# 6th SWS INTERNATIONAL SCIENTIFIC CONFERENCE ON SOCIAL SCIENCES 2019

**CONFERENCE PROCEEDINGS**
**VOLUME 6**
**ISSUE 1**

- - - - - - - - - - - - - - - - - - -

## POLITICAL SCIENCES, LAW, ECONOMICS AND FINANCE

- - - - - - - - - - - - - - - - - - -

**26 August – 1 September, 2019**
**Albena, Bulgaria**

**DISCLAIMER**

This book contains abstracts and complete papers approved by the Review Committee. Authors are responsible for the content and accuracy.

Opinions expressed may not necessarily reflect the position of the International Scientific Council of SWS.

Information in the SWS 2019 Conference Proceedings is subject to change without notice. No part of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, for any purpose, without the express written permission of the International Scientific Council of SWS.


Published by STEF92 Technology Ltd., 51 "Alexander Malinov" Blvd., 1712 Sofia, Bulgaria
Total print: 5000

**ISBN 978-619-7408-91-1**

**ISSN 2682-9959**

**DOI: 10.5593/SWS.ISCSS.2019.1**

**SWS INTERNATIONAL SCIENTIFIC CONFERENCE ON SOCIAL SCIENCES**
**Secretariat Bureau**

E-mail: **sgem@sgemsocial.org**
URL: **www.sgemsocial.org**

## ADVISORY BOARD

**Prof. Dr. habil. art Ojaris Sparitis**

President of the Latvian Academy of Sciences

**Acad. Prof. DSc. Valeriy Bondur**

Vice- president of the Russian Academy of Sciences

## INTERNATIONAL SCIENTIFIC COMMITTEE

**Prof. Dr. Dr.h.c. Aleksander Bursche**
University of Warsaw, Poland

**Prof. Dr. Alois Ghergut**
Alexandru Ioan Cuza University, Romania

**Prof. DSc. Andrejs Cekuls**
University of Latvia, Latvia

**Prof. Dr. Andrey Dvornichenko**
St. Petersburg University, Russia

**Prof. DSc. Baiba Rivza**
University of Life Sciences and Technologies and Latvian Academy of Science, Latvia

**Prof. Dr. Biruta Sloka**
University of Latvia, Latvia

**Prof. Dr. Carmen Castilla Vázquez**
University of Granada, Spain

**Prof. Dr. Donatella Privitera**
University of Catania, Italy

**Prof. Dr. Francesca Ghedini**
University of Padua, Italy

**Assoc. Prof. Dr. Gabor Kiss**
Óbuda University, Budapest, Hungary

# CONFERENCE PROCEEDINGS CONTENTS

## SECTION POLITICAL SCIENCE



## SECTION LAW

# BREXIT AND NEW EUROPEAN FRAMEWORK IN FAMILY PROPERTY REGIMES

**Prof. Dr. Lucia Ruggeri**

University of Camerino, **Italy**

## ABSTRACT

The internationality of family relationships can be determined by one or both of the following factors: the presence of members of different nationalities in the couple or the location of assets and real estate belonging to the couple in States other than the one in which the couple resides.

Couples are international if the two parties have different nationalities, live apart in different countries and/or live together in a country other than their home country.

After the UK's decision to leave the European Union, particular issues have arisen for cross-border families residing in the UK. After the Lisbon Treaty, the UK's policy on the regulation of family relations was characterized by a constant opt out regime.

For this reason cross-border families residing in the UK cannot benefit from recent European regulations regarding property regimes. The new EU Regulations make it easier to identify the law applicable to the assets of spouses or registered partnerships. But cross border couples in the UK cannot benefit from the new EU Regulations.

The uncertain regulatory framework determined by Brexit involves the application of international instruments that are not fully harmonized with the domestic legal systems of the United Kingdom.

The paper offers a focus on the situation for cross border families after the Brexit in the specific sector of property regimes with specific regard to England and Wales.

