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EUFAMS II

FACILITATING CROSS-BORDER FAMILY LIFE: TOWARDS A COMMON EUROPEAN UNDERSTANDING

REPORT ON THE CROATIAN EXCHANGE SEMINAR

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SUMMARY

The Croatian National Seminar endeavored to gather judges, lawyers, social workers and other legal practitioners in order to identify problems which these stakeholders face when applying European and international instruments in family and succession matters. It showed that a good practice in cross-border cases has been established but there is still ample room for improvement.

The general conclusion is that more training and information for all stakeholders of cross-border family and succession procedures have to be provided, in particular when it comes to the recently introduced Regulations on Property Regimes, the Public Documents Regulation and the Brussels II bis Regulation Recast. Cooperation between the various participants throughout the system has to be developed and fostered (at level of court consultants, judges and Central Authorities, as well as among all other participants in the decision-making process). Cooperation of judges from different Member States should be encouraged through the use of the European Judicial Network (EJN) and informal judicial cooperation. Education should ensure full impact of CJEU decisions. All levels of national courts are encouraged to address the CJEU with preliminary references.

The national application of the European and international framework will be enhanced by the entry into force of the new Croatian PIL Act of January 2019, the provisions of which explicitly point users to the pertinent instrument. Application of the Brussels II bis Regulation and Maintenance Regulation poses relatively few problems. The identified problematic issues (compulsory counselling as a prerequisite for divorce proceedings, hearing of the child in proceedings, the circumstances relevant for the determination of habitual residence, processing of the transfer of jurisdiction, indexing and automatic adjustment of maintenance obligations, public bodies as maintenance creditors) are partly elaborated by national doctrine. However, they are not fully implemented in practice. Certain issues require executive intervention in terms of implementing rules and a modification of the electronic court data system to ensure identification of international cases. When adopting national legislation, more attention should be paid to its aligning with the outward framework for an international dispute in an overlapping situation. The intervention would also be welcomed when it comes to specialization of judges, and in particular the specialization of judges by chambers in second instance courts. In relation to cross-border child abductions, national implementing legislation should improve the application of the 1980 Hague Child Abduction Convention and various regulations.

SUMMARY IN CROATIAN

Cilj nacionalnog seminara bio je okupiti suce, odvjetnike, socijalne radnike i druge pravne stručnjake kako bi otkrili probleme s kojima se susreću u svakodnevnoj praksi primjene europskih i međunarodnih instrumenata. Sam zaključak je da postoji dobra praksa u nacionalnim prekograničnim slučajevima, ali ima i mnogo prostora za poboljšanje.

Potrebno je osigurati više obuke za sve sudionike u prekograničnim obiteljskim postupcima i nasljeđivanju, osobito imajući u vidu nove uredbe o imovini bračnih drugova i registriranih partnera, slobodnom kretanju javnih isprava te reviziju Uredbe Brusseles II bis. Trebalo bi razvijati i poticati suradnju različitih sudionika u cijelom sustavu: na razini sudskih savjetnika sudaca i središnjeg tijela, kao i među svim ostalim sudionicima u postupku odlučivanja. Suradnju sudaca različitih država lanica treba poticati korištenjem EJN-a i neformalne pravosudne suradnje. Edukacija treba osigurati davanje punog učinka odlukama Suda EU. Suce se potiče da se obrate sudu s prethodnim pitanjem.

Nacionalna primjena sheme europskih i međunarodnih propisa biti će pospješena stupanjem na snagu novog Zakona o međunarodnom privatnom pravu iz siječnja 2019. koji jasno upućuje na relevantni pravni izvor. Primjena Uredbe Brussles II bis te Uredbe o uzdržavanju je relativno tečna. Identificirana problemska pitanja (obvezno savjetovanje kao procesna pretpostavka pokretanja razvoda; saslušavanje djece u postupcima; okolnosti utvrđivanja uobičajenog boravišta te litispendencije; procesuiranje transfera nadležnosti; indexacija i automatsko usklađivanje iznosa uzdržavanja; javna tijela kao vjerovnici uzdržavanja;) u nacionalnoj doktrini su djelomično obrađena ali smjernice nisu praktično implementirane. Za određena pitanja potrebna je intervencija izvršne vlasti u smislu provedbenog propisa te elektroničkog sustava identifikacije spisa sa stranim elementom. Kod usvajanja nacionalnog zakonodavstva trebalo bi voditi više računa o usklađivanju sa postojećim okviru za odnosno predmet spora prekograničnoj situaciji. Intervencija bi bila dobrodošla i u smislu specijalizacije sudaca po sudovima te osobito specijalizacija sudaca po vijećima u drugostupanjskim sudovima. Poteškoće s roditeljskim otmicama trebale bi biti otklonjene novim provedbenim režimom.

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A. INTRODUCTION

The Croatian Exchange Seminar was the first National Exchange Seminar organized within the project "Facilitating cross-border family life: towards a common European understanding" (EUFams II). It was organized by the Faculty of Law of the University of Osijek.

I. OBJECTIVES

EUFams II aims at evaluating the implementation of legal instruments applicable to cross-border family and succession matters adopted by the European Union (EU), especially the followoing:

- Brussels II bis Regulation[1]
- Rome III Regulation[2]
- Maintenance Regulation[3]
- Matrimonial Property Regimes Regulation[4]
- Regulation on Property Consequences of Registered Partnerships[5]
- Succession Regulation[6]
- Public Documents Regulations[7]

The project equally takes into account relevant international conventions, in particular:

- 1980 Hague Child Abduction Convention[8]
- 1996 Hague Child Protection Convention[9]

[1] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

[2] Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

[3] 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.

[4] Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

[5] Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

[6] Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

[7] Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012.

[8] Convention on the Civil Aspects of International Child Abduction, drafted by the Hague Conference on Private International Law and concluded at The Hague on 25 October 1980.

[9] Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, drafted by the Hague Conference on Private International Law and concluded at The Hague on 19 October 1996.

