



EULawInEN

EU LAW TRAINING IN ENGLISH LANGUAGE:
BLENDED AND INTEGRATED CONTENT AND LANGUAGE TRAINING
FOR EUROPEAN NOTARIES AND JUDGES



This Project is funded
by the European Union's
Justice Programme 2014-2020

Interpreting EU law: multilingualism and comparative law

Elena Ioriatti

Full professor in comparative private law
at the University of Trento, Faculty of Law

This Project is implemented by Coordinator



Fondazione
Italiana
del Notariato

Partners



Magyar Országos
Közjegyzői Kamara



Notary Chamber of Bulgaria



Comparative law

Science

Knowledge

Methodology



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Knowledge

Both in macrocomparison and in microcomparison

comparative law research focuses on the **legal language** too.



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Comparing the legal systems

The legal language

of the **Common law** legal family.....*tort, trespass, consideration,*
of the **Civil law** legal family.....*no contractual liability/principle
of neminem ledere, causam....*



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Inside the Civil law

The legal language of AUSTRIA:

“Besitz”: *de facto* power over a thing with *animus domini*

The legal language of GERMANY and SWITZERLAND:

“Besitz”: *de facto* power over a thing, also including those situations (with no *animus domini*) which are usually referred to as “detention” (detenzione).



The legal system of the European Union

- multilingual;
- a supranational legal system;
- action of harmonization;
- judicial cooperation in civil, criminal etc. matters.



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Characteristics of EU law

Drafted and enacted in 24 languages, composed by neologisms, which have to be interpreted autonomously, **as European term**, according to the aims of the Treaties.



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

The national jurist



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Language versions may be different

Example: reg. 650/12 art. 69

Article 69 Effects of the Certificate. The Certificate shall constitute **a valid document** for the recording of succession property in the relevant register of a Member State....

Article 69 Effets du certificat. Le certificat constitue un **document valable** pour l'inscription d'un bien successoral dans le registre pertinent d'un État membre....

Artículo 69. Efectos del certificado El certificado será un **título válido** para la inscripción de la adquisición hereditaria en el registro competente de un Estado miembro....



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Language versions may be different

Italian

Articolo 69

Effetti del certificato

Il certificato costituisce **titolo idoneo** per l'iscrizione di beni ereditari nel pertinente registro di uno Stato membro



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Language versions may be different

Hungarian

A bizonyítvány joghatásai

...

A bizonyítvány olyan okirat, amely **érvényes jogcímet** képez – az 1. cikk (2) bekezdése k) és l) pontjának sérelme nélkül – a hagyaték tárgyát képező vagyontárgynak valamely tagállam megfelelő nyilvántartásába való bejegyzéséhez



Language versions may be different

Bulgarian

РЕГЛАМЕНТ (ЕС) № 650/2012 НА ЕВРОПЕЙСКИЯ ПАРЛАМЕНТ И НА СЪВЕТА

Член 69

Правни последици от удостоверението

...

5. Удостоверението представлява действителен документ за вписването на наследственото имущество в съответния регистър на дадена държава членка, без да се засяга член 1, параграф 2, букви к) и л).



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

The norm may be different in the various language versions

Reg. 650/12 art. 35

Article 35.

Public policy (*ordre public*)

The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

Article 35

Ordre public

L'application d'une disposition de la loi d'un État désignée par le présent règlement ne peut être écartée que si cette application est manifestement incompatible avec l'ordre public du for.

Artículo 35

Orden público

Solo podrá excluirse la aplicación de una disposición de la ley de cualquier Estado designada por el presente Reglamento si esa aplicación es manifiestamente incompatible con el orden público del Estado miembro del foro.



The methodology: comparison

Articolo 35

Ordine pubblico

L'applicazione di una disposizione della legge di uno Stato designata dal presente regolamento può essere esclusa solo qualora tale applicazione risulti manifestamente incompatibile con *l'ordine pubblico del foro dell'autorità giurisdizionale o di altra autorità competente che si occupa della successione.*

public policy (ordre public) of the forum of the juridical authority or of an other competent authority in charge of the succession



Reading more than one language version is important

- The Court of Justice of the EU

.....THE DIFFERENT LANGUAGE VERSIONS ARE ALL EQUALLY AUTHENTIC.....AN INTERPRETATION OF A PROVISION OF COMMUNITY LAW THUS INVOLVES **A COMPARISON OF THE DIFFERENT LANGUAGE VERSIONS**

Case 283/81. Judgment of the Court of 6 October 1982. - Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health.