The main outcome of the paper is to highlight the need for dialogue between the UK and the European Union in the interests of transnational families.

**Keywords:** Family, Property, EU Regulation, Brexit, Cross border issues.

## INTRODUCTION

Statistical sources describe that, in 2017, in the UK, about 900,000 citizens are long-term residents of other EU countries and the group is mostly aged between 30 and 49 years [1].

What emerges from these data is the importance of a reflection on how the Brexit can influence the family relationships of those who, even if residing habitually in Great Britain, have a nationality of EU Members States or have assets and real estate in a different EU country.

The International Family Law of all European Member States, including the United Kingdom, has become more and more a Family Law which can be considered uniform to European rules.

In general, family matters are ruled by the single countries because the family is an expression of the culture, the history and the tradition of each nation [2].

On 15th and 16th October 1999, in Tampere, the European Council held a special meeting "on the creation of an area of freedom, security and justice in the European Union". The Tampere Council enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation. The main goal of the Tampere Council was to facilitate co-operation between authorities and the judicial protection of individual rights. After this European Council the principle of mutual recognition became "the cornerstone of judicial co-operation".

For this reason, after 2000, there is a EU-level Family law legislation based on cross-border implications. The EU Family Law is based on the principle of unanimity, all Member States have to agree and the EU Parliament must be consulted.

In Family Affairs the unanimity is a difficult goal because of the importance of cultural diversities between nationalities.

The United Kingdom has a special regime about the area of freedom, security and justice (AFSJ). The UK can opt in or opt out of legislation in this area. For this reason the path of the European Family Law could be different from the path of the UK Family Law.

After Tampere the European Union has started a process to regulate family relationships in order to guarantee European citizens the exercise of rights that belong to them as members of a family even if they live in a different EU country.

If we analyze the EU regulations on Family Law, we can identify the main contents of the EU-Level Family Law: legal separation, annulment of the marriage, divorce, parental responsibility and custody of children.

## II. PROPERTY REGIMES IN THE EUROPEAN FRAMEWORK

The Council Regulations of 24 June 2016 no. 1103 and no. 1104 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and in matters of property consequences of registered partnerships are the last EU instruments on EU Level Family Law [3].

Both of them came into force last 29 January. The Regulation No. 1103 is binding for 19 Member States: Belgium, Bulgaria, Germany, Finland, France, Greece, Italy, Croatia, Luxembourg, Malta, Netherlands, Austria, Portugal, Sweden, Slovenia, Spain, Czech Republic, Cyprus and Estonia. Both of them are based on the Stockholm Programme which enhances that mutual recognition should be extended to fields that are essential to everyday life.

The two Regulations were adopted by the special procedure of enhanced cooperation and they are aligned with the EU Citizenship Report 2010: "Dismantling the obstacles to EU citizens' rights", adopted on 27 October 2010.

The property regimes are really important for cross-border couples. The EU framework in this matters have to take into consideration Member States legal systems, especially public policy [4] and national traditions [5]. We have two Regulations, because not all EU member States recognize same-sex marriage. But both the EU Regulations have the same contents and provisions. The most important difference is that in Regulation No. 1103 there is a connection with Brussels II *bis* instrument because the Brussels II *bis* Regulation has regard to divorce and it's necessary to coordinate the jurisdiction rules about the divorce jurisdiction with the rules about property regimes in marriages.

Where a court of a member state is seized to rule on a matter of divorce pursuant to Brussels II, the courts shall have jurisdiction to rule also on matters of matrimonial property regimes (art. 5).

The spouses may agree [6] the law applicable to their matrimonial property regime providing that: a) it is either the law of the state where they or one of them is habitually resident at the time the agreement is concluded b) or the state of nationality of either spouse or future spouse at the time of the agreement (art. 22).

On the basis of Art. 6, if there is no jurisdiction for divorce and no choice of court agreement, there is a hierarchy of other jurisdictions, a so-called "cascading preference".