– 2007 Hague Maintenance Convention[10]
– 2007 Hague Maintenance Protocol[11]

The Croatian Exchange Seminar endeavored to gather judges, lawyers, social workers and other legal practitioners in order to identify problems which these stakeholders face when applying the previously listed European and international instruments. The overall aim of the project is to ensure a unified and sound application of the aforementioned instruments. Interpretations given by the CJEU should particularly be taken into account. The same goes for good practices developed in other Member States. The project's ultimate aim is to find adequate solutions for a coherent application of the relevant European and international instruments as well as the relevant national procedural and substantive legal framework.

II. PARTICIPANTS

The methodology in regard to the selection of participants was based on the good practices developed within the framework of the previous EUFams I project. The existing mailing list of interested participants was updated and invitations for participation were sent to practitioners, academics and various other target groups. Invited participants were required to preregister and confirm participation.

The Croatian Exchange Seminar was attended by:

– first instance court judges (18)
– appellate court judges (4)
– social workers (11)
– special guardians for children and vulnerable adults (5)
– academics and researchers (11)
– lawyers (4)
– state secretary of the Ministry of Justice (1)
– advisor of the Ombudsman for children (1)

Invited Croatian, Romanian and international experts presented the accurate state of affairs on topics relevant for the project. The role of the experts was to raise awareness of the specific framework of European cross-border family and succession law, as well as to encourage further discussion.

The names of the participants are not given in this report, only their professional status is provided, so that their remarks can be put into context (Chatham House Rule).

III. SHORT DESCRIPTION OF THE SEMINAR

The seminar was held in Osijek on the 7th and 8th of March 2019. The language of the seminar was Croatian, although the lecture of and discussion with one expert was in English.

The seminar mostly proceeded as a free and open discussion between the participants, induced by the presented anonymized case study collected within the project to be

[10] Convention on the international recovery of child support and other forms of family maintenance, drafted by the Hague Conference on Private International Law and concluded at The Hague on 23 November 2007.

[11] Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, drafted by the Hague Conference on Private International Law (HCCH).

implemented into the EUFams II database. Participants received working materials (handouts on the relevant case study and legal instruments – regulations and conventions), aiming to encourage further exchange of views. Participants were encouraged to share and compare their practical experiences underlining the main critical issues on the application of the EU Regulations and Hague Conventions which arise from the national case law.

IV. DETAILED PROGRESS OF THE SEMINAR

1. Preparation

The availability of a great amount of case law may provides a fruitful ground for thorough analysis and discussion. Data and outcomes of this project are thus a valuable source of information on the actual state of implementation of the relevant instruments in Croatian practice. The methodology of collecting relevant Croatian case law is twofold. The main sources of information were judgments published by the courts in 'e-Board', the publicly available database hosted by the Ministry of Justice.[12] However, the obligation of the court to publish its judgements in anonymized form is not implemented systematically. Hence, upon request, and by courtesy of the courts, the research team gained access to additional judgments.

Having collected a vast amount of case law, the organizers of the event have taken the occasion of the national seminar to gather judges (some of them having rendered the discussed judgments), disclose the gaps of application and implementation of the relevant legal framework, to discuss the specific aspects relevant for the proper application and interpretation, to raise awareness of relevant CJEU case law, to uncover further problematic issues and to encourage wider proper application of the relevant European and international legal cross-border family and succession framework.

2. Evaluation

During the seminar, the survey prepared in advance by the project coordinator, was circulated among the attendees, 45 of which had completed the survey. The results show the various professional occupations of the participants: 21 judges, 4 lawyers/attorneys, 5 state officers, 6 scholars, 1 social counselor, 6 social workers, 1 lawyer in the Social Welfare Center and 1 psychologist. The attendees indicated that in their professional activities they had dealt with divorce, legal separation or marriage annulment (77,78%), with parental responsibility or child abduction (80%), maintenance obligation (66,67%) and property regimes in marriage and registered partnerships (48,89%). To a significantly smaller extent they dealt with succession (20%) and public documents (6,67%).

Approx. 60% of the participants indicated to be familiar with the EUFams II Case Law Database.

The participants expressed their high satisfaction with the presentations and discussions. 93,33% of them rated the presentations during the seminar as good, while 91,11% evaluated the plenary discussions as good.

One of the objectives of the seminar was to establish contacts between professionals working in the field of European Private International Law in family and succession

[12] The Ministry of Justice of the Republic of Croatia, e-Board, available at https://e-oglasna.pravosudje.hr.

matters. 80% of the participants stated that they got to know other professionals working in these fields, while 68,89% of the participants stated that they had engaged in professional discussions and exchanges with other attendees of the seminar.

Finally, most of the attendees expressed their satisfaction with the overall quality of the seminar (88,89%).

3. Day 1, Session I

The program of the first day of the seminar consisted of two sessions.

Session I was an introductory to the scope and aim of the project and its predecessor "Planning the future of cross-border families: a path through coordination" (EUFams I). Session I was a presentation of certain results of the previous project relating to the current state of Croatian national practice in international family and succession matters and a reflection of these topics by the invited respondents.

The first two speakers were part of the EUFams I project. The session commenced with a presentation by a junior research fellow addressing the EUFams I's final study in respect of Croatia. The session continued with a presentation by a researcher and participant of the working-group on cross-border judicial cooperation. The first presentation gave an insight into the Croatian national practice in comparison with national practices of other Member States. It is notable that the findings were based on an actual case law analysis. It is also notable that many of the participants of the exchange seminar have also been involved in the EUFams I project. The research indicated that the overall ratio of court cases with a cross-border element in Croatia amounts to 2% of total cases. A selection of the interesting figures of the EUFams I's final study have been briefly presented to the participants. Possible improvements of the system in respect of cross-border adjudication were extensively addressed.

