ITALY

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A. New Developments in the Field of Divorce (since September 2002)

Many important developments have taken place in the Italian jurisdiction since 2002. New legislation and innovative court decisions have substantially modified the rules for separation, divorce and their effects.

The consequences of divorce and separation on the couple's children were modified in 2006 through the law 8 February 2006, n. 54 on shared custody.[1] In 2014, new simplified procedures for both separation and divorce were added (Law 10 November 2014, n. 162); in 2015, the law 6 May 2015, n. 55 shortened the time between separation and divorce; in 2016 the Italian Parliament introduced a new legal institution, called civil union, to formalize, regulate and dissolve same-sex couples (Law 20 May 2016, n. 76).

1. Separations and divorce proceedings

Up to 2014, the only way to get a separation and divorce – no matter whether consensual or controversial – was through a judicial process in front of a court (*Tribunale ordinario*).[2] The reform (Law 10 November 2014, n. 162) introduced two non-judicial procedures for consensual separation and joint divorce: negotiation assisted by lawyers and proceedings in front of the Civil Status Officer. Adversarial separation and contentious divorce can still today only be awarded through a proceeding in court.[3]

The *assisted negotiation* procedure requires the spouses to be supported by two lawyers who shall deliver the final agreement reached by the parties to the Public Minister. If the couple has no children or no children under age, or over eighteen but not yet financially independent, or disqualified, under support custodianship or severely disabled, then the Public Minister will control whether the agreement in facts conforms to their interest. If so, he/she will authorize it; if not, a change of the terms will be ordered.

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1 See below Chapter 2 on *Parental responsibility*.

2 See Patti, Carleo, Bellisario, *Italian Report*, answer 7

3 At present then, four alternative procedures are actionable to separate or to divorce: an adversarial and a joint procedure, both in front of a court; the negotiation assisted by lawyers; and the procedure in front of the Civil Status Officer.

When the couple have no children, or no children under the conditions just described, then the Public Minister will only check that the legal procedure has been duly respected. If such evaluation is positive, the agreement, after the review, has full legal effect. But when the Public Minister holds the agreement against the children's interest or otherwise vitiated, he/she will convey it to the court and a judicial proceeding will follow, under the guidelines of the consensual separation procedure.

The other kind of machinery introduced in 2014 is the *proceeding in front of the civil Status office*, which can be addressed by childless couples, or couples having no child under age or over eighteen but not yet financially independent, or disqualified, or severely disabled. The couple will sign an agreement which will be endorsed in the document finally drafted by the Officer and will be formally confirmed by both partners after at least thirty days. After such confirmation, the agreement has the same effect as the judicial decree in the consensual separation in court.

The agreement cannot however envisage any transfer of immovables or valuable assets, although it may provide for the periodical payment of money as maintenance.

Briefly said, the aims of the reform of separation and divorce procedures were twofold: easing the task of courts and their burden, while at the same time simplifying the duties and reducing the costs for separating couples. It is yet to be confirmed whether these aims are in practice really achieved, amongst other reasons because assisted negotiation does not always allow a substantial reduction of costs on the part of the spouses to make it competitive against a court proceeding. On the other hand, separation and divorce in front of the civil status officer, after a slow launch, is increasingly gaining favour among Italian couples.

From a more general point of view, it may be noted that nothing comparable to divorce by consent was envisaged by the Italian law up to 2015. Divorce was always the result of a court decision based on the spouses' community of life irretrievable break up. The new procedures of assisted negotiation and proceeding in front of the Civil status officer, on the contrary, not requiring any in depth examination of the parties' decision but only a control over the children related clauses, result in such a considerable increase of the parties' autonomy and self-determination that we might conclude that a kind of divorce by consent has in fact been introduced into Italian law, even if for a limited number of couples.

2. New time limits for separations and divorce

After the passing of law 6 May 2015, n. 55 spouses who want to apply for divorce must have been separated for 6 months when the separation was consensual or for 12

months when the separation was judicial. Before this long awaited reform, the time limit was 3 years in all cases.

