, while in others alternative mechanisms of proof and third parties' protection are in place. In the contribution, different models of devolution and proof of heirship are presented that exist in Europe and the interaction between national legislation and Regulation (EU) No 650/2012 is investigated. In this regard, relevant case-law is analysed to identify the issues arising from the interplay between the European and national certificates of succession.

Keywords: inheritance, devolution, proof of heirship, certificate(s) of succession, Regulation (EU) 650/2012.

EUROPEAN CERTIFICATE OF SUCCESSION AND RIGHTS OF THE SURVIVING SPOUSE

 GIOVANNA DI BENEDETTO

Article 1(1) of the Regulation (EU) No 650/2012 must be interpreted as meaning that the provisions of a Member State governing matters relating to matrimonial property regimes for the period following the death of one of the spouses fall within its scope. As confirmed by the Judgment of the Court of Justice of the European Union (CJEU) of 1 March 2018, C-558/16 *Mahnkopf*, it will therefore be possible to insert within the European succession certificate a right, the ratio of which is to compensate for the disadvantaged situation resulting from the interruption of the legal communion regime due to the death of the spouse. This interpretation, moreover, is not contradicted by the scope of application of Council Regulation (EU) 2016/1103, which implements reinforced cooperation in matters of matrimonial property regime. The Regulation, although it was adopted in order to regulate all aspects of civil law regarding matrimonial property regimes, also with reference to the liquidation phase of the of the marital patrimony following the death of one of the spouses, in fact expressly excludes in Article 1 from its scope of application the succession *mortis cause* of a spouse. Otherwise, the ultimate aims of Regulation 650/2012 would have been significantly affected. Such as, for example, that of contributing to the proper functioning of the internal market by removing obstacles to free movement within the EU territory for

individuals who currently encounter difficulties in exercising their inheritance rights with cross-border implications.

Keywords: succession, Regulation (EU) 650/2012, Regulation (EU) 2016/1103, European Certificate of Succession, matrimonial property regimes.

LEGACY BY VINDICATION: HOW TO MANAGE RIGHTS IN REM ISSUES

 GIOVANNI RUSSO

The European legal framework in family and succession law raised many questions about rights in rem. The main problem is how to allow nationals from another EU Member State to benefit from rights deriving from succession or from the choice of law in property regimes. The author focuses on the case of a legacy by vindication concerning persons with different nationality. In the examined case, the wife is an Italian national, but she lives with her husband in Germany. They live in her parents' house. Her parents worked and lived in Germany but, since they returned to Italy, left the house to her. They decide to apply the Italian succession law in their will and, as a form of legacy by vindication, they want to leave their house in Germany to their daughter. However, the notary in Italy refuses to draw up the act, because according to him it would be illicit under German law for two reasons: firstly, the German law does not recognise this type of legacy, and secondly, this act would encounter problems under the new European regulations in family and succession law. The solution is to enhance the circulation of rights in the European Union among different Member States. The latter is in accordance with the position taken by the Court of Justice of the European Union and at the same is in line with the spirit of the new European regulations.

Keywords: succession, family, legacy by vindication, property regimes, public policy.

HABITUAL RESIDENCE ACCORDING TO THE SUCCESSION REGULATION – THE CASE OF EU EXPAT RETIREES

 DAVOR PINDULIĆ

“In certain cases, determining the deceased’s habitual residence may prove complex”, laconically admits Recital 24 of the Succession Regulation, Regulation (EU) No 650/2012. Such complexity may arise in cases of EU citizens—the focus here being on retirees—living for longer parts of the year in a Member State different from the one where they have accumulated pension rights and to which they maintain formal ties. The contribution identifies difficulties that can arise for heirs and legal practitioners by looking at actual cases and to find the causes and possible remedies. The author proceeds with typical factual elements that should be considered when determining the habitual residence in the context of the Succession Regulation. Finally, the author evaluates whether taking into account the criteria used to determine the habitual residence in other areas of law, such as tax law, could prove helpful regarding successions.

Keywords: habitual residence, succession regulation, expat, pension rights, tax law.

