

Parte I**Dottrina**

CLAUDIA IRTI, Assegnazione della casa familiare e interesse dei figli al mantenimento del pregresso
habitat domestico: una rilettura critica» 573

This article critically examines the allocation of the family home following parental separation in Italian law, focusing on the tension between children's interest in maintaining their domestic habitat and other competing interests. While Article 337-sexies c.c. mandates that courts give "priority" consideration to children's interests, jurisprudence has often interpreted this as an absolute criterion, creating an interpretive automatism that neglects case-by-case evaluation. The author argues for a more nuanced approach that recognizes children's wellbeing as situational and relational, dependent on the wellbeing of caregiving adults and the quality of family relationships. Special attention is devoted to vulnerable situations involving disabled parents or children, and to the legal gap affecting "social children" in reconstituted families and same-sex couples, where allocation rules tied to formal parent-child status may fail to protect meaningful relationships. The analysis advocates for flexible, context-sensitive decisions that balance multiple family interests while genuinely prioritizing—rather than rigidly prescribing—children's needs

LAURA MASINI, Assegno divorzile e autoresponsabilità» 587

The jurisprudential evolution of the divorce allowance has progressed hand in hand with the emergence and growing recognition of the principle of self-responsibility of the economically weaker spouse. This paper, through the analysis of the main rulings of the Italian Supreme Court of Cassation – from the 1987 reform to the 2017 turning point, and the 2018 decision of the Joint Sections – highlights the transition from a purely welfare-oriented conception of the allowance to a balanced view between post-marital solidarity and individual self-determination. In particular, the principle of self-responsibility finds concrete application in lump-sum payments or time-limited allowances, aimed at encouraging the economic reactivation of the weaker spouse and promoting a negotiated resolution of the marital crisis. The analysis thus shows how the spouses' contractual autonomy and the enhancement of individual responsibility now represent the cornerstones of the current legal framework governing the divorce allowance.

ROBERTO GALASSO, Il problema della riducibilità della penale testamentaria» 603

Penalty clause reduction power constitutes an exception to negotiating autonomy principle, just aimed to guarantee judge control on economic imbalances generated by contractors asymmetry at the time of agreement conclusion. Therefore it cannot be exerted in presence of an excessive testamentary penalty clause (i.e. *legato poenae nomine*) whose effects arise just when beneficiary fails to comply with obligations established by *de cuius* for the benefit: between *de cuius* and penalty clause recipient, there is no contact at the provision and clause stipulation.

CAROLINA RENDINA, Composizione della crisi coniugale e accordi traslativi» 633

Starting from the increasing role of private autonomy in family law, this paper examines how spouses use contractual arrangements to manage the consequences of marital crises, including financial settlements and child-related matters such as maintenance and custody. Particular attention is given to the legal classification and causal foundation of such agreements—whether based on donation,

transaction, or a specific “familial cause”. The study also addresses the form and enforceability of these contracts, highlighting their growing recognition as tools for personalized and consensual management of family crises.

GIOVANNI BATTISTA FERRI *jr.*, Autonomia coniugale e patti in vista della crisi.....» 665

This analysis examines the reasons that led Italian case law to consider invalid any agreement between spouses that had as its object the consequences of the end of the marital bond. After explaining the rationale for this severe approach, the paper demonstrates that the basis of the various reconstructions is consistently the opposition to public order. From this consideration, it seeks to identify a viable approach to admitting such agreements within the Italian legal system.

Parte II

Giurisprudenza

FRANCESCO LINARDI, La Cassazione torna sul tema degli accordi in vista della crisi di coppia, tra vecchie aperture e perduranti divieti (nota a Cass. civ, sez. I, ord. 21 luglio 2025, n. 20415).....» 683

The contribution analyzes Ordinance No. 20415/2025, in which the Supreme Court considers valid and binding an agreement between spouses that is suspensively conditioned on the occurrence of a marital crisis. The ruling aligns with previous case law, which tends to distinguish between a condition and the cause of the contract in order to assess the validity of the agreement. The contribution aims to highlight how the judicial approach (which remains current) reflects an underlying intent to preserve the judge's authority in managing the financial consequences of a marital breakdown. Therefore, a shift in perspective is proposed, one that, while adopting appropriate safeguards, seeks to recognize broader autonomy for spouses in handling the (potential and future) dissolution of their marriage.