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COHABITATION OUTSIDE MARRIAGE AND COHABITATION CONTRACTS IN ITALY

In 2016 the Italian Parliament approved the first comprehensive law in its history recognizing and regulating legal rights of cohabiting couples, with no discrimination between heterosexual or homosexual partners. This law reform, championed by Senator Cirinnà (hence the title “*Riforma Cirinnà*”), whilst by no means perfect, is a step in the right direction in eliminating prejudice and discrimination, and towards reaching equality, for all families in Italy.

Actually a number of issues which have been dealt with for centuries by case law and legal doctrine have not been taken into account by the 2016 act. We could mention here, among other things, the questions referring to natural obligations, or to unjust enrichment between cohabiting partners, as well as to payments done for purchases done by the other member of the couple. All such issues will surely continue to be dealt with by judges according to the previous case law.

Subsection 36 of the 2016 law regulates “de facto” cohabitations, whereby the “de facto cohabitees” are two (either heterosexual or homosexual) persons of full age, united by a stable affective relationship and by mutual and material assistance, not bound by blood, affinity or adoption ties, by marriage or by other legal partnerships. Their co-habitation can be ascertained via a declaration that has been presented to the civil registry office of the town in which they live, which confirms them as a family unit, but it is not a compulsory requisite for the couple enjoying of the benefits of the law. They will enjoy some, but very few, of the same rights of a married couple; for example, rights of visitation in the event of incarceration, or in case of illness or hospital treatment, as well as assistance rights and access to personal information; also family reunification if one of the two is a foreigner, marriage leave, family allowances, and insurance premiums, are hereby extended.

Persons stipulating a pact of cohabitation can designate the other partner to act on his/her behalf to take decisions in the event of illness or in case of death. Upon the ending of cohabitation, if certain aspects are met, it is possible for the financially “weaker” party to ask, and be provided with, maintenance payments from the financially “stronger” ex-cohabitee, for a period of time as determined by the Judge; any payments will be calculated proportionately to the period of cohabitation. In the event of death of the owner of the property that both live in, the surviving cohabitee will have the right to reside in this property for a certain period of time, depending on the duration of the cohabitation and whether there are any children living in the property.

The cohabiting couple can sign a “Cohabitation Agreement” to regulate financial and any other patrimonial aspects between them.

As far as I am concerned, having been the first Italian scholar to provide a comprehensive study on this subject, I do salute the new legislation, whilst regretting that a number of legal problems have not been tackled by the legislator with the due attention. In the agreement, parties to a “de facto” couple may provide for their financial contributions to their cohabitation, agree on common or separate properties and (at least according to the views of the author) set provisions in case they split up. The document must be drawn up and officially registered by either a lawyer or a Notary. This agreement can be rescinded by a further agreement between the parties to this effect, a unilateral rescission, marriage or civil union of one cohabitee (with a third party or with each other), or due to the death of one of the cohabitees.

As far as homosexual couples are concerned, the first part of the 2016 law allows civil unions, or civil partnerships, between individuals of the same sex, by way of a declaration before a Civil Status Officer and two witnesses. A civil union will provide a couple with some, but not all, of the rights enjoyed by heterosexual married couples (for example, the right to receive the other’s pension, to inherit each other’s assets, and to take each other’s surnames). Whereas this first part of the law only addresses the issues of homosexual couples, who desire a legal treatment equal to that

of heterosexual married couples, the second part of the act refers in the same way to “de facto” heterosexual and homosexual couples.