CROSS-BORDER SUCCESSIONS, CONFLICTS OF TAXATION AND PROFILES OF TAX LAW

 SALVATORE ANTONELLO PARENTE

First, different variations of inheritance taxes in the context of different national legal systems are examined, depending on the choices of fiscal policy, e.g. taxes levied on the transfer of assets (estate tax) or taxes levied on assets’ enrichment that benefits the heir (inheritance tax). Then tax profiles of cross-border inheritance are analysed and the problems related to the territorial application of the tax rule are addressed to locate the connecting factor of inheritance taxation. Finally, the author focuses on positive conflicts of taxation—sources of double, triple and multiple international taxations—and on contrasting instruments.

Keywords: legal nature of inheritance tax, effectiveness in the space of tax rule, cross-border successions, conflicts of taxation, profiles of tax law.

MEDIATION IN CROSS-BORDER DISPUTES REGARDING MATRIMONIAL PROPERTY AND PROPERTY OF REGISTERED PARTNERS IN THE EU

 VASSILIKI KOUMPLI

Mediation in its modern form as a way of resolving disputes has been successfully applied in the Anglo-Saxon countries and the countries of the Far East for more than one century. In the last decade, it has also been highly promoted in the European Union. Particularly concerning cross-border family disputes, agreed, out-of-court, solutions are encouraged and gaining increasing importance. Jumeaux (twin) Regulations on property regimes of spouses and partners explicitly follow this trend, stating that they should not prevent the parties from settling the case amicably out of court in a Member State of their choice where this is possible under the law of the Member State. The contribution provides a concise illustration of the legal framework of mediation (at the EU and Member State level), one the one hand, and of the application of mediation (suitability of mediation and best practices) in such disputes, one the other hand.

Keywords: meditation, cross-border disputes, registered partnership, property disputes.

CROSS-BORDER ISSUES REGARDING THE DISTRIBUTION OF PROPERTY AFTER DIVORCE OR SEPARATION OF SPOUSES OR REGISTERED PARTNERS

 URBAN VRTAČNIK

The contribution provides a rudimentary overview of property relations between spouses and same-sex partners following new regulatory regime under the Slovenian Family Code. Differences in statutory or contractual regimes are explained briefly, alongside their effect on the (judicial) division and distribution of property where so applied. Differences between various types of procedures (domestic and international) are also clarified briefly. Particular part of the contribution is dedicated to practical examples of property distribution, next to some references concerning situations of different nationalities, residencies, places (locations) of property, along with other circumstances

relevant for application of the Council Regulation (EU) 2016/1103 and Council Regulation (EU) 2016/1104. The final part provides a critical evaluation on whether the Regulations can sufficiently tackle issues of cross-border distribution of property after divorce or separation and whether individual new solutions may be proposed *de lege ferenda*.

Keywords: family law, distribution of property, matrimony, same-sex partnership, EU law, Regulation (EU) 2016/1103, Regulation (EU) 2016/1104.

PATRIMONIAL REGIME DERIVING FROM A *DE FACTO* PARTNERSHIP: COMPARABLE TO THAT OF SPOUSES?

 VINCENZO BONANNO

The entry into force of the Council Regulation (EU) 2016/1103 and Council Regulation (EU) 2016/1104 places the interpreter before new challenges, including the delimitation of their scope of application. The subject of the contribution in particular concerns the patrimonial regime of *de facto* partnerships in the light of the two new Regulations. *De facto* partnerships have already received protection and recognition in some Member States. However, Article 1(1) of Regulation 2016/1104 provides that it “shall apply to matters of the property consequences of registered partnerships”. *De facto* partnerships and their patrimonial regime thus remain excluded from its scope of application, for which the author identifies the possible interpretative scenarios following a normative, jurisprudential and doctrinal analysis which in general the Member States and in particular, Italy will have to face, following the many application problems.

Keywords: EU Regulation, *de facto* partnerships, patrimonial regime, Member States, Italy.

