

## Regarding gender identity



# Gender Identity: Challenges to the Legal Order<sup>1</sup>

Ismini Kriari

## 1. Introduction

The aim of this article is to trace the developments approaching the new human rights frontier: The rights of the LGBTI individuals with regard to their children, human assisted fertilization and asylum requests. Although in most European countries the social perception towards the LGBTI community has been radically shifted, compared to the social attitude twenty or thirty years ago, the situation still cannot be considered as satisfactory in every aspect of human life, despite the promising jurisprudence of the European Court of Human Rights in Strasbourg. The Court has already regulated many issues tantalizing the LGBTI individuals, such as the age of consent for homosexual relations, the parental custody of same-sex parents, the marriage of same-sex couples, the right of the same-sex partner to social security, etc<sup>2</sup>. Article 21 of the Charter of Fundamental Rights forbids any discrimination based on sexual orientation, the same provision we find in article 11 of UNESCO's Universal Declaration on Bioethics and Human Rights<sup>3</sup>. Yet homosexuality is forbidden in many countries, sometimes punished by death penalty<sup>4</sup>.

## 2. Asylum requests by LGBTI individuals

In recent years Italy and Greece are the European countries mostly affected by immigration waves. Some of these unfortunate individuals raise asylum claims based on their sexual orientation: They claim that, being homosexuals in their country of origin, they might face death or other punishment.

European Directives 2004/83 and 2005/85 set out the details pertaining to the examination of asylum requests based on sexual orientation. The

main issues that have to be dealt with are: The credibility assessment (i.e. the assessment on the existence of the homosexual sexual orientation) and the risk assessment upon returning to the country of origin. For some time the risk was considered as minimal if the individual agreed to behave cautiously, i.e. without demonstrating his/her sexual identity, especially in public places.

94 In the case *X, Y, Z v Minister voor Immigratie*<sup>5</sup> the Court changed that perception and developed the following principle: «Members of a social group sharing the same sexual orientation should not be required to conceal that orientation, that being incompatible with the recognition of a characteristic so fundamental to a person's identity, that the person concerned cannot be required to renounce it (para.70)». The Court further noted that «the fact that the applicant could avoid the risk by exercising greater restraint than a heterosexual in expressing his sexual orientation, is not to be taken into account<sup>6</sup>» (art. 2 of D 2004 (83)).

The European Court has also elaborated the principles, which should apply to the credibility examination of the applicant, precluding the respective national authorities from founding statements, documentary or other evidence on questions based only on stereotyped notions concerning homosexuals and from carrying out detailed questioning as to the sexual practices of an applicant for asylum. Further the Court precludes the performance by the applicant of homosexual acts, his/her submission to medical and psychological «tests» with a view to establish his/her homosexuality or yet the production by them of films of such acts. The national authorities are not allowed to assess that the statements of the applicant lack credibility, merely because the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the ground for persecution<sup>7</sup>.

Another issue is related to the permissibility of the projective personality tests, which the Court (Third Chamber) examined at length thereby forbidding them<sup>8</sup> and gave following opinion: The Court does not preclude the responsible authorities from ordering that a psychologist's expert opinion be obtained in the context of the assessment, about the facts and circumstances relating to the declared sexual orientation of an applicant, provided that: *A*) The procedures are consistent with fundamental rights, i.e. they are carried out in a manner that respects the applicant's private and family life. *B*) In order to assess the veracity of a claim made by the applicant concerning his sexual orientation it is not allowed to prepare and use a report on the basis of projective personality test<sup>9</sup>. *C*) The authorities and courts do not base their decision solely on

that report and they are not bound by its conclusions. The Court did not define, unfortunately, what type of assessment could help an expert to determine someone's sexual orientation.

The administrative procedures carried out by the national committees, responsible for the assessment of the sexual orientation of the applicant do not always comply with above mentioned principles. In Greece, for instance, the applicants are requested to provide information about their sexual practices, although this is not in accordance with refugee law<sup>10</sup>, the decision of the Court of Justice of the European Union and human rights standards, as it is against the applicant's right to privacy<sup>11,12</sup>. Further the authorities rely on stereotyped notions about LGBTI persons, like the participation in Gay-parades, the visiting of gay-bars, the anticipation for the gay man to look feminine and the lesbian woman masculine, the expectation for the applicant to know about the criminal sanction in the country of origin or to avoid a risky behaviour, among others. This «first generation of stereotypes» continues to be applied at the asylum request examination, although it is based on the experiences by gay individuals in Europe and America, mainly the USA, where the social environment and the respective social scene with regard to homosexuals have nothing in common with the situation in rural Muslim Pakistan or in rural Sierre Leone<sup>13,14</sup>.