Session I continued with an introduction to the mosaic of relevant international and European instruments in cross-border judicial cooperation. When justice is served in an international family case, informal judicial cooperation may be advantageous in many respects. Such a communication is direct, it enables smooth, timely and low-cost operation in a situation where a judge needs information and data on a foreign jurisdiction. Its main disadvantage is potential language barriers. The EUFams Model Protocol for the Coordination Amongst Judges, developed in the framework of EUFams I, was presented step by step. Information on nominated contact judge and details of the requirements of the form of communication were been presented.

The second part of Session I was a round table discussion by various invited experts. The first one came from the governmental structure performing the function of State secretary in the Ministry of Justice. The respondent noted that the Ministry of Justice is aware of the specific nature and challenges of cross-border civil justice; hence it devotes efforts to enable a smooth operation of the system. The recently adopted Croatian PIL Act[13] was mentioned as a bright example of the implementation of the principles of the European civil justice area. Modification of the law on courts[14] also renders an innovation

[13] Act on Private International Law (Zakon o međunarodnom privatnom pravu), Official Gazette No. 101/17.

[14] Law of courts (Zakon o sudovima), Official Gazette No. 28/13, 33/15, 82/15, 82/16 and 67/18.

in respect of the obligatory nomination of a judge for monitoring of EU legal rules and following judgements of the CJEU within each first instance and second instance court in Croatia.

The second respondent came from the judiciary; he was a contact judge in a European judicial network. The respondent spoke of the challenges in handling cross-border family cases, with special emphasis on the issue of informal judicial cooperation and the Model Protocol for the Coordination Amongst Judges drafted in the EUFams I framework. The respondent noticed that logistical tools of informal communication merely relate to the judiciary, leaving public notaries and other relevant bodies with no cross-border cooperation tool. The respondent also emphasized that the cross-border communication is still rarely employed by Croatian judges. As a possible reason the respondent noted that cooperation amongst judges and other bodies is rather vague even on a national level.

The third respondent came from a body that participates in child-related court procedures; the respondent is employed at the position of the director of Center for special guardianship. The respondent raised the issue of participation in cross-border cases where the authority is nominated to safeguard the interests of the child. The expert emphasized that court procedures last too long and that in many cases the child is not properly heard. He presented a child abduction case where the adequate arrangements measure under Art. 11 (4) Brussels II bis Regulation were requested by the special guardian but were ignored by the courts.

The presentations of the researchers and views of the respondents on the system in general and on the Croatian cross-border family and succession matters practice provided a solid ground for a fruitful discussion. Issues discussed may be placed in several categories, which will be described in the following sections.

a) Identification of an international case, application of the proper legal source

According to the participants, in a typical family cases, the cross-border implication is often only recognized in a later stage of procedure. Pursuant to national procedural law parties are obliged to submit an application or a claim with their personal data on nationality and domicile. Both of these are retained in Croatia, despite the fact that a person and a family actually lives abroad. An expert from the judiciary made a remark that in the early stage of submitting the application to a court registry it is hardly expectable that an international element would be visible.

Therefore, in most of the situations it is not possible to enlist the cross-border applications to a separate electronic management data record of the court (electronic court record). Moreover, there is no separate category of electronic court record indicating that a case is international. The suggestion was put forward that within the accurate electronic court record system a notice should be introduced to indicate that a case is international. Respondent of the Ministry of Justice upheld the idea of a separate electronic court record. Modernization and computerization of the system were welcomed by participants.

The national head researcher notices that doubts whether to apply the former Croatian Private International Law of 1982[15] or the Regulation should now finally be set aside, as the recently adopted new Croatian PIL Act clearly directs to the application of the relevant regulation or a convention.

The discussion then focused on judgements rendered in a Member States but with a falsely assumed jurisdiction. National experts and project researchers clarified that pursuant to EU regulations a court may not refuse recognition of such a decision. That was clearly confirmed by the CJEU: it firmly defended mutual trust as an EU principle. National experts and project researchers clarified that sanctions may be rendered against a Member State for breach of EU law in an infringement procedure initiated either by the European Commission or a Member State. A national expert however mentioned the examples of migration law where the EU reacted towards Italy and Greece only in event of a systemic errors and repeated violations of EU law.

The international expert joined the discussion indicating that the Brussels II bis Recast Proposal takes the route of nominating an expert body within each Member State to provide help and advice when it comes to the application of the Regulation.

b) Specialization

Participants complained about poor education on EU law and application of the *acquis*. Overall, judges are not particularly encouraged to get further education (specialist studies) or attend *ad hoc* education. Judges noted that in most cases they find the information themselves, but such an effort is often time-consuming. One must bear in mind that most acting judges gained their legal education before EU law was taught in Croatia.

Croatian first instance judges are not specialized. Hence, some of them face a family cross-border case rarely or even never. Specialization is provided at first instance courts as of 1st January 2019 only for return procedures in parental child abductions. Second instance courts are specialized to a certain degree, as only the appellate courts of Pula, Zagreb and Split adjudicate in family matters. However, there are no specialized judges within these courts. Therefore, specialization is much advocated by the judges. Participants raised the issue of possible formation of specialized family courts in the four biggest regional municipal courts (Split, Zagreb, Rijeka, Osijek). The respondent from the Ministry of Justice clarified that due to Croatian legal tradition and the lack of financial, such a specialization is not considered feasible.

c) Cooperation with the Central Authority

Participants have raised the issue of insufficient and vague communication with the Croatian Central Authority. Judges complained that information requested through the Central Authority is received with a significant delay, delaying the entire court procedure. As one of the possible causes for miss-communication, participants pointed toward the fact that the Central Authority is seated within the Ministry of Family Affairs instead of the Ministry of Justice. Having in mind that the Ministry of Justice is also the ministry responsible for judges, the contact point in dealing with cross-border family

[15] The Law on Resolution of Conflict of Laws with Regulations of Other Countries (Zakon o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima), Official Gazette of SFRJ, No. 43 of 23 July 1982 with corrigenda in No. 72/82, adopted in Croatian Official Gazette, No. 51/91.

issues should have been seated there as well, so it was argued. Participants emphasized that in the Croatian legal system the Social Welfare Service is not an authority that may render any decision, but it is the court. Academics advocated a reconsideration of a middle approach, where the Central Authority would be a body established independently, separated from any ministry. National researchers indicated that courts could use other resources as well, such as the Evidence Regulation[16], to get information relevant for the case it deals with.