The Italian Parliament was actually expected to take a more courageous reform, aimed at making divorce directly actionably – as it is in civil unions – or at least at diversifying separation and divorce in a sharper way so as to bestow these legal institutions a reason of their own, independent from each other. The actual two steps procedure is criticized for many reasons, the main reasons being that it is expensive, because it needs the spouses to undertake two actions in court one after the other; it is time consuming; and it fuels litigiousness, because it requires the parties to discuss the same topics twice.[4]

3. Divorce in civil unions

A new law passed on May 20, 2016 with no. 76, introduced Civil Unions (*unioni civili*), launching the first Italian legal institution ever to formalize a same-sex relationship.[5] Civil unions are similar to marriage for many aspects. Only some provisions on affinity, family name, marriage procedure, and dissolution of the union are different. They are established through a formal, public declaration in front of the Official of Civil Status in the presence of two witnesses. Such declaration, included in the written act of civil union, will be registered in the archives of Civil Status.

The conditions to dissolve a civil union are similar to those provided to divorce from marriage, even if with a few important differences. Separation is not needed and divorce can be addressed directly. To this aim both the civil partners or only one of them – according to the article 1 para. 24 of the Law – must first declare their will to dissolve the bond to the Civil Status officer. After three months each partner can then start a judicial action to solve the union, or they can resort to the recently introduced non-judicial proceedings: assisted negotiation or declaration in front of the Civil Status officer. Other differences, in fact rather infrequent, between civil unions and marriage concern the impossibility for civil partners to divorce for not having consumed the relation and the effects of a change of sex by a civil partner. In the latter case, as the civil union can be formed only by same-sex couples, according to article 1 para. 26 of the Law the union would be automatically dissolved.[6]

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4 Moreover, the difference between the rules applying to divorces in civil unions, where it is directly actionable without separation, and the rules applying to divorce after marriage appears unreasonable.

5 The same law has also adopted rules on *de fac*to cohabitations (*convivenze di fatto*) both for heterosexual and same sex couple. See below Ch. 3 on Informal Relationships.

6 Change of sex produces then different results in marriage and in civil unions. If a spouse changes his/her sex, then the marriage turns itself into a civil union. If a civil partner does the same then the union is dissolved.

The steps to divorce from a civil union are clearly more immediate, simpler and undoubtedly faster than those required to divorce from a marriage.[7]

The adoption of civil unions being rather recent, not many relevant decisions on divorce between same-sex couples have yet been published. In 2019 an interesting judgement was however issued on the topic of maintenance, where the court declared the right of the weaker party to an *assegno di mantenimento* grounded on the contribution given to the family life and to the duration in time of the union.[8] Its amount was calculated using the same parameters provided by article 5 of the Law 1970 on divorce as interpreted by the courts in the opinions we have referred to above.[9]

B. New Developments in the Field of Maintenance between former spouses (since September 2002)

Dramatically significant court decisions were issued in 2017 (Cass. 10 May 2017, n. 11504) and 2018 (Cass.11 July 2018, n. 18287). Both concerned the topic of maintenance.

According to article 5 of the Law on divorce, maintenance can be granted only whenever the ex-spouse has 'no adequate means or it is anyway impossible for him or her to earn them for objective reasons'. In order to assess the exact sum to be paid for maintenance, the judge has to consider 'the conditions of the spouses; the reasons of the decision; the personal and economic contribution given by each of them to the family running and to the building of a personal or a common patrimony; the income of both'. These criteria must be related to 'the marriage length' and may lead to a refusal of the maintenance petition and therefore to discharging a wealthier spouse from providing allowance to the other.[10] According to uniform case law, the court will not necessarily take into account all these elements in every case, but only those that are relevant for the specific action at stake.

Since 1970, many decisions focused on the interpretation of article 5 and especially on the criteria to assess whether a right to maintenance accrues to the benefit the weaker party, or not. The much debated expression 'adequate means' was constantly constructed as meaning 'adequate means to keep up a standard of living which is similar to the one enjoyed during marriage',[11] thus establishing an analogy with the

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7 Among the many authors who noted this discrepancy, Gilda Ferrando, *Diritto di famiglia*, *4th ed.*, Bologna, Zanichelli, 2020, p. 229.

