



JuWiLi II – Study Group Legal

presentation by

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What is the subject matter of JuWiLi?

There is a strong current trend towards

extra-judicial administration of civil justice or, in other words, the „outsourcing“ of civil justice administration.

Notaries are having a central part in it. Activities of other professionals and public administration have to be taken into account.

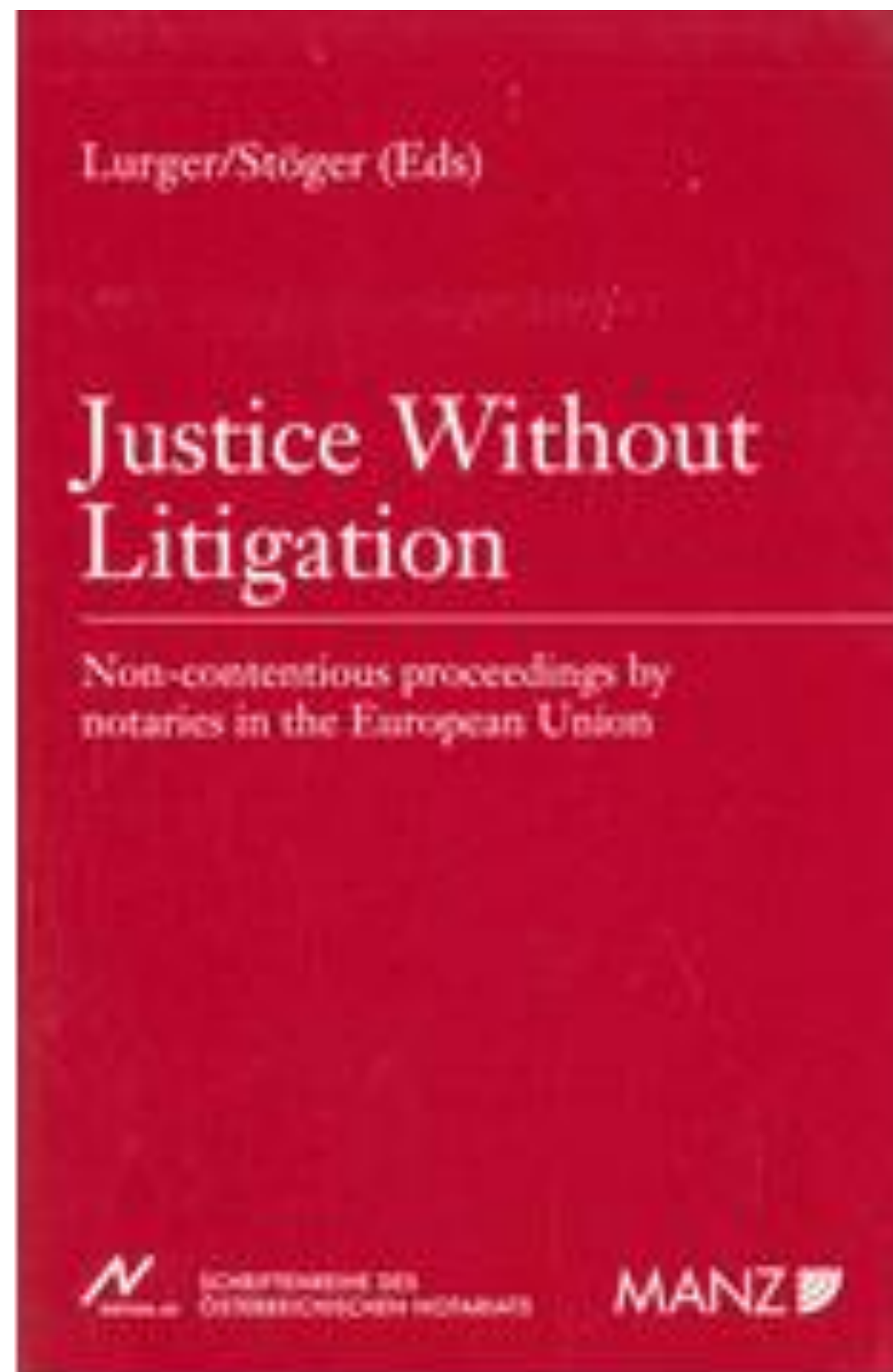
3 EU projects dealing with this subject matter:

➤ **JuWiLi I**

➤ **CODE.FS**

➤ **JuWiLi II**

What are the results of „JuWiLi ONE“?



**Lurger/Stöger (eds), Justice Without Litigation
– non-contentious proceedings by notaries in
the European Union, Vienna 2022, 254 pages**

Homepage (all texts)

<https://ihr-notariat.at/juwili/>

What are the results of „JuWiLi ONE“?