The Respondent of the Ministry of Justice has taken note of the problematic cooperation and vowed to work on smoother cooperation and capacity building within the Ministry of Justice in order to ensure cooperation with the Central Authority.

d) Informal judicial communication

Participants were rather responsive of the topic of informal communication. Their main constraint as to informal judicial communication was the lack of any information on such a possibility, since such communication is not commonly used even in domestic cases. Participants doubted if details of informal communication have to be disclosed to the parties and their representatives in a respective case, as well as pursuant to the GDPR[17]. The majority of the participants responded that the Evidence Regulation was an effective and efficient tool to obtain information from other Member States.

4. Day 1, Session II

Session II had a different concept from the first one. Invited international and national experts were asked to give a presentation on the current state of affair at the European level (Brussels II bis Recast Proposal) and to present the national practice of a Member State (Romania).

a) Program

The invited international expert of the T.M.C. Asser Institute in The Hague presented the ongoing revision of the Brussels II bis Regulation.

The second invited expert, a lecturer at the West University of Timisoara, delivered a presentation of the Romanian judicial system and challenges in handling cross-border family and succession matters. The presentation was based on several rulings of Romanian courts on the application of the relevant regulations.

The discussion of the academics and other participants followed these presentations. The discussion highlighted the rather high number of applications for a preliminary ruling brought by the Romanian courts. It was an occasion to present the several applications that were initiated by Croatian courts (outside the family and succession matters).

b) Main findings of the general discussion

Identification of an international element in a family case is at the early stage barely impossible due to the fact that national procedural law requires a data on nationality

[16] 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.

[17] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

and domicile (but not habitual residence) as obligatory parts of a claim which is submitted to a court. Additionally, there is no category of electronic court record indicating that a case is international. Improvements of the current system are awaited.

Specialization of the courts is assured only for child abductions at first instance and on second instance only three courts deal with family cases. Specialization of the judges within these courts, as well as other non-concentrated courts is advocated. The new regime of nomination of a judge for monitoring and following EU law and case law is a welcomed innovation. However, judges acting as such, as well as a judge nominated to a judicial network have retained the equal amount of workload as other judges with no additional obligations. Redefinition of workload and obligations is advocated.

Education has to be assured on all level of the adjudicating process.

Cooperation with the Central Authority has to be promoted. Employment of the direct judicial cooperation has to be promoted as well. A prerequisite for its advancement is an enhanced cooperation in internal cases as well. Guidelines for informal cooperation should be developed by justice authorities (Ministry, Supreme Court), particularly addressing the issue on information which has to be disclosed to the parties and their representatives in a respective case, as well as on the GDPR's requirements on data protection.

All levels of national courts are encouraged to address the CJEU in Luxembourg with a request for interpretation. In several cases the decision was made by the Croatian court but in the same factual framework the court of a different Member State required interpretation of the CJEU. The CJEU gave a clear interpretation which in most of these situations departed from the attitude Croatian courts have taken and practiced.

5. Day 2, Session III

The program of the second day of the seminar contained two sessions.

Session III of the second day of the seminar commenced with a presentation by a junior research fellow of the EUFams II projects scheme. The presentation contained basic data on project duration, partners, financial data, project activities and timeline of the project. The presentation of the EUFams website focused on the database. Search possibilities of the EUFams database were presented as well. The Croatian website of the project was also presented, as it contains useful links to relevant European and international databases and an updated list of all the CJEU rulings on relevant regulations. The Croatian website also contains sections with links to relevant literature (open access where possible, otherwise full reference).

Session III continued with a presentation and discussion on the issues of international family and succession adjudication. It was based on collected national case law. Case law was collected through e-board and collected by cooperation with judiciary that was willing to share case law. Details of discussion in respect of each regulation would be presented in the sequence of this Report under separate headings.

6. Day 2, Session IV

Session IV of the seminar was dedicated to new instruments relevant to the field. The first presentation was held by the project's external expert of the Faculty of Law

University of Rijeka. The expert presented the Property Regimes Regulations in respect to the rules adopted for jurisdiction, applicable law, recognition and enforcement.

The seminar ended with presentations on two recently adopted national acts, both relevant for cross-border adjudication. A professor of law at the University of Split gave the first presentation on the recently adopted Croatian Private International Law Act. The national expert presented the innovations brought by the Croatian PIL Act. Its structure is educational, as it directs towards applicable regulations and conventions. In its authentic part, some departures of the previously dominant nationality concept are noted. The final presentation was given by a Croatian head researcher on the recently adopted Law on Implementation of the 1996 Hague Child Protection Convention. This Implementing Act was drafted in the period of 2015-2017, and became applicable in January 2019. Due to an active role of the Croatian research team members in the creation of the Implementing Act its provisions were affected by the results of the EUFams project and national project "Cross-border Removal and Retention of a Child – Croatian Practice and European Expectation" (IZIP). The Implementing Act introduced the concentration of jurisdiction and procedural tools with the aim of speeding up the return procedure. It also introduced the provision on issuance of a second instance decision within 30 days, with no extraordinary appeal permitted. The Implementing Act omitted to prescribe specialization of judges within each of the specialized courts, which was proven as needed in conducted researches.

Participants were delivered handouts with samples of the most relevant cross-border situations. The EUFams II project research team, on the bases of collected case law, developed these samples.

B. BRUSSELS II BIS REGULATION

I. DIVORCES WITHOUT CHILDREN

The first part related to divorces without children. Researchers pointed out that in most of the collected cases the courts have established their jurisdiction properly (mostly based on the nationality of both spouses), but still had not referred in the issued decision to the rules of jurisdiction set out in the Regulation, even though courts are obliged to do so.

