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Non-traditional Family Forms & the International Dimension of Family Life: A Report on the ERA Seminar, 'Recent Case Law of the European Court of Human Rights in Family Law Matters'

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I. Introduction

Since its conception, the European Court of Human Rights (the Court or ECtHR) has had a central role in enforcing the protection of Human Rights in all the States party to the European Convention of Human Rights (the Convention or ECHR). In doing so the rights protected in the Convention and the interpretation and application of these rights by the Court has had a significant impact on the family law in all these states (47 in total). Family life plays a role in the Convention through various articles. The core article is Article 8 ECHR which provides the right to respect for private and family life. However, the other articles should not be forgotten: Art. 12, protecting the right to marry and found a family, Art. 14, the general anti-discrimination clause to be taken in conjunction with Art. 8 or 12, and Art. 5 of Protocol no. 7, which concerns the equality of spouses in civil law matters. These articles and the Court's interpretation of them was the object of the *Europäische Rechtsakedemie* (ERA) Seminar, 'Recent Case Law of the European Court of Human Rights in Family Law Matters', which took place in Strasbourg on the 11th and 12th of February 2016.[1] The programme consisted of a visit to the ECtHR to get a glimpse in the kitchen and the sharing of important practical tips for sending an application to the Court. But, more importantly, of speakers who put the spotlight on various family law topics including international child abduction, LGBT rights (lesbian, gay, bisexual and

transgender) and reproductive rights.
This conference report will discuss the interesting remarks and conclusions made by the speakers, starting with a brief discussion on the shifting notion of 'family life' in the case law of the ECtHR, then turning to best interests of the child in international child abduction cases, the Court's recognition of LGBT rights and finally the spectrum of challenges regarding reproductive rights in the Court's case law. This report will not include an exhaustive description and explanation of all the relevant case law of the ECtHR as mentioned during the seminar, because, while extremely interesting, it would create an avalanche of information.

II. 'Family life' as a shifting notion in the case law of the ECtHR

In order to plunge into the influence that the Court's case law has had on certain areas of family law, it is important to 'set the scene' and understand how the Court interprets the notion of family life as such. Registry lawyer Evgueni Boev meticulously set out the shifting notion of 'family life' in the Court's case law and discussed this shift in all the various forms of relationships, both horizontal and vertical, biological and non-biological.
Before discussing what the Court classifies as 'family life', it is important to realise that Art. 8 also protects private life, which is a notion broader than family life. In various cases, the Court does not establish family life, but does find an interference with private life. This allows the Court to discuss Art. 8 and potentially find a violation. The difference between family life and private life mostly matters in a symbolic way, for example with regards to the legal acceptance of same-sex couples. This symbolic shift shows that the current understanding of 'family life' might be contrary to what the drafters envisaged back in 1950.
So what is 'family life'? It is an autonomous concept, meaning that it is independent of the legal position of the applicants in their national law. What matters is the substance of the relationship. While the biological link could be a factor, it is not decisive. Considering horizontal relationships, a formalised relationship generally qualifies as family life, but the formalisation is not decisive: a marriage of convenience does not establish family life. The core importance of the factual substance of the relationship is also reflected in the Court's recognition of heterosexual *de facto* relationships as family life, when the facts require this. The Court then considers factors such as living together, the length of the relationship, the commitment to each other and common children. In regards to homosexual *de facto* relationships, the Court's approach has slowly shifted. In its early case law the Court found these relationships to engage the private life heading of Art. 8 ECHR. In the 2003 case *Karner v. Austria*, the Court deliberately left this point open.[2] In the 2010 milestone judgment of

Schalk and Kopf v. Austria, the Court found same-sex relationships a form of 'family life' for the first time, taking into account the European social developments.[3] Since then the Court has stuck to this position, amongst others in the later cases of *Vallianatos and others v. Greece* and *Oliari and others v. Italy*.[4] These two cases have, as Boev pointed out, also shown another development in the Court's case law: that the existence of family life between partners in a non-formalised union is independent of cohabitation. Due to globalization it is more common for partners, whether in a formalised relationship or not, to experience periods of long-distance relationships, for professional or other reasons. The Court does not find this to have any impact on the existence of a stable committed relationship.

