

Parte I Dottrina

EMANUELE CALÒ, *Il grande romanzo delle unioni civili e delle convivenze*..... p. 163

Abstract. *The new Italian law on Civil unions and Registered partnerships looks like a fresco that hides underneath a local never-ending story made of strong feelings (gay and cohabitant rights), censored words (marriage), conservative trends (community of assets as a default regime) and urban legends (medical consent and living will). Isn't it enough to label it as a tremendous novel to unveil, under the quick painting where you find the technical hands of the government and the passionate hands of some members of the Parliament? Naturally, there may be in the aforesaid fresco a widespread unawareness of a character that so many have failed to mention: the EU law that so much has done in order to bring new life to the European legal order through indirect means.*

FILIPPO VARI, *Profili d'illegittimità costituzionale della legge sulle unioni civili*» 197

Abstract. *The article deals with the new Italian law (n° 76, 20.5.2016), which introduces into the Italian legal system civil unions for homosexual partners ("unioni civili") and rules on cohabitation. From a twofold perspective, it argues that the introduction of this law could violate the Italian Constitution. On the one hand, several procedural rules (especially imposed by article 72) appear to be infringed during the adoption of law; on the other hand, the new regulation seems to contrast with the constitutional framework on family issues (in particular as defined in articles 29 and 31). In its final part, the article tackles the issue of the so called step child adoption.*

MASSIMO PARADISO, *Lo statuto dei diritti del figlio tra interesse superiore della famiglia e riassetto del fenomeno familiare*.....» 213

Abstract. *The paper compares the last legislative measures in the field of family law: filiation and marital relationships. It shows two principal character: the contrast between the uniqueness of the state of filiation and the plurality of marital relationships: marriage, "civil union" (for same-sex couples) and de facto relationship. It thus achieves a new system, radically opposed to the traditional one, who knew a unique form of legally accepted cohabitation (marriage) and plural status of filiation. But it also achieves an exchange of distinctive characters: the wedding was unique, unified, severe and permanent; today it becomes plural, flexible and temporary. Conversely, the parent-child relationship was unique in the procedures for setting up, flexible in content and stable; today filiation becomes plural in formation modes (natural, medical or legal), unique in status, rigid in content and unstable over time, for imprescriptibility of status shares allotted to the children. Finally, the areas of freedom widen in marital relationships and are reduced in the parent-child relationships, guaranteed by a set of mandatory rules, so that the modern family law becomes, almost without residues, law of filiation.*

DANIELA MUSCILLO, *Best interest del minore: l'applicazione giurisprudenziale nelle famiglie omosessuali*.....» 223

Abstract. *According to the national and European case law, the best interest of the child is a general principle used to adapt law to social evolution. The same-sex families are an example of how the Courts used it as a guide to give consistency to the judgements. The article analyses the application of this principle by Italian Courts in different fields, like the custody of the child following a divorce because of the homosexuality of a parent, custody of the child to same-sex couples, stepchild adoption, recognition of a birth certificate of a baby son of two women.*

ROBERTO SENIGAGLIA, *Il problema dell'affidamento del figlio maggiorenne portatore di handicap grave*» 241

Abstract. *The paper analyses the relationship between the provisions introduced in 2013 in the Italian civil code (article 337 septies et subsequent) set forth to protect adults that have severe disability (which are compared to minors) with those provisions set forth by article 404 et subsequent of the Italian civil code conceived*

for individuals having an infirmity or a physical or mental impairment (which can also just be partial or temporary) that does not allow to such individuals to look after their affairs and which provide for the appointment of a guardian (i.e. amministratore di sostegno) by the competent court. According to the Author's opinion, when ruling in connection with the custody of an adult that suffers severe disability, the Italian courts should apply to the decision not only the provision protecting minors, but also those protecting individuals suffering of infirmity or a physical or mental impairment, taking into account the specific case and the specific interests of the individual that has need of protection.

GILDA FERRANDO, *La procreazione assistita: la rilettura costituzionale della legge '40*» 263

Abstract. The rules of assisted reproduction has deeply changed following the sentences of the Constitutional Court and the judgements of ECHR. To ensure the right to health and self-determination numerous prohibitions were abolished: the prohibitions of embryo cryoconservation, fertilization using sperm or ova from a donor, preimplantation genetic diagnosis. However, many problems are open, particularly as regards the determination of paternity and maternity, surrogacy, and the children of same-sex couples.

PAOLA GRIMALDI, *Violenza intrafamiliare, stato di pregiudizio del minore e valutazione della decadenza dalla responsabilità genitoriale*» 279

Abstract. The aim of this study is to analyze the phenomenon of intra-family violence against children that occurs every time a parent behaves in a seriously prejudicial way for the personality of the child. The «control role» in this area belongs to the judge who has to ensure effective protection to the particular condition of the child through measures such as tools now offered by article 330 et seq. of the Italian Civil Code as amended by the recent reform of filiation.

Parte II

Giurisprudenza

Cass. civ., sez. I, 22 giugno 2016, n. 12962, con nota di CLAUDIA IRTI, *L'adozione del figlio del convivente (omosessuale): la Cassazione accoglie l'interpretazione evolutiva dell'art. 44, lett. d), l. n. 184 del 1983*» 295

Abstract. In the absence of express regulation, the Italian Supreme Court (Corte di Cassazione) recently ruled that a same sex partner is authorized to adopt the child of its partner based upon an extensive interpretation of article 44, paragraph I, lett. d) of the Italian Adoption Statute (l. 183/1983), finally confirming the interpretation of such article given previously by other lower Italian courts (either as a consequence of an evolutionary and extensive interpretation of such article, or though the enforcement in Italy of foreign judgements that recognized in Italy the adoption of same-sex couples legally obtained in other jurisdictions). The paper focuses on the evolution of the interpretation of the provision of the Italian Adoption Statute, as well as on the relationship between such interpretation and the absence of an express ruling of the “step-child adoption” and more in general of the same-sex couple adoption in the new law on Civil Unions.