Dottrina

Abstract. *Over the past fifty years, a number of significant changes have occurred in Italian family law. Despite the legal limits still imposed on private autonomy, there has been a certain movement toward privatization of family relations in Italy, as confirmed by recent developments. This contribution aims to highlight the principal steps in the complex itinerary towards "privatization" – in a loose sense of the term – of Italian family law.*

Abstract. *The Italian Corte di Cassazione has always stated that the agreements in contemplation of a future divorce are null and void. Nevertheless there is a significant evolution in Italian family law: values of self-determination and negotiability are emerging notwithstanding the general rule mentioned in art. 160 cod. civ. Two decisions from the Corte di Cassazione in 2012 and 2014 confirm that the times are perhaps ready for a change in the traditional approach even if the way towards a solution to the problem of the validity of the prenups in Italy is still long and winding. We try to follow a rational approach to the issue, by making a proposal for a solution within the Italian law.*

Abstract. *Nowadays the privatization of Family Law in Spain has more numerous and deeper manifestations. Its beginning would be pointed out in the Spanish Constitution of 1978. Several features show this. First, divorce was introduced in 1981: as casual divorce in the beginning, later on it is admitted divorce like unilateral desisting in 2005. Other change has been made in order to remove some decision making in the areas of separation and divorce from the hands of judges and transfer them to notaries. Referring to the cohabitation, marriage is became merely a formality, except in the case of so-called marriage of convenience, in which, although two people marry, their intention is not to become husband and wife, but rather to avail themselves of ius matrimonii nationality laws.*

Abstract. *This article addresses a reality that, in some way, is emerging, and whose existence can hardly be perceived in legal texts, but which has gained importance in the case law. Relying on certain legal precedents, especially in the Spanish Assisted Reproduction Techniques Act, which attribute double motherhood without biological filiation, two decisions of the Spanish Supreme Court have understood that possession of status may be sufficient to attribute motherhood to the person acting as such. If we add other judgments of the Supreme Court, we find that in Spanish law is arising a third type of filiation besides the biological and the adoptive one.*

Abstract. *The advanced stage of development of Family Law in Spain, which reflects in the fast-changing content of the corresponding legislation, has led to a strong privatization of the matrimonial crisis regulation. In the context of an evident emptying of the institutional character of marriage, in favour of the principle of autonomy and free development of the spouses' personalities -considered as individuals and not as a social community of affection and interests-, private autonomy has become a privileged element within the marriage. Following said premise, the present article aims to analyze the 'embryo' of the various privatization patterns that have recently arisen, specifically in the field of matrimonial crisis regulation. This manuscript focuses on the new regulation of separation and divorce under Spanish law from a comparative perspective to current Italian regulation.*

Abstract. *The report is related to the German legal situation concerning "private autonomy" and "privatization" in family law. German family law was starting on a base of "strict law" with only some elements of "private autonomy". In the course of the modernisation and differentiation of the regulations since 1950 elements of private autonomous design have gained greater importance. This applies to substantive family law and international family law.*

Abstract. *This short essay tries to retrace the long itinerary of the thought of Francesco Busnelli, one of the most important Italian legal scholars, about Italian and European family law during the last forty years. On the background of the friction between contractual and institutional conception of the family, Busnelli's reflection – now collected in the volume "Persona e famiglia" (2017) – aims to develop the idea of family as a community built on the ground of solidarity. From this perspective, a special attention is paid to the duty of fidelity among spouses and to the difference between marriage, non-marital couples and same-sex relationships.*

Giurisprudenza

Abstract. *With reference to the judges' possibility to raise the invalidity of the testament on its own motion, the Italian Supreme court, based on the decisions no.26242 and 26243 of 2014 of its United sections, extends the rules concerning the invalidity of the contract to wills. In the absence of a rule that foresees intervention on its own motion in cases of invalidity of testaments, the Supreme court judges justify their decision in the light of the testament's nature («negozio giuridico»). The decision is in line with the opinion of the majority of the authors, whereas a minor opinion, based on some differences between the rules concerning contracts and the ones concerning testaments, states that the judge cannot raise the invalidity of the will on its own motion.*

Opinioni

Abstract. *L'art. 1, comma 51, della legge 20 maggio 2016, n. 76 indica quale requisito formale ad substantiam del contratto di convivenza l'atto pubblico o la scrittura privata autenticata da notaio o avvocato. La norma, pur nella sua apparente semplicità e chiarezza, offre all'interprete numerosi spunti di riflessione. In particolare, è lecito chiedersi: le forme previste dalla legge per il contratto di convivenza sono fra loro alternative e del tutto equivalenti? Ancora, che significato bisogna riconoscere alla "attestazione di conformità alle norme imperative e all'ordine pubblico"? Infine, le coppie la cui convivenza non è iscritta all'anagrafe possono stipulare (ed in che forma) un contratto di convivenza?*