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Common core or enhanced cooperation in European Family Law?

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1. Introduction

Family law is currently experiencing an intense tension between instances of harmonisation and national particularism. In the former we can include important scholars studies on the common core of European Family Law, and the role of European Institutions in the safeguard of fundamental human rights and/or freedoms. The latter survives because the national State is the only body having competence to legislate in the field of family law. Although this statement is very clear and does not leave any margin of appreciation or discussion, it amounts to a major consideration, insofar as we want to verify if and to what extent a process of harmonisation is ongoing. The State can remain sovereign in the regulation of family law. The current European most impacting Treaties, as the Treaties on the European Union and the European Convention of Human Rights (ECHR) do not

jeopardise the exclusive national competence in family law. Indeed, art. 8 (ECHR) grants the right to private and family life, but neither defines the family, nor distinguishes it from an undefined private life; art. 12 refers to the right to marriage, without defining it, too. The European Court of Human Rights (ECtHR) has provided definitions thereof, but due to the dynamic interpretation of the ECHR, but its function is to sanction punctual violations of the Convention, and not to modify national law. This happens only if the ECtHR verifies a structural violation of the ECHR, but its judgments cannot have a direct effect in the faulty State.

Furthermore, the European Union (EU) has no competence in family law, except those attributed by art. 81 para. 3 TFEU on the civil judicial cooperation. The EU can approve only rules on private international law. The strong obstacle resides in the wording of art. 81, para. 3, since it requires unanimity within the Council. Therefore, harmonisation of substantive family law is impossible, and of the conflict-of-law rules quite complicated for procedural reasons.

These elements risk to make it seem impossible not only an approximation of the laws in Europe, but even a reasonable theoretical discussion thereof. Nevertheless, international institutions have not refrained against the national exclusive competence, and have tried to make "national legal orders confronting".

2. Harmonization of Family Law in Europe

2.1. A few definitions?

The title of this paragraph arises more problems than it seems at a first glance. What is meant by "harmonisation"? What is included in the concept of "Family Law"? Can we really deal with the legal experience of the whole continent, while the European Union is one of the most integrated legal system in the world? The answers that we might give can affect the general approach of the whole discussion.

There is not yet academicals unanimity on the meaning of harmonisation, as compared (or opposed) to approximation, unification and/or uniformation. Moreover, the notion might change if we place ourselves in an international perspective, or if we follow a more "European Union" approach. In this system, harmonisation is the final step of a normative procedure aiming at making national legislation closer to each other; unification is the process leading to the uniformation, i.e. to make the national legislations identical; approximation is a convergence-process. The same quite clear-cut definitions are rather impossible in an international dimension, due to the lack of a precise distinction of normative measures (as regulations and directives). Therefore I'll use this words in a more general

(and generally acceptable) notion: harmonisation and uniformation can be the final result of a unification process leading to a convergence of national rule.

What is "Family Law"? A first distinction can be drawn between "horizontal family law", i.e. relationships between or among adults, and "vertical family law", i.e. relationships with children and minors. The two dimensions can be quite easily separated, because they are grounded on different needs and principles. In these paragraphs I would just like to focus on some issues related to horizontal family law. Still, I did not answer to the question. The definition of family law might depend on national legislation: for example, if a State does not recognise same-sex marriages, hardly that legal system can accept that this institution is part of the family law. Italy represents a very positive exception to this good-sense consideration. The Supreme Court has accepted the characterisation pushed by the ECtHR, in the sense that a same-sex marriage is part of the family life of the spouses, notwithstanding the impossibility to recognise it in our legal system. Family law can include the existence of family institutions, the capacity of the individual to enter into it, the personal and patrimonial effects thereof, its dissolution, the grounds and the consequences thereof. Quite pragmatically, I submit that a family is the system of relationships protected by the right to family life under art. 8 ECHR.

And finally, Europe or EU? Somehow let's say both. Almost all the Member States on the continent are contracting parties to the ECHR, which means that there is a common core on fundamental human rights, or at least a yearn for reaching a high standard of protection of human rights. This is already a good start. Nevertheless, it is not possible to avoid any specific discussion on the EU, because it is a very well integrated system combining different European States and bound with other European third States by Association agreements. Moreover, it is still the sole example worldwide for such a high level of social and economical cooperation.

Notwithstanding the broad range of the selected topic, it is possible to present a few ideas on the current development of family law in Europe.