Most of the cases relate to families that have lived abroad for several years, but when a divorce comes at stake, they employ the Croatian judiciary for economic reasons, e.g. low cost of the proceedings in Croatia.

II. DIVORCES WITH CHILDREN

The majority of divorces related to couples with minors. In several cases courts rejected a prorogation of jurisdiction under Art. 12 Brussels II bis Regulation, as they considered it contrary to the best interest of a child. One of the issues detected in the case law is the fact that a family initiates divorce proceedings at the moment the family still lives in Croatia, but subsequently moves abroad. The court is thus faced with a situation where it has started dealing with the merits of the case but it has actually lost connection to the parties. Since in the Croatian legal system the court does not render a separate decision to establish/confirm if it retains jurisdiction, participants were asked whether in the abovementioned scenario a court could still reject its jurisdiction, or whether it has to hold on to *perpetuatio fori* and proceed, or eventually try to transfer the case.

In several cases, a court had to deal with applications relating to third country nationals. Having in mind that Croatia has a long border with Third States, the number of such cases is rather significant. The research team reminded the participants that the Brussels II bis Regulation does not have any limitation in respect of personal scope of application. The issue of delamination with the 1996 Hague Child Protection Convention came to forefront in these cases as well.

Another interesting issue related to divorces with children is where a family lives abroad but wishes to settle all of the connected claims in Croatia. The research team reminded participants of the consecutive requirements of the provision of Art. 12 Brussels II bis Regulation, according to which prorogation is possible only if it is in the best interest of the child. Hence, participants were presented several cases where Croatian courts declined jurisdiction in a combined claim, relying on the argument that a long and costly procedure of taking of evidence from the Member State where the child is habitually residence could not amount to its best interest.

III. TRANSFER OF JURISDICTION

When it comes to the transfer of jurisdiction, several cases were collected. Since transfer of jurisdiction is not a genuine institute of the Croatian legal system, the need for implementing provisions to enable its operation was raised already in the EUFams I project. No provisions were enacted in the meantime. Hence, courts are dealing with the transfer on a case-to-case basis. Open questions regarding the matter of transfer of jurisdiction prescribed by the Art. 15 Brussels II bis Regulation include: which is the legal basis for the acting of the court of another Member State; how should the court communicate (directly or through judicial network); what if the court receives a file in a

foreign language; will the court accept the evidences presented by another court; what if the circumstances of the case change or the child moves to another country. The issue that arose in one of the cases related to the moment the court can ask for a case to be transferred to Croatia. The case has been pending appeal in other Member States, but Croatian authorities have requested its transfer. The research team informed the participants about the recent CJEU case law in that respect. In the case *IQ v IP*[18], the CJEU clarified that such a scenario does not amount to a situation acceptable for transfer.

Over the course of the discussion, a question arose regarding the serving of process and other official court letters to a party living abroad. Judges indicated that in a situation of known residence, the Service of Documents Regulation[19] is an effective legal tool. However, in several cases respondents were of unknown address of residence. In such a situation, internal family law[20] was applied and a court nominated a representative to a person and delivered a decision on divorce. A discussion proceeded if in such a situation the interests of such respondents were properly represented. The external expert informed the participants of the prevailing CJEU practice that a court has to invest reasonable efforts to serve the respondent. Only in the event that all of its reasonable efforts failed and a court could not find a respondent, it may use national law[21] and nominate a representative for such a respondent.

IV. HABITUAL RESIDENCE

Several further cases raised the issues of determining the habitual residence of an adult and a child. Criteria that were most often extracted by the court correspond to the CJEU case law, particularly in respect of a child. Participants have raised the issue that unless one of the parties objects by claiming lack of jurisdiction, the court rarely *ex officio* investigate on the habitual residence. The research team and experts informed the participants that such a behavior is a malpractice that should be abandoned. Participants were informed of the relevant CJEU case law, particularly encouraged to use the EUFams II Croatian website to reach the full list of CJEU case law on the Brussels II bis Regulation.

V. PARALLEL PROCEEDINGS

Several cases related to the issue of parallel proceedings in different Member States. Points of these cases are diverse. Participants indicated that in most of the situations a judge is not aware of the ongoing foreign procedure if a party does not raise the issue. The discussion focused on the methods of establishing the ongoing foreign procedure.

[18] CJEU 04.10.2018, C-478/17 (IQ v JP).

[19] 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 (service of documents), and repealing Council Regulation (EC) No 1348/2000.

[20] In Croatia: Family Law, Official Gazette No. 103/15.

[21] In Croatia: Civil Procedure Act, Official Gazette No. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13 and 89/14.

Recent CJEU case law, particularly in the *Liberato* case[22], were presented to the participants.

One of the points raised in the context of *lis pendens* related to obligatory counselling procedure that has to be performed under the Croatian Family Law as a precondition to divorce initiation.[23] The issue raised related to the moment when the procedure is actually initiated for the purpose of establishing international *lis pendens*. It is rather clear that under national procedural law the divorce starts pending once a claim reached a court. Still, participants were acquainted with a CJEU case law on a similar mater[24].

The discussion of the research team and academics proceeded towards a rather unclear form and power of the Social Welfare Service report rendered within a mandatory counselling procedure. Having in mind the weight given to the moment the parties addressed the Social Welfare Service in a counselling procedure, participants were requested to carefully indicate the moment the procedure started pending. It was mostly not the case, instead the promemoria concluded by the Social Welfare Service mostly contain only the date the counselling is concluded. It has been emphasized that the mere fact that parties performed the mandatory counselling does not mean that a procedure is pending. Parties are obliged to proceed to subsequent steps prescribed by the law; within six months they must reach the court and initiate divorce proceedings.

VI. AGREEMENT WITHOUT HEARING OF THE CHILD

Another issue raised by the obligatory counselling procedure related to the situation where parents have actually reached an agreement over the child but the child has never been heard.[25] The parental responsibility plan developed by the parents is verified by the court and as such becomes an enforceable document.