8 Tribunale Pordenone 13 March 2019

9 Par. 3 on *Spousal maintenance*.

10 For instance see, among many other concurring decisions, Cass. civ. 11 November 2009, n. 23906.

11 The leading case, followed by plenty of concurring decisions, was Cass. civ., united sections, 29 November 1990, n. 11490. See Patti, Carleo, Bellisario, *Italian Report*, answers 56 and 69.

similar rules in separation. But rather recent decisions of the Court of Cassation have expressly overruled this long-standing principle.[12]

Following these innovative judgements, the 'adequacy' can no longer be referred to the standard of living during marriage because, according to the Court, this line of reasoning would produce a kind of survival of the marriage beyond its very existence. Divorce on the contrary causes the final dissolution of such bond both for the personal status of the spouses – who must from then on be considered as 'single persons' – and for the their economic and patrimonial relations, especially with regard to their reciprocal duty of moral and material support (art. 191 Italian Civil Code). No reference to the marriage life style is therefore reasonable after the dissolution of marriage and the amount of maintenance must therefore be linked only to the ex-spouse's state of need.

The payment should however not only to support the weak ex-spouse in a disadvantaged state but also, and above all, perform the task of bridging the gap between the different amount of contributions given by the partners and to compensate the ex-spouse whose contribution has been more conspicuous. In this frame, a pre-eminent role is therefore attributed to the 'personal and economic contribution to the common life' of the family, that is what the spouse in fact did for the family.[13]

All the criteria listed in article 5, however, have been clarified and even reshaped by the courts in the last years. The meaning of 'the conditions of the spouses' must be identified in the whole of their conditions: reference is then to be made not only to the economic status, but also to the ex-spouses health, age, social position, capacity of work, qualification.[14] The 'reasons of the decision', which is also unclear, implies, according to the Court of Cassation[15] an investigation over the whole of the family life and not only over the decision to divorce. The 'contribution of both' the spouses to the family life must be evaluated taking into consideration the whole of their substances

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12 Cass. 10 May 2017, n. 11504 and Cass. 11 July 2018, n. 18287. More recently but in the same sense, Cass 17 December 2020, n. 28995. For a comment in English, see F. Giardini "The divorce allowance in Italian Law. The role of the jurisprudence in the formation of the legal rule in the family sphere", *The International Survey of Family Law*, 2019, 163 ff.; G. Terlizzi, "Ties that bind: maintenance orders after divorce in Italy", 4 ItaLJ No 2 (2018), 449 ff.

13 These judgements, being related to a divorce claim, do not affect the way of assessing the amount of maintenance after separation. As separated spouses are still married, although their bond is considerably weakened, a reference to the marriage standard of living is held still reasonable by the Court.

14 Cass. civ. 4 September 2004, n. 17901.

15 Cass. civ. 9 September 2002, n. 13060.

and not only their mere income.[16] Every kind of contribution must be weighed, even housework, care of children, elderly persons, and household maintenance.

The amount of maintenance as settled in the divorce decision is automatically revised year by year according to the official index of devaluation (art. 5 para. 7 Law on divorce), but it may be varied by the court when the economic conditions of one or both the ex-spouses have changed. According to article 9 para. 1 of the Law, in fact, the amount may be altered 'when justified reasons overcome after the decision'. The claim to change the allowance amount can be based both on the improvements as well as on the worsening in the partners' conditions, even when the latter is due to a choice of the obliged person who, for instance, has freely decided to dismiss his or her job for a less paid occupation.[17] Until recently this provision had to be coordinated with the criterion of the standard of life kept during the marriage[18] and to the need to keep a balance between the conditions of the spouses.[19] After the 2017 and 2018 decisions of the Court of Cassation (Cass. 10 May 2017, n. 11504 and 2018 Cass.11 July 2018, n. 18287). Both co, however, no petition for adjusting the sum can rest upon the yardstick of the standard of life enjoyed during marriage.

Re-marriage brings to the end of the right to maintenance. Until recently it was uncertain whether the same rule applied also to the beginning of a new cohabitation. Several concurring decisions[20] have now settled that when a new family is established, no matter whether de facto, it is the expression of a free and conscious choice to break any bond with the precedent relationship. Maintenance from the ex-spouse then has no reason to continue.

C. New Developments in the Field of Parental responsibilities (since December 2004)

Several crucial laws have been passed since 2004 concerning parental responsibility, custody after separation and divorce and other important aspects of the parent-child relation: the law 8 February 2006, n. 54 completely modified the rules on custody after separation and divorce; both the law 10 December of 2012, n. 219 and the D.lgs. 28 December 2013 introduced substantial measures to foster equality of children born within and outside marriage; and law 19 October 2015, n. 173 concerned the child's right to continue his/her affective relations.

