International Studies Journal (ISJ)
Vol. 17, No. 1 (65), Summer 2020
Received Date: 29 January 2020
Accept Date: 27 March 2020
PP: 49-73

# The Civil Union in The Italian Legal System

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**Abstract**

The civil union represents a new family model in the Italian legal system, which must be analyzed from the point of view of the legal nature, of the definition and of the ratio legis - as an act - with specific reference to the assumptions, the methods of constitution, the preventive causes, to the causes of invalidity of the bond, to the causes and methods of dissolution - as a relationship - with the examination of the rights and duties deriving from the law for both parties. This analysis allows us to understand, through a constant comparison between the legal regime of the civil union and that of marriage, the common features of the two legal institutions and their differences.

**Keywords**

Civil union, legal nature, act, relationship, human rights, protection.

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## 1. Introduction.

Four years have passed since the entry into force of law n. 76/2016, called the 'Regulation of civil unions between people of the same sex and discipline of cohabitations', which established in Italy - among other things - the civil union between people of the same sex[1].

The law in question has filled a long-standing gap, which has long been felt at various levels, incorporating the formal notice sent by the bodies, including judicial, national and European[2].

It assumes a considerable juridical, political and social importance, because for the first time it has inserted and disciplined in Italy two new institutes: the civil union between people of the same sex and the de facto coexistence between a man and a woman, or between two same-sex people.

The introduction into the Italian legal system of the public law institute of the civil union allows the legal recognition of the couple formed by people of

[1] Law **20** May **2016**, n. **76** (the so-called 'Cirinnà' law), approved at the end of a long and difficult parliamentary debate, was published in the Official Gazette of May **21**, **2016** and entered into force on June **5**, **2016**.

[2] A regulation of civil unions between people of the same sex had now become indifferent, after the latest convictions issued against Italy by the European Court of Human Rights. The latter had stated that there is a violation of art. **8** ECHR, from the point of view of the right to respect for private and family life, by the Italian State, for not having issued a legislation aimed at giving legal recognition to homosexual couples through the provision of forms of civil unions, from disciplinary discretion in respect of the free state margin of appreciation recognized to each Contracting State in the system of the Convention (see ECHR **21** July **2015**, n. **18766**, in Guida al diritto **2015**, **33**, **110** with note of M. CASTELLANETA and in Foro it. **2016**, **1**, IV, **1** with note from G. CASABURI). The Italian Constitutional Court also urged the adoption of a regulatory solution to try to eliminate, or at least reduce, unacceptable discrimination based on sexual orientation in the creation of a family (see in particular Constitutional Court, **11** June **2014**, n. **170**).

the same sex, establishing mutual rights and duties[3]. The text of the law as approved consists of a single article, divided into 69 paragraphs, of which those from n. 1 to n. 35 regulate civil union[4].

This legislative method has raised many doubts and raised critical technical comments[5], for the interpretative difficulties connected to the presence of a single article, with many paragraphs without having a relative heading, which makes understanding the rules certainly less easy.

With the approval of the three implementing legislative decrees, which took place on 01.14.2017, the regulatory and legal process of the law was completed, which therefore left the transitional regime.

Unlike what is foreseen by other legal systems, even from countries belonging to the European Union, the Italian legislator, instead of allowing

[3] At **31.12.2018** according to ISTAT data, **9520** civil unions were registered in Italy, of which **2808** in the year **2018**, **4376** in the year **2017** and **2336** in the year **2016**. As expected, the peak occurred immediately after the entry into force of the new law, after which the phenomenon has stabilized.

[4] The original text of bill n. 2081, prior to the so-called maxi-amendment approved first by the Senate and then by the Chamber of Deputies, it consisted of two heads: the first dedicated to civil unions and the second to the discipline of de facto coexistence, for a total of 23 articles.

