The case law of the European Court of Human Rights

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Conflicts of interest

none

Caveats

I will not focus on case law that, even though the European Court of Human Rights (ECHR) classifies it under ‘reproductive rights’, is not related to our topic of *medically assisted reproduction*, e.g.:

access to lawful abortion,

home births,

(forced) sterilisations,

unintentional killing of an unborn child

A few words about the Court

- The Court was set up as a result of the European Convention on Human Rights (1950)
- Chamber decisions involve seven judges
- Grand Chamber judgments involve seventeen judges (these are exceptional)
- Cases can only be brought after domestic remedies have been exhausted
- Judgements are binding – the States are obliged to execute them

“margin of appreciation”

- Margin of appreciation refers to the space for manoeuvre that is granted to national authorities, in fulfilling their obligations under the Convention

- ‘[T]he process of realising a “uniform standard” of human rights protection must be gradual because the entire legal framework rests on the fragile foundations of the consent of the Member States. The margin of appreciation gives the flexibility needed to avoid damaging confrontations between the Court and the Member States and enables the Court to balance the sovereignty of Member States with their obligations under the Convention’

(Lisbon Network, legal training network of the Council of Europe)

“European consensus” / “common ground”

‘The “European Consensus” standard is a generic label used to describe the Court’s inquiry into the existence or non-existence of a common ground, mostly in the law and practice of the Member States.

...

the non-existence of a European consensus on the subject-matter will be normally accompanied by a wider margin of appreciation accorded to the State in question.

The European consensus criterion has, however, been criticized on different accounts ...’

(Lisbon Network, legal training network of the Council of Europe)

Most relevant provisions of the Convention

Art. 8

1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Art. 14: "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground…"

N.B. A distinction between *difference* and *discrimination* must be made: a difference in treatment is not necessarily discriminatory, provided a reasonable and objective basis can be found

Overview of cases I will discuss

1. Evans v. the United Kingdom (10 April 2007)
2. S.H. and Others v. Austria (3 Nov 2011)
3. Costa and Pavan v. Italy (28 Aug 2012)
4. Mennesson and Others v. France and Labassee v. France (26 June 2014) [same reasoning adopted in Foulon and Bouvet v. France (2016) and Laborie v. France (2017)]
5. Paradiso and Campanelli v. Italy (24 Jan 2017)

[Charron and Merle-Montet v. France: on the inability of homosexual couples to access ART in France: declared inadmissible because domestic means not exhausted]

[Kermalvezen and Roussial v. France: submitted to the Court but not yet visible – re anonymity of gamete donation]

Evans v. the United Kingdom (2007)

- **Grand Chamber** judgment: **concept of "private life" (Art. 8) covers "the right to respect for both the decisions to become and not to become a parent"** (para. 71) and **"the right to respect for the decision to become a parent in the genetic sense, also falls within the scope of Article 8"** (para. 72). **[the latter was also confirmed in Dickson v. the UK (2007)]**
- The applicant (Natallie Evans) had been referred for treatment at an assisted conception clinic in 2000, when she was married, but had not pursued it because of the breakdown of her marriage.
- In 2001 she and her partner J. were told she had serious pre-cancerous tumours in both ovaries and her ovaries would have to be removed. It was possible first to extract eggs for IVF, but had to be done quickly.
- In a session with the nurse to obtain their IC, the applicant asked the nurse whether it would be possible to freeze her unfertilised eggs, but was informed that this procedure had a much lower chance of success and was not performed at the clinic. J. reassured her that they were not going to split up, that she did not need to consider the freezing of her eggs, and that he wanted to be the father of her child.

Evans v. the United Kingdom (2007)

- J. ticked the boxes which recorded his consent to use his sperm to fertilise Evans' eggs *in vitro* and the use of the embryos for the treatment of himself and Evans together.
- Evans signed a form which essentially replicated that signed by J. She ticked the boxes providing for the treatment of herself and for the treatment "of myself with a named partner."
- In November 2001 eleven eggs were harvested and fertilised. Six embryos were created and consigned to storage. On 26 November Evans' ovaries were removed.

