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POLYGAMOUS MARRIAGE UNDER ITALIAN LAW



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| ITALIAN CONSTITUTION |

ART. 29



“The Republic recognises the rights of the family as a...”

NATURAL SOCIETY

- NATURAL-LAW CONCEPT
- TO PROTECT THE PRIVATE SPHERE

BASED ON MARRIAGE

- POSITIVE-LAW CONCEPT
- TO CREATE A LEGAL SUB-SYSTEM

| ITALIAN CONSTITUTION |

ART. 29

“Marriage is based on...”

MORAL AND LEGAL EQUALITY

→ *STATUS FAMILIAE* TO PROTECT EACH MEMBER



GUARANTEE THE UNITY OF THE
FAMILY

→ TO PROTECT EACH MEMBER ALSO
FROM INTERNAL THREATS

| ITALIAN CONSTITUTION |

the CONSTITUTIONAL COURT'S JURISPRUDENCE

Ruling n. 6/1977
Ruling n. 237/1986
Ruling n. 8/1996

Being questioned about the difference in the differential treatments between MARRIED and COHABITING COUPLES, the Court affirmed that:

“IN THE FIRST CASE THE FAMILY EXISTS, WHILE IN THE SECOND CASE IT DOES NOT”

FAMILY ARE PROTECTED
UNDER ART. 29

COHABITING COUPLES UNDER
ART. 2 (as human associations)



Yet, the Court was inviting the legislator to provide citizens with a proper legal protection.

| ITALIAN CONSTITUTION |

the CONSTITUTIONAL COURT'S JURISPRUDENCE

Ruling n. 138/2010
Ruling n. 170/2014

Questions started to arise also from homosexual couples' cases:

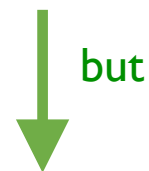
IMPOSSIBILITY FOR
HOMOSEXUAL COUPLES
TO STIPULATE MARRIAGE

claimed to be in
contrast with

→ art. 3 of the Constitution
→ art. 8 of the ECHR

*“The constitutional meaning of family, far from being anchored to a typical and unalterable structure” –
Tribunal of Venice*

*“The Constitution does not justify a notion of family against people and their rights” – Constitutional Court
Ruling n. 494/2002*



THE QUESTIONS WERE REJECTED, since the Civil Code *“stated and states that the spouses have to be of different gender”*

What is the difference between married couples and...?

| ITALIAN
CONSTITUTION |

NOTION OF
FAMILY

COHABITING COUPLES

- LACK OF STABILITY
- CAN BE REVOKED UNILATERALLY
- INDIVIDUAL PERSPECTIVE

HOMOSEXUAL COUPLES

- SEXUAL ORIENTATION

| THE EUROPEAN POINT OF VIEW |

ART. 8, ECHR

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

RIGHT TO

- RESPECT FOR PRIVATE AND FAMILY LIFE
- HIS HOME
- HIS CORRESPONDENCE

EXCEPTIONS NECESSARY FOR

- NATIONAL SECURITY
- PUBLIC SAFETY
- THE ECONOMIC WELLBEING OF THE COUNTRY

| THE EUROPEAN POINT OF VIEW |

the ECtHR'S JURISPRUDENCE

X, Y and Z v. the United Kingdom
Marckx v. Belgium

Being questioned about the refusal to recognise family rights by some member States, the European Court of Human Rights affirmed that:

“THE NOTION OF FAMILY LIFE IS NOT
CONFINED SOLELY TO FAMILY BASED
ON MARRIAGE, AND MAY ENCOMPASS
OTHER *DE FACTO* RELATIONSHIPS”

ART. 8 COMPREHENDS A
WIDER RANGE OF
SITUATIONS

LIMITS ARE LEFT TO EACH
STATE'S MARGIN OF
APPRECIATION



Yet, some fundamental principles cannot be
derogated



| THE EUROPEAN POINT OF VIEW |

About homosexual couples:

- Recommendation 924 (1981)
- Recommendation 1470 (2000)
- Recommendation 1474 (2000)
- Recommendation 1728 (2010)

} Charter of Fundamental Rights of
the European Union (2009)

“It would be artificial to maintain the view that a same-sex couple cannot enjoy family life for the purposes of article 8” – v. Austria

“The aim of protecting the family in the traditional sense is rather abstract” – v. Greece

“Italy was believed to “have overstepped their margin of appreciation” and to have been “reluctant to apply the Convention in a way which is practical and effective” – v. Italy



**THE COURT INVITED THE COUNTRIES TO
FULFILL THEIR POSITIVE OBLIGATION to ensure
the applicants the recognition and protection of their
union**

Shalk and Kopf v. Austria
Vallianatos and Others v. Greece
Oliari and Others v. Italy



| THE EUROPEAN POINT OF VIEW |

WHAT ABOUT POLYGAMY?

ART. 8 ECHR

- RESPECT FOR PRIVATE AND FAMILY LIFE
- HIS HOME
- HIS CORRESPONDENCE

2003/86/EC

- “A NECESSARY WAY OF MAKING FAMILY LIFE POSSIBLE”
- CREATING “SOCIOCULTURAL STABILITY”
- FACILITATING INTEGRATION
- PROMOTING “ECONOMIC AND SOCIAL COHESION”



| THE EUROPEAN POINT OF VIEW |

WHAT ABOUT POLYGAMY?

ART. 8 ECHR

- PUBLIC ORDER
- NATIONAL CULTURE AND VALORS
- INDIVIDUALS' FREEDOM

2003/86/CE

- "IN THE EVENT OF A POLYGAMOUS MARIAGE (...)
THE MEMBER STATE SHALL NOT AUTHORISE THE
FAMILY REUNIFICATION OF A FURTHER SPOUSE"



| THE EUROPEAN POINT OF VIEW |

the ECtHR JURISPRUDENCE

E.A. and A.A. v. the Netherlands

- E.A. IS A MOROCCAN NATIONAL WHO ENTERED THE NETHERLANDS IN 1979
- ALREADY HAVING A WIFE IN MOROCCO, HE CONTRACTED A SECOND (BIGAMOUS) MARRIAGE IN THE NETHERLANDS
- IN 1987, E.A. ASKS FOR A RESIDENCE PERMIT FOR HIS SON, A.A., BORN FROM THE MARRIAGE
- THE PERMIT IS DENIED BY THE NETHERLANDS SINCE POLYGAMY IS CONSIDERED "CONTRARY TO THE DUTCH PUBLIC ORDER"

The European Court of Human Rights
ACCEPTS THE DUTCH AUTHORITIES'
refusal, since:

"a contracting state cannot be required under the convention to give full recognition to polygamous marriages which are in conflict with their own legal order"



| THE EUROPEAN
POINT OF VIEW |

THE CONCRETE
SITUATION

POLYGAMOUS FAMILIES IN...

ITALY	→	15,000
FRANCE	→	20,000
UK	→	1,000

*“ FAMILIES ARE A SOCIAL
PHENOMENON FIRST, AND A LEGAL
ONE AFTER. FAMILIES EXIST BEFORE
THE LAW AND QUITE OFTEN BEYOND
THE LAW. “ – P. Bonnet*

