The Commission on European Family Law and Its Work

The Commission on European Family Law (CEFL) was set up in September 2001 by six law professors. It is based on a scientific initiative to carry out research with a team of specialists from twenty-two jurisdictions in the field of family law and comparative law, the aim being to create a set of Principles of European Family Law in areas thought to be most suitable for harmonisation. These Principles would target the national legislators in the process of modernising their national family laws.

The CEFL, a foundation set up according to Dutch law, consisted of an international group of scholars devoted to this pioneering theoretical and practical exercise of harmonisation of substantive family and succession laws in Europe. The members drawn from European Union member states and other European countries, were totally independent of any organisation or institution, the ‘comparative research-based drafting’ of Principles being a purely academic enterprise. Its working language is English.

Of the two groups forming the CEFL, one was the Organising Committee, with Katarina Boele-Woelki of Utrecht in the chair, and the other, the Expert Group of now twenty-six members. There was financial assistance from the European Commission under a number of research programmes, and other sponsors such as universities.

The CEFL considered a number of areas for harmonisation and concentrated first on divorce and maintenance as there was growing convergence in Europe, and the time for unifying substantive divorce law and maintenance seemed ripe. After the 2002 Utrecht Conference, which dealt with the Europeanisation of Family Law, arguments for and against unification and harmonisation of family law, the

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methodological aspects of such a harmonisation, the ‘common core’ approach, the ‘better law’ approach, the unification of private international law, and divorce and maintenance, the related topics of human rights, the expansion of Europe, and the American experience, the CEFL moved on to the creation and publication of ‘Principles of European Family Law Regarding Divorce and Maintenance Between Former Spouses’. These Principles were published three years after the establishment of the Commission.  

This was no mean feat.

The next project, started in 2004, was the distillation, creation and publication of ‘Principles on Parental Responsibilities’. This field of work is linked to the first, as both fields have been modernised in national systems in recent years, and the EU instruments and Conventions have played a significant role in these matters regarding cross-border relationships. In family law, the principle of the ‘rights of the child’ is increasing in importance and reform is needed to clarify and reinforce the legal status of the child. To this end, twenty-two family law experts in Europe were asked to draft national reports. The work is now at the stage of drafting the Principles, which will be discussed in December 2005 with a view to publication in 2006. Common solutions have already been found in the great majority of aspects.

The third field will be forms of cohabitation, including all types of formal and informal cohabitation, outside marriage. The aim is to create a European model at least for non-marital cohabitation. This field of great current importance is interconnected with the first, as the break-up of relationships is the cause of the most serious problems here.

An Assessment of Work Undertaken

With increasing Europeanisation, and when solutions to Europe’s pressing problems are urgently sought, consideration of these issues by the Commission is most timely. The goal of the European Union is the creation of ‘an area of freedom, security and justice’ in matters with cross-border implications. This is necessary for the proper functioning of a European internal market, and the CEFL’s work is vital.

There is no doubt that family law in Europe should be going through a harmonisation process. In fact, through the efforts of the Council of Europe, harmonisation has been taking place for the last two decades. As put by Katarina Boele-Woelki, “the train has left the station”. In assessing the work of the CEFL

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2 Ibid.