

**The Protection of the Right to Marry and the Right
to Found a Family in European Union
—A Perspective from the Case-Laws of
the ECHR and of the ECJ**

Yao-Ming Hsu

Institute of Law for Science and Technology, National Chung-Hsing University
250 Kuo-Kuang Road, Taichung 40254, Taiwan
E-mail: yaoming_hsu@hotmail.com

Abstract

Based on the relevant jurisprudences of European Court of Human Rights on Article 12 of the European Convention on Human Rights, and on the relevant legislations of the European Community and the jurisprudences of the European Court of Justice, this article attempts to analyze the conditions and the application of the protection of right to marry and right to found a family in European Union. Besides, considering the necessary protection of the transsexuals, gays, and lesbians, it also provides a critical analysis for the possible application of the Articles 8 and 12 of the European Convention on Human Rights, and the relevant practices established by the European Court of Justice. At last, because the principle of free movement of persons is well established in the European Union, it illustrates the possible dilemmas in European private international law, when dealing with same-sex marriages acknowledged in some Member States, but the non-recognition of these marriages elsewhere in the Union.

Key Words: European Union, Human Rights, Right to Marry, Right to Found a Family, Same-Sex Marriage