

EUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

SUNICOP

European civil procedure (in cross border) family matters

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- Intensified human mobility
 - Internationalization of family life / family law
 - Human rights protection
- inadequacy of national legal systems to regulate newly formed social situations

universal and regional level of LAW HARMONIZATION

- Hague conference on private international law
- United Nations
- Council of Europe
- European Community – European Union

EUROPEAN UNION

- Encouraging free trade brings the issue of cross border elements to family
- EU must create sophisticated legal solutions to deal appropriately with real social conditions
- Endangered legal certainty refrains people to employ market freedoms

- 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters
 - Art 220 TEC served as a legal bases for it's adoption
- Art 5/2 maintenance obligations within it's material scope

- 1990 Convention on the Simplification of Procedures for the Recovery of Maintenance Payments
 - never came to force
- 1997 Treaty of Amsterdam moved judicial cooperation in civil matters to the first pillar
 - Art 65 serves as a legal bases for adopting acquis on judicial cooperation in family matters

- 1999 Tampere programme
 - places mutual recognition of decisions at focus
- 2005 – 2010 Hague programme
 - mutual recognition agenda remained a priority
 - called for the development of EU action in family law: the Commission is invited to submit proposals on maintenance, matrimonial property, and divorce.

- 2009 Treaty of Lisbon
 - Introduces new Title V “Area of freedom, security and justice”
 - Art 81 now serves as a legal bases

- 2010-2014 Stockholm Programme
 - mutual recognition transfers to abolished egequatour in family matters
 - inovation: promoting alternative dispute resolution in cross border family cases

Direct constituents of international family *acquis*

- Council Regulation (EC) no. 2201/2003 of 27 November 2003 on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility which revokes the Regulation (EC) no. 1347/2000
- Council Regulation (EC) no. 4/2009 of 18 December 2008 on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Cooperation in Matters Relating to Maintenance Obligations

- Council Regulation (EU) no. 1259/2010 of 29 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation

Indirect constituents of international family *acquis*

- Council Regulation (EC) no. 1206/2001 of 28 May 2001 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters,
- Regulation (EC) no. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the Service in the Member States of Judicial and Extrajudicial Documents in Civil or Commercial Matters,
- Regulation (EEC, Euratom) no. 1182/71 of the Council of 3 June 1971 Determining the Rules Applicable to Periods, Dates and Time Limits,
- Regulation (EC) no. 805/2004 of the European Parliament and of the Council of 21 April 2004 Creating a European Enforcement Order for Uncontested Claims,
- Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters,
- Council Directive 200/52/EC of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters.

Additional constituents of international family *acquis*

- Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters,
- Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children,
- Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction,
- Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance +
Hague Protocol of the Law Applicable to Maintenance Obligations.

international family *acquis* instruments are
based on rules of:

- harmonized standard of international jurisdiction (direct),
- proper service,
- elimination of procedural irregularities,
- avoidance of simultaneous procedures and passing opposed decisions,
- exequatur repeal (two approaches),
- applicable law – at low extent so far.

HUMAN RIGHTS CONSIDERATIONS

- 2000 Charter of Fundamental Rights becomes integral part of binding EU law with 2009 Treaty of Lisbon
- each EU policy placed in front of human rights test
- human rights notions are often used for promotion of economic goals

CENTRAL AUTHORITIES

- HCCH conventions mechanisms of central authorities
 - Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.
 - Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
 - Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption
 - Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, Final Act of the Twenty-First Session, The Hague 23. November 2007.
- served as a model on establishing it's wider promotion within EU *acquis*:
 - Brussels II *bis* Regulation
 - Maintenance Regulation

General functions of CA

- promoting exchanges of information on national legislation and procedures,
- cooperating with each other in order to solve problems arising from the application of relevant regulations,
- facilitate communication between the courts.

Special functions of CA

- Brussels II *bis*:
 - providing assistance to holders of parental responsibility seeking to recognize and enforce decisions,
 - help in resolving disagreements between holders of parental responsibility through alternative means to mediation,
 - activities regarding placement of a child in another member state, etc.
- Maintenance Regulation:
 - transmission and reception of applications,
 - initiation of the related proceedings for the establishment or modification of maintenance or for the enforcement of a maintenance decision,
 - helping to locate the debtor or the creditor, etc.

European Judicial Network (EJN)

- Council Decision 2001/470/EC of 28 May 2001 established a European Judicial Network (EJN) in civil and commercial matters.
- The new framework for EJN was set up by Decision No 568/2009/EC of the European Parliament and of the Council of 18 June 2009.

- cross border communication and other judicial collaboration entails:
 - smoother conduct of cases with cross-border elements;
 - facilitates judicial cooperation among Member States judges (aid with the service of documents; taking of evidence);
 - aims at ensuring the proper practical application of *acquis communautaire* along with international agreements and conventions among Member States
 - aims at establishment and maintenance of an information system for the public on judicial cooperation in civil and commercial matters in the EU, *acquis*, international instruments and the domestic law of the Member States, especially regarding the access to justice.

Hague International Judicial Network (HIJN)

- HIJN completes the Malta declaration
- emphasizes the added value of direct judicial communications in international child protection cases