

Introduzione

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Parte I**Dottrina**

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Abstract: *The presence, in the current reality, of numerous mortis causa successions that present elements of extraneousness (meaning that they have a connection to different legal systems) has pushed towards the adoption, within the European Regulation of July 4, 2012, no. 650, of the European Certificate of Succession. Through this Certificate, for the issuing of which in Italy the notary public is competent, it is possible to prove the status of heir in every Member State of the European Union. The article examines the recent discipline, highlighting the advantages deriving from this new instrument, the characteristics and the limits of the ascertainment of the status of heir undertaken by the notary public, as well as the positive and the negative aspects of this choice made by the Italian legislator compared to the one made in the German legal systems, in which the competence to issue the Certificate belongs to the judge.*

REINHARD ZIMMERMANN, *Il diritto ereditario dei parenti in prospettiva storico-comparatistica*» 21

Abstract. *The law of intestate succession is faced with two central tasks: (i) to determine in which sequence the deceased's relatives are called to inherit and (ii) to coordinate the position of the surviving spouse with that of the relatives. The present paper analyses how the intestate systems of the Western world deal with the first of these tasks. In spite of differences in detail, they can be subdivided into three types: the "French system", the three-line system, and the parentelic system. All modern legal systems of the Western world attempt to take account of the deceased's relatives in a rational fashion. In that respect they build on the scheme established in Justinian's novels. The "French" system and the three-line system represent different manifestations of the Justinianic scheme, while the parentelic system implements its underlying ideas in an even more consistent manner, and inspired by Natural law ideas. All in all, a reasonably limited parentelic system appears to be the superior intestate succession system.*

M^a ISABEL DOMÍNGUEZ YAMASAKI, *El interés superior del menor y la patria potestad: claroscuros en la modificación del sistema de protección jurídica del menor*» 63

Abstract. *Over the past years, many legal systems have been amended in order to proclaim the best interests of the child as a primary consideration, inspired by the United Nations Convention on the Rights of the Child. On August 2015, in Spain entered into force the Organic Law 8/2015, 22 July, and the Law 26/2015, 28 July, both modifying the protection system for children and adolescents. The aim of this contribution is to show some of the most important changes in Spanish legislation, which are characterized by the improvement of child protection legislation in contrast with the recognition of their own autonomy and responsibility in accordance with their age and maturity.*

CRISTINA CARICATO, *Le convivenze registrate in Germania: quindici anni di applicazione e di riforme*» 71

Abstract. *Since 2001, Germany has adopted a law, reserved for couples of the same sex, which offered a legislative solution to the case of homosexual unions. As is known, this law came into force on 16 February 2001 and has undergone a number of changes, which have made the institution of registered partnerships similar to marriage. In Germany, the path was not easy, as witnessed by the various legislative stages, a time plan, in an almost painless, have gradually approached the institute in 2001, which appeared to be a hybrid, to marriage, on the basis of important decisions Bundesverfassungsgericht real "engine" of this evolutionary process. The contrasts, still not completely dormant, have had occasion to manifest itself through the questions of constitutionality of LPartG, which opened the way for repeated interventions of the legislature. In this paper*

we examine some aspects of the many reforms that have occurred over time. The great importance, also for our country, the German law and reforms that has suffered is attested by the recent law passed in Italy pending the publication of this essay, which shows marked similarities with the German Law in its original version.

MARIA ALESSANDRA IANNICELLI, *La crisi della coppia genitoriale e il «diritto» del figlio minore di essere ascoltato* 87

Abstract. The Italian law no. 219/2012 has first of all the merit of recognizing the uniqueness of the status of filiation, with the consequence of same rights for children, apart from the circumstance of being born of married or unmarried parents, but we cannot overlook the reformatory significance of the law about the minor's role in the proceedings concerning him. In fact, the new law of filiation expressly includes the hearing among the rights of the children. The minor – in proceedings in which measures about him must be taken – has become the effective holder of a right and no longer only of a superior but generic interest. The present paper analyses in detail the new rules provided for in articles 315 bis, paragraph 3, and 336 of the Italian Civil Code about the bearing of the minor (with particular reference to the proceedings related to the family crisis), focusing also on the minor's capacity of discernment and on the omission of the hearing.

LAVINIA VIZZONI, *Transessualismo e filiazione: quando la condizione transessuale riguarda il genitore o il figlio minore* 101

Abstract. The complex phenomenon of transsexualism – characterized by the dissociation between biological and psychological sex – can be analysed from the point of view of its relation to filiation. First, the transsexual parent's position, despite its peculiarity, cannot have influence, in terms of limitation, on the exercise of parenting, nor within a previously constituted parent-child relationship – thanks to the principle of the best interest of the child – neither upstream – on the creation of a new parent-child relationship – in application of the prohibition of discrimination on the basis of how gender is attributed, stated by the European Courts. Then, assuming the perspective of the child, another particular situation is that of the minor who applies for the access to the sex correction procedure. While l. n. 164/1982 makes no provision for this case, the Court of Rome, on 11.03.2011, instead defined the re-assignment of sex as a medical treatment aimed at achieving mental and physical integrity, and stated, for the minor child, the principle of the representation of parents. In this way, a wider self-determination of the minor, also in choices related to sexuality, is granted.

Parte II **Giurisprudenza**

Cass. civ., 15 giugno 2015, n. 12307, con nota di SALVATORE PATTI, *Falsità del testamento e ripartizione dell'onere della prova* 111

Abstract. The article critically examines the decision of the United Sections of the Italian Supreme Court which addresses the issue of who bears the burden of proof in case of asserted falsehood of a handwritten will. For a long time two conflicting opinions were present; on one hand, the opinion following which the intestate heir bears the burden of proof regarding the falsity of the handwritten will, whereas, on the other hand, the contrary opinion holds that the beneficiary of the bequest has the burden of proving the authenticity of the will. The United Sections of the Italian Supreme Court, by recalling an old precedent, follow the second opinion, specifying that the heir, who intends to hold up the will, has to present an instance in order to obtain a judicial ascertainment that the will is not false (azione negativa di accertamento).

Cass. civ., 20 luglio 2015, n. 15138, con nota di CHIARA ANGOLINI, *La rettificazione del sesso alla luce della recente giurisprudenza dei Giudici di Legittimità* 135

Abstract. The judgment No. 15138/2015 of the Italian Court of Cassation provides an evolutionary interpretation of statute No. 164/1982 regulating the procedures for legal sex reassignment, with regard to transgender and transsexual individuals. According to this judgment the surgical treatment that modifies the primary sexual characteristic is not necessary to obtain the rectification of sex. The Court affirms the constitutional status of gender identity protection, but also states that this latter must be balanced with the public interest by the judge, who should certify the seriousness and uniqueness of the transition process. On the 5th November 2015 the Italian Constitutional Court (decision No. 221/2015?) has given the same interpretation to the act No. 164/1982. The Constitutional Court referred to Articles 2, 3, 32, and 117 of the Italian Constitution, in relation to art. 8 ECHR. The article analyses the previous interpretations of the law No. 164/1982 given by the

Italian Courts, the argumentations provided by the Courts in the two listed decisions, as well as the ECHR case law regarding gender identity in transsexualism and transgender cases. The analysis focuses on the possible problems arising from the balance test between public interest and gender identity. Finally, some guidelines are identified with the purpose of orienting the discussion on this subject.