

## THE ROLE OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE LEGAL RECOGNITION OF SAME-SEX COUPLES \*

UDC 341.645

340.134:347.628-055.3

**Dejan Janićijević**

Faculty of Law, University in Niš, Serbia

**Abstract.** *Legal treatment of family relations was long based on the traditional concept of family, as a union of two people of different gender, who raise children while married. Hence, the legal protection mechanisms were focused only on such unions while others, like same-sex partnerships, unmarried couples, couples without children and single parents, were left aside legal recognition and protection. This was reflected in not recognizing the right to private life, provided by Art. 8 of the European Convention on Human Rights and Fundamental Freedoms (ECHR), to these untraditional unions. Notably, in the last decades, there has been a significant progress in overcoming the traditional concept of family and adjusting the law to the contemporary reality of family life. The activities of the European Court of Human Rights (ECtHR) are largely contributing to these efforts.*

**Key words:** *marriage, registered partnership, homosexual relations, recognition*

### INTRODUCTION

The legal regulation of family relationships has long been based on a “traditional” notion of the family as a unit comprising a heterosexual married couple and their children. Therefore, the legal protection mechanisms were focused on such family units, while other family forms, such as same-sex couples, unmarried couples, couples who are unable to conceive naturally and single parents, were not adequately recognized and protected by the law. However, in recent decades, there has been a significant progress in adapting the law to the modern realities of family life. One example of such progress relates to the legal status of homosexual couples in Europe.

Until the end of the 1980s, there was simply no legal recognition of same-sex relationships in the European jurisdictions. The situation has fortunately changed largely due to the

---

Received June 30<sup>th</sup>, 2021 / Accepted July 14<sup>th</sup>, 2021

**Corresponding author:** Dejan Janićijević, LL.D., Faculty of Law, University in Niš, Trg Kralja Aleksandra 11, 18000 Niš, Serbia. E-mail: [djanicijevic@prafak.ni.ac.rs](mailto:djanicijevic@prafak.ni.ac.rs)

\* This paper is a result of research financially supported by the Ministry of Education, Science and Technological Development of the Republic of Serbia, under the contract registration number 451-03-68/2020-14/200120.

efforts and persistence of many organizations and individuals. Today, even marriage is an option open to same-sex couples in an increasing number of countries; in others, there are registered partnerships or the recognition of *de facto* relationships of same-sex couples. Yet, even in Europe, particularly Eastern and South-Eastern Europe, there are still many jurisdictions that do not recognize same-sex relationships.

However, in *Schalk and Kopf v Austria*,<sup>1</sup> the European Court of Human Rights (ECtHR) decided that same-sex couples enjoy the right to “respect for family life” protected by Article 8 of the ECHR. This article holds that this decision requires legal recognition of same-sex relationships by all contracting states of the ECHR.

### 1. THE FORMS OF LEGAL RECOGNITION

Legal recognition of same-sex relationships in Europe began in the Nordic Countries.<sup>2</sup> In 1987, *de facto* cohabitation relationships of same-sex couples were given a similar legal status to those of opposite-sex couples in Sweden. The formalization of same-sex relationships began in 1989, with the introduction of the registered partnership for same-sex couples in Denmark.<sup>3</sup> Other jurisdictions followed, although the approaches to the registered partnership regimes that were and are different. The next step was the opening up of marriage, which first happened in the Netherlands in 2001,<sup>4</sup> and then in Belgium (2003),<sup>5</sup> Spain (2005),<sup>6</sup> Norway (2009),<sup>7</sup> Sweden (2009),<sup>8</sup> Iceland (2010)<sup>9</sup> Portugal (2010),<sup>10</sup> etc.

In many European countries, there is still a strong opposition to the legal recognition of same-sex relationship but the traditional “dividing lines” no longer exist. Spain and Portugal have opened up marriage to same-sex couples. Likewise, traditionally more conservative Catholic countries, such as Spain, Portugal, Belgium and the Republic of Ireland, recognize same-sex couples.

<sup>1</sup> *Schalk and Kopf v Austria*, Application No. 30141/04, 24 June 2010, (2011) 53 EHRR 20.

