

Mutual Recognition of Personal and Family Status in the EC

An interesting article written in English by *Roberto Baratta* (University of Macerata, Italy) has been published in the latest volume of the German legal journal IPRax (IPRax 2007, 4 et seq.): **"Problematic elements of an implicit rule providing for mutual recognition of personal and family status in the EC"**.

In this article *Baratta* examines whether certain primary rules of the EC Treaty may serve as a "theoretical gateway" for establishing a private international law principle of mutual recognition which facilitates the recognition of European Union citizens' personal status and family relationships within the European Union.

As a "theoretical gateway" *Baratta* considers three basic provisions of the EC Treaty.

As a first basis Art. 17 EC which is completed by Art. 18 EC guaranteeing EU citizens "the right to move and reside freely within the territory of the Member States" is contemplated. *Baratta* regards the latter right as including "the right to move with the personal status and family situations legally acquired" in the respective Member State of origin and supports this teleological interpretation of these two provisions of the EC Treaty with the ECJ's ruling in *Dafeki*, where the Court had affirmed, "at least as a matter of principle, the obligation to recognise that a worker (exercising a fundamental freedom) had the same personal status he or she possessed in her national State".

The second argument in favour of a principle of mutual recognition brought forward by *Baratta* is Art. 12 EC. Here, *Baratta* concludes from ECJ case law such as *Konstantinidis* and *Garcia Avello* that "legal values granted to a person by its national State cannot be denied by another Member State, in particular whenever this refusal has a negative effect on the integration of European citizens and, more generally, on their freedom to circulate and enjoy fundamental rights".

The third provision which is referred to is Art. 10 EC according to which Member States are obliged "to take all appropriate measures [...] to ensure fulfilment of

the obligations arising out of this Treaty [...]". *Baratta* regards it as a jeopardy for the exercise of the freedom of movement as well as the attainment of the objectives of the Treaty - which is forbidden by Art. 10 EC - if a Member State refuses *a priori* to recognise a legal status duly acquired by an EU citizen according to its national legal system.

Baratta regards the aforementioned provisions as a theoretical foundation of a private international law principle of mutual recognition and derives from this principle the following three consequences:

First he argues that domestic conflict-of-law rules as well as substantive rules should not be applied if they lead to a non-recognition result.

Second, "the aim of the principle would be to maintain throughout the territory of the EC the personal and family status legally acquired in the Member State of origin" and therefore the Member States would be obliged to recognise legal relationships acquired either *ex lege* or by an act of public authorities.

And third, the recognising Member State should in principle grant the respective status an effect as similar as possible to the effect of the same situation in the State of origin.

Baratta however supports - due to the different legal traditions in the Member States - a certain limitation of this principle by allowing a - narrowly construed - public policy exception.

Finally *Baratta* concludes that a private international law principle of mutual recognition could simplify the solution of private international law problems with regard to some status matters but was, however, "not capable of replacing the traditional conflict of law rules as a whole". One reason is that the scope of the principle is limited to intra-Community situations. Therefore *Baratta* supports the creation of European private international law rules on the basis of Art. 65 EC which "would be better placed to achieve predictability, continuity of family relationships and consistency with a future, comprehensive and coherent Community system of PIL [...]".