Evans v. the United Kingdom (2007)

- In May 2002 the relationship broke down. In July J. wrote to the clinic to notify it of the separation and to state that the embryos should be destroyed. The clinic notified Evans of J.'s withdrawal of consent and informed her that it was now under a legal obligation to destroy them.
- Evans commenced proceedings in the High Court, seeking a declaration, *inter alia*, that J. had not varied and could not vary his consent.
- She also sought a declaration of incompatibility under the (UK) Human Rights Act that the (UK) Human Fertilisation and Embryology Act 1990 breached her rights under Articles 8, 12 and 14 of the (European) Convention. She also pleaded that the embryos were entitled to protection under Articles 2 and 8.
- Interim orders were made requiring the clinic to preserve the embryos until the end of the proceedings.

Evans v. the United Kingdom (2007)

High Court:

- J. had only ever consented to his treatment "together" with Evans, and not to her continuing treatment on her own in the event that their relationship ended
- An embryo was not a person with rights protected under the Convention
- The relevant provisions of the 1990 Act interfered with the private life of both parties, but the Act was proportionate in its effect.

Court of Appeal:

Evans appealed but the appeal was dismissed (*Evans v. Amicus Healthcare Ltd* [2004] EWCA Civ 727)

Evans v. the United Kingdom (2007)

Grand Chamber of the ECHR:

- On Art. 2 ("Everyone's right to life shall be protected by law…"), reference was made to the case of Vo v. France, which held that States enjoy the freedom to decide when life begins, and under English law embryos do not have a right to life – Hence no violation of embryo's rights under Art. 2.
- On Art. 8: Evans submitted that the female's role in IVF treatment was much more extensive and emotionally involving than that of the male, who just donated his sperm. The female gamete provider, by contrast, donated eggs, from a finite limited number available to her, after a series of sometimes painful medical interventions designed to maximise the potential for harvesting eggs. Her emotional and physical investment in the process far surpassed that of the man and justified the promotion of her Art. 8 rights.

Evans v. the United Kingdom (2007)

- Instead, the 1990 UK Act operated so that her rights and freedoms in respect of creating a baby were dependent on J.'s whim. He was able to embark on the project of creating embryos with her, and then abandon the project when he pleased, taking no responsibility for his decision to become involved, and under no obligation even to provide an explanation. Even family pets enjoyed greater legal protection than embryos in the UK.

- According to Evans, this was a conflict primarily between the respective rights of two private individuals, rather than between the State and an individual. In this case, the clinic was willing to treat her and should be permitted to do so. There was no public interest at stake. [!!]

Evans v. the United Kingdom (2007)

- "the Grand Chamber … accepts the Government's submission … that the case does not involve simply a conflict between individuals; the legislation in question also served a number of wider, public interests" (para. 74)
- "While the applicant contends that … her Article 8 rights should take precedence over J.'s, it does not appear to the Court that there is any clear consensus on this point ... The Court of Appeal commented on the difficulty of comparing the effect on J. of being forced to become the father of the applicant's child and that on the applicant of being denied the chance to have genetically related offspring …" (para. 80)
- "the Court does not find that the absolute nature of the Act is, in itself, necessarily inconsistent with Article 8 ... Respect for human dignity and free will, as well as a desire to ensure a fair balance between the parties to IVF treatment, underlay the legislature's decision to [permit] no exception ... " (para. 89) – **hence no violation of Art. 8**

Evans v. the United Kingdom (2007)

Dissenting opinion of four judges:

- "We consider that the applicant's right to decide to become a genetically related parent weighs heavier than that of J.'s decision not to become a parent in the present case." (para. 6) – Art. 8 is violated because:

- The rule allows for no exceptions
- The UK Act of 1990 has disproportionate effects and does not allow for the balancing of competing interests
- We agree that the consent rule is important for IVF treatment … however, we see the instant case differently since its circumstances make us look beyond the mere question of consent in a contractual sense.
- "A sensitive case like this cannot be decided on a simplistic, mechanical basis, namely, that there is no consensus in Europe, therefore the Governments have a wide margin of appreciation … **The Court should not use the margin of appreciation principle as a merely pragmatic substitute for a thought-out approach**" (para. 12)

S.H. and Others v. Austria (2011)