<sup>2</sup> See: Dopffel, P. and Scherpe, J., “Gleichgeschlechtliche Lebensgemeinschaften im Recht der nordischen Länder”, in Basedow, J., Hopt, K. and Zimmermann, R. (eds.), *Max Planck Encyclopedia of European Private Law*, Oxford University Press, 2012.

<sup>3</sup> Broberg, M., “The registered partnership for same-sex couples in Denmark”, *Child and Family Law Quarterly*, 1996, pp. 149-156.

<sup>4</sup> See the amended Article 1:30 of the Dutch Civil Code (“A Marriage can be contracted by two people of different or the same sex.”).

<sup>5</sup> Pintens, W., “Belgien: Öffnung der Ehe für gleichgeschlechtliche Paare”, *Zeitschrift für das gesamte Familienrecht (FamRZ)*, 2003, pp. 658-659.

<sup>6</sup> Ferrer Riba, J., “Same-sex Marriage, Express Divorce and Related Developments in Spanish Marriage Law”, *International Family Law* 139, 2006; García Cantero, G., “Family Law Reform in Differing Directions”, *The International Survey of Family Law* 139, 2006, pp. 431-438.

<sup>7</sup> Frantzen, T., “Same-Sex Marriages in Norway”, *International Family Law*, 2009, pp. 220-222; Aslan, J. and Hambro, P., “New developments and expansion of relationships covered by Norwegian Law”, *The International Survey of Family Law*, 2009, pp. 375-384.

<sup>8</sup> Jänterä-Jareborg, M., “Sweden: The Same-Sex Marriage Reform with Special Regard to Concerns of Religion”, *Zeitschrift für das gesamte Familienrecht (FamRZ)*, 2010, pp. 1505-1508; Singer, A., “Equal Treatment of Same-Sex Couples in Sweden”, *The International Survey of Family Law*, 2010, pp. 393-399.

<sup>9</sup> Lög um breytingar á hjúskaparlögum og fleiri lögum og um brottfall laga um staðfesta samvist (ein hjúskaparlög), No. 65 of 2010.

<sup>10</sup> Lei N°9/2010 de 31 de Maio - Permite o casamento civil entre pessoas do mesmo sexo.

Outside Europe, there is a similar diversity in the recognition of same-sex relationships. In Canada (2005),<sup>11</sup> Argentina (2010),<sup>12</sup> several US states,<sup>13</sup> Mexico City (2010) and the Mexican state of Quintana Roo (2011), same-sex marriages are allowed, and in many other jurisdictions registered partnerships are provided for. However, several jurisdictions have changed their statutes and constitutions to the effect that marriage is only possible between a man and a woman.

It is interesting that in Europe<sup>14</sup> the broader legal recognition of same-sex couples was generally brought about as a result of the efforts of NGOs and political parties.<sup>15</sup> By contrast, outside of Europe, litigation based on constitutional and human rights was the predominant way that the legal recognition of same-sex couples was effected (in many US states, Brazil,<sup>16</sup> Canada, Columbia,<sup>17</sup> and South Africa<sup>18</sup>).

The approaches to the legal recognition of same-sex couples can be divided into three categories: 1) same-sex relationships are treated as being “inferior” to marriage; 2) they are viewed as being “functionally equivalent” to marriage; and 3) marriage is available to same-sex couples.

## 2. THE ROLE OF THE ECHR

As mentioned above, where same-sex couples were legally recognized on a broader scale, in Europe this generally happened through legislation rather than litigation. In court proceedings, the litigants often relied on non-discrimination and equality provisions in national constitutions and statutes, but also on Article 14 of the ECHR, which prohibits discrimination against a person on the ground of a personal characteristic in the exercise of their rights, including the right to respect for family life under Article 8 of the ECHR. While Article 14 does not list sexual orientation explicitly as one of the protected grounds, the Court took a strict position on this issue in its decision in *Dudgeon v United Kingdom*<sup>19</sup>.