The matrimonial property regime agreement applies to all assets falling under the regime regardless of where they are situated (Art 21) [7]. The consequence could be a clash of jurisdictions. The inclusion of all the assets was pivotal "to make sure this law applied to all of the assets of the couple within the regime, and avoiding a patchwork of different laws applying to different assets in different member states" [8].

"The spouses may not invoke the law of the matrimonial property regime against a third party in a dispute with the third party unless the third-party knew, or in the exercise of due diligence, should have known, of that law i.e the chosen regime".

The Eu Regulation No. 1104 on property regimes in registered partnership excludes marriage and excludes de facto cohabitants. The partnership can be registered in any country in the world. It is not just EU registered partnerships [9].

## III. THE IMPACT OF THE EU REGULATIONS NO. 1103 AN NO. 1104 IN THE ENGLAND AND WALES AFTER BREXIT

The two EU regulations don't involves the UK because in the Family Law there are different legal systems which don't contemplate property regimes for couples. For example England and Wales do not have a matrimonial property regime comparable to the one of the in continental Europe.

In these countries there is not a concept of matrimonial regimes. In England and Wales only the case law developed the idea of matrimonial regime after the *White* case in the Supreme Court in October 2000 [10].

If the UK opted in the Regulations there would be a lot of practical problems in Family Law, Property Law and Succession Law. For example, according to the family law in England and Wales, the Court deals with rights *in personam*, but not with rights *in rem*. The EU Regulations don't cover the nature of rights *in rem* relating to a property, but

the application of the Regulations can involve both (rights *in rem* and rights *in personam*). At this regard the EU Regulation No. 1104 (Whereas 25) provides an adaptation of an unknown right *in rem* to the closest equivalent right under the law of the other Member State. "In the context of such an adaptation, account should be taken of the aims and the interests pursued by the specific right *in rem* and the effects attached to it". "For the purposes of determining the closest equivalent national right, the authorities or competent persons of the State whose law is applied to the property consequences of a registered partnership may be contacted for further information on the nature and the effects of the right. To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used, as well as any other available means facilitating the understanding of foreign law".

Both the Regulations adopted the principles of universal application and unity of the applicable Law. For this reason on the basis of the two Regulations a cross-border couple can choose the England and Wales Law, but also an English individual of the couple could be ruled by a Law of a different State.

The English and Welsh courts will continue to apply local law to maintenance pending disputes: any statement in a qualifying nuptial agreement about applicable law would have no effect in the courts in England and Wales [11].

Maybe the most important problem of the two Regulations could be the absence of the uniformity in procedures and requirements in EU Member States Land Registries.

But the adoption of a registration system in all Member States for publicity of matrimonial property regimes was considered beyond the scope of Community competence (Art. 65 of the Treaty) [12].

The European framework in family and succession matters is characterized by a different level of relevance and application.

From a horizontal perspective - after the Stockholm programme – the new Regulations don't involve the UK and other Member States. The enhanced cooperation procedure de facto after 2010 substitutes the principle of unanimity in family matters.

We can relieve a linearity in the UK choices. The UK considered the EU path in family matters after 2010 totally incompatible with its tradition and legal culture. On this regard to the specialist in Family and Succession Law the Brexit represents only a final and most general step on the UK divergent path.

## CONCLUSION

The most relevant problem after Brexit could be represented by the EU Regulations applied by the UK: the Bruxelles II bis. The Withdrawal Act could be only a palliative care. The rights of the EU citizens included in EU Treaties, Charts and regulations will be kept in the UK legal system, but after the Withdrawal Act they will be applied by different courts in divergent legal systems. For example, before the Brexit the English courts have applied principle and case law of the European Court of Justice, after the Brexit the English judges will role in autonomy and without the influence of future modifications in the EU regulations revised.