- Comparative law

tertium comparationis



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Multilingualism and comparative law

Multilingualism and comparative law share the same aim, at the EU level: both lead at transferring what is **real**, regardless any formal expression.

Multilingualism express “what is real”

Comparative law seeks “what is real”



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

The story of the Italian CJEU Judge

Interesse legittimo under Italian law...means “half of a right”
under Finnish law!



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

The scope of the EU legislation

Regulation 650/12

Example: section 2301 German BGB, *Schenkungen von Todes wegen*.

Example: *trust*



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Drafting mistake or strategy?

Art. 158 (consolidated version) of the Treaty establishing the European Community

En particulier, la Communauté vise à réduire l'écart entre les niveaux de développement des diverses régions et le retard des régions ou îles les moins favorisées, y compris les zones rurales.

*In particular, the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness **of the least favoured regions or islands**, including rural areas.*

*In particolare la Comunità mira a ridurre il divario tra i livelli di sviluppo delle varie regioni ed il ritardo delle regioni meno favorite o insulari, comprese le zone rurali.
of the least favoured regions and the islands*



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

.....Drafting mistake.....

Annexes III and IV of the Brussels Regulations II bis (RBII bis)20 (certificate concerning judgments on rights of access (art. 41(1)) (certificate concerning the return of the child (art. 42(1)).

English version: ‘Is the judgment enforceable in the Member State of origin?’

Spanish version: ‘¿Es recurrible la resolución conforme al Derecho del Estado miembro de origen?’

Amended Spanish version: ‘¿Es ejecutoria la resolución en el Estado miembro de origen?’



The methodology of comparative law: homologation

Reg. 650/12

Rec. 16: For the purposes of determining the closest equivalent national right *in rem*, the authorities or competent persons of the State whose law applied to the succession may be contacted for further information on the nature and the effects of the right.

To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used, as well as any other available means facilitating the understanding of foreign law.



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

The methodology of comparative law: homologation

Adaptation of Rights *in rem*

Where a person invokes a right *in rem* to which he is entitled under the law applicable to the succession/matrimonial property regime and the law of the Member State in which the right is invoked does not know the right *in rem* in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right *in rem* under the law of that State, taking into account the aims and the interests pursued by the specific right *in rem* and the effects attached to it.



The methodology of comparative law: factual approach

Cornell seminars (USA, 1950), prof. Rudolph Schlesinger.

The factual approach method



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

The methodology of comparative law: factual approach

Habitual residence



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

The methodology of comparative law: factual approach

Habitual residence, unlike the concept of substantive harmonization, is not a concept that has to be defined on an abstract, juridical basis, but on a more factual level. Important is not the word, the definition, but the reality that is expressed through this concept. This concept has the task of forming the boundaries of a forum of international juridical competence. In this framework it will not be difficult to decide case by case.

As to the hard cases, reasonableness has to be the guiding line.

See: Janvier Carrascosa González, *El concepto de residencia habitual del causante en el reglamento sucesorio europeo*, Revista Castellano-Manchega de Ciencias Sociales, n. 19, 2015, p. 15 – 35.



Collaboration!



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020



EULawInEN

EU LAW TRAINING IN ENGLISH LANGUAGE:
BLENDED AND INTEGRATED CONTENT AND LANGUAGE TRAINING
FOR EUROPEAN NOTARIES AND JUDGES



This Project is funded
by the European Union's
Justice Programme 2014-2020

How to do things with concepts

A serious game

Elena Ioriatti

Full professor in comparative private law at the University of Trento Faculty of Law

This Project is implemented by Coordinator



Fondazione
Italiana
del Notariato

Partners



Magyar Országos
Közjegyzői Kamara



Notary Chamber of Bulgaria



International
Association of
Judges

promoting an independent judiciary worldwide

How to do things with concepts



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

How is a legal institute composed

The content

«agreement between two or more parties....»

The legal language

Contratto (I), szerződés (H), contrat (F)



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Comparison

The content

«agreement between two or more parties....»