### 2.1. Private Life

In *Niemietz v Germany*<sup>20</sup>, the ECtHR expressly refused to define private life, stating that it would be neither possible nor necessary to do so. But, in a later decision, the Court

<sup>11</sup> Cf. Reference re Same-Sex Marriage [2004] 3 S.C.R. 698, 2004 SCC 79; *M v H* [1999] 2 SCR 3; *Halpern v Canada (Attorney General)* (2003), 65 O.R. (3d) 16; and finally the Civil Marriage Act (full title: “An Act respecting certain aspects of legal capacity for marriage for civil purposes”, s.c. 2005, c. 33). On the development, see Davies, C., “Canadian Same-Sex Marriage Litigation: Individual Rights, Community Strategy”, *University of Toronto Faculty of Law Review*, 66, 2008, pp. 101-136.

<sup>12</sup> Grosman, C. and Herrera, M., “Family, Pluralism and Equality: Marriage and Sexual Orientation in Argentine Law”, *International Survey of Family Law*, 2011, pp. 27-50.

<sup>13</sup> Connecticut, District of Columbia, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont and Washington.

<sup>14</sup> But also, for example, in Argentina, New Zealand and Uruguay, as well as in some of the US states (e.g. District of Columbia, New York, Maine, Maryland, New Hampshire, Vermont and Washington).

<sup>15</sup> However, partial recognition (e.g. for succession to tenancies, etc.) was often achieved through litigation.

<sup>16</sup> Brazilian Supreme Court, ADI 4277/ADPF 132.

<sup>17</sup> Constitutional Court, decisions of 7 February 2007, 29 January 2009 and 26 July 2011.

<sup>18</sup> *Minister of Home Affairs v Fourie*, 2006(3) BCLR 355 (CC). On this case, see De Vos, P., “A judicial revolution? The court-led achievement of same-sex marriage in South Africa”, *Utrecht Law Review*, 2008, pp. 162-174.

<sup>19</sup> *Dudgeon v United Kingdom*, Application No. 7525/76, 22 October 1981, (1982) 4 EHRR 149, see Para. 52.

<sup>20</sup> *Niemietz v Germany*, Application No. 13710/88, 16 December 1992, (1993) 16 EHRR 97, Para 29.

made it clear that the right to respect for private life certainly comprises the right to establish and develop relationships with other human beings.<sup>21</sup>

In *Bensaid v United Kingdom*,<sup>22</sup> “gender identification, name and sexual orientation and sexual life” were held to be protected by Article 8 of the ECHR as part of “private life”. Concerning same-sex relationships, in the case of *Mata Estevez v Spain*,<sup>23</sup> the ECtHR stated: “With regard to private life, the Court acknowledges that the applicant’s emotional and sexual relationship related to his private life within the meaning of Article 8.1 of the Convention.” Thus, the ECtHR held that a same-sex relationship, whether formalized or not, could be protected by the right to respect for private life under Article 8 of the ECHR.

With regard to “family life”, in *Mata Estevez*, the Court held: “As regards establishing whether the decision in question concerns the sphere of ‘family life’ within the meaning of Article 8 § 1 of the Convention, the Court reiterates that, according to the established case-law of the Convention institutions, long-term homosexual relationships between two men do not fall within the scope of the right to respect for family life protected by Article 8 of the Convention (...) The Court considers that, despite the growing tendency in a number of European States towards the legal and judicial recognition of stable *de facto* partnerships between homosexuals, this is, given the existence of little common ground between the Contracting States, an area in which they still enjoy a wide margin of appreciation.”<sup>24</sup>

It should be noted that this case concerned a *de facto* same-sex relationship and not a formalized one. Hence, the question as to whether formalized same-sex relationships could be considered to have “family life” and thus enjoy this protection under Article 8 of the ECHR was not answered in the case.

## 2.2. Family Life

The issue whether same-sex couples have “family life” arose in the case of *Burden v United Kingdom*.<sup>25</sup> In this case, two spinster sisters claimed that they were being discriminated against because they were precluded from entering into a civil partnership since they were sisters.<sup>26</sup> This prevented them from benefitting from the inheritance tax bonuses available to civil partners.

The ECtHR stated: “The Grand Chamber commences by remarking that the relationship between siblings is qualitatively of a different nature to that between married couples and homosexual civil partners under the United Kingdom’s Civil Partnership Act. The very essence of the connection between siblings is consanguinity, whereas one of the defining characteristics of a marriage or Civil Partnership Act union is that it is forbidden to close

<sup>21</sup> Cf. *Botta v Italy*, Application No. 21439/93, 24 February 1998, (1998) 26 EHRR 241, Para. 32, referring to *Niemietz v Germany*.

