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## Changing Families, Changing Family Law in Europe

Konrad Duden and Denise Wiedemann (eds.)



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CHANGING FAMILIES, CHANGING  
FAMILY LAW IN EUROPE

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## PREFACE

What constitutes a family in Europe? The answer to this question is constantly changing and increasingly varied. The lived realities of European families are becoming ever more diverse. This trend, which has a long history, seems to have intensified in the last decades. However, different Member States of the European Union have taken very different views on these changes. These divergent reactions raise the question we want to address with our book: how can law in Europe address changing family realities if the Member States of the Union disagree about the treatment of these realities?

This volume begins by discussing in its first chapters some of the rapid and substantial changes in family structures, concepts and values which have taken place in Europe in recent times – and the often divergent answers and approaches that different legal systems in Europe offer to the family law questions that go along with these changes. In this endeavour we understand family law in a broad sense, including in particular the law of gender identity.

Changes affect the concepts of marriage and partnership: ranging from the increasing recognition of same-sex marriage to the acceptance of private divorce, the changing treatment of early marriages and the increasing legal protection of partnerships outside of marriage. New patterns of childbearing and parenthood are also developing: assisted reproduction – particularly surrogate motherhood – is creating families that could not have existed before. In some places there is even discussion of granting legal parenthood to more than two persons. In the treatment of such new parenthood patterns, adoption often serves to establish a legal parent–child relationship where a social one already exists, but cannot be legally established under the law of filiation. Queer persons and families add another layer of complexity: this starts with the increasing recognition of different gender identities, for instance of transgender or non-binary persons, and continues with the question of how to legally address the parentage of trans persons. Finally, changing views of gender roles and a greater recognition of children's rights make it necessary to reconsider the balance between, on the one hand, the promotion of equality, self-reliance and autonomy of family members and, on the other, the need to protect financially and physically vulnerable family members.

On many of the above-mentioned issues there are disagreements within Europe. And to make matters worse, many of the views do not seem to be converging, but are instead diverging ever more. Most prominently, a rift seems to have opened up between Western and Eastern Europe on all matters relating to

queer families and identities. These changes have gained a tremendous symbolic and political importance which can be seen as part and parcel of frictions within the European Union. Some Member States have embraced the diversity of families and grant legal protection. Other Member States are becoming more critical towards these rare family forms. For both factions, the treatment of these families is seen as a kind of litmus test for the fundamental values of the Member States: openness, inclusiveness and equality on the one side; tradition, national identity and religion on the other. For the families affected, this conflict threatens a core premise of the European Union: the freedom to move within the Union. The differences between family law systems in Europe can lead to 'limping' status relationships. Families affected are left to wonder whether they will still be families in the eyes of the law if they move between Member States.

This threat makes it increasingly important to foster a European exchange on these issues in order to envision a way forward that responds to the needs of international families. The final chapters of this volume address this perspective. Different approaches and ideas need to be explored to determine whether, and in what way, international family law in Europe – including conflict of laws, international civil procedure and even harmonized substantive family law – can and should respond to the different legal trends and developments in the individual Member States.

The issues described above can be approached only from a European and comparative perspective. This volume therefore brings together young European scholars in international and comparative family law from more than 15 European countries, whose contributions aim to not reflect only their respective national perspective but, rather, a comparative and European view. To prepare this book, a workshop was held at the Max Planck Institute for Comparative and International Private Law in Hamburg in March 2022. The workshop was conceptualized and organized by Jennifer Antomo, Konrad Duden and Denise Wiedemann. Since the workshop, Jennifer has been on family leave, which is why this book is edited by Konrad and Denise only.

Jennifer Antomo, Konrad Duden and Denise Wiedemann  
Mainz, Frankfurt am Main and Hamburg, Spring 2023