

Parte I Dottrina

- DANIELA CARDAMONE, La famiglia nella Convenzione Europea dei Diritti dell'Uomo: strumenti di tutela e linee evolutive p. 3

Abstract. In the case-law of the European Court of Human Rights (ECtHR) the notion of family is an autonomous concept; whether or not "family life" exists is essentially a question of fact depending upon the real existence in practice of close personal ties. Paying attention to factual relationships, the ECtHR is open to family relationships other than those resulting from marriage. However, attention to the peculiarities of national constitutional traditions constrains this attitude of openness towards new models of family-relations. The margin of appreciation gives the flexibility needed to enable the ECtHR to balance the sovereignty of Member States with their obligations under the Convention. However, in family law, the ECtHR avoids any automatism between the existence of a consensus among the Member States and a lesser extent of the margin of appreciation and it limits itself to providing protection to "additional rights" independently introduced by States.

- GIANLUCA MONTANARI VERGALLO, Questioni di legittimità costituzionale della disciplina in materia di disposizioni anticipate di trattamento contenuta nell'art. 4 della legge n. 219/2017» 23

Abstract. The article casts doubt on the constitutional legitimacy of art. 4 of Italian law n. 219/2017, which obliges health care professionals to comply with advance health care directives unless: a) the latter are clearly unsuitable or b) they refer to treatments other than those to be performed or c) unpredictable and effective treatments have subsequently been discovered. This rule does not contain any tools to ascertain that the advance directive is informed and that the choice made by the trustee matches that which the patient would have made if he or she had been capable. Consequently, this rule appears to be unconstitutional for the following reasons: a) it unreasonably differentiates the advance refusal compared to the current one; b) it violates the rights to life and self-determination; c) it does not protect the freedom of conscience of health professionals. The article sets forth an interpretation aimed at making this norm compatible with the Constitution.

Parte II Giurisprudenza

- TOMMASO AULETTA, La lettura della Cassazione, Prima Sezione, sulla natura ed i criteri fissati da S.U. 18287/2018 riguardo all'assegno di divorzio (nota a Cass. civ., sez. I, 9 agosto 2019, n. 21234)» 45

Abstract. The sentence in question is part of the broad strand of decisions of legitimacy and merit which have implemented the ruling of the sentence of the United Sections no. 18287/2018 regarding divorce allowance with reference to its nature and the criteria aimed at determining its amount. In confirming the direction already accepted with regard to the burden of proof, the sentence underlines how the allowance fulfils a pre-eminently assistance function and, eventually, an equalizing-compensatory function, and underlines that the economic autonomy of the claimant must be assessed on the basis of his possibility to lead a decent life. Retracing the long and complex path that led to the current interpretation, in this comment the author highlights the difficulties faced by the judge in reconstructing the criteria laid down by the new jurisprudential case law and in establishing its impact in order to determine the amount of the allowance.

- GIANLUCA DE DONNO, Assegno divorzile e convivenza *more uxorio* (nota a nota a Trib. Torre Annunziata, sez. I, 8 maggio 2019)» 85

Abstract. The essay aims at highlighting the potential implications of the recent leading case law relating to the nature of divorce spouse support. By commenting the case at stake – after recalling the case law evolution on the issue – the author tries to point-out the rationale underlying the Supreme Court's decision no. 18287 of 2018 and to provide arguments in support of the compensatory nature of divorce spouse support, as affirmed by such decision. Lastly, the essay addresses the issue of the relationship between divorce spouse support and

more uxorio cohabitation. In this respect, the decision of the Court is criticised since it appears not to have taken in due account the effects of a combined reading of both the Supreme Court's mentioned case law and the law 20 May 2016, no 76 (which has regulated, inter alia, more uxorio cohabitations), to provide a different view on the issue.

MARCO RAMUSCHI, Su talune questioni ermeneutiche attorno allo *status filiationis*: segnatamente, sul riconoscimento testamentario di figlio nato fuori del matrimonio e sulla caducità delle disposizioni testamentarie per sopravvenienza postuma di figli (nota a Cass. civ., sez. II, 9 aprile 2019, n. 9905)» 109

Abstract. Through the sentence in epigraph, other than certain legal matters, we have been able to deal with certain doctrinal matters, which the interpreter could figure out reading the sentence. Particularly, the affair taken into consideration, as described by the Supreme Court, allows reflecting on some distinctive features of the testamentary acknowledgement of children born outside of marriage; furthermore, it also allows reflecting on distinctive features of the precariousness of the testamentary dispositions for the posthumous survival of children. These aforementioned distinctive features, at first glance, are not easily identifiable by the legal regulations.

MARTA CENINI, Divisione transattiva, transazione divisoria e accordi paradvivisori (nota a Cass. civ., ord., sez. II, 22 marzo 2019, n. 8240)» 151

Abstract. In a recent ordinance, the Court of Cassation has addressed the issue of qualifying a private agreement as a transaction, a contractual division of inheritance or a preparatory agreement. This thus confirms that it is always necessary to apply the criteria of contractual hermeneutics also for the qualification of agreements within the process of partition of a succession.