

## **IV. ANALYTIC SUMMARY**



**Alli Aranguren, Juan Cruz** (Universidad Pública de Navarra/Nafarroako Unibertsitate Publikoa): **Personas jurídicas y bienes públicos en la Compilación del Derecho privado foral de Navarra** (Legal entities and public goods in the Compilation of Navarra's foral private law). (Orig. es).

In *Iura Vasconiae*, 13, 113-155.

Abstract: Since 1973, the New Charter or Compilation of Foral Private Law has been the code for the former and some parts of public law, such as for administrative legal entities and public goods and rights. This was a further advance in the systematisation of Navarra's law, geared towards coding and recovering principles and institutions. Social and legal changes mean that it needs to be adapted, removing anything laid down in specific rules passed by the legislative authority recognised in Navarra.

Key words: Legal entities. Local entities. Public and communal goods and property assets.

**Chicharro Lázaro, Alicia** (Universidad Pública de Navarra/Nafarroako Unibertsitate Publikoa): **Trascendencia de la cooperación judicial europea en materia civil en el Derecho privado de los Estados miembros y sus entes territoriales** (The significance of the European judicial cooperation in civil matters in the private law of Member States and regional entities). (Orig. es).

In *Iura Vasconiae*, 13, 289-323.

Abstract: In the context of the common area of freedom, security and justice, judicial cooperation in civil matters is lately being a particularly dynamic field. As a result the European Union has issued numerous European instruments harmonizing rules of private international law and procedural law which previously belonged to the competence of Member States. There is no doubt that these European instruments will also have a decisive influence in shaping solutions to domestic conflicts of laws.

Key words: European Union. Area of freedom, security and justice. Judicial Cooperation in civil matters. Domestic conflicts of laws.

**Enériz Olaechea, Javier** (Defensor del Pueblo de Navarra): **La competencia histórica y exclusiva de la Comunidad Foral de Navarra en materia de Derecho civil foral. Contenido actual de este derecho** (The historical and

exclusive competence of the Autonomous Community of Navarra in relation to foral civil law. The content of the current legal system). (Orig. es).

In *Iura Vasconiae*, 13, 57-111.

Abstract: Since 1982, the Autonomous Community of Navarra has had exclusive competence in relation to the foral civil law of Navarra. This competence formally allows it to pass foral laws and, effectively, maintain, change and update this own law, a result of its long history. The constitutional basis for this competence lies in the first additional provision of the Constitution, and not only in article 149.1.8 of the Constitution (that recognises all foral and special civil laws and preserves any that exist), since the regulation thereof is the legal right of the Autonomous Province of Navarra, under article 2 of the Treaty Law of 16 August 1848. Prior to 1982, unlike other territories and regions, the Regional Government of Navarra had and exercised joint legislative competence with the State –expressly recognised by the latter in Act 1/1973, of 1 March– to code, revise and propose the Compilation of Navarra’s foral civil law; in a complex and bilateral procedure, characterised by the covenant and agreement between the Regional Government or its representatives and the Ministry of Justice, the State would finally approve the proposed text through a Law or Executive Decree, without any involvement of the Parliament. Navarra’s current competence in relation to foral civil law – now exclusive and ultimately exercised by the Parliament of Navarra – has a very extensive range of material content, in some regards going beyond what is laid down in article 149.1.8 of the Constitution and it now allows the Autonomous Community to maintain special procedural legislative powers.

Key words: Foral civil law. Historical rights of the foral territories. Autonomous Community of Navarra. Exclusive competence. Compilation of the Foral Civil Law of Navarra.

**Erice Martínez, Esther** (Tribunal Superior de Justicia de Navarra): **Legitimación para el ejercicio de la acción de reclamación de filiación no matrimonial en el Fuero Nuevo** (Legitimation to exercise the right to claim parentage of children born out of wedlock in the New Charter). (Orig. es).

In *Iura Vasconiae*, 13, 231-258.

