Fraude à la loi, legitimate expectation, and the best interest of the child

To what extent do the ECtHR and the CJEU interfere with private international law in the field of family status?

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Workshop on International Law in Domestic Legal Orders
Scuola S. Anna - Pisa, 7 April 2017
THE ISSUE OF FAMILY STATUS RECOGNITION

- Recognition of family status established abroad is refused on public policy ground

- A PIL issue: «cross-border limping status»

  Non recognition = the law of the State of recognition of a status acquired abroad prevails over the law of the State of origin

- PIL could clash with EU Law and ECHR

  1) under which circumstances EU citizens have a legitimate expectation to have their family status recognized?

  2) under which circumstances a refusal of recognition by a EU Member State national authorities may be justified?
THE IMPACT OF THE ‘EUROPEAN LAW’

Case-law of the CJEU (Kostantinidis, Grunkin & Paul, Sayn-Wittgenstein, Runevic-Vardyn, Bogendorff + Garcia Avello)


1) WHEN THERE’S A LEGITIMATE EXPECTATION/RIGHT TO RECOGNITION IRRESPECTIVELY OF PIL RULES OF THE HOST STATE?
Validity, serious inconvenience, fraude à la loi

2) CAN A NON-RECOGNITION BE JUSTIFIED?
• it is based on objective considerations, and
• it is proportionate to the legitimate objective of the national provisions
RECOGNITION OF FAMILY STATUS INVOLVING CHILDREN

• The paramountcy of the ‘best interest of the child’ principle when weighing up the competing interests at stake.

• ‘Legal uncertainty’ that greatly ‘undermines the children’s private life and identity within the society’

• The primacy of the social reality on the biological and legal ones
SOME REMARKS

• 1) The notion of international public policy exception within the CJEU case-law is too broad
• 2) Which protection for *fraude à la loi*?
• 3) As social reality (sometimes) saves fraudulent status
• 4) The ‘best interest of the child’ principle subverts the ‘substance’ with respect to the ‘form’