95

A «second generation of stereotypes» has emerged in recent years, namely in 2011, which introduced the «Difference, Stigma, Shame, Harm (DSSH) model», as a basis for assessing the claims about sexual orientation. Following this pattern, the applicant is expected to have been through a painful inner journey leading from the time of self-discovery to a process of self-realization, accompanied by negative feelings and experiences. Applicants are expected to provide information not about their external behavior but about their emotional journey<sup>15</sup> and their lived experience of difference, stigma, shame and harm<sup>16</sup>. The applicants are expected to answer another type of questions, such as: «When did you realize that you are homosexual?» or «How did you realize your sexual orientation and how did it change your life?»

This model is based on the perception that there are certain characteristics, common in all sexual minorities and that the discovery of one's sexuality is a linear process, with clearly defined psychological stages, which might be traced in the white, educated homosexual living in an urban environment, but do not apply to individuals with poor or no-education and therefore with poor knowledge of the English language and limited possibilities to express the elaboration of their feelings towards

their partners or with regard to the development of their identity<sup>17</sup>. As an author points out, the ability to speak well and present a credible account are limited to class and social mobility<sup>18</sup>.

Some authors point out that this conception of «emotional Journey», «ignores the intersections of sexuality with gender, class, ethnicity and race and enhances a dichotomy between modern, progressive Western societies and premodern, regressive countries of origin»<sup>19</sup>.

96 Though the procedure with regard to asylum requests has been in many ways improved, it nonetheless is in need for revised guidelines by advisory bodies, in the direction of a better credibility assessment instrument, respecting the claimants' personality, his experiences and his cultural background. To this end the officials responsible for the credibility evaluation should have a better training, focusing on the cultural and educational background of the claimants, taking into consideration their vulnerability in this postcolonial era and their negative sentiments towards their former colonial authorities. Words introduced by the «white gentleman» are no longer used, as an expression of the emerged national identity.

### 3. Same-sex parents and their children: Problems and Promises

In recent years same-sex couples have been legally recognized in some countries in Europe and the United States of America, their children, however, continue to face troubles in case their birth certificates are to be recognized in another country. The following cases illustrate the perplexed issues that come to the court, which bear testimony to the dilemmas faced by individuals, in their effort to obtain legal clarity and to award security to their children. The European Court of Human Right has dealt extensively with the rights of children born in new forms of family<sup>20</sup>.

1. In the case *Frette v. France* of 2002 the Court considered that the denial of French authorities with regard to adoption by a homosexual was not contrary to the principles of the Convention of Human Rights. The main reasoning was about the doubts, as to the influences that might be incurred on the child's personality: "...it must be observed that the scientific community- particularly experts on childhood, psychiatrists and psychologists – is divided over the possible consequences of a child being adopted by one or more homosexual parents, especially bearing in mind the limited number of scientific studies conducted on the subject to

date. In addition, there are wide difference in national and international opinion, not to mention the fact that there are not enough children to adopt to satisfy the demand<sup>21</sup>».

2. That opinion was radically revised a few years later in the case *E.B. v. France* of 2008, in which the Court asserted, that the sexual preferences of the intended parents or the co-habitation of same-sex individuals should not be considered an obstacle for the creation of family and adoption. In this case *E.B.*, a French woman in a stable relation with another woman was denied the permit for adoption by the respective French authorities on the ground that the lack of a paternal model, proper to endorse the right development of an adopted child as well as the way of life of the applicant, albeit omitting to mention her sexual orientation, were not offering arguments supporting her application. The authorities responsible to grant the adoption permit underlined, however in a negative way, the influence the female companion of the applicant might have on the upbringing of the child.