CROSS-BORDER MARRIAGES AND DIVORCES IN EUROPE: SAME CONFLICTS WITH DIFFERENT SOLUTIONS



MARIA JOSÉ CAZORLA GONZÁLEZ
ISABEL ESPIN ALBA

The situation of families faced with a marital breakdown is similar regardless of nationality or place of residence, although the effects are different according to the law applicable to the liquidation of the matrimonial property regime. It is either law, selected by the spouses, or the law, applicable according to the hierarchical order set in the Council Regulation (EU) 2016/1103. The effects of the liquidation can differ according to the application of rules, which vary significantly among the 28 Member States of the European Union. The dispersion will have to be systematised and analysed, but its normative richness remains, as we will try to show in our contribution, an indisputable value.

Keywords: marriage, divorce, cross-border disputes, Regulation (EU) 2016/1103.

CROSS-BORDER SUCCESSIONS INCLUDING UNLIQUIDATED MATRIMONIAL PROPERTY OF A DISSOLVED MARRIAGE



BELÉN BARRIOS GARRIDO-LESTACHE

The increasing number of cross-border families and their changing nature have arisen multiple situations in which not only the jurisdiction, the applicable law and the enforceability of public instruments are put to the test but also situations, in which it is not clear whose rights must be protected. These questions are especially relevant in international successions in which the estate of the deceased includes property still attached to a previous matrimonial property regime, although the marriage has been dissolved. In such cases, it is necessary to establish whether the former spouse is entitled to participate in the succession procedure, since the liquidation of the previous matrimonial property regime is essential to define the estate of the deceased, and whether the liquidation of the matrimonial property regime alone falls

under the scope of European Union law from a material and a jurisdictional point of view.

Keywords: cross-border family, cross-border succession, matrimonial property, EU law.

MATRIMONIAL PROPERTY AND SUCCESSION – THE INTERPLAY BETWEEN MATRIMONIAL PROPERTY REGIMES REGULATION AND THE SUCCESSION REGULATION

 FILIP DOUGAN

The adoption of the Matrimonial Property Regimes Regulation, Council Regulation (EU) 2016/1103, and the Succession Regulation, Regulation (EU) No 650/2012, undoubtedly brought improvements to predictability and legal certainty of married couples. One of the approaches used by the European legislators to achieve this goal was the coordination of rules regarding international jurisdiction in cases concerning matrimonial property and succession. This is of particular importance since questions relating to the matrimonial property often arise in connection to the death of a spouse. Nonetheless, the interplay between both instruments might still raise several questions, as the connecting factors mostly do not align. The contribution, therefore, attempts to explore how this interplay affects the position of a surviving spouse concerning matrimonial property. It also highlights selected issues, which may arise when courts will apply national law of one state to matters of matrimonial property and national law of another state to matters of succession.

Keywords: matrimonial property, succession, qualification, Regulation (EU) 2016/1103, Regulation (EU) 650/2012.

LEGAL UNCERTAINTY REGARDING THE DETERMINATION OF LAW APPLICABLE TO MAINTENANCE OBLIGATIONS AFTER DIVORCE

 FRANCESCO GIACOMO VITERBO

The contribution focuses on a practical case that raises the issue of legal uncertainty regarding the determination of law applicable to the allowan-

ce or maintenance paid to the financially less secure spouse after divorce. The issue pertains to the definition of the boundary between the scope of recent Council Regulation (EU) 2016/1103 and Council Regulation 2016/1104, and the scope of Council Regulation (EC) No 4/2009 on jurisdiction and law applicable to maintenance obligations. Despite the fact that there exists no definition of “maintenance obligations” in EU regulations, and that maintenance obligations between spouses should be excluded from the scope of the Regulation 2016/1103 and Regulation 2016/1104 in accordance with their Recital 22, it is necessary to focus on the meaning of “maintenance obligations” as a result of the interpretation of the Court of Justice of the European Union. Thus, cases in which the compensatory allowance to be paid after the divorce should be considered as an aspect, or a consequence of “the liquidation of the matrimonial property regime” under Regulation 2016/1103 rather than a “maintenance obligation” under Regulation (EC) No 4/2009 will be analysed.

