

Love and money: problems of characterization in matrimonial property and maintenance matters

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Problems of characterization and the problem of context

- **Motto:** "*How much? Thirty! What is thirty? What is how much?*"
- **Concept of marital property** in civil-law.
- The **‘financial provision orders’** in English law
 - *Raison d’être* of this regime
 - English maintenance awards are normally much more generous than continental maintenance decisions.
- **Practical relevance:** 4 out of 27 Member States (approximately 14% of the EU’s population) have a common law legal system.

Characterization

- **Characterization of English judgments:** matrimonial property or maintenance?
- **Not a new riddle! Are mules horses of donkeys?**
- ***C-220/95 Antonius van den Boogaard v Paula Laumen*:** are they a mixture but rather maintenance. If so, are these claims left out of the future Regulation on matrimonial property?

Interrelation and context

- Matrimonial property, maintenance and inheritance law are **interrelated** and are **shaped with reference to each other**.
- May a spouse after having received half of the **matrimonial property under Hungarian, German etc. law** (e.g. first common habitual residence) claim **maintenance on the basis of English law** (habitual residence of the maintenance creditor)?
- May the widow (after **having acquired half of the common gains**) **inherit under English law**, where he/she also inherits the chattels and the rest upto 250.000 or 450.000 GBP?
- The judge may be granted **some possibilities under the applicable substantive law (or laws)** to exclude material injustice.
- There are also some **possibilities under conflicts law**.

Draft Regulation on Matrimonial Property

- The Draft Regulation on Matrimonial Property **settles neither** the issue of characterization nor the problems of interrelation.
- Article 2 **defines the term ‘matrimonial property regime’** as follows: *“a set of rules concerning the property relationships of spouses, between the spouses and in respect of third parties”*.

The tool of party autonomy

- The **spouses may use their freedom under party autonomy** to make the same law applicable to matrimonial property and maintenance.
- **Article 8 of the 2007 Hague Protocol** provides that the parties may subject the question of maintenance to *“the law designated by the parties as applicable, or the law in fact applied, to their property regime”*.
- The **laws that can be chosen** by the spouses under the Draft Regulation on Matrimonial Property (Art 16) and under the 2007 Hague Protocol (Art 7-8) **overlap** to some extent.

Conclusions

- Problems of characterization and interrelation could be avoided, if the property relations between the spouses were **governed by the same law**.
- The second-best solution is to enable the judge, **through escape clauses**, to subject matrimonial property and maintenance to the same law.
- It is also to be taken into account that the **decisions** on matrimonial property and maintenance **may not be rendered in the same procedure**.
- **EU private international law at the present stage**, through a feeble escape clause, enables courts to take the problem of interrelation properly into account; nevertheless, this provision should be adapted to the Draft Regulation on Matrimonial Property.
- The parties can tackle this problem on the basis of **party autonomy**, though this seems to be far from sufficient, taking into account that in practice European couples utilize this possibility only rarely.

Thank You Very Much for Your Attention!

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