JUXTAPOSING LEGAL SYSTEMS AND THE PRINCIPLES OF EUROPEAN FAMILY LAW ON DIVORCE AND MAINTENANCE
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JUXTAPOSING LEGAL SYSTEMS AND THE PRINCIPLES OF EUROPEAN FAMILY LAW ON DIVORCE AND MAINTENANCE

Edited by
ESİN ÖРÜCÜ and JANE MAIR
Juxtaposing Legal Systems and the Principles of European Family Law on Divorce and Maintenance
Esin Örücü and Jane Mair

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PREFACE

Following the publication of Principles of European Family Law Regarding Divorce and Maintenance Between Former Spouses by the Commission on European Family Law (CEFL) that was set up in September 2001 with a team of specialists from twenty-two jurisdictions to carry out research in the field of comparative family law, it was considered worthwhile to produce an edited volume to assess the reality of legal systems in view of the Principles, and the Principles in view of the reality of these legal systems.

The CEFL hoped to create a source of inspiration to legislators in the process of modernising their national family laws. “Functional equivalence” was sought and both the “common core” and “better law” approaches were adopted. The drafters chose “the best”, “the more functional” and the “most efficient” rules, their touch-stone being the modernisation of the law. So, these CEFL Principles are not merely restatements of family laws in Europe, but contributions towards the establishment of a European Family Law.

Only by empirical testing of the Principles in a number of legal systems can one demonstrate whether they are acceptable and/or are regarded as an improvement on existing national laws. For our purposes, after an introductory overview, it was deemed appropriate first to re-test the Principles in a sample of legal systems already considered by the CEFL: France, one head of the civilian tradition; Scandinavia, a variation on the civilian theme; England, the mother of the common law tradition, Scotland, a mixed jurisdiction that has gained popularity within the European Union as a model; and then, to test the Principles in the untested: Malta, a new EU member with a conservative background; Estonia and Lithuania, two new EU members with a socialist background but different socio-cultures; and Turkey, a country bridging two cultures and aspiring to membership of the EU.

The final part of the volume is a comparative assessment of our findings. One study looks at the Principles as harmonious ideals, the other looks at the shortfalls in the ideals as presented and the obstacles to harmonisation.

Esin Örúcü and Jane Mair
1 March 2007
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