16 For instance Cass. civ. 16 July 2004, n. 13169.
17 E.g. Cass. civ. 11 March 2006, n. 5378.
18 For instance see Cass. civ. 3 August 2007, n. 17041.
19 Cass. civ. 21 January 2008, n. 1761.
20 The leading case was Cass. 3 April 2015 n. 6855.

1. Custody and maintenance of the child

Parental responsibilities do not change when parents live apart, as separation or divorce do not impinge on the rights and duties encompassed in the parent-child relation. The 2006 law (8 February, n. 154) was passed to ensure this goal.

Up to that time the main rule was sole custody (*affido esclusivo*) to one parent.[21] The Law replaced the old discipline with shared or joint custody (*affido condiviso*) and, more widely, the law envisaged a thorough transformation of the topic of parental responsibility after the couple's dissolution.

Under shared custody, parents' responsibility toward the issue remains unaltered after the couple's breakdown and all decisions concerning the child must be taken by the parents together in light of the child's best interest. The child has the right to continue having an enduring, stable, meaningful and balanced relationship with both parents, no matter with whom the child will be physically placed.[22]

Each parent will bear the usual expenses of the child's maintenance at the times they spend together, although in some cases a contribution will be paid from one parent to the other to ensure the respect of the proportionality principle. Specific occasional expenses, such as for instance extra lessons or sport training, must be shared by both the parents. Agreements between the parents are therefore needed and frequent contact.[23]

The general criterion for the child's maintenance is that each parent will fulfil his/her duty in a *direct* way, paying the expenses when the child is with him or her. The exact amount will be proportioned to his/her income and patrimony, and should be adequate to the child's needs (art. 337 *ter* Italian Civil Code). In practice however, as children will live predominantly with one of the parents, it is common that the parent with whom the child spends less time will pay maintenance. Article 337 *ter* lists the criteria to calculate the amount: the actual needs of the children; the standard of life enjoyed when living with both the parents; the time periods spent with each parent; the economic resources of each parent; and the economic value of the tasks performed by each parent in taking care of the home where the child lived and of the child

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21 The features of the old discipline are described in Patti, Rossi Carleo, Bellisario, *Parental responsibility - Italy*, answer 16(c) and ff.

22 Among the huge literature in the topic see in English, V. Zambrano, "Allocating child shared custody to separating or divorcing couples: law 54/2006", *International Survey of Family Law*, 2008, 205 ff.

23 See in English F. Giardini, 'Joint custody of children on separation and divorce: The current law in Italy: An overview and how it is applied', *International Survey of Family Law*, 2014, 227 ff.

him/herself. The sum is automatically raised or lowered every year according to the variations of the official cost of life.

The child will have residence with one parent according to the specific agreement between the parents themselves, in most cases with the parent he/she spends the greater part of the time.

Exclusive or sole custody (*affido esclusivo*) is established only when shared custody would be, in the judge's opinion, against the child's interest, for instance because of specific failings of the parent or because of a refusal of the child toward that parent. These reasons must be specifically weighed and motivated by the judge. In practice, heavy conflicts between the parents are not considered sufficient reasons to deny joint custody, and thus exclusive custody is applied only in extraordinary cases. In these cases, however, article 337 *quater* Italian Civil Code lays down that 'the decisions of greater interest to the children are taken by both parents. The parent who does not have the custody of the children has the right and the duty to supervise their education and upbringing'.

Italian law recognizes the right of the child to keep meaningful, frequent relations with both parents, even in the case of exclusive custody. To this end the parents themselves are invited to reach an agreement when they separate or divorce. A difference still exists depending on whether parents are married or not. If they are married and the agreement is reached within a separation or divorce taking place in court, the judge will scrutinize the proposed agreement and if necessary will make any change it considers fit in the child's interest. The court will impose a decision when parents are wholly unable to reach an agreement whatsoever. Similar guarantees for the children are set forth by the law in the non-judicial divorce proceedings.

On the contrary, when unmarried parents separate their eventual agreement and its terms will generally not be checked by anyone beyond the couple themselves. Only if they disagree on some points or cannot find an agreement at all, will the court scrutinize the settlement and give instructions on custody.

