

Dottrina

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Abstract. At the beginning of the new century, among the principles developed in connection with the matter of divorce, the European Commission on Family Law indicated the principle according to which, except particular cases, "following the divorce, every spouse shall provide to their own needs" as being the general rule. A similar evolution can be found in the French legal system that, in 2004, has adopted in the Code civil the principle according to which the divorce "met fin au devoir de secours entre époux" and in German one that, in 2007, introduced the principle of the "self-responsibility" in the BGB (German Civil code). The "post marital solidarity" survives only in exceptional cases and, generally, for a limited period of time. A similar reform seems advisable also in the Italian legal system.

MASSIMO PARADISO, <i>Convivenza di fatto e solidarietà economica: prassi di assistenza reciproca e nascita dell'obbligo alimentare</i>	287
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Abstract. The paper deals with the issue of economic assistance between more uxorio cohabitants in the light of the recent law no. 76/2016, which provides for a genuine duty of solidarity only at the time of its ending. In particular, it is expected that the former cohabitant unable to maintain himself has the right to receive "alimenti" from the other one – that is, what is necessary for the basic needs of life – for a period proportional to the duration of cohabitation. However, the question arises whether the particular intensity of the relationship does not affect the general criteria for determining alimony and, first, if it does not affect the reciprocal contribution during the cohabitation.

GILDA FERRANDO, <i>Libertà e solidarietà nella crisi delle convivenze</i>	299
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Abstract. Some duties of solidarity remain among unmarried partners at the end of cohabitation. Law no. 76/2016 provides a limited obligation of support. The Courts consider that it is not possible to ask for the return of the contributions to the common life and that unjustified enrichment must be returned. The article discusses about various problems the interpreter has to deal with.

MARIA NOVELLA BUGETTI, <i>La solidarietà tra genitori e figli e tra figli e genitori anziani</i>	313
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Abstract. The author develops a reflection on the protection of elderly people in our legal system; she specifically considers the gaps and asymmetries in the Italian legal system that, while expanding the rights of sons – even over the age of 18 – towards parents, does not require duty of care for the elderly parents who are not self-sufficient.

PAOLA GRIMALDI, <i>Gli accordi di maternità surrogata tra autodeterminazione sulle scelte procreative, autonomia privata e best interest of the child</i>	323
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Abstract. Surrogacy is legal in some countries where a woman in exchange for money or even for free is committed to continue the pregnancy not recognizing the child. The born child is immediately delivered to the intended parents and its birth certificate is issued by the competent authority certifying that the intended parents are also the legal parents of the child. In Italy the practice is prohibited by the Law n. 40/2004 but it does not rule cases where children are however born in violation of the Law.

RACHELE MARSEGLIA, <i>I matrimoni contratti all'estero fra cittadini italiani dello stesso sesso dopo la legge Cirinna'</i>	339
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Abstract. This paper aims to offer a concrete analysis of the application scope of implementing rules of law no. 76/2016 and of the "regularizing" function of the above-mentioned law, by focusing on the effects deriving

from the recognized possibility of transcribing the “same sex” affective bonds.¹ At the same time, since marriages and “same sex” bonds established abroad are equated to marriages established in Italy, this job performs a combined reading about the (new) substantial discipline and the new special parallel regulation that introduce in our legal system new impedimenta legaminis and, therefore, new invalidation reasons and new tasks for the officer of the civil status.

MICHELA LABRIOLA, *La filiazione omogenitoriale*..... » 357

Abstract. This article analyses the evolution of the Italian law and jurisprudence about same-sex parenting in a comparative perspective. The article highlights issues related to the recently approved piece of Italian legislation (L.76/2016) ruling about civil and common law partnerships. In particular it highlights critical issues stemming from the interpretation and application in Italy of a patchy body of norms. As a result the jurisprudence had to adapt domestic and international legal principles in order to overcome any referencing to the parents’ sexual orientation and gender identity. By conforming to transnational judicial rulings, Italian jurisprudence attempts to overcome adjudicating asymmetrical ward. The judges apply the constitutional principle of equality taking into account a rigorous analysis of the social context.

Giurisprudenza

App. Napoli, sez. min., decreto 29 marzo 2017, con nota di ROSARIA GIAMPETRAGLIA, *Il conflitto endofamiliare non giustifica la nomina di un amministratore di sostegno* » 389

Abstract. The decision of the Court of Appeal of Naples, concerning the institute of the support administration, shows a highly relevant profile of interest because it is an expression of the close attention of Italian jurisprudence for the protection of the “person”, of his needs, of his dignity and freedom, therefore, for interests in life. In particular, it affirms that the nomination of an administrator who takes care of an incapable person cannot be the excuse to solve a conflict which is within the family and to regulate mere hereditary expectations. So, it appears to be in compliance with the ratio of the institute, according to the principles of our Constitution.

Recensioni

La recensione di SALVATORE PATTI a “Same-Sex Relationships and Beyond – Gender Matters in the EU” di Katharina Boele-Woelki and Angelica Fuchs (eds.) » 407

* Il contributo è stato sottoposto a valutazione in forma anonima.