Keywords: divorce, maintenance obligation, matrimonial property, Regulation (EU) 2016/1103, Regulation (EC) 4/2009.

UNIVERSAL ACCESS TO HEALTH CARE IN SLOVENIA AND ITALY WITH FOCUS ON CROSS-BORDER FAMILIES/COUPLES

 BARBARA RAJGELJ

Although the Slovenian social health insurance system and the Italian national health system define themselves as universal, in both of them universality is limited: Slovenian social insurance legislation defines categories of insured persons, with each categorisation leading to exclusion by inclusion (according to person's labour market participation, family ties and affiliation to the state). The Italian system restricts access to health care based solely on affiliation to the state (undocumented migrants have access only to emergency care and essential treatments and benefit from specific preventive medical treatment programmes). The comparison shows that the Slovenian social insurance system poses significantly more conditions for access to health care than the Italian regulation. One could claim that after Slovenian independence, the principle of universal access to health care has been replaced by the principle of selectivity.

Keywords: social insurance system, health system, insured person, principle of universal access, principle of selectivity.

EUROPEAN FAMILIES' SOCIAL SECURITY RIGHTS AND THEIR DENIAL BY INTERSECTIONAL DISCRIMINATION

 FEDERICO PASCUCCI

The author focuses on the relationship between the social right of a survivor's pension as a primary and fundamental expression of family solidarity and its denial through intersectional discrimination (discrimination based on several personal grounds or characteristics) on combined grounds of age and sexual orientation. The Court of Justice of the European Union (CJEU) reached an important decision on the matter in C-443/15 *Parris v Trinity College Dublin*. The case concerned a man who was unable to entitle his partner to a survivor's pension because the Irish law was late in recognising the legal status of same-sex couples. More specifically, the claimant was not able to fulfil the condition provided by the pension scheme to have his partnership legally recognised before the age of 60, thus losing the right of his partner being able to claim a survivor's pension. The CJEU was asked to decide on the existence of single discrimination on the grounds of age or sexual orientation and the presence of intersectional discrimination on the grounds of age and sexual orientation. The CJEU did not recognise the existence of discrimination or intersectional discrimination and thus gave, relying on the teachings of law and economics, priority to social security institutions' financial considerations over persons' fundamental rights when balancing the two.

Keywords: EU fundamental rights, human dignity, solidarity, survivors' pension, intersectional discrimination.

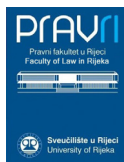


The Ljubljana Faculty of Law, established in 1919, is one of the founding faculties of the University of Ljubljana and the largest law faculty in Slovenia. On 15 April 1920, the first dean of the Faculty, Professor Leonid Pitamic, marked the beginning of the Faculty's teaching and research activities with an inaugural lecture entitled Law and Revolution, emphasising that "we can neither make, share nor find justice if there is no justice within ourselves". Ever since, the Faculty has offered its students an intellectually exciting learning environment with high academic standards at undergraduate and postgraduate levels, promoting both legal knowledge and critical thought. Following its motto "The Tradition of Excellence" throughout the years, the Faculty of Law remains committed to its mission to provide the students with the best possible legal education to prepare them for all the traditional legal professions. Located in a renovated building complex at the very centre of the city of Ljubljana, the Faculty boasts a large teaching staff working in nine departments, six associated research institutes and the richest law library in the region. In 2019, the University of Ljubljana, which belongs to the top 500 of the world's best universities on the Shanghai, Times and Webometrics ranking lists, and the Faculty of Law, one of its 26 full members, are celebrating its 100th anniversary.

Project Partners

Personalised Solution in European Family and Succession Law

800821-JUST-AG-2017/JUST-JCOO-AG-2018



Univerza v Ljubljani



The content of this publication represents the views of the authors only and is their responsibility. The European Commission does not accept any responsibility for the use that may be made of the information it contains.


euro-family.eu


info@euro-family.eu



Co-funded by the Justice Programme
of the European Union (2014-2020)