Abstract: In Europe, relationship law is currently in a new stage of its historical evolution, driven by a new approach which seeks to implement it in such a way as to protect and develop fundamental rights. We cannot ignore the fact that relationship law is predominantly an institution to protect children. Even so, their rights have to be combined with those of the other people with a legitimate interest in exercising the rights of parentage.

Key words: Proceedings for parentage out of wedlock. Active legitimation. New Charter.

**Huarte Lázaro, José Julián** (Tribunal Superior de Justicia de Navarra): **Instituciones sucesorias navarras. Vigencia y actualización desde una visión judicial** (Inheritance institutions in Navarra. Validity and update from a judicial perspective). (Orig. es).

In *Iura Vasconiae*, 13, 259-287.

Abstract: In an extensive regulation on gifts and inheritance contained in Navarra's Compilation of foral private law, the judicial activity has demonstrated that various institutions clearly need to be revised, or in some cases, that it would be prudent to reflect upon them, given all of the changes that have occurred in our society since it and its subsequent reforms were approved.

Key words: Navarra's regional private law. Gifts. Inheritance. Revision.

**Iriarte Ángel, Francisco de Borja** (Tribunal Superior de Justicia del País Vasco): **La actualización del Derecho civil vasco en el año 2015: una visión desde la práctica** (The revision of Basque civil law in 2015: a vision from a practical perspective). (Orig. es).

In *Iura Vasconiae*, 13, 323-340.

Abstract: The recently approved Act 5/2015 revised the regional law and extended its scope to all residents in the Basque Country; this extension alone makes it an historical act. But it also involves significant changes regarding heirship and the transfer of debts to heirs which, together with other minor changes, make it worthy of consideration for future regulatory changes. Act 7/2015, commonly called the joint custody act, also entails new developments in this regard that are worthy of mention in this paper.

Key words: Act 5/2015 of Basque civil law. Basque residence. Heirship. Transfer of debts to heirs. Family relationships. Joint custody.

**Jimeno Aranguren, Roldán** (Universidad Pública de Navarra/Nafarroako Unibertsitate Publikoa): **Evaluación del proceso de compilación/codificación del Fuero Nuevo: doctrina y praxis del derecho** (Evaluation of the compilation/coding of the New Charter: legal doctrine and practice). (Orig. es).

In *Iura Vasconiae*, 13, 9-55.

Abstract: The New Charter or Civil Compilation of Navarra (1973), the last of the Franco dictatorship's foral compilations, is characterised by profound traditionalism and historicism devoid of any practicality and was at odds with

the social and economic circumstances at that time, meaning that as soon as it was enacted, it became obsolete. This article examines how this source of legislation has evolved over time up to the present day, using legal doctrine and practice to compare it with the changes that have occurred in family law, the area where the obsolescence of the New Charter is most apparent.

Key words: Navarra. New Charter. Foral civil law. Family law. Marriage law. Common-law partnerships.

**López Azcona, Aurora** (Universidad de Zaragoza): **La política legislativa de la Comunidad Autónoma de Aragón en materia de Derecho civil propio: de la Compilación de 1967 al Código de Derecho Foral de Aragón de 2011 e iniciativas legislativas ulteriores** (The legislative policy of the Autonomous Community of Aragón in relation to its own civil law: from the 1967 Compilation to the 2011 Regional Code of Law of Aragón and subsequent legislative initiatives). (Orig. es).

In *Iura Vasconiae*, 13, 341-402.

Abstract: The aim of this paper is to present the civil law revision process in Aragón since the Autonomous Community of Aragón was given the power to change, maintain and develop its own civil law; a process where two clearly defined phases can be identified. During the first phase (1982-1995), the only aim of Aragón's legislative body was to adopt the 1967 Compilation for the Autonomous Community and adapt its provisions to the constitutional provisions. It was not until 1996 when the task of reformulating and, thus, developing Aragón's civil law really began, finally resulting in Aragón's Regional Code of Law being approved in 2011. Following this date, several not very significant legislative initiatives relating to its civil law can be reported, some of which came from the Government of Aragón, with others originating from various groups with parliamentary representation.