97

In the Court of Human Rights the *E.B.* supported the view that she had been subjected to unfair treatment because of her sexual orientation (art. 14 of the Convention) and that her private life had been unlawfully infringed upon (article 8 of the Convention). The Court accepted her allegations, stating that: «...The inescapable conclusion is that her sexual orientation was consistently at the centre of the deliberations in her regard and omnipresent at every stage of the administrative and judicial proceedings. The Court considers that the reference to the applicant's homosexuality was, if not explicit, at least implicit. The influence of the applicant's avowed homosexuality on the assessment of her application has been established and, having regard to the foregoing, was a decisive factor leading to the decision to refuse her authorization to adopt<sup>22</sup>». The Court concluded that *E.B.* had been treated in a discriminatory way and her application was not accepted because of her sexual orientation. The French authorities had violated articles 8 and 14 of the Convention. As the Court further stated: «In this case, moreover, the applicant presented, in the terms of the judgement of the Conseil d'Etat, "undoubted personal qualities and an aptitude for bringing up children" which were assuredly in the child's best interests, a key notion in the relevant international instruments<sup>23</sup>».

3. In the following case *X. and al v. Austria* in 2013 the Court proceeded even further, as it supported the view that excluding a homosexual

married couple from adoption amounts to discrimination, given that heterosexual unmarried couples are awarded this possibility.

98 4. In the case *D.B. and others v. Switzerland*<sup>24</sup>, two male Swiss nationals formed a same-sex couple and they have been registered partners since 2011. They have a child, born *via* a gestational surrogacy contract in the USA, with the sperm of one of them. A California Court declared the first and second applicant to be the child's legal parents. In 2011 the men asked the Swiss authorities to recognize the US Judgement and to copy the birth certificate into the relevant civil register. The request was denied by the Register's office and by the Federal Office of Justice. In May 2015 the Federal Court held that using surrogacy in California to circumvent the prohibition in place in Switzerland had amounted to a material evasion of the law. It recognized the California judgement in so far as it concerned the parent-child relationship between the child and his genetic father, but withheld recognition of the relationship declared by the US Court between the child and the intended father (i.e. the other man of the same-sex couple). In 2018 an amendment to the Civil Code came into force legalizing the adoption of a registered partner's child and the applicants filed for adoption, which was granted on 21 December 2018. In September 2021 Swiss voters approved an amendment to the Civil Code legalizing «civil marriage for all» in Switzerland.

The European Court of Human Rights held that Switzerland had overstepped its margin of appreciation, foreseen in art. 8 of the Convention on Human Rights, as it did not make a timely legislative provision for a process of recognition of the relationship between the child and the intended father. This amounted to a disproportionate interference with the child's right to respect for private life.

On the other hand the Court observed that surrogacy arrangements, which the two same-sex partners has used to start a family, had been contrary to Swiss public policy and it had amounted to a material evasion of the law. The Swiss authorities non-recognition of the birth certificate had not, in practice, significantly affected their enjoyment of family life. The practical difficulties, which the two members of the couple had to endure, because the Swiss law did not recognize the relation between the child and the intended father at that time were within the limits of compliance with art. 8 of the Convention (respect for private and family life). The Court concluded that there was no violation of the two parents' right to respect for private life.



5. A six-year-old British girl, who was born to a surrogate mother using the ova of an anonymous donor and sperm from her biological father has lost her case at the European Court of Human Rights, to have her father's name on her birth certificate. The Court ruled that although the girl's biological father is not named on her birth certificate because of a statutory ban foreseen in the Human Fertilization and Embryology Act of 2008 she is not wholly deprived of a legal relationship with her biological father<sup>25</sup>.

Two examples from Greece illustrate the difficulties, endured by same-sex couples, although the one had a positive outcome.

In the first case, a couple of same-sex male partners were considered as legal parents of a child, obtained *via* surrogacy abroad. Upon returning to Greece the couple sought to recognize the birth certificate of the child at the First Instance Court and at the Court of Appeal. In both cases the request was rejected on the ground that a same-sex marriage is considered in Greece as contrary to public order and *boni mores*. Although this child, as America-born, has the American citizenship, his Greek parent, not being legally recognized as a parent, is not entitled to obtain a social security number for the child, with the result that he cannot even buy medicaments for him at a Greek pharmacy, or to receive financial support for his education in a foreign school, in case he is (i.e. the parent) assigned in a country abroad, among other difficulties.

In the second case the Greek Court of Appeal recognized as binding the decision of an English court granting custody of a child, born in same-sex female partnership, to the adoptive mother and not to her partner, who had gestated it. The Greek woman had, besides the custody of the child, also the right to move with the child in Greece.