<sup>22</sup> *Bensaid v United Kingdom*, Application No. 44599/98, 6 February 2001, (2001) 33 EHRR 205, Para 59.

<sup>23</sup> *Mata Estevez v Spain*, Application No. 56501/00, 10 May 2001.

<sup>24</sup> In this paragraph the ECtHR referred to the previous Commission decisions regarding admissibility of complaints in *X. and Y. v the United Kingdom*, Application No. 9369/81, 3 May 1983, (1986) 8 EHRR CD298, and *S. v the United Kingdom*, application No. 11716/85, 14 May 1986. This passage was also referred to by Sir Mark Potter in *Wilkinson v Kitzinger* [2006] EWHC 2022 (Fam), Para 45.

<sup>25</sup> *Burden v United Kingdom*, Application No. 13378/05 (Grand Chamber decision, 29 April 2008), (2008) 47 EHRR 38, noted by Sloan, B., “The benefits of conjugality and the burdens of consanguinity”, *Cambridge Law Journal*, 2008, p. 484; see also the judgment of the 4th section of 12 December 2006, (2007) 44 EHRR 51 noted by Sloan, B., “The Burden of Inheritance Tax”, *Cambridge Student Law Review*, 2007, p. 114.

<sup>26</sup> The civil partnership was introduced for same-sex couples by the Civil Partnership Act 2004, and the same prohibited degrees of relationship apply to both marriage and civil partnership.

family members (...) The fact that the applicants have chosen to live together all their adult lives, as do many married and Civil Partnership Act couples, does not alter this essential difference between the two types of relationship.”

Interestingly, the Court went on to differentiate between formalized family relationships and *de facto* ones: “Moreover, the Grand Chamber notes that it has already held that marriage confers a special status on those who enter into it. The exercise of the right to marry is protected by Article 12 of the Convention and gives rise to social, personal and legal consequences.”

Since the coming into force of the Civil Partnership Act (2004) in the United Kingdom, a homosexual couple now also has the choice to enter into a legal relationship designed by Parliament to correspond as far as possible to marriage.

As with marriage, the Grand Chamber considers that the legal consequences of civil partnership under the 2004 Civil Partnership Act, which couples expressly and deliberately decide to incur, set these types of relationship apart from other forms of co-habitation. “Rather than the length or the supportive nature of the relationship, what is determinative is the existence of a public undertaking, carrying with it a body of rights and obligations of a contractual nature. Just as there can be no analogy between married and Civil Partnership Act couples, on the one hand, and heterosexual or homosexual couples who choose to live together but not to become husband and wife or civil partners, on the other hand (...), the absence of such a legally binding agreement between the applicants renders their relationship of co-habitation, despite its long duration, fundamentally different to that of a married or civil partnership couple.”

The Court, therefore, drew a clear dividing line between formalized and *de facto* relationships and equated marriage and civil partnership. This position was confirmed in *Courten v United Kingdom*<sup>27</sup>: “The Court would note that, while the Grand Chamber equated civil partnerships between homosexual couples with marriage, this was on the basis that in both situations the parties had undertaken public and binding obligations towards each other.”

In the eyes of the ECtHR, this means that opposite-sex marriage and same-sex civil partnership are to be considered the same *type* of relationship; since a married couple undoubtedly enjoys “family life”, equating marriage with civil partnership inevitably had to mean that civil partners do, too. However, there was no express statement to that effect in either *Burden* or *Courten*.

This question was finally resolved in *Schalk and Kopf v Austria*.<sup>28</sup> In this case, Mr Schalk and Mr Kopf claimed that they were discriminated against because they were denied the opportunity to marry or have their relationship otherwise recognised by law in Austria. They argued that the usage of the terms “men and women” in the relevant provisions of the law did not imply that men and women merely have the right to marry someone of the opposite sex, but that the provision could and should be interpreted more widely to comprise the right to marry a person of the same sex.<sup>29</sup> The Austrian government argued that “the right to marry was by its very nature limited to different-sex couples”<sup>30</sup> and, while some contracting states had allowed same-sex marriages, there was no European consensus on the matter. The applicants argued

---

<sup>27</sup> *Courten v United Kingdom*, Application No. 4479/06, 4 November 2008, decision on admissibility.

