EUROPEAN LAW INSTITUTE

FAMILY AND SUCCESSION LAW SIG

Webinar *The new Family Law: realities and future perspectives*

20th November 2024

ABSTRACTS

Multiple and Transgender Parentage in Cross-Border Families

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In the short time span of a couple of decades, family law is probably on the brink of a "Copernican" revolution. The principle that a child can only have a mother (female) and a father (man) has been overcome, following significant societal, biomedical and legal developments.

From a legal point of view, the principle of double parentage remains firm: one mother and one father. *From a biological point of view,* multi-parentage occurs today in the case of fertilization of the oocyte of a donor (one father and two mothers). *From a social point of view*, legal parents can be joined by one or more social parents. *In the name of the right to self-determination*, the issue of the impact of gender reassignment on parenting has been raised in recent years.

Family and Families: between European Law and convergence strategies

Virginia Zambrano. University of Salerno

Even though, in Europe, the evolution of family dates back at the beginning of '60, the concept of 'family' does not express a convergent and unambiguous idea. Reflecting values, principles and ideals of different human societies the idea of family undergoes to

a slow but unavoidable transformation of its very essence. Such transformations concern gender roles and intergenerational relations involving its form (e.g. patriarchal, nuclear, parental), its structure (e.g. single-parent families, extended families, reconstituted families, etc.) and, more generally, the different ways of making a family (e.g. marriage unions, heterosexual and homosexual cohabitations, civil unions, genderfluid unions, religious bonds, etc.). In addition, the spread of a gender ideology and queer lifestyle influences what family is or look like.

The analysis, while revealing a significant proliferation of different family models, shows how the heterosexual union based on marriage represents by far the most widespread family archetype. The complex relationship between marriage and registered partnerships can confirm this hypothesis.

Not only less than half the members of the European Union – do allow same-sex couples to be united in marriage. Registered partnerships are regulated differently within the European Union. Nine Member States allow all couples, opposite-sex or same-sex opposite sex or of the same sex, to register their union (Austria, Belgium, Cyprus, Estonia, France, Greece, Luxembourg, Malta and the Netherlands), while five Member States (Croatia, Italy, Czech Republic, Slovenia and Hungary) allow only same-sex couples to register their union. Eight Member States do not provide for registered partnerships, regardless of the sex of the parties (Bulgaria, Latvia, Lithuania, Poland, Romania, Slovakia).

At a taxonomy's level, the differences are quite significant.

If we look at registered partnerships, for instance, it is easy to observe how in those legal systems where they are considered to produce the same effects as marriage, the law-maker has no longer provided for their regulation. Such was the case in Spain, where the introduction of same-sex marriage has meant that there is no longer reason to maintain the civil union model. After the promulgation of Laws No. 13 and No. 15/2005, the Supreme Court, judgment of 12 September 2005, STS 5270/2005 made it clear that the law, by increasing the flexible nature of the marriage institution, made distinct - but assimilable - forms of it superfluous. Given the inconsistency of the legal framework, it is understandable how (especially in relation to same-sex marriages) the risk of limping status is very high. The problem arises especially when two persons of the same sex married in a Member State ask for the transcription of such marriage in another Member State where same-sex marriages are not allowed.

Here, too, there are big differences, since, for instance, for the Italian courts (Court of Cassation - Judgment No 11696 of 14 May 2018) a same-sex marriage cannot be legalised in Italy.

The bumpy road that, in the context of the European Union, has led most Member States to adopt forms - albeit diversified - of same-sex couples' recognition, has led to "asymmetrical" situations in several respects.

On the one hand, the introduction of registered partnerships only for same-sex couples - the possibility of marriage remaining the prerogative of heterosexual couples - is in line with the EDU Court. As known in Oliari et al. v. Italy (2015) the judges recognised the same-sex partners's right to a private and family life, within the framework of Article 8 of the ECHR, without imposing on the State the duty to introduce a law on same sex marriage instead of regulating forms of registered partnership. A choice that being subject to a logic of 'separate but equal', seems to cast some shadow on the way to interpret the principle of no discrimination.

On the other hand, where the discipline of marriage has been innovated and - at the same time - the model of the registered partnership has been kept unchanged, without extending it to unions between persons of the opposite sex, no doubt that, again, arises a question of equal treatment between heterosexual couples and homosexual couples. With respect to the first of these problems, at present, it does not seem easy to identify clear perspectives for further development.

The protection of children and adolescents in the digital environment in the European Union

Ana Isabel Berrocal. Complutense University of Madrid

This presentation will analyze the protection of minors in the digital environment, in particular, the European regulations (General Data Protection Regulation and the European AI Regulation) will be analyzed, in addition to other national regulations that seek to promote privacy, legal security and the defense of fundamental rights.

