

Application of foreign law (Sellier, 2011)

APPLICATION OF FOREIGN LAW

Edited by Carlos Esplugues, José Luis Iglesias and Guillermo Palao

(Sellier, Munich, March 2011)

I am delighted to announce the publication of the book “APPLICATION OF FOREIGN LAW” (Sellier, Munich, March 2011, ISBN 978-3-86653-155-0), edited by Carlos Esplugues, José Luis Iglesias and Guillermo Palao, all of them Professors of Private International Law at the University of Valencia (Spain).

The book deals in depth with one of the most complex issues of Private International Law directly affecting the process of harmonization of Private Law and Private International Law in Europe: the application of foreign law by judicial and non-judicial authorities. During the last decade Europe has undertaken an active and broad process of harmonisation of Private International Law. Many areas of law of diverse nature have been influenced by this trend to the point that nowadays a growing set of common choice-of-law rules exist within the EU. This process, directly grounded on Article 81 of the Treaty on the Functioning of the European Union, is yet far from being finished. It will seemingly increase in the near future covering many domains so far not governed by European instruments. However, this movement towards a harmonised system of choice-of-laws rules within the EU has so far left aside a highly relevant issue which may directly affect the viability of the whole process of harmonisation under way; the application of the foreign law referred to by harmonized choice-of-law rules by judicial and non-judicial authorities in Europe. The analysis of the several solutions embodied in the different legal systems of the EU Member States shows both the existence of some recurring problems as to this issue and of very different responses to it in all of them. The current situation is hardly consistent with the existing trend towards harmonization of Private International Law within the EU; in fact, it seemingly runs against it. It violates legal certainty and contradicts the objective of ensuring full access to justice to all European citizens within the European Union.

The book approaches the situation existing as regards this issue in every EU Member State, analyzing in depth the solutions provided by their respective legal systems and their treatment by case law. Besides, a general comparative study rendering a comprehensive overview of the existing situation in Europe is included. Standing on the different national reports and on the general study, some basic principles for a future European instrument on this field are proposed as well.

This book is the first one in Europe dealing in a joint manner with the issue of application of foreign law both by judicial and non-judicial authorities in the European Union. It provides an exhaustive analysis of an issue of very practical relevance. We are sure that it will become a highly useful tool for all legal practitioners -lawyers, judges, notaries, land registries, academics, ministry officials, public servants, prosecutors...- from the European Union and abroad.

The book is the final result of the Action Grant awarded in 2008 to the Universities of Valencia (Spain) and Genoa (Italy) and the Spanish Land Registry Association by the European Commission within the framework of the Specific Programme "Civil Justice". The study has been developed by a team of academics and other legal professionals belonging to some 20 different Universities and legal entities of the EU.

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