- Grand Chamber judgment regarding the **prohibition of using donor eggs and sperm for IVF**
- Applicants were two married couples: first couple wife had fallopian tube-related infertility and husband was infertile so they wanted IVF with donor sperm; second couple wife suffered from agonadism but had a fully developed uterus and husband could "produce sperm fit for procreation" so they wanted donor eggs
- **Chamber** judgment: 2010: five votes to two that there had been a **violation** of Art. 14 in conjunction with Art. 8 re the egg donation, and six votes to one that there had been a **violation** of Art. 14 in conjunction with Art. 8 re the sperm donation

S.H. and Others v. Austria (2011)

- Austrian Artificial Procreation Act 1992: MAP only allowed within marriage or a similar relationship; only within these kinds of relationship may sperm and ova be used for MAP; however, if the male is infertile donor sperm may be used for artificial insemination; egg donation is always prohibited
- The applicants pointed out that this was incoherent
- The Government argued that the reasons for allowing *in vivo* artificial insemination were that because it was such an easily applicable procreation method, it could not be monitored effectively. This technique had also already been in use for a long time. Thus, a prohibition of this simple technique would not have been effective.

S.H. and Others v. Austria (2011)

Chamber:

"the Court would emphasise that there is **no obligation on a State** to enact legislation of the kind and **to allow artificial procreation**. However, once the decision has been taken to allow artificial procreation and notwithstanding the wide margin of appreciation afforded to the Contracting States, the legal framework devised for this purpose must be shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately ..." (para. 74)

S.H. and Others v. Austria (2011)

Chamber:

"The **Government** relied on a further argument … namely that **children had a legitimate interest in being informed about their actual descent**, which, with donated sperm and ova, would in most cases be impossible as the actual parentage of a child was not revealed in the births, marriages and deaths register." (para. 82)

"The **Court** is not persuaded by this argument either. In this respect it reiterates that respect for private life requires that everyone should be able to establish details of their identity as individual human beings … This includes obtaining information necessary to discover the truth concerning important aspects of one's personal identity, such as **the identity of one's parents** …" (para. 83)

"However, such a right is not an absolute one. In the case of Odièvre … which concerned anonymous birth and the impossibility for the applicant to obtain information about her biological parents, the Court found no breach of Article 8 of the Convention because the French legislator had achieved a proper balance between the public and private interests involved ." (para. 84)

S.H. and Others v. Austria (2011)

Grand Chamber:

"Having regard to the risk referred to by the Government of creating [unusual] relationships … the Court observes that unusual family relations in a broad sense, which do not follow the typical parent-child relationship based on a direct biological link, are not unknown in the legal orders of the Contracting States. The institution of adoption was created over time in order to provide a satisfactory legal framework for such relations ... However, the Court cannot overlook the fact that the splitting of motherhood between a genetic mother and the one carrying the child differs significantly from adoptive parent-child relations and has added a new aspect to this issue." (para. 105)

S.H. and Others v. Austria (2011)

Grand Chamber:

- "The fact that the Austrian legislature, when [deciding] not to allow the donation of sperm or ova for *in vitro* fertilisation, did not at the same time prohibit sperm donation for *in vivo* fertilisation … cannot be considered solely in the context of the efficient policing of the prohibitions. It shows rather the careful and cautious approach adopted by the Austrian legislature in seeking to reconcile social realities with its approach of principle in this field. In this connection, the Court also observes that there is no prohibition under Austrian law on going abroad to seek treatment of infertility that uses artificial procreation techniques not allowed in Austria and that in the event of a successful treatment the Civil Code contains clear rules on paternity and maternity that respect the wishes of the parents" (para. 114) [!!!]
- **No violation of Art. 8** (thirteen votes to four) – i.e. **Chamber decision was overturned**

S.H. and Others v. Austria (2011)

Joint dissenting opinion of four judges: **violation of Art. 8**:

"One of the arguments advanced by the Government and accepted by the majority is particularly problematical in our view, namely that 'there is no prohibition under Austrian law on going abroad to seek treatment of infertility … not allowed in Austria and that in the event of successful treatment the Civil Code contains clear rules on paternity and maternity that respect the wishes of the parents" … In our view [this argument] does not address the real question, which is that of interference with the applicants' private life" (paras 12 and 13)

Costa and Pavan v. Italy (2012)

Chamber:

- When Costa and Pavan had a daughter born with cystic fibrosis in 2006 they found out that they were healthy carriers of the disease. Mrs Costa became pregnant again in February 2010. They had the foetus screened and it was found to have cystic fibrosis. Mrs Costa had her pregnancy terminated on medical grounds.
- The couple now wanted to have a child by IVF so that PGD could be done.
- Italian law prohibited PGD but did allow IVF for sterile couples or those in which the man has an STD such as HIV or hepatitis B and C.
- Costa and Pavan argued that they were discriminated against, in comparison with such couples (violation of Art. 14). – argument rejected by the Chamber
- **Violation of Art. 8**: Italian law was found to be inconsistent because it allows abortion if the foetus shows symptoms of the same disease. The prohibition of PGD left the applicants only one choice, which brought anxiety and suffering: starting a pregnancy by natural means and terminating it if prenatal tests showed the foetus to have the disease. The prohibition was found to be a disproportionate interference with the couple's rights under Art. 8.

Mennesson and Others v. France and Labassee v. France (2014) (simultaneous proceedings)

- Applicants: two French nationals (Dominique Mennesson and Sylvie Mennesson, husband and wife, wife infertile, and two US nationals (Ms Valentina Mennesson and Ms Fiorella Mennesson)
- The French couple used sperm of the husband and an egg of a donor for IVF and the embryo was implanted in a **gestational surrogate** in California
- In July 2000 the Supreme Court of California stated that Dominique and Sylvie Mennesson should be recorded as the father and mother of the children (twins) of the surrogate – they were born in Oct 2000
- The father tried to have the birth certificates entered into the French register and the childrens' names on his passport, but the French consulate in L.A. suspected a surrogacy agreement and referred to the Nantes Public prosecutor

Mennesson and Others v. France and Labassee v. France (2014) (simultaneous proceedings)

- In May 2003 the Créteil public prosecutor instituted proceedings in the Créteil *tribunal de grande instance* to have the entries in the register annulled. He observed that an agreement whereby a woman undertook to conceive and bear a child and relinquish it at birth was null and void in accordance with the public-policy principle that the human body and civil status are inalienable. Hence the judgment of the Supreme Court of California could not be executed in France.
- This action was declared inadmissible.
- The public prosecutor appealed to the Paris Court of Appeal which ruled that under the Civil Code (Art. 47), the certificates drawn up in California in accordance with the procedures in that State should be deemed valid.
- The *Cour de Cassation* quashed that judgment on the ground that, as established by the Court of Appeal, the birth certificates in question could only have been drawn up following a surrogacy arrangement.
- The case was sent back to the Paris Court of Appeal with a differently constituted bench.

Mennesson and Others v. France and Labassee v. France (2014) (simultaneous proceedings)

In March 2010, the **Paris Court of Appeal** annulled the entries pertaining to the birth certificates:

- "Under **Article 16-7 of the Civil Code** … any agreement concerning reproductive or gestational surrogacy is null and void. Accordingly, the judgment of the Californian Supreme Court, which indirectly validated a surrogacy agreement, **contravenes the French concept of international public policy**. Consequently … the entries in the French central register of births … must be annulled ...
- [The applicants] cannot seriously claim that they have not had a fair hearing; ... The concepts to which they refer, in particular the child's best interests, cannot allow them … to validate *ex post facto* a process whose illegality … is currently enshrined in positive law. Furthermore, non-registration does not have the effect of depriving the two children of their US civil status or calling into question their legal parent-child relationship … recognised under Californian law ..."

Mennesson and Others v. France and Labassee v. France (2014) (simultaneous proceedings)

Appeal to the ***Cour de Cassation***: alleging a violation of Article 8 of the Convention taken alone and in conjunction with Article 14.

April 2011: *Cassation* decision: appeal dismissed: exactly the same arguments as the Paris Court of Appeal

ECHR Chamber:

Was the interference in accordance with the law? (Art. 8(2))

"the measure or measures in question should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects."

The Court considers that these conditions are met in the present case.' (paras 57, 58)

Mennesson and Others v. France and Labassee v. France (2014) (simultaneous proceedings)

Was the aim legitimate? (Art. 8(2))

Government: French law reflected ethical and moral principles according to which the human body could not become a commercial instrument and the child be reduced to the object of a contract. The legitimate aims of the interference were the prevention of disorder or crime, the protection of health and the protection of the rights and freedoms of others.