In vertical relationships, the traditional relationship between a minor child and his/her married parents has always been recognized by the Court as family life; the tie can only be broken in exceptional circumstances. The early judgment of *Marckx v. Belgium* has shown that the Court makes no distinction between 'legitimate' and 'illegitimate' children.[5] In later cases, such as *Keegan v. Ireland* and *Kroon v. the Netherlands*, the Court also extends family life between minor children and their unmarried parents, even when they do not live together.[6] For the establishment of family life between a child born out of wedlock and his or her father, the Court held that the mere existence of a biological link in the absence of an actual factual relationship is insufficient.[7] As mentioned previously, the Court values substance over biology. This was also shown when the Court recognized family life in the absence of a biological link where a *de facto* personal relationship existed and the man had acted as the father for the child.[8] However, when the lack of a *de facto* relationship of substance between the biological father and the child cannot be attributed to the father who has taken sufficient steps to establish a tie, the Court is also satisfied of the existence of 'intended family life'.[9] In such cases, the facts still have the upper hand in the Court's decision.

Following this overview of the typical situations in which the Court has found family life to exist, Boev briefly discussed how the Court addresses cases concerning 'family life'. The first main remark he made was that the Court when applying Art. 8 ECHR does not frontally challenge national prohibitions. Instead the Court examines all the factors relevant to the applicant, other affected persons and the general public interest. By doing so the Court never rules that there is an absolute right to something, but can find that in the present circumstances of the case the State violated Art. 8 ECHR. The second main remark concerned the difference between simply applying Art. 8 ECHR and the application of Art. 14 jo. Art. 8 ECHR. For the latter, the Court must establish whether the situation falls within the ambit of Art. 8 ECHR, which is a slightly broader concept than when directly applying Art. 8 ECHR. When it does, the Court tests whether the difference in treatment in similar situations is discriminatory or not.

In cases regarding homosexual persons and their relations and other rights, the Court can either apply Art. 14 jo. Art. 8 or Art. 8 ECHR alone. According to Boev, the Court's choice very much depends on how the case is pleaded, but also what the Court sees as the core of the issue; the discrimination or the substantive content of Art. 8 ECHR.
In concluding his thorough examination of 'family life' in the ECtHR's case law, Boev raised two particularly striking developments – and potentially challenges – for the Court: the variety of non-traditional forms of family life and the increasing international dimension of family ties. Boev questioned what the Court's role should be in this domain: should it follow change in Europe or anticipate and impose change?[10] His opinion was that the Court should safeguard existing rights, instead of being a social leader creating rights or extending existing rights. Of course it depends on the judicial philosophies of the sitting judges in the Court, but as he cleverly stated, 'the Court must be a court, not an NGO.'

III. Issues of incompatibility in International Child Abduction

The first specific field of family law discussed in light of the ECtHR's recent case law, was the issue of international child abductions, one of the issues of the increasing international dimension of family ties. Dr. Thalia Kruger commenced her presentation with an explanation of the legal framework for international child abduction cases, discussing the goals and procedures of both the Hague Convention on the Civil Aspects of International Child Abduction 1980 and the EU Brussel II*bis* Regulation. With this framework in mind, Kruger then discussed the case law of the ECtHR and the CJEU regarding international child abductions to raise two interesting discussions regarding the friction between the legal instruments (the Hague Convention, Brussel II*bis* and the ECHR). Firstly, regarding the general best interests of children versus the best interest of the particular abducted child and secondly, the friction between EU integration and the ECHR's protection of human rights.
The first issue has an historical background: at the time of the adoption of the Hague Convention the opinion was that it is in the best interests of the child to be returned immediately to the country of habitual residence. Primarily because most abductors were believed to be fathers who no longer had custody rights and abducted the children out of frustration or spite, but also because the Hague Convention aimed to dissuade parents from abducting their children as it is in children's best interests not to be abducted. However, research has shown that nowadays most abductors are mothers with the role of primary caretakers. The question has therefore been raised whether the immediate return procedure remains in the best interests of the child. Of course, the drafters of the Hague Convention provided for an exception if there is a grave risk for the child of physical or

