

European private international law on legal parentage? Thoughts on a European instrument implementing the principle of mutual recognition in legal parentage

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Propositions to the dissertation *European private international law on legal parentage? Thoughts on a European instrument implementing the principle of mutual recognition* (2010) by Kees Jan Saarloos.

1. For the purposes of private international law it does not matter that according to English law legal parentage is largely a matter of evidence, whereas according to Dutch, French, German and Swedish law legal parentage is a question of substantive law. On the basis of functional equivalence, it is possible to transpose the rules of one legal system into another.
2. According to current EU law a state is obliged to recognise parental status which has been established abroad, if that parental status does not violate the international public policy of the recognising state and if there is no conflict of interests between the persons involved.
3. A future European instrument on private international law regarding legal parentage should aim to facilitate free movement of persons and allow national authorities to apply their own law as much as possible.
4. The 'international jurisdiction' of a civil status registrar to establish the legal parentage at birth is shared. Thus the registrar of the place of birth has jurisdiction even if this place is merely accidental. Also, for example, the registrar in the state of the child's nationality may have jurisdiction. Accordingly, a European instrument should harmonise those choice of law rules which determine the child's legal parentage at birth and those which determine the legal effects of an acknowledgment of parenthood. That harmonisation should take the form of giving a unified choice of law rule for those legal questions. The unified choice of law rule should refer to the law of the child's habitual residence at the moment of birth or at the moment of acknowledgment of parenthood.
5. The international jurisdiction of courts to hear applications for establishment or annulment of legal parentage should be based either on the child's habitual residence or the habitual residence of the defendant or the nationality of the defendant. The court seized should apply the *lex fori*.
6. Even in cases governed by foreign law, the apparent parental status (*bezit van staat* or *possession d'état*) which is in conformity with the birth certificate should be protected against interference by third parties, including the state.
7. In a globalising society, the Dutch policy of discouraging surrogate motherhood by prohibiting professional organisations from introducing intended parents to potential surrogates is ineffective and should be reconsidered.
8. The French law which gives a woman the right to give birth anonymously violates basic rights of the child.
9. The law on adoption should regulate child protection, whereas the law on parentage should determine the original parents of the child. Therefore, same sex parenthood which is created with donor sperm or with the help of a surrogate mother should be regulated in the law on parentage and not in the law on adoption.
10. Er bestaat een opmerkelijke tegenstelling tussen letterkunde en rechtsgeleerdheid in die zin dat de letterkunde als uitgangspunt heeft dat een tekst meer dan één geldige betekenis kan hebben, terwijl men in de rechtsgeleerdheid op zoek is naar één geldige betekenis van een tekst.
11. Het Nederlandse middelbare onderwijs moet meer aandacht besteden aan culinaire basisvaardigheden voor mensen met weinig tijd.