

Andrea Bonomi: Varia on Succession and PIL

Prof. Andrea Bonomi, Vice-Dean of the Faculté de droit et des sciences criminelles and Director of the Centre de droit comparé, européen et international (CDCEI), University of Lausanne, has just published a critical opinion on the Proposal for a Regulation in matters of succession in the collective book *Innovatives Recht* (Festschrift für Ivo Schwander), under the title “La compétence des juridictions des Etats membres de l’Union Européenne dans les relations avec les Etats tiers à l’aune des récentes propositions en matière de droit de la famille et des successions”. He has kindly sent me an abstract :

The Commission’s Proposal for a Regulation in matters of succession covers among alia the jurisdiction of the courts of EU Members States. By virtue of the recent Proposals for Regulations for matrimonial property and for the property consequences of registered partnership, the court with jurisdiction over the administration and distribution of the estate of a spouse or registered partner also has jurisdiction to rule on the winding up of the matrimonial property *régime* and on the property consequences of the partnership.

Normally, the competent court will be that of the last habitual residence of the deceased. However, where the deceased had his/her last habitual residence in a non-Member State, the competent court will have to be determined in accordance with Art. 6 of the Succession Proposal. This provision is for many reasons unfortunate, in particular because it creates the conditions for positive conflicts among the courts of several Member States and with the courts of non-Member States, as it is shown in the relationship to Switzerland.

In this article we analyze the shortcomings of Art. 6 and suggest some possible improvements of this provision (deleting Art. 6(c); reducing the role of nationality by retaining this criteria only in the case of a choice of the national law; reducing the reach of the court’s residual jurisdiction by excluding the property situated outside the European Union; including a *lis pendens* rule applicable in the relation to third States’ courts; including a *forum necessitatis* to avoid negative conflicts). We hope that this provision will be corrected during the negotiation process.

A second recent, obviously worth commenting contribution of Prof. Bonomi is his “Succession internationales: conflits de lois et de juridictions”, The Hague Academy Collected Courses, vol. 350 (2010), pp. 71-418. The study takes the course taught by him in The Hague in 2007 as point of departure, and deepens and broadens the insights made at the time for the audience (which included me!). Clicking Table des matières you will have access to the index of the publication.