psychological harm or for an intolerable situation (Art. 13(b) the Hague Convention). However, the exception must be applied sparingly, as it should be interpreted restrictively according to the explanatory report. In addition, for intra-EU Member State abductions Brussel II*bis* strengthens this strict test: according to Art. 11(4) Member States cannot refuse the return due to the grave risk for the child if the Member State of return can take adequate measures to protect the child. All in all, the situation must be very drastic for the return of the child to be impeded due to a grave risk or an intolerable situation.

As eloquently stated by Kruger, the case law of the ECtHR, especially *Neulinger and Shuruk v. Switzerland* has 'caused an earthquake'. Prior to that decision, the Court had agreed with the philosophy of the Hague Convention, emphasizing the interest of the child to be returned swiftly.[11] While emphasizing this value of the Hague Convention in *Maumousseau and Washington v. France*, the Court also already mentioned that the interests of the particular child must be considered in the proceedings.[12] In the *Neulinger* case the Court becomes sceptical and is of the opinion that a swift return is not always in the best interests of the particular abducted child, therefore the best interests of the child must be assessed in each individual case.[13] The Court went on to say that courts have to conduct an in-depth examination of the particular circumstances to decide what the best solution is for the abducted child. This decision has to be seen in light of its very particular circumstances, as explained by Kruger, 'hard cases make bad law'. The application came at a time when the ECtHR had an extreme backlog, therefore it was pending for four years. By the time the judgment was given in the Grand Chamber, the child had been living in Switzerland for six years it would not have been plausible for the Court to say that the child had to be sent back to Israel, when he was not part of his father's orthodox religious community and was completely integrated in Switzerland. In *X v. Latvia* the Court had to appease the earthquake it had caused. It therefore (made an attempt to) bring the case law of the ECtHR back in line with the Hague Convention.[14] This judgement contains the current balancing act the ECtHR has made between the general best interests of children and the best interests of the particular abducted child: the Hague Convention aims for the general best interest and on the basis of its grounds for refusal, the specific best interests of the abducted child must be taken into account through the relevant elements submitted to the national courts. The national courts should not thoroughly investigate *ex officio* the entire factual situation, but should take into consideration all the evidence provided to them. Furthermore, in doing so, the national courts should stay within the time limits, as the ECtHR emphasizes the quick return aim of the Hague Convention.[15] This case law (and the rest) shows the friction between collective justice, the best interests of *all* children, and individual justice, the best interest of the abducted child.

The second issue of friction is between EU integration and the ECHR's protection of human rights. This issue contains two aspects. The first is highlighted in the case of *Aguirre Zarraga v. Pelz* at the European Court of Justice, in which a question concerning whether or not the child has had the opportunity to be heard in a second-chance procedure under Brussel II*bis*.[16] The ECJ's approach is to emphasize the mutual trust between EU courts. If the Spanish courts certify that the child has had this opportunity, then we must trust them because in the EU we are 'team players', as Kruger calls it. This is a very different approach from that of the ECtHR, which most likely would have examined whether the Spanish courts had adequately protected the child's human right to be heard. The second aspect concerns the *Bosphorus* doctrine of equivalent protection. In the *Bosphorus* case the ECtHR stipulated that a Member State remains bound by the ECHR even when acting 'to comply with international legal obligations'.[17] The doctrine of equivalent protection is the presumption of the ECtHR that EU law equivalently takes into account and protects fundamental rights. In *Povse v. Austria*, the ECtHR was faced with an application that Austria had violated Art. 8 ECHR by not allowing for a non-enforcement procedure of an Italian judgement due to the abolition of exequatur under the Brussels IIbis Regulation.[18] The Court, taking into account the *Bosphorus* doctrine, decides that it can assume that EU law is in line with the ECHR and because Austria had no discretion, it simply had to enforce the Italian judgment. Considering this case was decided in June 2013, Kruger was of the opinion at the time that this use of the *Bosphorus* doctrine was merely transitional. As soon as the EU would ratify the ECHR, the Court would be able to determine that a rule of EU law violated a right protected by the ECHR. However, the ECJ has (at least for the time being) declined the ratification of the ECHR by the EU, yet the *Bosphorus* doctrine remains. Kruger finds this to be particularly problematic, because the ECtHR continues to assume that the EU complies with the ECHR, but had the case been an issue of domestic law, the Court could have found a violation. It will be interesting to see how compatibility between the ECHR and the EU and between the Hague Convention and the ECHR concerning international child abduction can be achieved as much debate remains in this area.