The form of the blocks



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Comparison

The legal language
«contratto»

Color of the blocks



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

The methodology of comparative law: homologation

USUFRUCT IN ITALY (Usufrutto)	USUFRUCT IN THE NETHERLANDS (Vruchtgebruik)
<p>The usufructuary has the right to enjoy an object, but must preserve its economic destination.</p> <p>Art. 981 c.c.</p>	<p>The right of usufruct provides the right to use things that belong to another person and enjoy the fruits thereof.</p> <p>Art 3:201 BW</p> <p>A usufructuary can use and use up (consume) the things under the usufruct in accordance with the rules made upon the creation of the usufruct, or where such rules are lacking, in accordance with the nature of the things and the local practice in respect of to the use and using up.</p> <p>art 3:207(1) BW</p>



Homologation

This technique is useful in order to verify whether two institutes of different legal systems are similar or not, and to measure the similarities.

Similarities and differences = **legal effects** that are concretely produced in the two legal systems
(**operational rules**)



Homologation

In order to do that, the legal institute under analysis has to be reduced into **more elementary concepts.**



Homologation

Italy

Use up (to consume)

“quasi usufrutto”

real right: NO

The Netherlands

Use up (to consume)

“Vruchtgebruik”

real right: YES



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

The methodology of comparative law: homologation

Adaptation of Rights *in rem*

Where a person invokes a right *in rem* to which he is entitled under the law applicable to the succession/matrimonial property regime and the law of the Member State in which the right is invoked does not know the right *in rem* in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right *in rem* under the law of that State, taking into account the aims and the interests pursued by the specific right *in rem* and **the effects** attached to it.



Homologation

The jurist needs a **standard** to measure differences and correspondences to the *right in rem* that he/she considers the closest equivalent under the law of the MS in which the right is invoked.

According to comparative law this standard, this has to be done by uncovering the *operational rule*, that's to say the **final legal effects** that an institute is producing in a legal system, regardless the formal definition.



The methodology of comparative law: homologation

Measure

comparing the legal effects

(operational rules)

Standard

the most relevant legal effects (operational rules) related to the “aims and the interests pursued by the specific right *in rem*” in the specific, factual situation (art. 31)



The methodology of comparative law: homologation

Adaptation of rights in rem *reg. 650/12 (and reg. 2016/1103; 2016/1104)*.

The international private law scholars commenting the regulation suggest to rely on the **methodology of comparative law** in order to verify the applicability of the adaptation principle.

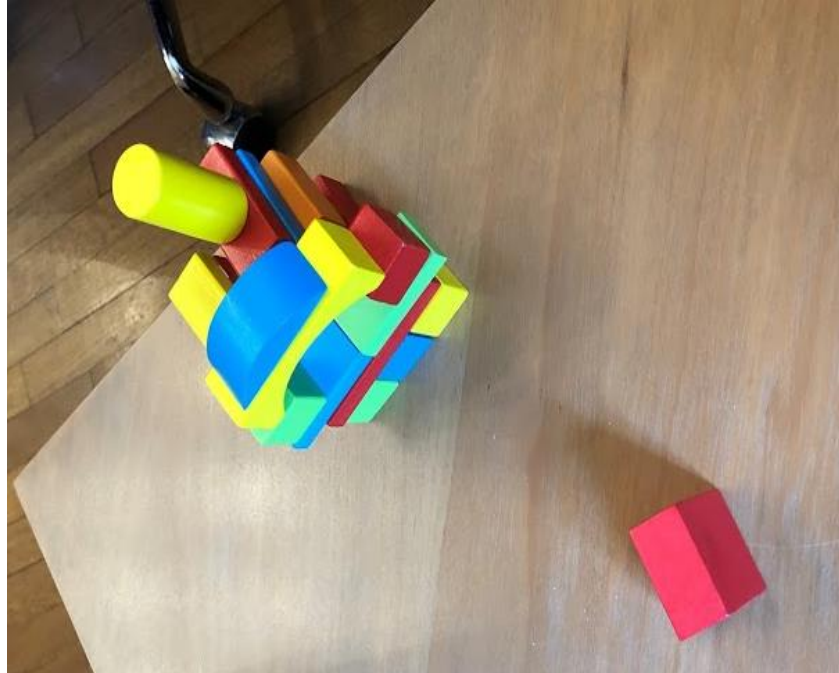


EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020

Thank you for playing with us!



EULawInEN



This Project is funded
by the European Union's
Justice Programme 2014-2020