2.2. The role of the European Court of Human Rights

The ECHR envisages two provision on family law, art. 12 on the right to marriage and art. 8 on the right to private and family life. The latter has the leading role in the development of family law in Europe.

Indeed, the ECtHR has always preferred a quite traditional interpretation of the right to marry, considering it as for a right reserved to a couple formed by a man and a woman. Contracting States are not under any duty to extend it to other situations, with particular regard to same-sex couples. This statement has been repeated even quite recently, as for example in the *Hämäläinen v Finland*

(July 2014). Moreover, it has only a "positive meaning", in the sense that it grants the right to marry (creation of a civil status), but not to divorce (dissolution of status). This is clear already in the *Johnston and Others v Ireland* (December 1986), although the case was decided under very particular political circumstances. Nevertheless, the ECtHR has never contradicted this outcome.

Every development lays therefore on art. 8. The lack of any definition or description of the notion of family allows an extensive and dynamic interpretation of rule. Many cases have marked the development of the notion of family law according to art. 8 ECHR. The most sensitive issues regard the family life of couples departing from the traditional scheme of a man and a woman in a marriage. In this meaning, family life is not only the life organised within the standards codified in art. 12 ECHR. We might recall some cases.

The most clear example of the evolution of the notion of family law in Europe is the comparison of the *Rees v UK* (October 1986) and the *Goodwin v UK* (July 2002) cases. Almost 20 years elapsed between the two judgments, but still the cases are quite the same and the outcome completely the opposite. Only after *Goodwin*, the ECtHR has included the marriage of the transsexual person within the meaning of family. Therefore, a transgender has a right to be recognised as a person in the newly acquired sex in public documents too, and consequently must accede to all the family status recognised and regulated by the state as a person with the new sex.

In *Schalk and Kopf v Austria* (June 2010) the Court has recognised for the first time that a same-sex relationship is covered by the right to family (and not private) life, within which national authorities have a stricter margin of appreciation in the limitations of the rights concerned.

In *Vallianatos v Greece* (November 2013) the ECtHR stated that the States are free to provide different familiar status within their legal order. Nevertheless, if they provide for any status different from marriage, as registered partnership, this must be open to same-sex couples, too.

Finally, in *Oliari v Italy* (July 2015) the Court clearly stated that same-sex couples must enjoy a formal recognition of their relationship. States have a margin of appreciation on *how* to grant it, that means the form of the relationship, but not on the *if*, the opportunity to do it.

2.3. The role of the European Union

Notwithstanding the lack of competence, the EU has strongly contributed to the development of family law in Europe.

The first tool has been the right to family reunification as a mean to promote the free movement of workers within the EU. Directive 2004/38, currently in force, considers the possibility to grant the family reunification to partners, insofar as the receiving Member State recognizes in its jurisdiction family law institutions different from marriages. Although the final choice to admit registered

partnerships is left to Member States, the EU legislation officially equate the rights of the partner and the rights of the spouse.

The second tool is the case-law of the Court of Justice of the European Union (CJEU). In interpreting rules related to the free movement of persons, the CJEU has had many opportunities to modernize European family law. One striking example is the case *P. v S.* in 1996, where the Court has revealed a discrimination grounded on the sex of the parties due to a gender reassignment.

EU law refrains from pushing too far the national developments in family law. For example, the CJEU is prevented to consider stable relationships between same-sex partners as equivalent to marriage: this choice is once more left to Member States (*Grant* case, in 1998). Nevertheless, if the State formalize same-sex relationships, no discriminations (compared to opposite-sex couples) are admissible. In *Reed* (1986) the CJEU refused to consider a long lasting same-sex relationship as a marriage, but added a fundamental principle. The State cannot refuse to grant social rights to "foreign" same-sex couples, insofar as "national" same-sex couples enjoy them. The refusal would amount to a discrimination grounded on nationality. At the same time, the rights granted to partners must be equivalent to those granted to spouses, although marriage and registered partnership are subject to a different but comparable regulation. Therefore, in *Maruko* (2008) the CJEU ruled that EU law prevents Member State to admit different survivor's benefits (to the surviving spouse or to the surviving partner), if the situation of the partners can be compared to those of spouses (which is a task for the national judge). The same reasoning is evident in *Römer* (2011), concerning supplementary retirement pension, and in *Dittrich* (2012), concerning the characterization of assistance granted to public servants in the event of illness according to Directive 2000/78 (which in case must be granted regardless of the sexual orientation of the parties concerned).

