



Family Law in Italy

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ITALIAN CONSTITUTION - 1948

The family law system in Italy is founded in the **Italian Constitution** of 1948.

Art. 29

The Republic recognizes the rights of the family as a natural union founded on marriage. Marriage is based on the moral and legal equality of the spouses within the limits of the law to guarantee the unity of the family.

Art. 30

It is the duty and right of parents to raise and educate their children, even if born out of wedlock. In the case of incapacity of the parents, the law provides for the fulfillment of their duties. The law ensures the same legal and social protection to any children born out of wedlock as that ensured to members of the legitimate family. The law establishes the rules and constraints for determining paternity.

Art. 31

The Republic assists the formation of the family and fulfillment of its duties, with particular consideration for large families, through economic measures and other benefits. The Republic protects mothers, children and infants by adopting necessary provisions.



CIVIL AND RELIGIOUS MARRIAGE

A Civil Marriage was not recognized by the Catholic Church, and vice versa, from 1865 to 1929, the year the Agreement (the "*Concordato*") was signed between Mussolini and the Vatican State.

The trouble with this was that the vast majority of marriages were religious at that time, so that a huge number of families were not recognized by the Italian State.

In the year 1929 the *Concordato* settled this situation.

Even today, a Catholic Marriage is not recognized by the State, and vice versa, but two celebrations are no longer required.

On request from the spouses, the State Registrar may register a Catholic marriage. In such a case, the Priest will celebrate the marriage as if he were a State Officer. As part of the ceremony, the Celebrant will read aloud the Articles of the Civil Code, stating the rights and duties of the spouses, to the partners and official witnesses.

The most frequent form of marriage in Italy is by far the *Matrimonio Concordatario*.



CIVIL MARRIAGE: FINANCIAL ASPECTS

Until **1975** the rights of ownership as between married couples was a separation of assets of the spouses.

From the Family Law Reformation Act (1975) onward, the **accepted financial system became joint-ownership**; therefore, as a matter of law, the nuptial agreement that takes place before a State Officer results in joint ownership, unless otherwise agreed to by the spouses.



SEPARATION AND DIVORCE: CONTRACTS AND ORDERS

Until April 2015 **Divorce was the outcome of a mandatory three-year separation** period.

Now it's one year from a judicial marriage or 6 months from a consensual partnership.

The Law provides for certain specific grounds for divorce, such as incest, total incapacity, change of sex, and in a few other circumstances, such as serving a life sentence, etc., but these are not frequent.

A dissolution of marriage comes about as a result of **two different lawsuits** taking place, one after the other, the second (the actual divorce) seeming like a repeat of the first (the previously required 3-year separation).

Contrary to what occurs in other countries, a married couple needs to seek Authorization from the President (a judge) of the local Court (*Tribunale*) to live in a state of separation, regardless of:

- the number of children;
- any joint ownerships;
- how long the marriage has lasted.

SEPARATION AND DIVORCE: HOW IT'S DONE

Application for the "Consent separation" (or "Consent divorce") agreement can be filed with the Court of Jurisdiction without stating a reason.

Approval typically follows within a few months.

The 'permit' to live apart is always granted by the Court, when the children's best interests are guaranteed by the separation agreement.

The Agreement contained in a Joint Application, when set forth in a Consent Order of the Court, cannot be challenged.

Approval by the Separation Judge - Family Law Court leaves no room for reconsideration of the terms of the agreement (provided that the agreement respects the minimum standards for the minors).

In other words, consent by the spouses, regarding the financial aspects of separation and divorce, is to be considered *'non-retractable'*.

The Judge can overrule a Consent Order based on the Separation agreement only when it is contrary to the interests of the children.

In all other cases, the Court will grant the Order, and the parties must accept the consequences of what they have freely and knowingly agreed to.

If the spouses cannot agree, the judge will make the decision, which is as binding as the Separation Agreement. Further, this process is longer and more expensive, and generally more difficult for the parties.



ORDERS AND AGREEMENTS ABOUT HOUSING

Children must be supported until they become financially independent.

The house goes with the children, normally, until they become independent.

This means that the custodial partner will hold the family house until the 22nd or 26th birthday of the youngest child, which varies depending on the income.



ORDERS AND AGREEMENTS ABOUT ALIMONY, PENSION PLANS, TERMINATION BONUS

Finally, "fault-based" divorce still has some importance in Italian Law. The partner who is not to blame for the family breakdown is entitled to personal "maintenance".

This means not merely alimony, but a higher monthly amount for her/his support.

The goal is to maintain the same standard of living.

This ancillary relief can be paid for in a lump sum (Alimony in Gross) in the event of separation or divorce.

When Alimony in Gross is paid, no further financial redress can be awarded by the Court for any reason.

When a monthly payment is ongoing (typically in ancillary relief) at the time the divorced partner retires, the not-at-fault partner may take advantage of the other partner's pension plan and also benefit from a share of his/her Termination Bonus.



DE FACTO FAMILIES, COHABITATION AND CIVIL PARTNERSHIPS

"De facto" couples receive no protection under the Law, with few exceptions.

On several occasions, the Constitutional Court has stated that a landlord-tenant relationship will continue, even if the tenant – the unmarried partner – died or simply walked away.

Also, the regulation examined above (regarding the family house remaining with the children's guardian) has applied to cohabitants since 2006.

Few other regulations, mainly local administrative regulations, grant basic aid to unmarried couples.

In general, mothers with natural children can take advantage of special provisions (schooling, health services, etc.), but unmarried couples can not.

Of course, this kind of relationship may be regulated by contract, which is only valid to a certain extent, however. In fact, so-called *"agreements of future inheritance"* are void, if not stated in a valid will.

Additionally, a written agreement providing for a sum to be paid in case of an ongoing non-marital relationship or, on the contrary, in case of dissolution of the unmarried couple, is likely to be annulled by the Court as an "immoral contract".

In two words: PACS, Cohabitation Agreements, Civil Partnerships are **not allowed**.

Contrary to what occurs with a spouse, a *"de facto"* partner will never acquire rights to the partner's properties, pension plan, termination bonus, life insurance, etc.