Human Rights and Private International Law in the Family Law Area

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This issue of *Oslo Law Review* publishes some of the papers that were presented at a conference entitled ‘Human rights and private international law in the family law area’ that I organised at the University of Oslo on 7–8 November 2018. The contributors met again for a writer’s workshop at the University of Oslo in March 2019.\(^1\)

The focus of the conference was on a set of new questions arising from increased mobility and new family patterns that are of specific concern to human rights law, private international law and family law. The conference brought together prominent researchers who presented on topics ranging from interdisciplinary research in legal areas such as family law, equality law and international law to the revisiting of classic private international law approaches and concepts such as ‘the habitual residence’, the scope of jurisdiction, choice of law and the recognition of foreign marriages.

Another purpose of the conference was to bring together experts in the field from different arenas (academia, public administration, courts, law firms, etc.) in order to map out pressing legal challenges and to uncover areas for further research and cooperation. The papers published in this issue are authored by academics who attended the conference.

In a wider sense, the issue focuses on how to handle the crossing of both physical and conceptual borders. Demographic developments over the last few decades in Europe and the Western world show a large increase in immigration based on family relationships. There is therefore an evident need to research the law from new angles and perspectives with an aim of making the legal system better at responding to the needs of vulnerable people who are in transnational settings. For instance, this raises concerns as to how a child rights paradigm would affect the content and implementation of law and policy bringing in perspectives of immigrant children and their families, as explained by Dowd in this issue. Another example is the development of new family forms that are alien to the categories and structure of the domestic legal system, a development analysed by Vaige in this issue. This mobility in law creates and enhances the risk for human rights violations. Consequently, it becomes impor-

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tant to analyse such developments in order to give guidance on how to make family law reflective and responsive to the problems that arise in practice.

In a stricter sense, the topic of the conference, as well as this issue of Oslo Law Review, concerns direct intersections between human rights and private international law in the family law area. Private international law traditionally comprises the regulation of private law issues that stem from the concurrence of the legal systems of different countries, including questions on jurisdiction, the recognition and enforcement of foreign legal acts as well as the theme of the choice of law. Human rights protection raises complex issues in terms of private international law, and the contributions to the conference added much needed legal analysis to this field, which has been underdeveloped to date. In this regard, one major objective of the conference was to examine the actual implications concerning the interpretation of private international law regulations in domestic law and private international law conventions, taking into account developments in both human rights regulations as well as EU law instruments that secure basic rights. One example of this is Mustasaari’s article in this issue, which analyses the concepts of ‘jurisdiction’ and ‘habitual residence’ from the perspective of the situation of those Finnish children who are currently held captive in the refugee camp of Al-Hol in Syria. The article offers an analysis of interrelated legal sources that influence the assessment, such as consular legislation, human rights obligations and the rules of the Brussels IIa Regulation, as well as the 1996 Hague Child Protection Convention. Vaige’s article in the present issue provides an analysis of private international law in Poland and the relevant case law in light of the new European human rights standards concerning recognition of same-sex formalised relationships, suggesting, for instance, that some room for cross-border recognition of family status has opened up in the approach to same-sex marriages and same-sex parenthood in Poland.

As elaborated in this issue, human rights law and private international law overlap and human rights law influences private international law in different ways, but there is a need for the two legal disciplines to ‘communicate’ better. This challenge was investigated in several of the papers presented at the conference. Certain apparent differences in the origins, sources and characters of the two disciplines were addressed in order to facilitate a better application of human rights obligations within assessments of private international law concerns.

This special issue therefore offers timely analysis of present burning issues of State actions towards, inter alia: immigrant children crossing the US and European (Danish) borders (see Dowd’s article in this issue); children who are citizens of European countries being held captive in Syrian refugee camps (see Mustasaari’s article); and the development of recognition of same sex marriage across European borders (see Vaige’s article). At the same time, this issue offers contributions of a legal scientific character and conceptual development on how private international law may give effect to human rights in law and in practice – in light of the legal developments that have occurred in human rights law as well as the demographic developments of an ever-increasing movement of people across borders.