Summarizing, the CJEU case-law hits the actual and potential discriminations created at the national level, when the parties concerned enjoy a relationship different from the classical opposite-sex marriage.

The third tool is the enactment of regulations in the field of the civil judicial cooperation, concerning family law and related issues (reg. 2201/2003; reg. 1259/2010; reg. 2016/1103; reg. 2016/1104). The regulations do not define the marriage, and scholars agree on its gender neutrality. Extending in this field the case-law mentioned above, Member States, admitting same-sex marriage, cannot refuse to accept "foreign" same-sex marriages, i.e. celebrated abroad, or between foreigners. Surprisingly, reg. 2016/1104 defines the registered partnership as "the regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation". It is a surprise, because the lack of

competence should prevent the EU to define any family institution. Nevertheless, it is a gender-neutral definition, too, which can include many forms of legal recognition of familiar relationships.
Last but not least, art. 9 of the Charter of the Fundamental Rights of the EU modernizes art. 8 ECHR, avoiding all references to the sex of the spouses.
These developments do not impose any duty to Member States to provide for completely gender-neutral family institutions, but push on the right of non-discrimination (grounded on nationality and/or sex and/or sexual orientation).

2.4. The role of the Commission on European Family Law

The Commission on European Family Law (CEFL) was created in year 2001 by expert scholars from the Academia. Its purpose is to draft European Family Law principles, according to an agreed working method. It starts from the choice of the topic to be analysed, through comparative studies on the "law-in-action" (legislation, case-law, praxis) in the Member States concerned, ending with debates within the CEFL itself. Two basic criteria determine the choice of the final principles: the common-core and the better law approaches. If the comparative analysis shows a common-core (even on a quite sectorial issue or problem), this rule is generally accepted. Failing it, the CEFL discusses the possibility to define a better rule. The CEFL expressly reserves a margin of appreciation in both moments: if the common-core rule is not considered proper, it is replaced (or no principle is drafted). The margin of appreciation is intrinsic in the elaboration of the better rule, but the CEFL and its members clearly express their guidelines in its determination. There is no secret in the fact that the CEFL gives general preference to rules modernising family law. Modernisation is one of the key features of the working method. The principles are finally published on-line.
By now, the CEFL has published: Principles on Divorce and Maintenance Between Former Spouses, Principles on Parental Responsibilities, Principles on Property Relations between Spouses, that means more than 100 principles. This comprehensive work has already inspired some national legislators: the 2008 Portuguese reform on parental responsibility took advantage of the newly published principles. The 2014 Czech rules on parental responsibility are designed on the principles, too; Norwegian law on alternative residence of the child is designed on principle 3:20 of the CEFL; a Dutch law proposal followed the suggestions contained in the principles on matrimonial property regime.
The work of the CEFL is not without critics. Basically, some scholars question the working method especially on two points. If there is a common core, why should scholars overcome it? And, why is modernization the preferred tool to identify the better law? Moreover, critics submit that the CEFL is

very much oriented in finding out a common core or at least a convergence in European Family Law, and the working method is modelled in order to underline and to observe this convergence.

3. The constraints of Family Law in Europe

Notwithstanding these developments, some factors seem to limit or to delay a true harmonisation of national family laws in Europe. Scholars have pointed out three main obstacles.

3.1. The common core

Currently, the common core in the definition of the family seems to be quite strict. It includes the traditional marriage between a man and a woman. The need to recognize somehow same-sex couples can be included in the common core with carefulness, because some European States do not admit any legal formalization to same-sex relationships.

This very strict common-core might even be considered not such common. For example, some jurisdiction, grant a special constitutional protection to the heterosexual marriage. Others characterizes marriages as for a special kind of contract. The difference can be of the utmost importance.

On the opposite, it seems easier to find out a substantial common core when dealing with other aspects of the family relationship, as for example the property regimes and the divorce, which are generally based on a set of common principles (differing only on rules on details). These are, for example, the duty to contribute to the family necessity, the existence of three general schemes of patrimonial regimes in a comparative perspective, the admissibility of the dissolution of the marriage, the equality of the spouses, the individuation of five general grounds for divorce in a comparative perspective (mutual consent, on demand, by fault, irretrievable breakdown, separation).