Chamber: the interference pursued two of the legitimate aims listed in the second paragraph of Article 8 of the Convention: the "protection of health" and "the protection of the rights and freedoms of others". (para. 62)

Was the interference necessary in a democratic society? (Art. 8(2))

Applicants: the ECHR's ruling of no violation of Article 8 in *A, B and C v. Ireland (*2010) and *S.H. and Others v. Austria* (2011), which concerned access to abortion and medically assisted reproduction respectively, was based on the finding that, although domestic law prohibited these practices, it did not prevent individuals from going abroad to take advantage of them.

Mennesson and Others v. France and Labassee v. France (2014) (simultaneous proceedings)

Was the interference necessary in a democratic society? (Art. 8(2))

Government: The domestic courts had duly drawn the consequences of the law by refusing to register the particulars of the civil-status documents of persons born as the result of a surrogacy agreement performed abroad; **to permit this would have been tantamount to tacitly accepting that domestic law could be circumvented knowingly and with impunity and would have jeopardised the consistent application of the provision outlawing surrogacy.**

As there was no consensus on the question of surrogacy among the States Parties, the latter should be afforded a wide margin of appreciation in that area. Having regard to that, and the fact that the applicants were leading a normal family life on the basis of the US civil status of their children and that the latters' best interests were protected, the interference in the exercise of their rights under Article 8 of the Convention was entirely proportionate to the aims pursued.

Mennesson and Others v. France and Labassee v. France (2014) (simultaneous proceedings)

Chamber decision:

"a surrogacy arrangement raises sensitive ethical questions … the States must in principle be afforded a wide margin of appreciation, regarding the decision not only whether or not to authorise this method of assisted reproduction ...

However, regard should also be had to the fact that an essential aspect of the identity of individuals is at stake where the legal parent-child relationship is concerned. The margin of appreciation afforded to the respondent State in the present case therefore needs to be reduced." (paras 79 and 80)

"a distinction has to be drawn … between the applicants' right to respect for their family life on the one hand and the right of the [children] to respect for their private life on the other hand." (para. 86)

Regarding the husband and wife: "the Court considers that the situation brought about by the Court of Cassation's conclusion in the present case strikes a fair balance between the interests of the applicants and those of the State in so far as their right to respect for family life is concerned" (para. 94)

Mennesson and Others v. France and Labassee v. France (2014) (simultaneous proceedings)

Chamber decision:

Regarding the children: “an essential aspect of the identity of individuals is at stake where the legal parent-child relationship is concerned ... As domestic law currently stands, the [children] are in a position of legal uncertainty. … That uncertainty is liable to have negative repercussions on the definition of their personal identity. ” (paras 96 and 97)

“The Court can accept that France may wish to deter its nationals from going abroad to take advantage of methods of assisted reproduction that are prohibited on its own territory ... however, the effects of non-recognition in French law of the legal parent-child relationship … also affect the children themselves, whose right to respect for their private life … is substantially affected. Accordingly, a serious question arises as to the compatibility of that situation with the children’s best interests, respect for which must guide any decision in their regard. … This analysis takes on a special dimension where, as in the present case, one of the intended parents is also the child’s biological parent.” (paras 99 and 100)

Mennesson and Others v. France and Labassee v. France (2014) (simultaneous proceedings)

Chamber decision:

"by thus preventing both the recognition and establishment under domestic law of their legal relationship with their biological father, the respondent State overstepped the permissible limits of its margin of appreciation. … Having regard also to the importance to be given to the child's interests when weighing up the competing interests at stake, the Court concludes that the right of the [children] to respect for their private life was infringed." (paras 100 and 101)

"There has been **no violation** of Article 8 of the Convention with regard to the [right of the **husband and wife**] to respect for their family life. There has, however, been a **violation** of that provision with regard to the right of the [**children**] to respect for their private life."

