

Parte I

Dottrina

SALVATORE PATTI, <i>The privatization of the divorce in Italy</i>	p. 155
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Abstract. In Italy, the Christian idea of the marriage being indissoluble, came to an end in 1970, when the law no. 898 was enacted, finally introducing the divorce in Italy; this law has been profoundly modified first in 1987, introducing a combined application of the spouses to obtain the divorce. The idea still was that the dissolution of the marriage was outside the scope of negotiating autonomy and, thus, only a judicial intervention could dissolve the marriage. In 2014, this scenario has been profoundly modified in following an intervention of the legislator, who – in the context of a “simplification” of the civil justice system – has introduced two proceedings that in some ways are alternatives that overlook from a judicial sentence.

EMANUELA ANDREOLA, <i>Revocabilità e simulazione degli atti di disposizione in sede di separazione</i>»	161
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Abstract. The privatization of the matrimonial crisis and the gradual recognition to the spouses of wider private autonomy during the separation and the divorce raise the problem of the patrimonial effects of these acts towards third parties. In particular, it is worth clarifying under which conditions and through what judicial remedies the creditors can render those acts that are detrimental to their rights, ineffective. The complexity of the topic derives, on one hand, from the nature of the agreements of separation and divorce, made effective through a judicial measure and, on the other hand, from the circumstance that the rights of weak subjects – being primarily protected by the legal system – are involved in the financial regulation of the crisis.

MARIA VIRGINIA MACCARI, <i>Il patto di famiglia a dieci anni dall'entrata in vigore</i>»	187
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Abstract. After ten years from the entry into force of law 55/2006 (entitled “Amendments to the Civil Code dealing with ‘Patto di Famiglia’”), the paper analyses the use of the legal institute of “patto di famiglia”. Many interpretative problems arise from the unclear phrasing of the new regulation and other new questions are posed by subsequent legislation. Until today, none of the legislative attempts made to amend the Italian “patto di famiglia” has completed its parliamentary procedures, and practices had to make up for this deficiency, by adapting the institute to the needs arising in practice.

MARCO LUCHESCHI e DAVIDE MARCHESINI MASCHERONI, <i>Successioni italo-svizzere: alcune problematiche alla luce del Reg. UE 650/2012</i>	209
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Abstract. Italian-swiss successions are governed by the Consular Treaty of 1868, whose art. 17 is subject to different interpretations by the legal literature as for the applicable law. Since the EU Regulation no. 650/2012 entered into force, the new EU-wide rules have caused considerable changes in any succession opened after August 17th 2015, with particular regard to the succession of an Italian citizen who was usually living in Switzerland. In this respect, some uncertainties about the law applicable to the succession still exist. This article examines the changed regulatory framework and investigates the most critical aspects which come to evidence when the European legislation is read in combination with the Consular Treaty. In this way, we aim to deliver some new arguments in order to address the still unsolved issues.

Parte II

Giurisprudenza

CEDU, Grande Camera, 24 gennaio 2017, Paradiso e Campanelli c. Italia, ric. n. 25358, con nota di ALESSANDRA GATTO, <i>Maternità surrogata e distinzione tra vita privata e familiare nella decisione della Corte di Strasburgo. Interesse del minore e tutela della legalità</i>	221
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Abstract. The European Court of Human Rights has recently been facing a case of surrogacy characterized by the absence of a biological relationship between the intended parents and a child born after the practice of

surrogacy. According to the Author, it is important to respect the right of the child to preserve his or her personal identity not only in relation to the biological relationship, but also to the right to maintain stable and lasting relationships with the people the child himself identifies as parental figures. The child's assessment of the quality of his/her relationships with his/her biological parents is arguably as important as the existence of an emotional relationship with the family he/she has lived with since birth; the control of the Court concerning the suitability of the family remains in any case a fundamental step both in the case of a genetic relationship between the child and the intended parents and in the case such a bond is missing.

Trib. Min. Milano, 20 ottobre 2016, n. 268, con nota di GIAMPAOLO MIOTTO, *Adozione del convivente e diritto positivo: un matrimonio impossibile*» 245

Abstract. This sentence (Juvenile Court of Milan, n. 268/2016) challenges the interpretation of article 44, letter d), law n. 184/1983, given by the Civil Supreme Court of Cassation (sentence n. 12962/2016), according to which the adoption in "special cases" concerns also those underage people who cannot be placed in foster care before the adoption. The Court of Milan does not agree with the Supreme Court about this broad critical interpretation of the legislative rule: according to the territorial judge, indeed, this regulation should be applied just in cases where the adoption has not been possible, in spite of the suitability of the underage person. This opinion can be shared because of both the logical interpretation of the rules set by article 44, considered as a whole, and their literally and systematic interpretation. Moreover, the juridical notion of "impossibility provided for by law", used by Supreme Court in order to argue the aforementioned decision, seems to be intimately irrational and may also produce some paradoxes.

Parte III Recensioni

La recensione di SALVATORE PATTI a JENS M. SCHERPE, *The Legal Status of Transsexual and Transgender Persons*.....» 269

Parte IV Opinioni

L'opinione di LUCILLA GATT, *Il problema dei minori senza identità genetica nei (vecchi e) nuovi modelli di famiglia: il conflitto tra ordine pubblico interno e c.d. ordine pubblico internazionale....»* 271