Key words: Competences. Regional or special civil law. Civil law of Aragón. Legislative policy. Regional Code of Law of Aragón.

**Palao Gil, Javier** (Universidad de Valencia): **La integración del Derecho histórico en el desarrollo del moderno Derecho civil valenciano** (The incorporation of historical law into the development of Valencia's modern civil law). (Orig. es).

In *Iura Vasconiae*, 13, 447-483.

Abstract: Of all of the territories of the former Crown of Aragón, only the kingdom of Valencia completely lost its own law due to the new government

charter established by the Bourbons in 1707. The consequences of this are still felt today and still distinguish it from the kingdoms with which it shared history and politics for several centuries. This is because it is the only one of these subject to civil law that is not its own. We have provided several reasons to clarify this point, ranging from purely historical grounds to legal, political and even sociological reasons. In recent years we have acquired further knowledge about this, providing additional information and a more complete and accurate picture. Two different, but related, issues are considered: on the one hand, the complete abolition and its consequences; on the other hand, the Valencia government's recovery of the power to legislate civil laws, the resulting legislation and its link with historical law. The paper deals with both issues separately, with its final pages devoted to the role of and results achieved by historians.

Key words: Charters of Valencia. Valencia's civil law. Spanish constitution. Statute of Autonomy of the Valencian Community.

**Sabater Bayle, Elsa** (Universidad Pública de Navarra/Nafarroako Unibertsitate Publikoa): **Derecho de obligaciones y actualización del Fuero Nuevo** (The law of obligations and revision of the New Charter). (Orig. es).

In *Iura Vasconiae*, 13, 157-207.

Abstract: We analyse the law of obligations and contracts in the New Charter and argue that it should be reformed. We put forward a number of arguments to support this initiative and propose some general ideas for the reform.

Key words: Law of obligations. Contracts. National and regional legislation. Compilations. New Charter of Navarra. Bases of contractual obligations. Reform and revision.

**Villagrasa Alcaide, Carlos** (Universidad de Barcelona): **De la Compilación al Código civil de Cataluña: la recodificación actualizada del Derecho civil catalán** (From the Compilation to the Civil Code of Catalonia: the current recoding of Catalan Civil Law). (Orig. es).

In *Iura Vasconiae*, 13, 403-446.

Abstract: The article analyses the most recent update of the civil law of Catalonia, taking into account the legislative evolution that has occurred especially since the adoption of the Spanish Constitution. On this path has been followed a plan designed to achieve own civil code, passing special laws with that horizon, from the dual perspective of historicity, based on modernity, and our historic civil law, adapting it to the social reality, since, from the tradition emerging solutions to address the precise solutions to the most recent social problems.

Key words: Civil Law of Catalonia. Spanish Constitution of 1978. Compilation of Civil Law of Catalonia. Civil Code of Catalonia.

**Villanueva Latorre, Ana Clara** (Universidad Pública de Navarra/Nafarroako Unibertsitate Publikoa): **Cuestiones problemáticas del Derecho de familia navarro** (Problematic issues in Navarra's family law). (Orig. es).

In *Iura Vasconiae*, 13, 209-230.

Abstract: Family law in Navarra further illustrates that the New Charter needs to be revised and reformed. In turn, Navarra's family law is the cornerstone of the New Charter, so it cannot be reformed separately from the other institutions. Ideally, it would be reformed as a whole. And, within that, to develop legislation regarding institutions that have thus far been omitted from the Charter, but which are more relevant to the socio-familial reality of Navarra than those currently considered. In any event, revising and reforming the content for certain institutions, whose very terminology does not respect the right to equality, must not be delayed any further.

Key words: Family law in Navarra. Need for reform. Obsolete institutions. Lack of completeness and clarity. Wholesale reform. Urgent review of certain institutions.