VII. MIGRATION

The issue of a change of habitual residence of the child is a rather problematic one in Croatian practice. Since free movement of workers came to full effect, the number of migrations achieved enormous proportions. In several of the collected cases one of the parents decided to move abroad in search for work, while the other parent refused to consent to such a removal of a child. Experts indicated towards comparative research and EU guidelines confirming that the best interest of a child is one of the facts to be taken into account when dealing with such a request, but not the only one relevant.

VIII. NATIONAL ADMINISTRATIVE PROCEDURES

Another set of cases related to the situation in which a child lives abroad, but applies for the issuing of an identification card or a passport in a national administrative procedure. The research team reminded the participants of the established CJEU case law that consent of the missing or opposing parent is in such a scenario issued by the authorities of the habitual residence of a child, instead of Croatian authorities.

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[22] CJEU 16.01.2019, C-386/17 (Liberato).

[23] Art. 322 Croatian Family Law.

[24] CJEU 20.12.2017, C-467/16 (Brigitte Schlömp).

[25] Art. 107 Croatian Family Law.

IX. CHILD ABDUCTION

A set of cases related to child abduction. Despite the fact that the 1980 Hague Child Abduction Convention gives only an exceptional and limited number of grounds for refusal of return, there is a trend of court decisions refusing the return on the ground of existence of a grave risk of harm within the meaning of Art. 13 (1) (b) Brussels II bis Regulation. The Draft Guide to Good Practice on Art. 13 (1) (b) clearly suggests that the court of the State of the child's illegal residence may not use the grave risk exception as to turn the proceedings on the return of the child into the procedure on the merits of the dispute. The court deciding on the return request must avoid dealing with the questions on the merits that are for the State of habitual residence to decide. The national researchers indicated that the operation of the courts often goes beyond these limits. The collected national practice and case presented by the representative of Center for Special Guardianship suggested that in the vast majority the courts still had conducted a thorough analysis of the child's situation in order to evaluate the child's best interests. The judges mainly based their decisions on the opinions and proposals of the Social Welfare Centers. This was often preceded by the court requesting the Social Welfare Center to submit an opinion on whether the return is in the child's interest. In most cases the court actually did not consider the risk in the country of origin, but rather the fact that a parent would be better suited to a child, in the court's view, and that due to a close connection of the child and abducting parent the separation would constitute a grave risk of harm. Leading scholars in the field of child abduction clearly state that the fact of separation from the abducting parent should not by itself constitute a grave risk of harm.

Preliminary including protective measures cases were also presented to the participants. Taking care of the best interests of the child in child abduction cases can also be manifested through provisional and protective measures for the protection of the child and its assets. Protection is often needed also in respect of other persons as well, usually the parent who abducted the child. Competent authorities which have no jurisdiction as to the substance of the matter are also authorized to undertake appropriate provisional measures. The bases for this treatment are Art. 20 Brussels II bis Regulation and Art. 11 of the 1996 Hague Child Protection Convention. The protection of the child upon the return to the state of his or her habitual residence is based on Art. 11 (4) Brussels II bis Regulation, which stipulates that a court cannot refuse to return a child based on Art. 13 (b) of the 1980 Hague Child Abduction Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

Collected case law indicated that the courts are confronted with the difficulties in application of provisional measures provision. These relate to defining the jurisdiction of the national court to impose provisional, including protective, measures under Art. 20 Brussels II bis Regulation and to the attitude the court towards provisional measures taken in another Member State with regard to their legal effects in Croatia.

X. FORMS

Several cases related to issues of proper competition of the forms attached to the Regulation. In several examples some of the data that are part of the form were not addressed by the judgement. The peculiarity of the regime is that forms are completed

by the court advisors, i.e. a person that did not draft the decision. Even though court advisors have obtained legal qualifications for drafting the form, they have not received legal education (as is mandatory for judges).

XI. MAIN FINDINGS

In the most common scenario of divorce with children, courts are faced with the application of provisions on prorogation, defining the habitual residence of a child and transfer of jurisdiction. In most of these cases the Regulation was properly applied. Transfer provision is still problematic, due to lack of implementing legislation. In a high number of cases third country national child was subject of procedure – courts were reluctant to apply the Regulation, and doubted over the application of 1996 Hague Child Protection Convention. Insecurity relates here to delimitation of Brussels II bis Regulation, the 1996 Hague Child Protection Convention and the personal scope of application.

In several cases, courts had difficulties to establish *lis pendens* in another Member State. The role of the obligatory counselling before Social Welfare Service was also unclear, particularly in terms of its impact of the moment the case starts pending.

In child abduction cases the interpretation of the grave risk of harm does not correspond to international standards. The application of adequate measures of Art. 11 (4) Brussels II bis Regulation is not sufficient either.

In respect of the provisional measures the courts are not aware of their territorial effects.

C. BRUSSELS II BIS RECAST PROPOSAL

Having in mind the complexity of serving justice in cross-border family cases the EU is undertaking the effort to improve and clarify the functioning of the Brussels II bis Regulation. The main modifications relate to parental responsibility section. Full abolishment of the exequatur, rules on hearing of a child, more detailed rules on child abductions may be pinpointed as main innovations. The expert presenting the Brussels II bis Recast Proposal indicated the additional weight to be placed on the functioning of the Central Authority, which would have to be further build up with quality human resources.

All in all, the Brussels II bis Recast Proposal would clarify and improve the current framework. Continuous education has to be assured for all stakeholders.

D. ROME III REGULATION

The Rome III Regulation was adopted in an enhanced cooperation procedure. Croatia is not taking part in it. Possible reasons of Croatia for not taking part were listed, though it has never been clarified by any relevant governmental authority. Participants were reminded that even though this Regulation is published in the Official Journal in Croatian it is not a legal source. One example of application of this regulation before a Croatian court was mentioned as a false example. Applicable law in divorce matters is established by the provisions of the Croatian PIL Act. The capital provisions on the applicable law of divorce of the Rome III Regulation were copied to the new Croatian PIL Act. Hence, uniformity of application in divorce cases is assured.