In Italy, as in many other countries, an especially critical issue is related to highly conflicting couples after their separation or divorce. In these cases it is frequent that the clash between parents results into in a failure to fulfil obligations towards children, sometimes with a retaliatory purpose. To overcome at least in part the inadequacy of the rules in force at the time, and to respond to the pressing demands of legal professionals, the law 54/2006 inserted the new article 709 *ter* into the Italian Code of Civil Procedure. According to this article the judge, in a situation of serious non-

fulfilment of obligations or acts of any kind causing harm to the minor in connection with custody, can apply various sanctions of increasing consequence against the defaulting parent: a warning, compensation for damage against the child, compensation for damage to the other parent, or payment of a variable penalty ranging from 75 to 5,000 euros. To apply any of these sanctions it is not required that there has been an actual prejudice to the minor, but it is sufficient that the parent did not fulfil his/her obligations. The rule has, as the Court of Cassation recently stated, both a deterrent and sanctioning nature.[24]

2. Children born within and outside marriage

Nowadays all parent-child relations are regulated in the same way, without any difference based on the kind of bond – if there is any – that links the parents to each other. Since the Law 10 December of 2012, n. 219 and the D.lgs. 28 December 2013, the use of the words 'legitimate children' and 'natural children' to indicate the birth in wedlock or out of wedlock, were replaced by the neutral word 'children'. As the current text of article 315 Italian Civil Code states: 'All children have the same legal status'.

The rights and duties of children are considered in the new text of article 315 *bis* Italian Civil Code : 'I. [t]he child has the right to be maintained, educated and instructed, and morally assisted by his parents, respecting his abilities, natural inclinations and aspirations. II. The child has a right to live in his own family and to maintain meaningful relations with his relatives. III. The minor child who is more than twelve years old, or even less if able to understand, has a right to be heard in all matters and procedure which involve him. IV. The child must respect his parents and must contribute, in relation to his abilities, his assets and his income, to the maintenance of the family as long as he lives with it.' Controversies about custody and maintenance are, since the reform, decided by the ordinary court (*tribunale ordinario*) irrespective of the bond between the parents, while in the past[25] disputes among unmarried parents were adjudicated by the Tribunal for Minors (*tribunale dei minori*) and controversies among spouses were decided by the ordinary court.

The reform is an important step toward parity of children, although a few differences still remain in the Italian legal system. One of them is that children born outside the wedlock must be recognized by each parent at the time of the birth, or later on. This requires a specific declaration made to the Civil registry officer that the child is one's own offspring. Recognition is not necessary when parents are married to each other.

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24 According to the Court of Cassation 27 June 2018, No. 16980.

25 See Patti, Rossi Carleo, Bellisario, *Parental responsibility-Italy*, answer 25 and 55.

Another difference is that legal actions about maintenance and custody of children follow different procedures in court depending of the existence of a formalized bond between parents. If parents were married the usual procedure applies, if they are not, a chamber procedure applies, where the guarantees to be heard and participate are not realized in the same full way.

Parents must comply with their duty of maintenance according to the specific parameters set forth by article 316 *bis* Italian Civil Code: they are obliged proportionately to their properties, their income and to their capacity to work at home and in a job outside it. The duty may be fulfilled also by transferring a specific asset to the child.[26]

The law does not establish a definite deadline for the duty of maintaining one's own children and in the last years several decisions have tackled this topic.[27] The duty expires, according to consistent case law, once sons or daughters are able to maintain themselves autonomously,[28] a condition that may require rather long period of time.[29] Courts hold that the duty of maintenance comes to an end when children have incurred in lazy or negligent behaviours; that regard must be had to the personal path the young ones have chosen (e.g. universities studies or professional work); and to the social and economic conditions of the family. Other factors to be taken into consideration are whether the child has involved their parents in the decision process, which implies that parents cannot later on withdraw their support after having initially agreed to the child's choices; and whether the offspring's determinations are more or less similar to those made by the parents at a similar age.

3. The child's affective and personal relationships

At present every child holds an explicit right to maintain 'meaningful relationships' with the relatives of both branches of the family (art. 337 *ter* Italian Civil Code) .