Due to this starting point, if the States are completely free to legislate on family law, the spontaneous harmonization of family law proves to be very difficult. There can be an important degree of convergence, but the different approaches to the notion of family will constitute a permanent barrier.

3.*2. The general consensus*

Some scholars question the proactive role of the international and supranational jurisdictions in the development of family law in Europe. Summarizing, it is submitted that the ECtHR grounds its judgments on the general consensus among contracting States. The characterization of same-sex relationships as integral part of the family life has been possible only when a big group of States had provided a legal form of recognition for these couples. The well-known *Schalk and Kopf* case would

not have been possible without the previous national developments. The *Oliari* case strictly refers to a comparative approach. Therefore, the ECtHR case-law does not push the modernization of family law in Europe, but follows it, and serves as a promoter thereof for the "lazy" States.

A similar reasoning is valid for the CJEU's case-law. Here, the focus is on the application of the principle of non-discrimination, it being on the grounds of the sex, of the sexual orientation or of nationality. Consequently, the Court cannot push Member States to modify, to modernize, their national family law: it can only pretend that the States do not accept/perform any discrimination within the general national regulation on family law.

Therefore, the approximation of family law in Europe cannot rest on the case-law of the European Courts. Their role correspond to the limitations of their judicial competence: combating discriminations and violations to fundamental rights.

3.3. The cultural constraint

The classical argument against any approximation of family law is the cultural constraint argument. Family law is regarded as a legal issue strictly linked with the specific culture of a State. Therefore, approximation and convergence might even prove impossible, because the States would lose of part of the national culture.

The role of the national culture is still under discussion. Part of the scholars tends to lessen its role in a historical and comparative perspective. Other scholars question this approach. At the very end, much depends on what "culture" is. Family law is a politically sensitive issue, roughly divided between traditionalism and modernism. States with similar social cultures and historical background show different approaches in family law due to diverging recent political experiences. An example is the opening to marriage in Spain already in year 2005, while Italy enacted the law on same-sex registered partnerships only in year 2016. Nevertheless, politics can be part of the culture of a State, at least from a present-view perspective.

Scholars reducing the weight of the cultural constraint argument tend to focus on the progressive convergence of European Family Law and long for a European codification. Therefore, the national identities should play a limited role. On the opposite, the stress on national peculiarities underlines the divergences and the fundamental role of the Nation-State in family law.

4. Three methods of approximation

The framework can be roughly summarised as follows. Some European States have incurred a process of privatisation of family law, where the State interference is reduced to a minimum. An example is

Swedish law on marriage and its dissolution. Scholars refer to these States as involved in a strong process of modernisation. On the other side, some States maintain a more traditional approach, giving a fundamental value to the heterosexual marriage and only eventually recognising other forms of family relationship.

Historical perspectives have demonstrated that the modernisation itself has produced major divergences in family law. We only need to consider family law in the XIX century, where only one model existed. Currently, there are more means to enjoy family life, and the role of the parties, even of children and minors, too, has dramatically changed. Convergence is therefore possible only through a completely new process of approximation.

This can be realised by three methods.

The first is the natural convergence left to internal reform of national laws ("bottom-up"). This method assumes that the States consider the approximation of family law as an important target, it being a mean to ensure the free movement of persons and their fundamental rights. Praxis shows that this is not the case, at least at the moment. While Romania is debating on the introduction of a constitutional safeguard of the heterosexual marriage, France and Italy have introduced private divorces, where no public authority is required, and the Scottish people has approved a constitutional reform opening to same-sex marriages. The trend is therefore not uniform towards harmonisation and privatisation of family relationships, because the cultural/political idea leading to these reforms are completely different.

The second method follows a "top-down" direction: a supranational institution forces approximation. Still, neither the EU, not the Council of Europe have these competences/powers. International conventions can still be concluded (we only need to consider the French-German Convention on an optional matrimonial property regime), but it is up to States to sign and to ratify them. The will of the State is once more the key point.

The last method is the spontaneous convergence to common principles. This is the aim of the CEFL. I mentioned some examples where the CEFL principles have inspired national legislators. Still, these are not many. In this case, too, convergence depends on national willingness, and not on the high quality of the academical work. CEFL principles are not the first attempt to push spontaneous convergence. Already in the 90' the "Lando Commission" published the Principles of European Contract Law. This work incurred many critics, because the time did not seem ripe to uniform European contract law. The CEFL work is nowadays subject to the same criticism.

