

France 1

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DEBATES

ITALY vs. FRANCE 3

ITALY

Italy argued that attempts to bring the practices of member states into harmony is unlikely to produce an outcome that accords with the wishes of European policy makers.

The argumentation of Italy took two main directions :

- **Firstly, they stressed that there are a lot of obstacles to harmonization** (the primary European legal limits, the secondary European legal limits and national limits due to strong differences on historical, social, political and cultural point of view)

Some arguments were relevant :

-They pointed out the lack of competence of the European Union in the field of substantive family law and stressed that EU has only competence in harmonization of private international law (cf. title V TFUE).

We agree with this obstacle to harmonization since it is true that there are no legal instruments that permit harmonization.

-the principles of subsidiarity and proportionality, necessary agreements of all member states to adopt measures in family matter as this matter is linked to historical, cultural and social differences. But, even if these differences still exist, this argument will be less and less relevant in the years to come since people are going to cross the frontier and have a family in a different country from the country they were born. Nevertheless, the implementation of

those two principles is important to achieve the goal of harmonization that the European Union gave to this policy.

Some argument were irrelevant :

They indicated that the respect of fundamental rights and the different legal traditions of member states was another obstacle to harmonization but we absolutely disagree with this idea.

This question cannot be addressed without the help of the European Convention of Human Right, and particularly of the articles 8, 12 and 14 of the ECHR. These articles and the interpretation the ECHR give us, European people, a lot a principles linked to fundamental rights in family law/family matter (marriage of same sex persons...). Since the Lisbon treaty (Decembre 2009), the EU can be part of the ECHR. This demonstrates that fundamental rights are not an obstacle to harmonization but helped European harmonization (+charter of fundamental right)

- *Secondly, they criticized some effective regulations*

On the one hand, they criticized the regulation 2201/2003 (Brussels II bis) mainly because of the lack of definitions concerning connecting criteria for the law applicable, for instance of habitual residence or the nationality. They said that the lack of a common definition of marriage is also a problem in the harmonization. We think that the lack of definition is not such a bad thing. The wide definition given by the regulations allows not only the possibility of applying the European rules to a large number of situations in the respect of the culture and history of all the Member States but also an evolutive interpretation. Thus we think that, contrary to what the Italian team thinks, the wide definition is helping to achieve the goal of harmonization.

What's more, Italian team criticizes the lack of rules on financial consequences of divorce or separation in Brussels II bis. The fact is that the financial consequences of divorce are foreseen by the European Regulation 4/2009 (December 18th, 2008). This Regulation provides tools to facilitate the payment of alimony (as regards to the children and for the ex-spouses). It owes to the spouse to decide who will pay what and to whom, and this cannot be provided in an European regulation.

On the other hand, they criticized the Council Regulation Rome III

The Italian team said that there is no link between the internal economic market and the Council Regulation Rome III, and especially with the matter of divorce, trying to justify the fact that the harmonization is not possible.

It is limiting the aim of the European Union (not any more the European economic community) to the only economic goal which is not true since the European legislators gave a political aim to the European Union in 1993. Since the Maastricht treaty, the European Union started to develop the area of freedom, security and justice and can make legislations in family matters.

Thus, the Italian team highlighted the fact that the Regulation Rome III gives the spouses the choice of the applicable law in case they will divorce.

Some arguments developed against this regulation are really irrelevant :

- Firstly, giving the choice of the applicable law to the spouses is “incomplete” because some aspects of the divorce are not available to the spouses.

No confusion should be done between the couple, the spouses and the children. The regulation is quite logical with some basic theoretical civil rules.

- Secondly, they wondered if it is realistic that the couple at the beginning of their happy – lifetime marriage is able to set down an agreement about the possible divorce.

It is realistic in case of international marriages that spouses decide which law could be applied to their potential divorce. Moreover, it is forgotten that if the spouses didn't say anything about the applicable law, the Regulation Rome III gives some solutions to decide which law would be applied.

We answer: yes this is realistic since people have been saving money since they are 20 for their retirement period, since happy people can establish a testament in case they died ! this is a matter of prevision !

Conclusion :

The Italian team doesn't give any solution to the critics they've made about the European regulations.

France 3

France 3 had to argue that, difficult though harmonization might be, attempts to bring it about must continue and may lead to a successful eventual outcome.

I- Presentation

-Oral presentation: France 3 team is really easy to understand: they speak slowly, their sentences are short and clear, their arguments are very sharp while easy to understand.

-Power-point presentation: their power-point is very professional and illustrates what they say perfectly summarizing the main points they talk about in short sentences.

-They answered quite well to the questions the jury asked them.

II- Contempt

A- Contempt of their presentation:

1- Progressive harmonization in family matters required by European challenges

a- Difficult but necessary:

--Difficult because linked to sociology, religion and diversity in EU.

--Necessary: increased movement of people=> increased international family situations (*figures given to illustrate their argument*), necessary harmonization to protect citizens' interests (improve legal certainty).

b- Progressive implementation of a European regulatory scheme in family matters:

--Legal basis within the treaties: Rome Treaty 1957 art 220, Maastricht treaty 1992 art K1§6, Amsterdam Treaty 1997 art 65, from Tampere 1999 to Stockholm Program 2009, Lisbon Treaty art 81 TFEU "civil matters having cross-border implications"...

--What has been done: conflicts of jurisdictions in civil and commercial matters Brussels I, Conflicts of law: new Brussels II; recognition and enforcement of judgments: Council Regulation of 20 December 2010 (many difficulties to reach this text).

Good point of the current situation: we can see that harmonization is already well started.

--problems arising from regulation implementation: not huge obstacles but basic problems. Major difficulties are: interpretation, material problems (rules unknown, cost of translation...), mix of different levels of legislation.

2- The necessary furthering harmonization

a- required expansion of harmonization

--extension of the scope of harmonization: 2009 proposal for a regulation on jurisdiction, applicable law, recognition of decisions... (*here France 3 team explains that harmonization still has a promising future*).

--modernization of harmonization methods: have to focus on enhanced cooperation

b- Innovation tools to develop more complete harmonization and cooperation:

--minimum harmonization of procedures

--towards an harmonization of substantive law (eg Mazureck, Marckz) (*here this French team stresses that some famous Court decisions have lead to an accurate substantive harmonization and justify to go further*).

--key players involved in support for successful cooperation (European Judicial Network, central authorities...)

B- General appreciation on their contempt

1- Reasons why we really learned and were convinced by their presentation:

-They successfully gave us an interesting view of harmonization on family law as so far achieved, while giving us a convincing argumentation of the need to continue the work started.

-A great quality of their presentation is to give examples (case laws, practical situations) to almost all their arguments. For example the figures given proved the fact that European citizens are more and more included in European family matters.

2- Lacks of their presentation

-Maybe they could have referred to the fact that harmonization in that field is made field after field and harmonization would benefit a more general legal instrument that would encompass all the previous legal instruments.

-Difficulty for citizens to accept decisions taken by Europe, which seems far away from them.

-They did not stress enough their point of view about a successful eventual outcome of harmonization: is it possible or will it come to a dead end with for example the different enlargements, the rise of Euro-scepticism...

-They could have talked about the need to harmonize family situations when the couple is not married which nowadays lack of European legal basis.