<sup>28</sup> Henrich, D., *Zeitschrift für das gesamte Familienrecht (FamRZ)*, 2010, p. 1525.

<sup>29</sup> By contrast, Article 9 of the Charter of Fundamental Rights of the European Union, mindful of the issue of same-sex marriages, was drafted as follows: “The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.” (See above, note 2, Paras. 24-25, where the commentary to the Charter is reproduced, as well as Para. 60.)

<sup>30</sup> It is interesting to note that the current government seems to be of a completely different view.

that: “[I]n today’s society civil marriage was a union of two persons which encompassed all aspects of their lives, while the procreation and education of children was no longer a decisive element. As the institution of marriage had undergone considerable changes there was no longer any reason to refuse same-sex couples access to marriage....”

In its decision, the Court recognized that in light of recent developments the right to marry enshrined in Article 12 cannot “in all circumstances be limited to marriage between two persons of the opposite sex” and, consequently, it could not “be said that Article 12 is inapplicable to the applicants’ complaint”. But, the decision on whether or not to allow same-sex marriage was to be left to the individual contracting states; the Court, therefore, unanimously held that there was no violation of Article 12 because the applicants were not allowed to marry. The Court’s central argument was that: “[M]arriage has deep-rooted social and cultural connotations which may differ largely from one society to another. The Court reiterates that it must not rush to substitute its own judgment in place of that of the national authorities, who are best placed to assess and respond to the needs of society.”

It was hardly a surprise that the Court found that there was no obligation of the contracting states to allow same-sex marriage, as it is perfectly in line with the cautious approach the Court takes in socially and culturally sensitive areas, and particularly family law.<sup>31</sup>

The second complaint of the applicants was raised under Article 14, taken in conjunction with Article 8 of the Convention; the applicants claimed to have been discriminated on the basis of their sexual orientation. Ruling on the issues of private and family life, the Court stated: “[T]he Court’s case-law has only accepted that the emotional and sexual relationship of a same-sex couple constitutes ‘private life’ but has not found that it constitutes ‘family life’, even where a long-term relationship of cohabiting partners was at stake. In coming to that conclusion, the Court observed that despite the growing tendency in a number of European States towards the legal and judicial recognition of stable *de facto* partnerships between homosexuals, given the existence of little common ground between the Contracting States, this was an area in which they still enjoyed a wide margin of appreciation (see *Mata Estevez v. Spain* (...)). In the case of *Karner* (...), concerning the succession of a same-sex couples’ surviving partner to the deceased’s tenancy rights, which fell under the notion of ‘home’, the Court explicitly left open the question whether the case also concerned the applicant’s ‘private and family life’.

The Court notes that since 2001, when the decision in *Mata Estevez* was given, a rapid evolution of social attitudes towards same-sex couples has taken place in many member States. Since then, a considerable number of member States have afforded legal recognition to same-sex couples (...). Certain provisions of EU law also reflect a growing tendency to include same-sex couples in the notion of ‘family’.

In view of this evolution, the Court considers it artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple cannot enjoy ‘family life’ for the purposes of Article 8. Consequently, the relationship of the applicants, a cohabiting same-sex couple living in a stable *de facto* partnership, falls within the notion of ‘family life’, just as the relationship of a different-sex couple in the same situation would.”

---

<sup>31</sup> After all, as Wikely put it, the ECHR is an international instrument which provides “a floor of rights but not a ceiling”. (See: Wikely, N., “Same sex couples, family life and child support”, *Law Quarterly Review*, 122, 2006, pp. 542-547.) See also: Scherpe, J., “Family and private life, ambits and pieces”, *Child and Family Law Quarterly*, 2007, pp. 390-403.

Thus, while dismissing the complaints in the following paragraphs, the Court expressly departed from its previous position in *Mata Estevez* and now fully accepted that same-sex couples enjoy the right to respect for their family life.

### 3. STEPS TOWARDS EQUALITY

While Mr Schalk's and Mr Kopf's complaints were nominally rejected, they actually won a fundamentally important victory. The decision undoubtedly is a landmark for the rights of same-sex couples and as such will have significant impact on the future development of European family law. Since same-sex couples are now considered to have "family life" and are therefore protected by Article 8 of the ECHR, the decision obliges the contracting states to provide at least some form of legal recognition for same-sex couples and their family life. More importantly, every differential treatment of same-sex and opposite-sex couples is now subject to the Court's scrutiny to a much broader level.