To a certain extent, these critics seem nevertheless to describe the reality. We only need to consider that the EU has not yet been able to enact any measure on a common European contract law, but for some specific issues (as a partial protection of the consumer in the draft and the performance of the

contract). The project to adopt a common European sales law has failed. By now, only Paraguay has implemented the 2015 Hague Conference Principles on Choice of Law in International Commercial Contracts.

If European States have difficulty in spontaneously approaching to a long-debated and technically discussed set of principles in contract law, where privatisation is given for granted, they will be barely ready to harmonise national family law. Given the current state-of-the-art, it seems utopian that the EU will enact measures on a European family law – although not binding, or on an optional basis – in the next future. The Principles on Family Law can be nowadays only a source of inspiration for national legislators.

5. Harmonization through private international law

The most harmonised field of family law has quite peculiar features. The EU has enacted a few regulations on private international law aspects related to family law. It is therefore a top-down uniformation, laid down by the EU without any margin of appreciation left to Member States (due to the direct applicability of the regulations). This harmonisation is based on art. 81, para. 3 TFUE, attributing to the EU the competence to enact measures in the civil judicial cooperation affecting family law with cross-border implications. This rule provides for a special legislative procedure, so that the unanimity within the Council is required, and the European Parliament might express only an opinion.

This uniformation might have the appearance of an approximation of family law. Nevertheless, this is not the case for many reasons.

First, it depends on the matters subject to uniformation. The first regulation enacted in the field of family law regards the jurisdiction, the recognition and the enforcement of foreign judgment in the field of annulment of marriage, legal separation and divorce (reg. n. 1347/2000, repealed by reg. n. 2201/2003). The second concerns the law applicable to the legal separation and divorce (reg. n. 1259/2010). These regulations do not strengthen the convergence of divorce law within EU Member States, because they do not impact on the national substantive law. The causes for the dissolution of the marriage are still left to the national legislation; the regulations do not define a marriage, neither apply to family institutions different to marriage. Finally, they do not affect the consequences of the break-down. Summarizing, the regulations rest on the national legislation, which are merely coordinated in cross-border situations.

The other two regulations deal with the property consequences of marriage (reg. n. 2016/1103) and registered partnership (reg. n. 2016/1104). These measures have a “treble nature”, since they regulate the jurisdiction, the applicable law, the recognition and the enforcement of foreign judgments within

their scope of application. They aim at facilitating the management of family properties in cross-border situations. They will be applicable as from January 2019. Although these regulations provide for some extremely innovate solutions (as for example the "alternative law"), they do not affect national family law, too. It is quite the opposite. The regulations accept that not every family institution is accepted and/or granted within all the Member States. Therefore, the judge is not under a duty to hear the case, if the *lex fori* does not provide for the institution of the registered partnership, or the national private international law does not admit the recognition of the marriage. The competence to regulate family status is exclusively in the hands of the Member States and the EU does not interfere with the national substantive legislation.

Second, the regulations do not affect the civil status of the persons concerned. The conditions for the acquisition of a family status, its (personal and patrimonial) consequences and the grounds for its dissolution keep depending on the national legislation. Whereas 64 of reg. n. 2016/1103 and whereas 63 of reg. n. 2016/1104 clearly state that the recognition of a decision on the property consequences of a registered partnership does not imply the recognition of the registered partnership, while arts. 1, para. 2 of the regulations make it clear that the legal capacity of partners and spouses, the existence, validity or recognition of a registered partnership or a marriage are excluded from their scope of application.

Therefore, the EU regulations on family law seem actually far from family law itself, aiming at coordinating national legislations, and not converging national substantive laws.

Third, the three most recent regulations have been adopted through the enhanced cooperation. Reg. n. 1259/2010 is applicable nowadays to 16 Member States, while 18 Member States have approved the regulations on the patrimonial consequences of marriage and registered partnership. The impossibility to reach unanimity within the Council is meaningful and subject to different possible interpretations, stressing political divergences, the cultural constraint, the fear of approximation from EU law, the sensitiveness of family law. Most probably, the refusal to accept this legislation depends on a mix of these factors. Whether the exact reason might be, the outcome is the same: even within a very integrated legal system as the EU it is not possible to reach the unanimity in the approximation of the law in fields closely connected with family law. The efforts of the CEFL in demonstrating that the difference concern rule of details and not general principles and structures of the law seem not to have had a beneficial impact in the discussion of the three latest regulations (while jurisdiction and recognition of decisions on the dissolution of the marriage did not give rise to similar concerns in years 2000 and 2003).