IV. LGBT rights and the way forward

The recognition of same-sex civil unions and transsexuals' right to family life is a core issue in the discussion of non-traditional families. Dr. Constanza Nardocci first focused on the case of *Oliari and others v. Italy*, not only from the viewpoint of the Italian legal system, but also from her own specific experience as one of the lawyers representing the applicants in the case.

There were two main points to be drawn from Nardocci's analysis of *Oliari and others v. Italy*. The first concerned the contrast in the

Italian legal system between the judicial activity in favour of granting same-sex couples certain rights and the lack of legislative activity towards introducing legal recognition. In Italy, same-sex couples have no form of legal protection: they have access to neither marriage nor civil unions or partnerships. The Italian Constitutional Court had in previous judgments already started to reduce the difference between families in the traditional sense and non-traditional families and in an important ruling of 2010 held that, while same-sex couples do not have the right to marry, their right to family life does fall within the ambit of Art. 2 of the Italian Constitution. In this ruling, and later rulings, the Italian Constitutional Court repeatedly warned the legislator that it had the constitutional duty to enact appropriate regulation for the recognition of same-sex couples. The legislator remained inactive however, even when other domestic courts underlined the discriminatory treatment encountered by same-sex couples. The ECtHR case of *Oliari* gives, according to Nardocci, a good description of the Italian legal system in that sense. The Court held there to be a violation of Art. 8 ECHR, especially because of the conflict between the social reality of the applicants and society versus the lack of legislation, as was exemplified by the findings of all the different Italian courts. Again a strong warning to the legislator is found, this time by the ECtHR and hopefully leading to successful legislative activity.[19]

The second relevant point of Nardocci's analysis are her remarks regarding which grounds the ECtHR has based its decisions of *Oliari* on in comparison to previous ECtHR case law. As previously mentioned, a shift had already taken place in the Court's interpretation of Art. 8 ECHR, finally recognizing the family life of same-sex couples in *Schalk and Kopf*. However, the Court's interpretation of Art. 12, the right to marry, has remained the same. The article explicitly references the heterosexuality of the couple and while it could, in relation to Art. 9 EU Charter and through evolutive interpretation, be read as also protecting same-sex couples, the Court finds no positive obligation to introduce same-sex marriage. For that reason, the applicants represented by Nardocci in *Oliari* did not complain of a violation of Art. 12 ECHR, but instead of a violation of Art. 14 jo. 8 and of Art. 8 ECHR on its own. In contrast to the *Vallianatos* case, where the discrimination aspect of Art. 14 jo. 8 played an important role in finding a violation, the Court did not discuss Art. 14 jo. 8 ECHR in *Oliari*. Perhaps due to the difficulty of finding a *tertium comparationes* as mentioned by Nardocci, because Italy also did not have civil unions for heterosexual couples.