The attitude of Croatia towards the family regulations adopted under the enhanced cooperation umbrella is diverse. Croatia never acceded to the Rome III Regulation, but it does take part in the enhanced cooperation in the field of property regimes.

E. MAINTENANCE REGULATION AND 2007 HAGUE MAINTENANCE PROTOCOL

When it comes to maintenance obligations, the collected case law is indicative of a less problematic application. One of the cases presented to the participants related to a maintenance obligation decision rendered by a Croatian court in a factual situation of pending child abduction procedure in Croatia. Since the child abduction procedure lasted for several years, the court was misled and rendered a decision obliging the father to contribute to the child's maintenance. The Croatian head researcher informed the participants of a CJEU case.[26] This ruling confirms a theoretically well-known figure that as long as an abduction is pending the court of abduction may not undertake in procedure on the merits, besides the child abduction return procedure.

The project team also informed participants of a situation where a parent with a child lawfully moves to another Member State and applies to a permanent advance of maintenance, while the other parent is also regularly contributing to the same child's maintenance. In such a situation a body of state that has advanced, the maintenance obligation may ask for a remuneration under the Maintenance Regulation as well as under the 2007 Hague Convention. Systematic control and cooperation on national and international level is inevitable to avoid any misuse.

The research team has presented a German maintenance decision with an automatic adaptation of the amount as the child grows and invited participants to share experiences with automatic indexation and automatic enforcement of such a decision. None of the participants has ever been confronted with such a situation.

Social Welfare Services do have an issue of revenue claims in the event of advanced maintenance. The fact that a public authority may use the maintenance scheme to reimburse the advanced maintenance of the debtor was discussed. It has also been discussed that a debtor that has overpaid the maintenance obligation has to use the Brussels I bis Regulation to get compensation.

As far as available case law indicates, application of the maintenance obligation scheme is smooth and application of the civil justice area works well. The issue of indexation and automatic adjustment of the maintenance obligation deserves more attention. More attention should also be given to coordination of the scheme of advanced maintenance and the options available for maintenance creditors, i.e. public bodies. Education should be assured for the relevant stakeholders, Social Welfare Services in particular.

[26] CJEU 10.04.2018, C-85/18 PPU (CV v DU).

F. MATRIMONIAL PROPERTY REGIMES REGULATION AND REGULATION ON PROPERTY CONSEQUENCES OF REGISTERED PARTNERSHIPS

These two regulations became applicable on the same day as the Croatian PIL Act. Moreover, the Croatian PIL Act clearly indicates to their application with its Art. 35, 40, 49 and 65. Hitherto, no practical experiences are available.

All in all, the new property regime has been developed as an advance of civil justice scheme. It would in particular be coordinated with the jurisdiction rules adopted in the framework of Brussels II bis Regulation and Succession Regulation. Education should be assured for all the relevant stakeholders (judges, public notaries).

G. SUCCESSION REGULATION

In regard to issues of determining jurisdiction in cross-border succession cases, it appears that establishing the habitual residence remained a challenge. As was already mentioned in the EUFams I Final report[27], these difficulties are not immanent to Croatian legal practice, they are present in other Member States as well (e.g. in Germany).

I. HABITUAL RESIDENCE

In most cases, the deceased lived in other Member States for economic reasons and also died there. However, all of his property is situated in Croatia, as are his family members who he visited and contacted regularly. Hence, it may be concluded that the center of his interests was also in Croatia. Still, public notaries as competent authorities are understandably reluctant to assume jurisdiction in such cases due to the fact that the main rule in Art. 4 Succession Regulation places jurisdiction at the court of the last habitual residence of the deceased.

There are also difficulties in establishing whether the deceased who was a national of another Member States had habitual residence in Croatia if he moved to Croatia after retirement. Usually, a large part of the property of the deceased is situated in the Member State he moved from and his heirs live abroad. In this situation public notaries tend to take into account all elements of the case, including the length of the residence of the deceased in Croatia, the knowledge of the Croatian language, purchase of immovable property, opening of bank accounts and integration in the community.

In order to assist Croatian competent authorities in determining habitual residence in cross-border cases, the Croatian legislator introduced a provision in Art. 5 Croatian PIL Act.[28] It does not aim to define the concept but to provide some guidance to the competent authorities as to which elements should be taken into account when the habitual residence is determined.

II. RELATION TO THIRD STATES

Another good practice is established by Croatian public notaries with regard to Art. 12 Succession Regulation. In adjacent Third States (Bosnia and Herzegovina, Republic of Serbia), as a rule, the decision of the Croatian notary will not be recognized and where applicable, declared enforceable. Consequently, public notaries who have jurisdiction to rule on the succession on the whole (including property situated in Third States) under the Succession Regulation, use the exception of limitation of proceedings and, at the request of one of the parties, do not rule on the assets situated in those Third States.

At the same time, it is surprising that a similar practice is established in some Member States in regard to the property situated in Croatia. It is not certain whether by mistake or willingly, the competent authorities in these Member States apply the national rules on private international law and rule only on the property situated in that Member State. Upon the conclusion of proceedings, they refer the heirs to competent Croatian

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[27] EUFams I Final Report, p. 126-128.

[28] In the sense of this Act, habitual residence is the place in which the natural person lives regardless whether her residence is registered or allowed. In determining the habitual residence, all circumstances of personal or business nature which indicate that there is a permanent connection of the person with that place or her intention to establish such connection should be taken into account.

authorities in order for the property situated in Croatia to be administrated and divided among the heirs. Croatian public notaries approached by heirs are only left with the possibility to advise the heirs to apply for the re-opening of the succession case before the competent authority of the other Member State in order for that authority to rule on the remaining part of the property. Otherwise, the unity of the property which was envisaged in the Succession Regulation would be undermined.