The legal recognition of this decision was rejected as contrary to public order and *boni mores* at the First Instance Court. The Court of Appeal, however, recognizes the Greek woman's right to custody, independent from the non-validity of the same-sex marriage, considered as contrary to public order and *boni mores* as in the previous case. The Court of Appeal underlined that «...the different approach to same-sex marriage cannot jeopardize the welfare of the child. The Greek society is already prepared to face these situations and to welcome in its bosom and to tolerate a same-sex family and its children...<sup>26</sup>».

A similar case in Bulgaria was brought before the European Court of Justice in 2020. A Bulgarian citizen wanted her child, born in a same sex relation with another woman to be recognized in Bulgaria, so that the child could obtain a Bulgarian passport<sup>27</sup>. The Court ruled that a child

and their same-sex parents have to be recognized as a family, the child should be issued a Bulgarian passport and the family should have free movement in all member-states of the European Union.

#### 4. Concluding remarks

100 Family, the most resilient institution in human societies<sup>28</sup> from times immemorial is subject to cataclysmic changes in the last fifty years. Medical developments and social changes have transformed the traditional conception of family to new forms: The nucleus family, the same-sex family, the family created by means of human assisted procreation with three or more «collaborators», following the «collaborative reproduction», (i.e. via surrogacy, sperm and ova donation, genetic parents and social parents) etc. The term «family» does not only include the traditional form of «biological family». It also includes other forms of co-living that feature the same qualitative characteristics as the traditional biological family: Its members relate to each other with strong bonds, they promote the socialization of their members and ensure the development of their offspring and the protection of their rights.

The protection of the child, its welfare and its need for a loving and caring environment remains however, the only unifying element in all conceptions of family.

Laws and court decisions try to address with varying degrees of success these pressing «felt necessities of time»<sup>29</sup>. In polarized societies with conflicting political and social interests their task is exceptionally difficult. One traceable trend, however, points to the unweaving protection of children and to guaranteeing a friendly and adequate environment for them, no matter what the preferences of their parents, adoptive parents, foster parents etc. might be.

As the Court of Human Rights observed in the case *Vallianatos et al. v. Greece*<sup>30</sup>, when a European state legislates on family issues «in its choice of means... it must necessarily take into account developments in society and changes in the perception of social and civil status issues and relationships, including the fact that there is not just one way or one choice, when it comes to leading one's family or one's private life». The member states should therefore adapt their legislation to the emerging social developments.

The President of the European Council, Mrs. Ursula von der Leyen has said in her Speech of the Union in 2020 that «being a parent in one

country means you are parent in every country». It seems, however, that the road is long and that the homogenization of the European legal order with regard to the legal recognition of same-sex families will be time-consuming. The Greek Prime Minister Mr. Mitsotakis had declared in an interview on the 4<sup>th</sup> July 2022 in the agency «Bloomberg» that «the same-sex marriage will be reality in Greece in some time, that being part of our strategy». This promise was fulfilled in February 2024 (L. 5089/2024).

One should, however, remember the words of the poet T.S. Elliot in *Waste Land*: «Birth and copulation and death// that's all that matters// when it comes to brass talks».

## Note

<sup>1</sup> I want to express my warmest thanks and gratitude to Professor Alessia Valongo from the Department of Political Sciences, who had the initiative for my invitation to the International Conference: *Legalità e Partecipazione, Tendenze, sfide e prospettive*, 16-17 Giugno 2022. I also express my warmest thanks and my gratitude to Professor Alessandra Piogga for all the arrangements and the University's hospitality. It was an event one cannot forget. *Mille Grazie!*