On 7 December the Council of the European Union approved the General Approach on the Brussels IIa Recast proposed by the Presidency on 30 November 2018

The Council has agreed on the complete abolition of exequatur, a limitation of jurisdiction for provisional measures to States where the child or property belonging to the child is present, allowing the cross-border recognition and enforcement of provisional measures granted by the court to where the child has been abducted when ordering the return and the harmonisation of certain rules on actual enforcement.

The Bruxelles II Recast can't involve the UK and after the Brexit the Brithish Family Law can't take advantage by the improvement in EU framework.

The dialogue between the EU and the UK will continue because of the international elements presents in the society: cross-border couples, import-export, immigration. But, at present, in the field of family affairs only some International Conventions can operate on the basis of the Hague Conventions.

The main instrument to continue the dialogue could be represented by the European Convention on Human Rights which can influence reciprocally EU judges and UK judges playing the role of mediator between the developments of the domestic case law.

After the Brexit, the Charter of Fundamental Rights of European Union is not part of domestic law, on the basis on Clause 5(4) of the Withdrawal Act. But this does not affect the retention in domestic law of any fundamental rights which exist irrespective of the Charter-Clause 5(5) which establishes also that "References to the Charter in any case law are, so far as necessary for this purpose, to be read as if they were references to any corresponding retained fundamental rights or principles".

Only the EU Legal Continuity - Scotland Bill decides to retain the Charter in Scottish Law after the Brexit.

In conclusion the most important instruments for a dialogue between UK and UE in the field of Family Law could be only the Hague Conventions and the European Convention on Human Rights.

In this context, the role played by judges will be increasingly important in finding appropriate solutions for cross-border families living in UK.

## ACKNOWLEDGEMENTS

This paper is a deliverable of the Project PSEFS - Personalized Solution in European Family and Succession Law n. 800821-JUST-AG-2017/JUST-JCOO- AG-2017-
This project was co-funded by the European Union's – Justice Programme (2014-2020).

The content of this document represents the views of the author only and is her sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

## REFERENCES


[1] www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/whatinformationisthereonbritishmigrantslivingineurope/jan2017.

[2] Gilbert A., British Conservatism and the Legal Regulation of Intimate Relationships, United Kingdom, pp. 1-256, 2018.

[3] Bruno P., I regolamenti sui regimi patrimoniali dei coniugi e delle unioni registrate, Italy, pp. 1-319, 2019.

[4] Perlingieri G., Zarra G., Ordine pubblico interno e internazionale tra caso concreto e sistema ordinamentale, Napoli, p. 48-85, 2019.

[5] Damascelli D., Applicable law, jurisdiction, and recognition of decisions in matters relating to property regimes of spouses and partners in European and Italian private international law, Trusts & Trustees, Vol. 25, Issue 1, p. 6–16, 2019.

[6] Scherpe J.M., Marital Agreements and Private Autonomy in Comparative Perspective, Marital Agreements and Private Autonomy in Comparative Perspective, United Kingdom, pp. 443 – 518, 2012.

[7] Ruggeri L., Winkler S., Neka pitanja o imovinskim odnosima bračnih drugova u hrvatskom i talijanskom obiteljskom pravu, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 40 No. 1, pp. 167-197 , 2019.

[8] Honson D., EU matrimonial property regime regulation, in https://www.familylaw.co.uk/news_and_comment/EU-Matrimonial-Property-Regime-Regulation.

[9] Sherpe J.M., Hayward A., The future of registered partnerships. Family Recognition Beyond Marriage?, United Kingdom, pp. 1-594, 2017.

[10] House of Lords' decision in White v White [2000] 2 FLR 981.

[11] House of Commons, Law Commission, Property, Needs and Agreements, par. 7.36, United Kingdom, p. 149- 150, 2014.

[12] Summary of replies to the green paper on the conflict of laws in matters concerning matrimonial property regimes, including the questions of jurisdiction and mutual recognition, Brussels, 5 February 2008, p. 2.