1. Recommendations EU Regulations – cross-border cases (conflict of laws)

uniform comprehensive definition of “court” in all EU Regulations; from the **traditional** two-track-model [decisions + authentic instruments] to kind of a **new** three-track-model [like in Brussel IIB]: (1) decisions by “courts” (including notaries in some cases) – (2) authentic instruments and registrations by notaries bound by rules of int’l jurisdiction/”binding legal effect”- /court-like recognition – (3) notaries not bound by rules of int’l jurisdiction

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2. Recommendations constitutional law

Notaries accomplishing judicial tasks in the administration of justice can, do and should comply with **constitutional standards** for “courts”

3. Recommendations for improvements (best practices) of activities of notaries in the administration of justice in the systems of the MS

What are the results of „JuWiLi ONE“?

Conditions for the „outsourcing“ of administration of justice

Legal aspects (constitutional law)

- rule of law, Art. 6 HR – fundamental right of parties to fair trial
- Equal treatment
- Impartiality, independence, notaries as public office holders

consequences for conflict of laws / PIL

SAME FUNCTION + SAME QUALITY = SAME LEGAL CONSEQUENCES

Economic aspects

- possible advantages: territorial coverage, easy access, atmosphere, simplicity, efficiency, cost reduction

The cornerstones of „JuWiLi II“

22 Participating Member States

Austria

Belgium

Bulgaria

Croatia

Czech Republic

Estonia

France

Germany

Greece

Hungary

Italy

Latvia

Lithuania

Luxembourg

Malta

Netherlands

Poland

Portugal

Romania

Slovakia

Slovenia

Spain

Legal Study JuWiLi II in Steps

1. Questionnaires (general + divorce) created

Basis

2. Country Reports = answers to the questionnaires

Basis

3. Analysis of country reports by academics

Questions

4. Discussions in the Working Group, Task Forces, Steering Committee and JuWiLi events and conferences

Questions

5. Drafting of Legal Study by academics

Answers

What are the cornerstones of „JuWiLi II“?

subject matter: „outsourcing“ the administration of civil justice.

Key Research Questions

1. In how far do non-courts comply with **constitutional** standards in the same way as judges do: for the protection of fundamental rights of the parties and the rule of law in the legal system? What will follow from that?
2. How can the pluralistic system of different categories of administration of justice in the MS be adequately accommodated in the cross-border free movement and enforcement regime of the **EU Regulations** that was originally designed only for court decisions?
3. What can we learn from each other? **Best practices?** **Extensions?**

Constitutional Guarantees – Rule of Law + Fair Trial

Art 6 ECHR / Art 47 CFR

- **Category 1:** Notaries directly assisting courts („court commissioners“): Art. 3/2 SuccR
- **Category 2:** Notaries otherwise reducing the workload of courts

Compliance with the guarantees of a court under Art 6 ECHR/Art 47 CFR as a basis for both categories

Specific qualities/duties of notaries under national law

- a. free from instructions by the parties or other actors with a legal interest at stake in the proceedings and
- b. **independently** and
- c. must observe the guarantees of a **fair trial**

Conflict of Laws

How can the pluralistic system of different categories of administration of justice in the MS be adequately accommodated in the cross-border free movement and enforcement regime of the EU Regulations that was originally designed only for court decisions?

- **Starting Point:** The **EU Regulations** offer contradictory, partly inadequate approaches with many open questions
- **Result:** **Policy recommendations** for legal amendments will be formulated - to **facilitate/support the free movement** of decisions, authentic instruments, and others, with the goal of improving the just and equal protection of the **interests of EU citizens**

Divorce – Special Task Force

Consensual Divorce

- **Starting Point:** Regulation Brussels IIB – a new Three-Track-Model
 - (1) “court decision” (Art. 30 et seq.) or
 - (2) “authentic instruments” formally drawn up or registered and “agreements” registered assuming int’l jurisdiction under Chapter II (Art. 64) (*state-empowered* public or other *authorities*, Art. 66) + (“binding legal effect” in the MS of origin)
 - (3) Authentic instruments, registrations and others without international jurisdiction (private agreement: no recognition, but acceptance)

Divorce – Special Task Force

Consensual Divorce

➤ Study:

- Analysis, comparison, and evaluation of legal infrastructure of notaries involved in consensual divorce in the participating Member States: evaluation of experiences of professionals, and of parties affected
- Comparative evaluation with other institutional arrangements: courts, public administrative bodies, law firms

➤ Recommendations:

- on different levels – constitutional law, conflict of laws, best practices



**Thank you very much for
your attention !!!**



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