



Transnational litigation in Family and Succession Law
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In times of ever-increasing migratory flows problems arising in case of transnational family relationships, and the related issues regarding inheritance law, are a rather fertile ground in which it is possible to experience the importance of finding new ways in order to foster the coexistence between different cultures and legal statuses, also through the use of cultural mediation tools. The aim is to overcome some of the social conflicts that may stir the development of forms of religious and political radicalization ending up with terrorist behaviours.

In two projects coordinated by the Department of Legal Science transnational litigation issues emerged.

GoinEu Plus (www.goineu.eu) proposes to enlarge with an innovative perspective the scope of the first GoinEu project on successions law –started on 1st October, 2017 for the duration of two years - also to related problems regarding the recognition and the enforcement of decisions in matters of matrimonial property regimes and registered partnerships property regimes, thus focusing on the legal management of different inheritance statutes in case of transnational families with a new special focus on the increasing problems of integration of different cultures in Europe.

In the light of the current migratory challenges, and as announced in the Communication of 6 April 2016, the moment has now come to revisit and strengthen the common approach across policy areas and involve all relevant actors – including the EU, Member States, regional and local authorities as well as social partners and civil society organizations. This is also supported by the European Parliament in its Resolution of 12 April 2016, which calls inter alia for full participation and early integration of all third country nationals, including refugees.

GoinEu Plus aims at contributing to the reduction of social conflicts promoting an analysis of the impact of Migration to EU Family & Successions Law having particular regard to the application of the European Regulations 1103 and 1104 enacted in 2016 coordinated with the Regulation 650/2012.

Social values are strictly related to the culture, which have mainly a national dimension, and also to the national law.

Thus in the case of international families the identification of the national law needs to take into account the need for social cohesion.

On this point, it is important to consider the role of private autonomy in regulating the situations of power and duty related to *ius in rem* even in legal systems, such as Italy, ordered on the principle of typicality of *iura in rem*. The parties could therefore regulate, in the agreement of choice of the applicable



law, within the spaces left to their private autonomy, the adaptation of an unknown right in rem to the closest equivalent right under the law of that other Member State.

From the realisation of the training objectives of the project, application difficulties emerged. Results achieved with GoinEu e GoinEuPlus projects, aimed at contributing to develop and disseminate an innovative cross-professional EU law training programme, specifically focused on Migration and Cultural Mediation, underlined some criticalities: lack of acquaintance of the Eu Regulation among professionals, necessity to communicate and disseminate their content to citizens, difficulties in the concrete cases to determine what is the scope of application of different Eu regulations in Inheritance, patrimonial families' regime (650, 1103, 1104), the possible cross application of Regulations 2012/650 and 2016/679 in case of digital goods (see web profiles on social network), the use of Eu certificates (Eu Succession Certificate) to exercise rights in front of Bank, Insurers, investments funds. With regard to certificates we have to remember the recent entry in to force of Eu Regulation 2016/1191 promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012 which sets out a system for further simplification of administrative formalities for the circulation of certain public documents and their certified copies where those public documents and the certified copies thereof are issued by a Member State authority for presentation in another Member State.

The results achieved thus open up new trends that we are committed to seizing while keeping the research team active.

Mediation is the most effective way to solve cross-border disputes for many reasons: i) time and cost saving; ii) low constraints and formalities; iii) inclusive and cross-cultural approach; iv) flexible procedure preserving personal relationships.

The European Union has taken on a decisive role in these years , producing a series of regulatory documents aimed at encouraging and regulating the use of ADR methods in the member countries.

Mediation is a particularly suitable tool for managing disputes between parties of different nationalities.

The difficult management of conflict dynamics and intercultural issues in cross-border civil disputes has resulted that the International mediation is configured today as the main tool for the alternative resolution of disputes between subjects of different nationalities and which may arise due to the heterogeneity of internal legal systems and the respective procedural rules, the



application of which in the trial would extend the resolution times of the dispute.

One of the key challenges is the diversity in mediation training standards and qualifications across the EU, making it hard for mediators to handle conflict dynamics and intercultural issues in cross-border civil disputes. As the second paragraph of Article 1 of the directive 2008/53 clarifies, the directive applies to cross-border disputes, a limitation which is linked to Article 67 of the Treaty, with reference to Articles 65 and 61, which expressly refers to "the measures of judicial cooperation in civil matters and which has cross-border implications.

This limitation, however, has not been an obstacle, in almost all member countries, to the extension to internal mediation of the national legislation applying the principles of the directive (as the same hopes, in point 8 of the recital preceding the text, stating that «nothing should prevent Member States from applying these provisions also to internal mediation proceedings»).

Those of mediation and more generally of the ADR are by now, in fact, topics on which one can discuss in any part of Europe with the certainty of being understood, and indeed it can be said that the fundamental problems under discussion are always the same, even in the different national contexts, from the mandatory-optional alternative to that of mediation prior to the case-mediation ordered by the judge, from the issue of defensive assistance to that of the training requirements of mediators.

In this contest InMEDIATE, is a Project funded by the European Commission within the ERASMUS+ Programme (October 2020 – March 2023) aims to establish pan-EU standards related to mediation skills. The complimentary training, open-source information and freely available learning content would contribute to augmenting local, regional, national and cross-border mediation services.

The optimal thing is to know how to look at the individual and have the ability to see him in his social context to understand how his decision-making process operates, his priorities and how his decisions will be evaluated "at home". By doing this, cultural differences are elements of communication and negotiation and you can benefit from your knowledge of a certain culture by keeping the individual always in the front row.

Especially, mediation in the family relationship is a structured process during which an impartial mediator allows the members of a family to talk constructively about their conflict. The aim is to facilitate communication and dialogue in order



conflict.

International mediation aims to resolve family disputes involving at least two countries. Sometimes, those kinds of disputes develop in a context characterised by the different cultural and religious practices of the people involved, or when the customary practices of a country contradict the laws of the country to which the member has moved. In all these cases, international mediation can help people in conflict to overcome these differences in order to reach an agreement.

In particular, referring to the first part of this study, regarding GoinEU and GoinEU Plus projects, following this training we can resolve situations such as: uniform application of European law which is in turn strengthened through action; EU citizens and migrants are better informed about the current state of implementation of European law and trust that their successions will be recognized in the Member States; discrimination against different family structures is addressed and solutions are proposed; a contribution is offered to the study of the impact of migration and emerging technologies on inheritance law.



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