In the second part of her presentation, Nardocci focused on the case of *Hämäläinen v. Finland*, discussing the impact of the development of the ECtHR's case law regarding homosexuals on the rights of transsexuals.[20] The Grand Chamber did not find any violations in the application of a transsexual woman who had married another woman prior to her transition regarding the right to obtain legal recognition of

her gender without transforming her marriage into a civil partnership. Nardocci finds the judgment unsatisfying, because the Court had approached the alleged violation through Art. 8 ECHR as a positive obligation, instead of as a negative obligation. In her opinion the outcome might have been different. In *Hämäläinen*, the Court had compared the situation to that of homosexuals, deciding that states were entitled to regulate marriage as they saw fit. However, the situation is not comparable, because the marriage already existed and for the applicants the conversion was not an option due to their religious beliefs and the potential negative influence on the status of their common child. Had the Court taken the negative obligation approach, it could have determined whether or not the conversion was proportionate and necessary in light of the specific needs of the applicants. Nardocci, in sum, concluded that while the enforcement of homosexuals' right to family life was heading in the right direction, it was not going hand in hand with that of transsexuals.

V. Spectrum of Reproductive Rights and the Challenges

The final specific field of family law discussed was the spectrum of reproductive rights in light of the ECtHR's recent case law, an issue touching upon both non-traditional families and international family relationships. It is also a relevant topic due to the increasing use of technology in reproduction, leading to a growing number of cases and the discussions to accompany them. Dr. Michael Wells-Greco discussed the various issues the Court has been faced with concerning reproductive rights – abortion, embryo donation and scientific research, home birth and surrogacy – to see what the influence of the ECtHR has been and whether common themes emerge. Combining these different topics concerning fundamental ethical principles and different national approaches allowed for a helicopter view of the recent case law in this area.

The access to a lawful abortion is characterised by historical development. By now, most European states have legalized some form of abortion, although there is great diversity as to how access is or is not limited. Once a state allows abortion, the legal framework surrounding it should be shaped in a coherent matter, taking into account the different legitimate interests according to the ECtHR. The Court in *A, B and C v. Ireland* held that while the Convention does not guarantee a right to abortion, a state allowing some form of abortion may not limit the real possibilities for a woman to obtain one.[21] The procedural framework must promote the effective enjoyment of certain rights, such as the access to relevant information. A complete prohibition, however, did not constitute a violation due to health or wellbeing reasons. Most likely the Court, in this decision, was influenced by the fact that Irish women could lawfully travel abroad to get an abortion and received care in Ireland pre- and post-abortion.

The following case, *Parrillo v. Italy*, is one of the most contentious judgments as it concerned the question whether the Art. 8 ECHR respect to private life encompasses the right to make use of embryos obtained from IVF for scientific research.[22] The Court had to wrestle with existential questions, therefore taking a year to write and deliver judgment with two separate concurring opinions, a joint partly concurring opinion, a joint partly dissenting opinion, a partly dissenting opinion and a dissenting opinion. The Court held that Art. 8 was applicable since the embryos contained the applicant's DNA and thus formed a part of her identity and private life. However, there was no violation of Art. 8 ECHR due to the wide margin of appreciation. Why was the margin so wide? The research did not concern an important aspect of the applicant's identity. While prospective parenthood would be closely linked to her identity, she did not want to be a parent. Wells-Greco was critical of the judgment. At the time of the creation of the embryos there was no Italian law prohibiting the use of embryos for scientific research, the law came into force following the death of the applicant's partner. The question is therefore whether the law was foreseeable, seeing as there were no transitional provisions and no exceptions. Wells-Greco raised the valid point that even if a wide margin does exist, it should not allow a state to act arbitrarily.