The Italian legal system has long ignored the relationsbetween the child on the one side, and relatives and grandparents on the other,[30] even though courts in the past did urge the Parliament to legislate to protect this tie especially when the child's parents separated. The decree 28 December 2013 n. 154 inserted into the Italian Civil Code the new article 317 *bis*, according to which: 'The ascendants have the right to maintain significant relationships with their minor grandchildren. The ascendant who is

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26 Court of Cassation 23 September 2013, n. 21736.

27 See Patti, Rossi Carleo, Bellisario, *Parental responsibility-Italy*, answer 3.

28 Rule reaffirmed by the Court of Cassation in the decision 9 May 2013, n. 7970.

29 See e.g. Court of Cassation 21 February 2007, n. 4102.

30 The older discipline is described in Patti, Rossi Carleo, Bellisario, *Parental responsibility-Italy*, answer 44 (c) ff.

prevented from exercising this right can appeal to the judge of the child's place of habitual residence so that the most suitable measures are taken in the exclusive interest of the minor'.

Article 317 *bis* resonates with article *ter* Italian Civil Code, which states that a minor 'has a right to maintain meaningful relationships with the ascendants and relatives of each parental branch'.

The Court of Cassation conveniently clarified the actual extension of the rights of grandparents in comparison with the child's rights and interests, affirming that the right of the ascendants to a relationship is a full right that everyone, including the child's parents, must respect.[31] However a grandchild's interests prevail. It is the judge's task to control if the meetings with the grandparents are useful to the child's serene and balanced growth. If not, the grandparent's right must surrender.

The Court of Cassation underlined that the relationship with the grandparents must correspond to the real interest of the minor, so much so that in the presence of the child's precise and explicit desire not to meet them frequently or at all, meetings should not be allowed by the court. The right of ascendants therefore is not unconditional, but it is in any case subject to the judges' assessment of the real and exclusive interest of the minor. To this aim, the court is bound to hear the child (art. 336 *bis* Italian Civil Code) as expressly required by article 317 *bis*.

Parental responsibilities can be transferred to persons other than the child's parents only upon the occurrence of a limited well-defined situations resulting in adoption or the placement of the child in foster care.[32] Italian law has always considered adoption and foster care two parallel legal institutions, unconnected to each other both from a theoretical-reconstructive point of view and as a consequence of the substantive and procedural rules applied to them. Until the passing of law 19 October 2015, n. 173, a child could never be adopted by the foster carers who were in charge of him or her at the time the 'state of abandonment' was declared. This very strict rule had its *raison d'être* in the diversity of the requirements for foster care and for adoption, and was intended to protect the minor. The result was however that in some cases children were forced to leave their foster carer with whom they had a good relationship, to join their almost unknown adoptive parents.

Since the law 173/2015, titled 'Right to affective continuity', the child has a full right to continue his/her affective relationships and the judge deciding about the adoption

31 Ordinance 12 June 2018, n. 15238 and decision 25 July 2018, n. 19779.

32 Compare Patti, Rossi Carleo, Bellisario, *Parental responsibility-Italy*, answers 49 ff.

must take into account 'the significant emotional ties and the stable and lasting relationship established between the minor and the foster family'.[33] Therefore, if the foster parents request the adoption of the child and they meet the conditions needed for adoption, they must be preferred to other possible adopters. In addition, when the foster care period expires and the minor returns to his/her biological family, or when the child is placed in the foster care of another family, the judge can provide for regular meetings with the former foster parents, provided that this is compliant with the child's interests.[34]

D. New Developments in the field of Property relations between spouses (since August 2008)

There have been no important developments in Italy in this field.

E. New Developments Regarding de Facto Partnerships (since February 2015)

At the time the Report was written, Italy recognized only one kind of formalized relation: the marriage between a man and a woman. This completely changed by the law passed on May 20, 2016 with no. 76, the law that also introduced Civil Unions (*unioni civili*) for same-sex couples. The law adopted rules on de facto cohabitations (*convivenze di fatto*) both for heterosexual and same sex couples.[35]

Notwithstanding its very comprehensive title (*Disciplina delle convivenze*, discipline of cohabitations), the Law does not apply to all couples living together, but only to cohabiting adult partners who are 'stably' bound by a lasting affective tie, live together and are not bound by a relation of kinship, affinity or adoption or by a marriage or a civil union with anyone else (art. 1, n. 36). Therefore, many couples fall outside the scope of the law, such as those where one or both partners are underage, or still married or separated but not yet divorced, or civilly united. Also outside the application of the law are cohabitants bound together by affinity or kinship, for instance a brother and a sister, or two friends. In all these cases the relationship will be under the rules on informal cohabitations that were described in the Report.