III. EUROPEAN CERTIFICATE OF SUCCESSION

In this context, a case of a deceased who died in Croatia where she had habitual residence, her property was situated in France and Croatia and her son as her heir who lived in France should be mentioned. Although all elements indicated that a Croatian notary has jurisdiction according to Art. 4 Succession Regulation, under the instruction of the French notary, the heir requested that the Croatian notary issues an European Certificate of Succession (ECS) in which the property in Croatia is declared, in order for the French notary to be able to proceed and rule on the property as a whole. The Croatian notary warned that this would be contrary to the Succession Regulation regime, due to the fact that under it, he has jurisdiction in the matter, but the French notary insisted. Due to the fact that he refused to proceed according to the request of the heir and the French notary, the Croatian notary has no knowledge as to how this case was resolved.

There are continuing doubts regarding the purpose of the ECS and the manner in which it is to be used. In cases where the ECS is issued by a competent authority of some Member State the heirs often contact Croatian public notaries with difficulties regarding the registration of their rights on the inherited property in the land register on the basis of Art. 69 (5) Succession Regulation. In these cases usually the issuing authority does not respect the instruction contained in the ECS form that in case of a registered asset information required under the law of the Member State in which the register is kept so as to allow the identification of the asset (for immovable property the land register, cadastral number, description of the property etc.) should be indicated.[29] Public notaries in these cases probably apply their national rules for issuing similar national instruments. Croatian public notaries in such cases regularly advise the heirs to request the issuing authority to modify the ECS in order for the immovable property to be registered in a Croatian land register.

Finally, a Croatian public notary can be commended for a good practice in regard to the issuing of ECS. She issued a certified copy of the ECS to an heir who, due to the lack of expedience of the land register in another Member State, was not able to register his rights on the immovable property. Hence, after 6 months he requested that another certified copy of the ECS be issued. The Croatian public notary informed the other heir in that case that, due to the circumstances described above, another certified copy will be issued and that he/she has the right to request a certified copy as well according to Art. 70 Succession Regulation.

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[29] Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the Forms referred to in Regulation (EU) No 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 359, 16.12.2014.

IV. MAIN FINDINGS

Croatian notaries have so far been successful in the application of the Succession Regulation. There are occasional challenges in terms of recognizing the cross-border element or establishing the habitual residence. However, most of the problems which heirs to the estate located in Croatia face are caused by the lack of knowledge or willingness of the notaries as competent authorities in other Member States to apply the Succession Regulation and to decide on the property as a whole (including the property situated in Croatia). Although Croatian notaries report good practices in regard to the application of the ECS and commend the registry offices and their efforts to apply it in order for heirs to register their immovable assets in Croatia, a problem has been detected. Occasionally, issuing authorities from other Member States do not respect the instruction contained in the ESC form on how the information on the asset should be indicated in order for the registry office of another Member State to be able to proceed with the registration. In such cases, Croatian notaries can only advise heirs to request the issuing authority of another Member State to rectify the ECS.

H. PUBLIC DOCUMENTS REGULATION

The system was welcomed by the participants. Education should be assured for all the relevant stakeholders (judges, public notary, civil servants, and administrative authorities).

I. CONCLUSIONS

- There are difficulties in detecting an international element of a case in an early stage, as well as with its identification as such in an electronic court management system. Efficient tools should be introduced to indicate that a case is international (possible by electronic case management service device); pointed out by researchers, experts, respondents and participants.
- Cooperation of different stakeholders within the entire system should be developed and promoted: on the level of judges and the Central Authority as well as amongst all the other participants in the adjudication procedure; pointed out by researchers, experts, respondents and participants.
- Cooperation of the judges of different Member States should be fostered by using the European Judicial Network and informal judicial cooperation; pointed out by researchers, experts, respondents and participants.
- More training should be assured for all stakeholders involved in the cross-border family and succession adjudication procedure; pointed out by researchers, experts, respondents and participants.
- It is necessary for the Croatian courts to establish their jurisdiction and to refer to the rules of jurisdiction of the relevant regulations; pointed out by researchers.
- There are open questions regarding the conduction of the procedure of mandatory counselling before divorce where the child has habitual residence in another Member State and in relation to the establishment of the jurisdiction of the Center for Social Welfare. Official guidelines should be issued; pointed out by the judges, lawyers in Social Welfare Services and practitioners.
- The Social Welfare Services should punctually indicate the moment the application for counselling was requested, since that moment may be taken as decisive for the purposes of *lis pendens*; pointed out by researchers.
- There are different practices when it comes to the hearing of the child which is a problem especially in the cases of consent divorce; pointed out by the judges and researchers.
- The decision replacing the parent's consent must be issued by the competent authority of the Member State of the child's habitual residence; pointed out by researchers.
- Prorogation of jurisdiction should be submitted under the test of the best interest of the child; pointed out by judges, practitioners and researchers.
- In a case related to third country nationals living in Croatia, the system of regulations equally applies, irrespectively of their third country nationality. If a child is habitually resident in a 1996 Hague Child Protection Convention State the delimitation of the two instruments is prescribed by the provision of Art. 61 Brussels II bis Regulation; pointed out by researchers.
- There are many open questions regarding the operation of transfer of jurisdiction prescribed by Art. 15 Brussels II bis Regulation. Since transfer of jurisdiction is not a genuine institute of the roatian legal system, the need for implementing provisions to enable its operation was raised by academics as early as in the EUFams I project. The need for implementing provisions or at least a protocol of operations has been addressed again; pointed out by researchers.

- In cases of cross-border child abductions the implementing law should improve the application of the 1980 Hague Child Abduction Convention and the Brussels II bis Regulation. Such conclusion can be derived from the fact that the law prescribes concentration to one court, additional national procedural rules, rules on provisional and protective measures as well as guarantees upon return of the child; pointed out by researchers, experts, respondents and participants.
- In the event of urgent need for a protection, the provisions on protective measures have to be used and the territorial effects of provisional measures have to be taken into account; pointed out by researchers.
- There is a good practice in national succession cases where judges ask the parties for the memorial amendment in order to facilitate the determination of habitual residence of the deceased. The concept of habitual residence of a child is properly and stringently interpreted; pointed out by researchers.