Paradiso and Campanelli v. Italy (2017)

- about the placement in social care of a nine-month-old child born in Feb 2011 in Russia following a **gestational surrogacy** contract between a Russian woman and Donatina Paradiso and Giovanni Campanelli, an Italian married couple; it subsequently transpired (through a DNA test ordered by the court) that they had no biological relationship with the child (supposedly because the clinic made a mistake with the sperm).
- The applicants complained about the child's removal from them, and about the refusal to acknowledge the parent-child relationship established abroad by registering the child's birth certificate in Italy.
- The **Chamber** found (5 to 2) that there had been a **violation of Art. 8**
- The **Grand Chamber** found, by eleven votes to six, that there had been **no violation of Article 8** in the applicants' case. In view of the absence of any biological tie between the child and the applicants, the short duration of their relationship with the child, and the legal uncertainty regarding the ties between them, and in spite of the existence of a parental project and the quality of the emotional bonds, the Grand Chamber held that a family life did not exist between the applicants and the child.

Paradiso and Campanelli v. Italy (2017)

- According to the Grand Chamber, the contested measures had pursued the legitimate aims of preventing disorder and protecting the rights and freedoms of others. It regarded as legitimate the Italian authorities' wish to reaffirm the State's exclusive competence to recognise a legal parent-child relationship – and this solely in the case of a biological tie or lawful adoption – with a view to protecting children.
- The Grand Chamber also found that the Italian courts, having concluded in particular that the child would not suffer grave or irreparable harm as a result of the separation, had struck a fair balance between the different interests at stake.

Some general observations to conclude

- Glenn Cohen: Reproductive tourism is part of the broader phenomenon of 'circumvention tourism' : travelling abroad to engage in activities that are prohibited in one's home country (e.g. prostitution, abortion, soft drugs, female genital mutilation)

- Two of the most prevalent forms:

  Surrogacy tourism

  Egg cell tourism

Some general observations to conclude

Surrogacy tourism:

Controversy in France in 2013 following the *circulaire* of the then Minister of Justice Christiane Taubira, instructing the judiciary to henceforth accept citizenship applications for the children if at least one of the legal parents is a French citizen

- Yet surrogacy remained/remains prohibited
- Heated debate about the question whether such a pragmatic policy boils down to a **facilitation/ encouragement of surrogacy tourism ?**

Some general observations to conclude

Egg cell tourism: also two main debates (both mentioned in the S.H. case):

Debates on the anonymity of foreign egg cell donors

Debates on payment for egg cell donation

Some general observations to conclude

In the S.H. case, the Court clearly took a pragmatic approach to reproductive tourism:

the Court, mentioned as proof of the "careful and cautious approach adopted by the Austrian legislature", was (para. 114) that "there is no prohibition under Austrian law on going abroad to seek treatment of infertility that uses artificial procreation techniques not allowed in Austria and that in the event of a successful treatment the Civil Code contains clear rules on paternity and maternity that respect the wishes of the parents" !

Some general observations to conclude

- This is hard to understand given that the Court accepted the three arguments of the Austrian government in defense of its ART law
- The dissenting judges rightly point out that it is **most unlikely that concerns** regarding human dignity, the well-being of future children and the exploitation of women **will all of a sudden "disappear as a result of crossing the border"** (para. 13, joint dissenting opinion in S.H. case)

Some general observations to conclude

Britta van Beers (2014), Is Europe 'giving in to babymarkets'? Medical Law Review:

"[T]he obvious question is whether by adopting a purely pragmatic approach to the regulation of reproductive questions, one is not trying to remove the ethical and political dimensions from an issue that is ethical and political at heart. … "

Some general observations to conclude

"Since the first civilisations, the most important biological facts of human life, such as birth, death, sexuality, and kinship, have been surrounded by certain cultural and symbolic values and rituals [which] have … also found their way into law … Nevertheless, it is clear that existing legal-anthropological categories and narratives may change over time or become contested as a result of cultural, social, or technological developments. The opening up of marriage for same sex couples [is an example]. Another example … Should not both the intending and genetic parents be able to be legally recognised as legal parents …? In fact, in several states, the possibility of three or four legal parents is currently discussed, or has recently become a legal reality."

Some general observations to conclude

"However, some authors wish to take it one step further and abolish the role of family law in this area altogether. Under the system of intent-based parenthood which they propose, filiation would be the result of private contracts and negotiations rather than a status attributed by family law. …

…

If a balance between pragmatic and symbolic approaches is not pursued, we should not be surprised to find in a nearby future that **a European harmonisation of ART laws has *de facto* already taken place**: a **free market** approach to reproductive questions."

Thank you for listening!

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