In order to fall under the scope of the law 76/2016, cohabitants must live together 'stably', although it not explicated what this requirement means nor how long the tie should last to fall under the qualification. It is also required that de facto partners are

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33 Art. 1 of the law, which modifies the law on adoption 4 May 1983, n. 184.

34 The law conforms to the judgment of the ECHR in the case *Moretti e Benedetti c. Italia*, 27 April 2010 (16318/07).

35 In English on this topic, see among others, I. Ferrari, "Family relationships in Italy after the 2016 reform: the new provisions on civil unions and cohabitation, International Survey of Family Law, 2017, p. 169 ff.

registered as having a common residency and included in the same family status certificate ('*stato di famiglia*', art. 1 para. 37) according to the administrative rules on civil status. It is not yet clear, however, if such registration, which must be expressly requested, is merely a proof of the cohabitation or a condition for the application of the law, and whether registration is the only way to prove the stability of the partnership.

To the couples who fall under the scope of the law 76/2016, a few non-patrimonial and patrimonial effects apply, which are the same ones already recognized by case law and described in the Report.[36] The Law has simply listed them. Only one effect is new, and this is a right to alimony (art. 1 para. 65 of the Law) after dissolution of the partnership, when a partner is in need and is not able to provide for his/her own maintenance. The right to alimony is proportional to the duration of the cohabitation.

The duty to supply alimony follows a precise hierarchy of obliged persons (art. 438 Italian Civil Code), which is: son and daughters, even if adopted, or their descendants; parents and their ascendants, even if adoptive; sons and daughters in law; mother and father in law; and then the ex-cohabitants. As the list is rather long, the cohabitant's possibility to be addressed does not appear very significant.

Apart from this provision, however, the law does not settle any specific discipline for the patrimonial regime of the couple and does not provide any succession right to the surviving partner. It has no effect on the relationship the partners may have with their children.

The de facto cohabitation may dissolve through the death of a partner or by decision of one or both of the cohabitants. As far as the important topic of the family home is concerned, the consequence of such dissolution is different if the couple lives in a rented home or in a home whose owner is one of the partners.

If the home is *rented* and the contract is in the name of the deceased partner only, upon his/her death the other cohabitant is entitled to succeed in the contract for the time remaining. The same rule applies when the cohabitant who is the only subscriber of the contract withdraws unilaterally by his/her own decision (art. 1, para. 44 law 76/2016).[37]

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[36] M.D. Panforti, *Informal relationship: Italy*, answer to question 2.

[37] Compare M.D. Panforti, *Informal relationship: Italy*, answer to question 9 and 22.

If the home is the *exclusive ownership* of only one of the cohabitants and this person dies,[38] the surviving partner is awarded by the Law 76/2016 a right to continue to live in the home for two years, or for a period equal to the cohabitation if it had lasted for more than two years. In no case can this period last longer than five years. Where the surviving cohabitant lives with minor or disabled children, he/she has the right to continue to live in the house of common residence for a period of no less than three years (art. 1, para. 42). The right to live in the family home expires if the surviving cohabitant ceases to live permanently in the home or remarries, starts a civil union or a new cohabitation (art. 1, para. 43).

Partners may sign an agreement (*contratto di convivenza*, art. 1, para. 50 ff.) to regulate the reciprocal committent, for instance how each of them will contribute to the family life or what the consequences will be if they breakup. In theory, partners might even opt for a regime of community property (art. 1, para. 53), although it is unlikely that cohabitants would avoid marriage to obtain the same effects through a cohabitation agreement. The contract must be written and registered in the Civil status registers, and may be consensually changed any time.

The detailed rules of these contracts contained in the law, however, does not add much to the pre-existing possibility of cohabitants,[39] who, like any other contracting party, can contract to regulate the patrimonial aspects of a relationship.

[38] Compare M.D. Panforti, *Informal relationship: Italy*, answer to question 49.
[39] Compare M.D. Panforti, *Informal relationship: Italy*, answer to question 57 ff.