The third reproductive right discussed, was the right of choosing the circumstances of becoming a parent and in that connection the option of giving birth at home with or without the assistance of medical health professionals. Two recent cases have led to different outcomes. In *Ternovsky v. Hungary* Art. 8 ECHR was violated due to the lack of legal certainty in the application of the laws whether or not midwives could assist with homebirths.[23] In *Dubskà and Krejzovà v. the Czech Republic* there was no violation of Art. 8 ECHR, because the laws prohibiting midwives from assisting with home births did fulfil the criteria of legal certainty and the State had a wide margin of appreciation in this respect.[24] Wells-Greco critiqued the negative obligation approach of the Court in the latter case, just as Judge Lemmens did in his dissenting opinion. While the State interference might have been minimal in the women's right to choose, the State should actually facilitate a real choice. If the State allows homebirths, should it not also provide for the safety of the persons involved? By applying a hands-off approach to home births, are the medical risks involved not being privatized? The appeal is currently pending before the Grand Chamber and with many intervening governments and organizations, it will be extremely interesting what the Court will decide.

Finally, the issue of surrogacy was discussed, a highly intriguing topic which the ECtHR has had to deal with due to the increasing occurrence of inter-country surrogacy and the very divergent approaches in national laws. The case of *Paradiso and Campanelli v. Italy* concerned the removal of a surrogate-born child from the

intending parents, who had no genetic ties to the child.[25] The Court held that although the parents had tried to circumvent the national rules, the inter-country adoption rules and other international rules, the *de facto* family ties had to take precedence in order to guarantee the best interest of the child and thus the case fell within the ambit of Art. 8 ECHR. The Court also found an interference with this existing family life, because the authorities had not properly balanced all the interests involved. However, this did not require the Italian State to return the child to the intending parents, because the child had now been living with a new family for three years. This case is significant due to the Court's finding of *de facto* family life, but the judgment was appealed and the Grand Chamber will most likely deliver its judgement this year. In respect of the ECtHR case law on surrogacy, Wells-Greco raised some interesting unanswered questions. In his own practice, he has seen more heterosexual infertile couples interested in surrogacy, than homosexual couples pursuing this route. Therefore, he argues that it is not an LGBTI issue, but a children's issue; is a surrogate-born child not like any other child? Is it a violation of the child's Art. 8 ECHR rights to deny him/her the ability to have his/her non-genetically related intended parents established as legal parents? Secondly, does the respect for family life not require the social reality to prevail over a legal presumption or legal maternity *ex lege*? According to Wells-Greco, the answer will depend on the personal ideas of reproductive rights of the persons concerned. An American surrogate mother may be able to make an informed decision, but can surrogate mother's in third world countries do the same? Lastly, once countries allow the establishment of parentage for intending parents, is any method of establishment sufficient or will there be certain minimum requirements?

In his conclusion, Wells-Greco tentatively identified some emerging trends. He concluded that human rights are multifaceted and multidimensional and that the national values and supra-national aspects will interact in the area of reproductive policy. When at the end of a gradual evolution, a state is in an isolated position regarding a reproductive manner, this does not necessarily mean that the state is in violation of Art. 8 ECHR. The Court is aware that reproductive choices have deep-rooted cultural dimensions in states. The states are therefore free to make their own decisions, as long as they adequately assess the interests of those involved. Once a state starts to allow certain reproductive matters, it is obliged to meet procedural obligations, the legislation must be coherent and the entitlement must be granted in a non-discriminatory manner.

VI. Conclusion

The recent case law of the ECtHR on family law matters was comprehensively discussed by the various speakers at the ERA Seminar. In each of their respective areas of family law, frictions and

trends were pointed out. A general trend seen in the topics of the speakers, and also emphasized by Boev, is that the Court is increasingly faced with issues concerning non-traditional forms of family and with issues caused by the internationalisation of families. These issues raise three main questions.

Firstly, how will the Court and the Contracting States – continue to – accept and recognize families in all forms, shapes and sizes. Through same-sex relationships, increasing reproductive technology and the cross-border creation of families, amongst other things, new family forms will continue to arise. It will be for the Contracting States and perhaps the Court to determine whether or not a divide will remain between traditional and non-traditional families.