<sup>2</sup> The European Court of Human Rights in Strasbourg has developed a rich jurisprudence with regard to the protection of the rights of the LGBT individuals, based on art. 8 (protection of private and family life) and article 14 (forbidding discrimination) of the European Convention on Human Rights. See Decisions: *Dudgeon v. United Kingdom*, 7525/76, (on the criminalization of homosexual relations between consenting adults), (24.02.1983)// *Smith and Grady v. United Kingdom*, 33985/96, 33986/96 (homosexuals in armed forces) (27.09. 1999)// *L. and V. v. Austria*, 39392/98, 39829/98 (age of consent for homosexual relations) (9.01.2003)// *Salgueiro da Silva Mouta v. Portugal*, 33290/96 (on parental custody of same-sex parents) (21.12.1999)// *Karner v. Austria* 40016/98 (house succession of the same-sex partner of the deceased) (24.07.2003) and *Kozak v. Poland*, 13102/02, (2.03.2010)// *P. B. and J.S. v. Austria*, 18984/02 (the right of the same-sex partner to social security), (22. 07. 2010)// *Schalk und Kopf v. Austria* 30141/2004 (marriage of same – sex couples) (24.06.2010)// *X and other v. Austria*, 19010/ 07 (adoption by same-sex-couples), (9.02.2013)// *Christine Godwin v. United Kingdom*, 28957/95 (infringement of rights under art. 8 of the European Convention of Human Rights of a transgender woman, who after a gender-reassignment surgery continued to be labeled as a man, thereby experiencing discordance between her social reality and her gender identity), (11.07.2002).

Further it has been asserted that texts against homosexuality are not covered by art. 10 (freedom of expression), as it was decided in the case *Vejdeland et al. v. Sweden*, 1813/07, (9.02.2012) // In the case *Identoba et al. v. Georgia*, 73235/12 (lack of protective police measures during a LGBTI rally infringes on the rights of this vulnerable community, enshrined in articles 3 (inhuman treatment and 14 (against discrimination) (12.05.2015)//. With similar argumentation *M.C. and A.C. v. Rumania* 12060/12 (about the state responsibility to take adequate measures in case of violence with homophobic traits), (12.07.2016).- In dec. *Bayev et al. v. Russia*, 67667/09, the Court held that the arrest of homosexuals demonstrating outside a school, based on a Russian law, amounts to stigmatization of the said community and endorsement of homophobia (20.06.2017).

**102** <sup>3</sup> Article 11 (Non-discrimination and non-stigmatization): «No individual or group should be discriminated against or stigmatized on any grounds, in violation of human dignity, human rights and fundamental freedoms».

<sup>4</sup> In 62 countries homosexuality is considered a criminal offence and in six countries death penalty is foreseen for the homosexual behavior between consenting adults, see ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Organization) (2017), *State-Sponsored Homophobia: A world Survey of Sexual Orientation Laws: Criminalization, Protection and Recognition*, <https://www.refworld.org/docid/59e615f64.html> (accessed 20 November 2023).

<sup>5</sup> *X,Y,Z v Minister voor Immigratie, Integratie en Asiel* (C-199,C-200, C-201/12) {2013} ECLI:EU: C: 2013:720

<sup>6</sup> The Court had reached a similar conclusion in a case about religious beliefs, where it noted that the possibility of concealment and exercising restraint in religion practices must be irrelevant to the determination of the level of protection. The authorities cannot reasonably expect the applicant to abstain from those religious practices, which constitute an important part of his identity (*Bundesrepublik Deutschland v Y und Z*, C-71 and C-99/11), {2012}, ECLI: EU: C 2012: 518.

<sup>7</sup> *ABC v Staatssecretaris van Veiligheid en Justitie* (C-148, C-149, C-150/13) {2014} ECLI:EU:C: 2014:2406

<sup>8</sup> *F v Bevendorlasi es Allampolgarsagi Hivatal* (C-473/16) {2018} ECLI: EU: C: 2018: 36

<sup>9</sup> Projective personality tests are tests designed to let a person respond to ambiguous stimuli (i.e. inkblots and/or enigmatic pictures), presumably revealing hidden emotions and internal conflicts, projected by the person into the test, *Encyclopaedia Britannica*, <https://www.britannica.com/science/projective-test>

<sup>10</sup> United Nations High Commissioner on Refugees, (2013): *Written Observations of the United Nations High Commissioner for Refugees in the Cases of A and others* (C-148/13, 149/13 and 150/13). Available at: <https://www.refworld.org/docid/5215e58b4.html>.

<sup>11</sup> *Van Kuck v Germany* App no 35968/97 (ECtHR, 12 June 2003).

<sup>12</sup> s. ZISAKOU, *Credibility Assessment in Asylum claims based on sexual orientation by the Greek Asylum Service: A Deep-rooted Culture of Disbelief*, in «Frontiers in Human Dynamics» n. 3, 2021, p. 4. The author provides examples from the Greek administrative practice, whereby the applicant was asked que-

stions like: «Tell us some details from your first time?», «How long did it take?», «I want you to describe to me what you did when you met each other» etc. p. 5.

