

***Symposium on the Jurisprudence of the Family:
Parenting and the Influence of Culture***

Aula Magna, University of Malta (Valletta campus)

July 15-16, 2011

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Concluding Remarks

Saturday, 16 July 2011

This symposium could not have come at a more appropriate time than today. Indeed, this last year has been a very productive one for the evolution of family legislation and its interpretation through case law in Malta. Less than two months ago, on 28 May 2011, the House of Representatives consulted the electorate on a Private Members' Bill intended to introduce divorce legislation in Malta, with the referendum producing a 53% support for such law. Consequently, a Bill to amend the Civil Code in order to introduce divorce in Malta was published in *The Malta Government Gazette* on 17 June 2011 and the third reading on the Bill is expected to take place on 25 July 2011.

Government has also announced that by this year's end Malta will also have a law to regulate cohabitation. The details of this law are not yet known as the Bill has not been published but the point remains that within one year we will be having two significant pieces of law in the family law sphere.

Government is also concluding the drafting of a law to regulate in vitro fertilisation. Although the House of Representatives had appointed a Select Committee to deal with this issue, it now appears that the bioethical hurdles which existed in this field and which had raised concerns in government spheres appear now to have been surpassed mainly due to advances made in technology.

On 14 December 2010 Parliament enacted the Protection of Children (Hague Convention) Act, 2010 which enables Malta to ratify the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children concluded on the 19th October, 1996 within the Hague Conference on Private International Law. This law falls squarely on this symposium's theme even though its ratification by Malta is belated.

On 21 December 2010 the Civil Code was amended to enable a husband to prove his physical impossibility of cohabitation and to allow the natural father and mother of a child born in wedlock to apply for a declaration of paternity.

In so far as case law is concerned, on 28 March 2011 the Civil Court, First Hall, applied the provisions of article 257A of the Civil Code to a case pending before it and authorised an annotation regarding the particulars relating to sex which had been assigned to a

person whose identity was not revealed by court order in the act of birth of such person after the latter had undergone an irreversible sex change. This new provision was added in the Civil Code in 2004.

A few months earlier on 30 November 2010, the Civil Court, First Hall, had also decided that a person who had undergone an irreversible sex change operation was entitled to marry. This judgment is not however final as it has been appealed by the Government and we are still awaiting a pronouncement by the Constitutional Court on this matter. Should the court confirm the judgment of the court of first instance, the law will have to be amended according to the court's pronouncement.

From the above developments carried out in the last year, Malta has lately been very much creative in so far as the branch of family law is concerned and I am sure that colleagues who specialise in this area of the law think that this is not a comprehensive list of developments taking place during the last year in the family law sector.

This two days symposium is an important milestone in family law in Malta. We have heard seminal contributions on Maltese Family Law by academic members of the Faculty of Laws and we have also had the honour and privilege to learn from the excellent presentations delivered by foreign colleagues who have brought with them a comparative angle into the study of family law. These contributions will be valued by the Faculty of Laws as they provide innovative insights into a very dynamic and evolving subject such as Family Law. Indeed, this symposium has shown us how multifaceted Family Law is and at what fast rate it is developing. It is an exciting and breathtaking exercise to keep up to date with such novelties.

I think the lessons of this symposium are various. We have discussed what is perhaps the cornerstone of family law – the best interest of the child – the societal implications for the family, global implications of emerging family structures, divorce legislation, challenges of parental rights and children's best interests, marriage annulment cases, etc. All this points as to how the structure of the family has changed over time and the direction in which it will continue to change in a globalised and interconnected world. The family of today is not the extended family of past times. On the contrary, the family today comes in different shapes, combinations and permutations. The family has moved ahead in certain respects such as through the elimination of the distinction between legitimate and illegitimate children, the recognition of the equality between the spouses, the development of children's rights, the utilisation of DNA to establish parenthood, etc. etc. Family Law is no longer restricted within the confines of the family's private residence but it has externalised itself assuming a European and international dimension. We now have cases decided by the European Court of Human Rights which deal with various aspects of family life which were unheard of 60 years ago. We even have a Centre for Family Studies at this University and a Family Commission at national level not to mention, of course, the Family Court (Civil Court, Family Section). Whatever decisions are taken by our legislators, the Family will still continue to be the main nucleus responsible for the formation, education, upbringing, wellbeing, etc. of future generations. Indeed, future generations owe their existence and their development to the

family. We should thus do everything to continue to celebrate the institution of the family. I hope that this symposium has contributed to developing additional knowledge on the timeless institution of family and how it is regulated by law.

I wish to thank the convenors of this symposium, all the speakers for their useful presentations and insights they have provided, the participants who have rendered this symposium a lively debate, and all the staff who have contributed to make this symposium a success. I thank you all.

Professor Kevin Aquilina