Digital parenting

Abigail Quesada. University of Granada

Digital parenting is a concept that reflects the extension of traditional parental responsibilities into the digital sphere. With the increasing influence of technology on minors' daily lives—through social media, online games, and digital platforms—parents are faced with the challenge of ensuring their children's safety, privacy, and well-being in virtual environments. Digital parental authority requires balancing the duty of

protection with respect for a minor's autonomy and privacy, creating ethical, legal, and practical challenges.

The analysis begins by defining digital parental authority and situating it within the context of modern parenting. It highlights the responsibilities parents hold to protect their children from online risks, such as cyberbullying, inappropriate content, and the misuse of personal data, while also nurturing their ability to navigate the digital world responsibly. The phenomenon of "sharenting," where parents share personal information or images of their children online, is discussed as a pressing concern for privacy and the development of a child's digital identity.

The legal framework in Spain, including the Civil Code and the Organic Law on Data Protection and Guarantee of Digital Rights (LOPDGDD), it emphasizes that while these laws provide general principles for safeguarding minors, there is no specific regulation on digital parental authority, leaving parents to navigate complex issues with minimal legal guidance. The analysis is complemented by an examination of case law from the Spanish Supreme Court, which has addressed critical issues such as minors' right to privacy, the limits of parental supervision, and the shared responsibility between separated parents for decisions related to their children's digital presence.

The challenges of digital parental authority are multifaceted. Parents must contend with addictive patterns in digital platforms, conflicts over social media access, and ethical dilemmas when supervising minors' online activities. These tensions are particularly acute in situations of family separation, where disagreements over digital supervision often lead to legal disputes.

In its conclusions, underscores the urgent need for legislative reform to provide clear guidelines on the scope and limits of digital parental authority. It advocates for proportional supervision tailored to a child's age and maturity, ensuring that parents act in the best interest of their children without infringing on their rights to privacy and autonomy. The analysis also highlights the importance of family mediation, comprehensive education on digital rights, and training for legal professionals to navigate this evolving field effectively.

The complexities of parenting in the digital age and the importance of fostering balanced approaches that protect minors while respecting their developing autonomy. By addressing these challenges, digital parental authority can evolve into a framework that empowers families to navigate the opportunities and risks of the digital environment responsibly.

Civil liability in the field of family law in the European Union, especially concealment of paternity

María Dolores Casas. University of Jaén

The object of this paper offers an up-to-date overview of compensation in the field of Family Law, specially in the area both in parental- child legal relationships and in marital relationships, which has become a particularly attractive and evolving subject in constant evolution. These issues concern complex aspects of human behaviour and are therefore inherently difficult to resolve. In addition, they concern societal values which are constantly changing. Ongoing consideration of these issues is therefore needed.

It is structured in two parts, after a brief introduction about the evolution of the principle of 'family immunity' both in Common Law and Codified system. In the first part, I focus on some controversial cases in most European countries, among others: illegitimate interference with parental-filiation legal relationship, being the starting point for the recognition of civil liability in the family context. And also looking into the most controversial claims for lack of voluntary recognition of paternity subsequently determined in a forced manner through other unaccompanied children, as well as the case of the person who has acknowledged his paternity out of complacency and after he brings an action to challenge the paternity, in which the doctrine of '*venire contra factum proprium non potest*' could not be invoked as a rejection because questions of civil status of this nature are subject to unavailable public policy.

And in the second part, I will discuss the opposing views when it comes down to the application of the civil liability to the *concealment of the true paternity*. Nevertheless, this part is preceded by the idea that a clear distinction must be made between civil liability for non-material damage arising, on the one hand, from the violation of the conjugal duty of fidelity and, on the other hand, from the concealment of paternity. Since, it is peaceful, at least in case law and defended by the majority of the doctrine in most European countries, that the breach of the duties of marriage, specifically infidelity, does not admit the exercise of civil liability actions (Germany, Spain…), with the exception, among others, of the French law only in cases where the seriousness is established or where a serious disregard for the welfare of another or the severe consequences for the spouse and the children are shown, consistent, in my opinion, with the principles of tort law, applying commutative justice, as with of those of Family law.

Apart from the previous case, as far as the concealment of paternity is concerned, for both married and unmarried couples, there are no consensual answers neither in Common law nor in Codified law, admitting it for example in Germany on the basis of the subjective criterion of dolus or malice (false statements), or denying it in Spanish case law, although contradicted by lesser case law. In short, there are three current positions: i) the first, which admits the concealment of paternity as a potentially compensable case on the basis of the 'open clause' enshrined in the European Civil Codes on the understanding that, depending on the circumstances of the specific case, it could cause

damage to interests that are separable from the interest in maintaining the marriage and respect for its rules. And within this sector there are those who defend that the subjective criterion of justice to impute the damage is malice or gross negligence and those who maintain that it is mere negligence. ii) the second which denies compensation for pecuniary and non-pecuniary damage for concealment of paternity as it is not subsumed, as a general rule, in a criminal offence or in an infringement of a fundamental right. iii) and finally there are those who deny reparation in any case, given that the damage under study rests on a meaning of paternity that basically takes into account biological ties, when the current conception of paternal-filial relations is based mainly on the construction of affective ties.

