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Morally sensitive issues and cross-border movement in the EU. The cases of reproductive matters and legal recognition of same-sex relationships

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**Stellingen
behorende bij het proefschrift**

**Morally sensitive issues and cross-border movement in
the EU. The cases of reproductive matters and legal
recognition of same-sex relationships**

van Nelleke Koffeman

1. Reality often outpaces and dictates the law in morally sensitive issues, particularly in cross-border cases; this should be recognised both by national legislatures as well as the EU legislature resulting in anticipatory action.
2. Since it is a reality that European law is spreading like oil in respect of morally sensitive issues, both in internal and in cross-border situations, the question as to how this must be valued is redundant.
3. The ECtHR should not use an ‘outsourcing’ approach – whereby foreign treatment options contribute to the justification of a restrictive regime – in respect of reproductive matters, or any other fundamental rights issues.
4. When States accommodate (the effects of) cross-border movement in morally sensitive issues, this is likely to imply a move towards the more progressive side of the moral spectrum in the EU, while ‘outsourcing’ implies that States are inclined to remain on the less permissive side.
5. A shift is visible in the nature of interests that legislatures and courts include in balancing exercises in morally sensitive issues from more abstract to more concrete and from more country-specific to more transnational.

6. Propositions 1 to 5 above together imply that EU Member States move towards more progressive positions on morally sensitive issues.

7. The ‘in for a penny, in for a pound’ approach of the European Courts – entailing the idea that States may decide whether or not to grant a certain right or entitlement at the national level, but once they do indeed grant that right or entitlement and they thereby act within the scope of European law, they must do so in a way which meets European standards – risks becoming an ‘all or nothing’ approach.

8. It may be true that hard cases make bad law, but even worse are inactive legislatures that leave vulnerable parties involved in such cases without any protection of the law.

9. The EU’s fundamental rights debate should not be preoccupied with the scope of the EU Charter of Fundamental Rights, but focus more on the content instead.

10. Cross-border movement by those who flee war, terror, persecution and/or hunger may never be warded off.

11. Leaving the ECHR, or threatening to do so, should be unthinkable for any European State.

12. There is another side to every argument.