Secondly, can and will different international legal instruments be compatible. This issue is extremely relevant in the field of international child abduction, where the compatibility of the ECHR and the Hague Convention can be questioned in light of the best interests of the child. Perhaps even more problematic, how must or can the Court deal with EU legislation if it is incompatible with the ECHR? Is the *Bosphorus* doctrine still appropriate? This issue of compatibility between international legal instruments might also be relevant in the field of surrogacy as the Hague Conference on Private International Law is working towards a private international law instrument on parentage.

Lastly, what will the Court's role be in these family law areas in the future. The Court should remain vigilant in ensuring the protection of human rights, but should it also advance change? As Wells-Greco questioned, is the Court more concerned with a consensus or with trends? Will and should it follow the European consensus or encourage the emerging trends?

Noten

1 See the website of ERA (www.era.int) for other events.

2 ECtHR 24 July 2003, Appl. no. 40016/98 (*Karner v. Austria*).

3 ECtHR 24 June 2010, Appl. no. 30141/04 (*Schalk and Kopf v. Austria*).

4 ECtHR 7 November 2013, Appl. nos. 29381/09 and 32684/09 (*Vallianatos and others v. Greece*) and ECtHR 21 July 2015, Appl. nos. 18766/11 and 36030/11 (*Oliari and others v. Italy*).

5 ECtHR 13 June 1979, Appl. no. 6833/74 (*Marckx v. Belgium*).

6 ECtHR 19 April 1994, Appl. no. 16969/90 (*Keegan v. Ireland*) and ECtHR 27 October 1994, Appl. no. 18535/91 (*Kroon and others v. the Netherlands*).

7 ECtHR 1 June 2004, Appl. no. 45582/99 (*L. v. the Netherlands*).

8 ECtHR 16 July 2015, Appl. no. 39438/13 (*Nazarenko v. Russia*).

9 ECtHR 21 December 2010, Appl. no. 20578/07 (*Anayo v. Germany*).

10 See e.g., the Dissenting Opinion of Judge Morenilla in ECtHR 27 October 1994, Appl. no. 18535/91 (*Kroon and others v. the Netherlands*).

11 ECtHR 6 November 2008, Appl. no. 49492/06 (*Carlson v. Switzerland*).

12 ECtHR 6 December 2007, Appl. no. 39388/05 (*Maumousseau and Washington v. France*).

13 ECtHR 6 July 2010, Appl. no. 41615/07 (*Neulinger and Shuruk v. Switzerland*).

14 ECtHR 26 November 2013, Appl. no. 27853/09 (*X v. Latvia*).

15 ECtHR 12 March 2015, Appl. no. 22643/14 (*Adžić v. Croatia*) and ECtHR 13 January 2015, Appl. no. 35632/13 (*Hoholm v. Slovakia*).

16 ECJ 22 December 2010, C-491/10 (*Aguirre Zarraga v. Pelz*).

17 ECtHR 30 June 2005, Appl. no. 45036/98 (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*), para. 153.

18 ECtHR 18 June 2013, Appl. no. 3890/11 (*Povse v. Austria*).

19 In the meantime, legislative activity has been successful. In May 2016, a bill establishing same-sex civil unions was approved by the Italian Senate and Parliament. The bill will enter into force on the 5th of June 2016. *Legge 20 maggio 2016, n. 76, Gazzetta Ufficiale n. 118 del 21 maggio 2016*.

20 ECtHR 16 July 2014, Appl. no. 37359/09 (*Hämäläinen v. Finland*).

21 ECtHR 16 December 2010, Appl. no. 25579/05 (*A, B and C v. Ireland*).

22 ECtHR 27 August 2015, Appl. no. 46470/11 (*Parrillo v. Italy*).

23 ECtHR 14 December 2010, Appl. no. 67545/09 (*Ternovsky v. Hungary*).

24 ECtHR 11 December 2014, Appl. nos. 28859/11 and 28473/12 (*Dubskà and Krejzovà v. the Czech Republic*).

25 ECtHR 27 January 2015, Appl. no. 25358/12 (*Paradiso and Campanelli v. Italy*).