It has long been established in case law that all contracting states must have particularly serious reasons for a differential treatment based on sexual orientation. The Court has consistently held that: "[A] difference in treatment is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realized."<sup>32</sup>

Generally, the "justification" for treating same-sex and opposite-sex couples differently was found in the need to protect the "traditional" family, and the Court still does hold it a valid aim. However, the Court has made it very clear in *Karner* that: "[The] aim of protecting the family in the traditional sense is rather abstract and a broad variety of concrete measures may be used to implement it. In cases in which the margin of appreciation afforded to States is narrow, as is the position where there is a difference in treatment based on sex or sexual orientation, the principle of proportionality does not merely require that the measure chosen is in principle suited for realizing the aim sought. It must also be shown that it was necessary in order to achieve that aim to exclude certain categories of people – in this instance, persons living in a homosexual relationship."

Consequently, the differential treatment of same-sex and opposite-sex couples must be *necessary* to protect the family in the traditional sense. This is a very high standard, as it means that without the measure in question such protection cannot be achieved; it needs to be proved that allowing same-sex couples the right to enter into a meaningful legal relationship would endanger the "traditional family". It is obvious that granting such right and benefits deriving thereof to another group does not result in the groups that have already had those rights and benefits losing them, nor do they become "diluted" or less valuable simply because someone else has them. As Baroness Hale stated: "No one has yet explained how failing to recognize the relationships of people whose sexual orientation means that they are unable or strongly unwilling to marry is necessary for the purpose of protecting or encouraging the marriage of people who are quite capable of marrying if they wish to do so."<sup>33</sup>

---

<sup>32</sup> See also *Petrovic v Austria*, Application No. 20458/92; 27 March 1998, (2001) 33 EHRR 14, Para 30.

<sup>33</sup> In *M v Secretary of State for Work and Pensions*, [2006] UKHL 11 at Para. 113.

Therefore, it is almost certain that we will see many more successful challenges of differential treatment of same-sex couples and opposite-sex couples in the future in national courts and ultimately in the ECtHR. The German experience is an excellent example for this.

The German *Eingetragene Lebenspartnerschaft* (a registered partnership exclusively for same-sex couples) was introduced in 2001<sup>34</sup> but, originally, there were some significant substantial differences in the legal consequences of marriage and the *eingetragene Lebenspartnerschaft*.<sup>35</sup> Many of those were challenged successfully, both politically and in courts, particularly in the German Constitutional Court<sup>36</sup> and even the European Court of Justice.<sup>37</sup>

### CONCLUSION

It should be expected not only that all contracting states of the ECHR will provide a legal framework for same-sex couples but also that any such framework will for the most part have to be a true and full functional equivalent of marriage. Otherwise, the national legal provisions may fail to meet the ECHR requirements. The easiest way to achieve this would be to open up marriage to same-sex couples, as more and more jurisdictions in Europe and beyond do. But, whatever approach a contracting state chooses to take, it is obvious that after *Schalk and Kopf* non-recognition of same-sex couples is no longer an option.

### REFERENCES

- Basedow, J., Hopt, K. and Zimmermann, R. (eds.) (2012). *Max Planck Encyclopedia of European Private Law*, Oxford University Press, 2012.
- Dopffel, P. and Scherpe, J. (2012). "Gleichgeschlechtliche Lebensgemeinschaften im Recht der nordischen Länder", in: Basedow, J., Hopt, K. and Zimmermann, R. (eds.), *Max Planck Encyclopedia of European Private Law*, Oxford University Press, 2012.
- Broberg, M. (1996). "The registered partnership for same-sex couples in Denmark", *Child and Family Law Quarterly*, 1996.
- Pintens, W. (2003). "Belgien: Öffnung der Ehe für gleichgeschlechtliche Paare", *Zeitschrift für das gesamte Familienrecht (FamRZ)*, 2003.
- Ferrer Riba, J. (2006). "Same-sex Marriage, Express Divorce and Related Developments in Spanish Marriage Law", *International Family Law* 139, 2006.
- García Cantero, G. (2006). "Family Law Reform in Differing Directions", *The International Survey of Family Law* 139, 2006.
- Frantzen, T. (2009). "Same-Sex Marriages in Norway", *International Family Law*, 2009.
- Aslan, J. and Hambro, P. (2009). "New developments and expansion of relationships covered by Norwegian Law", *The International Survey of Family Law*, 2009.