<sup>13</sup> A. GUSTAFFSON GRONNINGSAETER *Establishing a Sexual Identity: The Norwegian Immigration Authorities Practice in Sexuality-Based Asylum Cases*, in «Out & Proud? LGBT Asylum in Europe Conference» COC Netherlands, Amsterdam, October 5-6, 2017. Available at: <https://www.coc.nl/wp-content/uploads/2017/04/Norwegian-practices-Andrea-Gustaffson-Gronningsaeter.pdf>. Also s. JANSEN, & T. SPIJKERBOER, *Fleeing Homophobia, Asylum Claims Related to Sexual Orientation and Gender Identity in Europe* Amsterdam, VU University, 2011, available at: <https://www.refworld.org/docid/4ebba7852.html>.

<sup>14</sup> In Greece the cases mentioned by s. ZISAKOU, op. cit. pp. 6 et seq. are about the claims of a lesbian woman of Cameroon, which was considered as not convincing, because her first same-sex relationship was at the age of 39, and she was a mother of three children. This stereotyped notion of parenthood and previous marriage as incompatible with same-sex sexual orientation was observed also in other four cases. A gay man from Pakistan did not know the penal provisions about homosexuality. A gay man from Ivory Coast did not know about LGBTI organizations and authorities' treatment towards LGBTI. A Same-sex attracted man from Sierra Leone did not identify himself as gay, given that this term was totally unknown to his community till 2010 and they used the term man-to-man to describe men with same sex contacts. In these cases, the Greek authorities considered that the applicants could not establish their sexual orientation.

<sup>15</sup> V.C. CASS, *Homosexual Identity Formation: A Theoretical Model*, in «J. Homosexuality» n. 4, 1979, pp. 219-235. The author introduced the theory of the formation of homosexual identity through defined different stages.

<sup>16</sup> J. DAWSON, P. GERBER, *Assessing the Refugee Claims of LGBTI People: Is the DSSH Model Useful for Determining Claims by Women for Asylum Based on Sexual Orientation?*, in «Int. J. Refugee» L. 29 (2), 2017, pp. 292-322.

<sup>17</sup> S. ZISAKOU, op. cit. p. 9 offers some examples of the applicants' inability to answer questions like: «On what occasion did you realize your sexual orientation?», though the claimant from Gambia was arrested and tortured by the police and showed his injuries and submitted medical documents about it. A gay man from Guinea was not able to describe «how he experienced the shift in his sexual identity and how this affected his life since». A gay man from Bangladesh could not provide enough details about «how he realized his sexual orientation, how this changed his life and how this affected his perception about romantic relationship».

<sup>18</sup> R.A LEWIS, *Gay? Prove it: The Politics of Queer, Anti-deportation Activism*. In «Sexualities», n. 17, vol. 8, 2014, pp. 958-975.

<sup>19</sup> S. ZISAKOU, op. cit. p. 8 and S. ZISAKOU, *Proving gender and sexuality in the (homo) nationalist Greek asylum system: Credibility, sexual citizenship and the «bogos» sexual other*, in «Sexualities», 2023, pp. 1-27.

<sup>20</sup> See V. MALLIOS, *Children of homosexual couples: An existing family form and a new challenge to the legal order*, in «e-politeia», vol. 5, 2023.

<sup>21</sup> Frette v. France, para. 42.

<sup>22</sup> E.B. v. France, paras 88.89.

<sup>23</sup> Op. cit. para. 95.

<sup>24</sup> 5881715 and 58252/15, Fourth Chamber, (367) 22.11.2022,

<sup>25</sup> H. v. United Kingdom, no. 32185/20, Fourth session 31.05.2022.

<sup>26</sup> Both very recent cases have not been reported in legal reviews but are presented in the daily press, see, for instance the Sunday Paper «Kathimerini», 19 November 2023, article «In Europe we are a family, here nothing», page 33.

<sup>27</sup> CJ 490/20.

<sup>28</sup> With the exception of taxes, as the famous American saying goes: «Death the taxes are the only sure things in life!».

<sup>29</sup> The famous words by the American Supreme Court Chief Justice Oliver Wendel Holmes.

<sup>30</sup> ECHR 7. November 2013, no 29381/2009 and 32684/09, para. 84.