The fourth problematic issue arises an extremely debated question: is the harmonization through private international law an approximation of laws? The answer is in the affirmative if we think of

approximation of private international law. The direct applicability of the regulations leaves no margin of appreciation to the Member States, and the national legislation retreats. EU law replaces national private international law.

The same is not true if we focus on family law. The neutrality of EU law with regard to matters related to substantive family law leaves the latter unaffected. EU regulations can at most welcome some degree of openness from Member States, as if, for example, a court recognises an unknown family status acquired abroad. Nevertheless, this result is not required, and the recognition of the status and its consequence cannot be given for granted. The unification of private international law can arise the consciousness of different approaches and family law models within the EU, because most probably these models (or at least the persons, the family) will try to circulate. Nevertheless, the national frontiers can still be erected against undesired foreign values and institutions.

The role of private international law is not the unification or the standardisation of substantive legislation. Private international law serves other aims. Within the EU, its fundamental purpose is the simplification of the free movement of the persons and the management of the property/ies. The development of the civil judicial cooperation has been trying to reach this target leaving national substantive family law unaffected.

6. Harmonisation through mutual recognition

Harmonisation through mutual recognition has proven to be impossible even within the EU. The fundamental principle under this method is the plain acceptance of every status acquired abroad. This aim is difficult to realize due to the existence of different family institutions and status that might circulate: a State might be under the duty to recognise an unknown status.

The EU has tried to reach the result, in order to facilitate the free movement of persons. A 2010 Green Paper on the reduction of bureaucracy for EU citizens opened the debate on the opportunity to codify the principle of mutual recognition of civil status. The suggestion did not receive great support, and the following Commission's proposal focussed only on the acceptance of public documents (which is related to the authenticity of foreign acts, and not to the legal effect of the status certified). Regulation n. 2016/1191 limits its scope of application on this issue, leaving aside the more sensitive issue of the full and plain recognition of civil status acquired abroad.

7. Is family law a limit for the harmonization?

The perspective of this paper seems to be quite negative. While there are some international and supranational instances for the harmonisation of family law, European State seem to close their borders and rest on their national legislation. This is a very pessimistic view, which does not describe properly the reality.

Harmonisation seem actually quite difficult to reach. This can be differently justified by the lack of EU competence, the limited competence of the ECtHR, the cultural or political constraints, the not-unanimously convincing works of the academia. Future academical and legislative works must take these facts duly into consideration.

Still, the concluding remarks wish to shed a light on current developments, which can lead us to talk about a convergence in European Family Law. Roughly said, we can analyse the current trends and conclude that similarities increase. The modernisation started in the 60' has led to divergences in the European family law. New perspectives and approaches were born in the Nordic countries, leading to a sort of fracture between modernists and traditionalists in Europe. The new family models, as all the social models and trends, are not born to be static: they have circulated throughout the continent. The reception has not been immediate, and still some jurisdictions do not accept them. Nevertheless, the law is moving.

The principles and the fundamental values of the national legislations are quite common, and a few exceptions can be counted. The States are prevented to interfere with the family life, and have a positive obligation, too, to make people enjoying it. The privatisation of the family and the family relationship is in progress. Sex and sexual orientation decrease their role and importance when dealing with the family. We only need to mention here some examples, as the introduction of the divorce in all the European States (although it can be subject to different conditions); the quite common transition to same-sex registered partnership to same-sex marriage; the right to marriage granted to transsexual persons; the introduction of family institutions different and somehow lighter than marriage, as the registered partnership; the privatisation of the proceedings for the dissolution of family law institutions; the progressive gender equality within the couple; the general acceptance of factual cohabitation. Most of these examples are at the same time the legislative national outcome after a previous ECtHR or CJEU judgment.

Some States run, some walk towards modernisation and privatisation. They cannot but go alone, but European institutions have a primary role in this race, because they can give the pace thereof. Many recent national reform of family law are the direct consequence of the impact of the European case-law, and we can expect that this trend continues.

In this race, scholars can go off like a shot, because the academical studies might not have an immediate practical impact. This statement does not deprive the current researches of their fundamental role. They show the way, and they demonstrate that the European integration (in the EU) and cooperation (in Europe) cannot depend on the differences of the detail rule, but rests on the common ground of the human rights.

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