The paper also searches the adaptation of the legislation on damages to the principles governing the Family Law, investigating whether the general rule of fault or malice as a subjective criterion of imputation should govern; the feasibility of compensation and the problem of the quantification of moral and pecuniary damages; as well as the problems of regulatory technique regarding the classification of the damage as permanent and not as a continuous damage.

In conclusion, family and family life are a living space in which people can pursue and achieve the greatest possible spiritual and material fulfilment, and the parental bond generated by biological filiation is a factor of enormous emotional significance. Furthermore, it should be borne in mind that in the concealment of paternity the damage is the so called *'pure damage'* as it does not derive from the injury neither personal nor material. As a consequence, the damage that arise from the concealment of paternity is compensable as we are face with a injury to an interest worthy of protection, that is, injury to the certainty of filiation and the maintenance of the legal paternal-filial bond upon the loss of it and, consequently, the disappearance or diminution of the right to relate to their alleged children, and despite the existence of other interest at stake, as the requirement of unlawfulness as an element the lack of which would lead to the non-obligation to pay compensation (committing a tort not covered by a cause of justification) would solve this problem on a case-by-case basis. Finally, it is a matter of a legal judgment and in no way a judgement o the morality of the spouse; so in cases of damage in family relationships, and specifically for concealment of paternity, the Courts have the duty to decide in accordance with the rules of civil liability and in equity, which will lead them to deny (real risk of violence for telling the truth; action is exercised in an opportunistic manner) or admit compensation.

*"Non-contractual civil liability was created with a potential for development or flexibility to adapt to new and ever present human needs" (*Parliamentary Debates. Spanish Civil Code, 1889)

"Final goal of Law which is justice, (...) and imposes equity as a moderating factor of the whole system, to obtain its concretion in the particular case; without which, the positive norms would constitute mere aspirations (...)'. (Brebbia, 1997, 47)

An overview of the Protection of Unaccompanied Minor Migrants in the EU

Begoña Flores. UNED

Each year thousands of unaccompanied children arrive on the territory of the European union. Therefore, the protection of these minors is a significant issue which we will explore in this work. We will divide this presentation into 3 parts. First, we will go over the definition of unaccompanied minors according to the law. Then we will move on to the legal framework, looking at the three levels of protection for the unaccompanied minors: international law, European Union Law and legal framework of Member States. Finally, we'll focus on the gaps of European law and the practical problems in enforcing the legal protection of these minors in the Member States.

How not to reform the law on surrogacy – Denmark after the KK decision

Jens Scherpe. University of Aalborg, Nordic Centre for Comparative and International Family Law

Denmark's laws were fund to be in violation of Article 8 of the ECHR in the decision *K.K. and others v. Denmark* (Application no. 25212/21, ECLI:CE:ECHR:2022:1206JUD 002521221). In this surrogacy Danish law had recognised the legal parenthood of the father for twins born through surrogacy because he was the genetic father of the children but had refused the second intended parent who was married to the father any pathway to legal parenthood, including through step-parent adoption, because money had been paid for the surrogacy. While Danish courts had argued that the general preventative aim of deterring commercial surrogacies should prevail over the best interests of the child in question, the European Court of Human Rights reversed this and held that the right to respect of the children's private life and particularly their right to identify had to take precedence.

This talk first analyses the case and its background. It argues that the old Danish position a) allowed intended fathers whose sperm was used to obtain parenthood but by refusing the second intended parent was discriminatory but that b) the general preventative effect which it purportedly aimed to achieve is, in fact, minimal at best and therefore could not justify overriding the best interests of the children in question. The talk then discusses the proposed reforms in Denmark, likely to come into effect on 1.1.2025 which will create easier pathways to parenthood for national altruistic surrogacy and for international surrogacies. The reforms are criticised because they are short-sighted, discriminate on the basis of wealth and are ignoring the realities of the global surrogacy market.

Access to Asylum and Family Statuses Across Borders

Vito Bumbaca. University of Geneva

The selected topic represents ongoing research for my habilitation thesis in Switzerland. In order to answer questions relating to 'access to justice' – intended as the right of access of children and families in vulnerable situations to specific remedies of protection – the focus of the research falls both under the aegis of private and public international law legal framework by also targeting specific jurisdictions namely Australia, Bulgaria, China, Ghana, Moldova, Morocco, Russia, South Africa, Switzerland and the UK.

The term protection here should refer to both asylum and civil law measures (e.g. legal representation, guardianship, foster care, *kafalah*). Therefore, the accent here is not only on vulnerable migration in need of protection within the European Union. Our research refers to migrants in distress in international situations, including outside Europe, in which asylum decisions and civil law remedies, as well as judgments and social services reports, may clash and result in inefficient methods – if in absence of coordination and cooperation mechanisms.