

# Legal Formants and Attributes: Methodology

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# Comparative law

Science

Knowledge

Methodology



# Case C-80/19 preliminary ruling

Advocate General M. CAMPOS SÁNCHEZ-BORDONA, 26 March 2020

“A **comparison** with the law of habitual residence is necessary to establish to what extent these provisions are typical only of the system whose choice is discussed”

Methodology: homologation

# Comparative law methodology in IMOLA II and III

- Legal formants;
- questionnaires;
- homologation;
- genotype/fenotype;
- operational rules beyond legislative provisions;
- operational rules beyond language definitions;
- legal translation and problem solving;
- .....

# Legal formants

R. SACCO, *Définitions savantes et droit appliqué dans les systèmes romanistes*, in *Revue Internationale de Droit Comparé*, vol. 17, 4, 1965, p. 827 ss.

R. SACCO, *Contratto e negozio a formazione bilaterale*, Studi in onore di Paolo Greco, II, Padua, 1965, p. 953.

R. SACCO, *Les buts et les méthodes de la comparaison du droit*, in *Rapports nat. italiens au IX congrès intern. de droit comp.*, 1974.

R. SACCO, *Introduzione al diritto comparato*, first ed., Turin, 1980.

R. SACCO, *Legal Formants: A Dynamic Approach to Comparative Law*, in *The American Journal of Comparative Law*, Vol. 39, No. 1 (Winter, 1991).

# Legal Formants

A specific material fact/legal issue might be regulated differently (dissociation) by:

- the **legislation** (legislative formant);
- the **case law** (judicial formant);
- the **legal scholars opinion** (doctrine).

# Legal Formants

Legislation

Case law

Scholarly opinion (doctrine)

Other formants, e.g. «criptotypes»

# Legal formants in IMOLA II and III

- defining the attributes of the legal concepts in a more complete and systematic way;
- collecting data in a structured way;
- connecting pivot terms and attributes to the national definitions, by uncovering the operative rules beyond the declamatory/abstract definitions;



# Formants in IMOLA II and III

- filling the general definitions with a more accurate and detailed legal meaning;
- contributing to the data collection for the creation of a possible Restatement of EU terminology;
- updating (and keeping updated) the template with all the innovations and changes that can affect a legal system (and which can be brought by either the legislative or the case law formants);
- identify differences and similarities among several legal systems and the operational rules of those systems.

# The legal formant: a recent example

- EU: European Certificate of Succession  
(Regulation 650/12 in matter of Succession and on the creation of a European Certificate of Succession)
- Northern Italy: Tabular Succession Certificate

# European Certificate of Succession

## Art. 69 Effects of the Certificate

5. The Certificate shall constitute a «valid document» for the recording of succession property in the relevant register of a Member State..omissis....

Italian version: «titolo idoneo» (suitable title)

# Which «model»?

In case of transborder successions:

- must the European Certificate of Succession be integrated by the Tabular Certificate of Succession?

Or

- is the European Certificate of Succession self-sufficient and so a “suitable title”, through which registration can be provided in the tabular register?

# The legislative formant

- Art. 21 of decree 499/1929 regulating the tabular system, provides: “A person cannot be qualified as heir if he/she is not in possession of a succession certificate enacted according to this decree (the Tabular Certificate of Succession)”.
- Art. 32 Statute 161/2014 provides: “even after the enactment of the European Certificate of Succession, in territories where the Italian tabular system is in force the provisions on the Tabular Succession Certificate remain valid».

# The case law formants

- Tribunale Rovereto (Trento), decreto tavolare (tabular decree), G.N. 2209/2019 (Mr. Michele Cuccaro, tabular judge).
- Tribunale Trieste, decreto tavolare (tabular decree), G.N. 4537/2019.

# The material facts: Trento

- The deceased habitual residence was in Germany and immovable properties were located both in Germany and in Italy, Trento (Rovereto).
- The heirs required the registration of immovable properties on the tabular register in Trento, in force of the European Certificate of Succession enacted in Germany, by a German Court (Amtsgericht of Russelheim).

# The material facts: Trieste

- The deceased was an Italian citizen having his habitual residence in Italy and immovable properties located in Italy and Slovenia.
- The heirs required an Italian notary to enact a European Certificate of Succession and to register immovable properties in the tabular register in Trieste.



# The case law formant

A) the principle of "consistent interpretation" according to which national judges must interpret national law as much as possible in a way which ensures the fulfilment of obligations deriving from EU law.

# The case law formant

B) EU Court of Justice, decision 21.06.2018, C-20/17 «Oberle», ruling that «the EU Succession Regulation creates a single regime and therefore the situation in which there are two certificates certifying information about the same object should be avoided».

# The case law formant

- The European Certificate of Succession and the Succession Certificare are fully alterantive.
- The European Certificate of Succession is a «suitable title» («titolo valido») for registration in the Italian tabular system and the enactment of the tabular succession certificate is not required.

# Comparative law perspective

Disapplication of the legislative formant by the case law formant.

Clarification of the operational rules.

EU model imported into the Italian legal system.

# Formants and multilingualism

- Language clarification: the Italian version of art. 69 Reg. 650/12 is the only version providing for a “titolo idoneo” (suitable title) while the other languages provisions mention the need of a “valid title”.
- Comparative law methodology and the protection of multilingualism (e.g. Framework Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste - environment protection - consolidated version of 2018) and the term “possession”).
- Instrument P.A.R.O.L.E.: Principles and Rules Over Languages in Europe.

# The formants and IMOLA III

Thank You  
for  
Your attention