<sup>34</sup> *Lebenspartnerschaftsgesetz* (LPartG; Act on life partnerships) which was introduced by the *Gesetz zur Beendigung der Diskriminierung gleichgeschlechtlicher Lebensgemeinschaften: Lebenspartnerschaften* (LPartDisBG) of 16 February 2001, BGBl. I 2001, pp. 266 ff.

<sup>35</sup> For an overview of the legal development and the LPartG in general, see: Scherpe, J., *The Legal Status of Same-sex Relationships in Germany*, in Basedow, J., Kischel, U. and Sieber, U. (eds.), *German National Reports to the 18th International Congress of Comparative Law*, Mohr Siebeck, 2010, pp. 75-107; and Scherpe, J., *National Report Germany*, *American University Journal of Gender, Social Policy and the Law*, Vol. 19:1, 2011, pp. 151-186.

<sup>36</sup> See, e.g. Bundesverfassungsgericht (BVerfG) 21.7.2010, Entscheidungssammlung des Bundesverfassungsgerichts (BVerfGE) 126, 400 (on inheritance tax) and BVerfG 7.7.2009, BVerfGE 124, 199 (on social security law/pensions); and most recently BVerfG 19.2.2013, 1 BvL 1/11 and 1 BvR 3247/09 (on step-child adoption).

<sup>37</sup> *Tadao Maruko v Versorgungsanstalt der deutschen Bühnen*, Case C-267/06, 1 April 2008, [2008] E.C.R. I-1757.



- Jäterä-Jareborg, M. (2010). "Sweden: The Same-Sex Marriage Reform with Special Regard to Concerns of Religion", *Zeitschrift für das gesamte Familienrecht (FamRZ)*, 2010.
- Singer, A., "Equal Treatment of Same-Sex Couples in Sweden", *The International Survey of Family Law*, 2010.
- Davies, C. (2008). "Canadian Same-Sex Marriage Litigation: Individual Rights, Community Strategy", *University of Toronto Faculty of Law Review*, 66, 2008.
- Grosman, C. and Herrera, M. (2011). "Family, Pluralism and Equality: Marriage and Sexual Orientation in Argentine Law", *International Survey of Family Law*, 2011.
- Sloan, B. (2008). "The benefits of conjugality and the burdens of consanguinity", *Cambridge Law Journal*, 2008.
- Sloan, B. (2007). "The Burden of Inheritance Tax", *Cambridge Student Law Review*, 2007.
- Henrich, D. (2010). *Zeitschrift für das gesamte Familienrecht (FamRZ)*, 2010.
- Wikelly, N. (2006). "Same sex couples, family life and child support", *Law Quarterly Review*, 122, 2006.
- Scherpe, J. (2007). "Family and private life, ambits and pieces", *Child and Family Law Quarterly*, 2007.
- Scherpe, J. (2010). "The Legal Status of Same-sex Relationships in Germany", in Basedow, J., Kischel, U. and Sieber, U. (eds.). *German National Reports to the 18th International Congress of Comparative Law*, Mohr Siebeck, 2010.
- Scherpe, J. (2011). "National Report Germany", *American University Journal of Gender, Social Policy and the Law*, Vol. 19:1, 2011.

## **ULOGA EVROPSKOG SUDA ZA LJUDSKA PRAVA U PRAVNOM PRIZNANJU ISTOPOLNIH ZAJEDNICA**

*U ovom radu autor sagledava razvoj evropskih pravnih sistema koji se odnosi na priznavanje zajednica lica istog pola i uočava njegove tendencije. Posmatraju se i različita zakonodavstva, ali i praksa nacionalnih sudova, a posebno praksa Evropskog suda za ljudska prava koji na ovom planu ima veoma važnu ulogu.*

Ključne reči: *brak, registrovano partnerstvo, istopolne zajednice, priznanje*