[5] According G. BONILINI, *Trattato di diritto di famiglia*, Volume quinto, *Unione civile e convivenza di fatto*, Turin, 2017, 4 and 5, "Wanting to identify, with a single word, the sign, under which the new legislation can be said to be born, it seems to me that it is the following: slovenliness. Sloppy, first of all, for the method used by the legislator, and for the technique used. It should be noted, indeed, among other things, that, in defiance of any rule, and reference, and previous, also of the Constitutional Court and the Presidency of the Republic, they have been entrusted, to a single article, of which the L. is made up n. 76/2016, as many as sixty-nine paragraphs, which aim to regulate, in a disorderly way, without any systematic line, disparate topics".

same-sex marriage, has decided to create a new legal institution[6] on the archetype of that present in the German legal system introduced since **2001**[7].

A ruling by the Italian Supreme Court, preceding law n. **76**, had considered that the failure to extend the marriage model to unions between people of the same sex did not result in an injury to the integrated parameters of human dignity and equality[8].

This new family model, which constitutes a memorable revolution in the Italian social, cultural and legal panorama, must be analyzed from the point of view of nature, definition and *ratio legis* - as an act - with specific reference to the assumptions, the methods of establishment, the impedimental causes, the causes of invalidity of the bond, the causes and methods of dissolution - as a

[6] It should be noted in this regard that the ECHR, while also recognizing same-sex persons the right to enter into marriage pursuant to art. **12** of the ECHR, however, has given the discretion of individual States the power to legislate on the matter, with the specification that the same sex union must in any case also be granted protection of family life pursuant to art. **8** of the same ECHR (ECHR **24** June **2010**, Schalk and Kopf v. Austria).

[7] In Germany from 2001 to 2017, the registration of the civil union (Eingetragene Lebenspartnerschaft) was available for all homosexual couples; the benefits granted by this partnership has been gradually extended by the Federal Constitutional Court through various judgments. From 1 October 2017, same-sex marriage became legal in Germany.

[8] See Civil Court of Cassation, section I, 9 February 2015, n. 2400, in Guida al diritto 2015, 11, 44 with a note by M.R. GALLUZZO, for which "The process of constitutionalizing unions between people of the same sex is not based on the violation of the anti-discrimination canon dictated by the inaccessibility of the marriage model, but on the recognition of a common nucleus of rights and duties of assistance and solidarity proper to the emotional relationships of the couple and the traceability of these relationships in the ambit of social formations aimed at the development, in a primary form, of the human personality. From this recognition there arises the need for a homogeneous treatment of all situations that present a *deficit* or an absence of protection of the rights of the members of the union, deriving from the lack of a protective statute of relationships other than marriage relationships in our system".

relationship - with the examination of the rights and duties deriving for both parties from the law.

During the entire analysis of the institute, a constant comparison will be made between the legal regime of the civil union and that of marriage, highlighting their common features and their differences.

## 2. Legal nature, definition and *ratio legis* of the institution.

The institution of the civil union, based on art. 1, paragraph 1, of law n. 76/2016, is qualified as a type of social formation constitutionally relevant pursuant to articles 2 and 3 const.[9].

Like marriage, it determines the establishment of a family *status*[10], with respect to which it presents various similarities from an objective point of view, by virtue of the multiple recognized rights and duties envisaged, but from which it differs from a subjective gender profile. In fact, the civil union was shaped on the model of the marriage certificate and the contents of the related relationship. The discipline of civil union is largely inspired by that of marriage and borrows different principles and rules from it. Consider, by way of example but not limited to, the causes of invalidity of the marriage whose discipline of the civil code is extended to civil union pursuant to art. 1, paragraph 5, of law n. 76/2016. The same can be said for the crime of bigamy, in that the one who contracts two civil unions commits this crime, like the one

[9] According to the Italian Constitutional Court for social training, pursuant to art. 2 of the Constitution, must be understood as any form of community, simple or complex, suitable to allow and favor the free development of the person in the relationship life, in the context of a valorisation of the pluralistic model (Constitutional Court, September 23, 2016, n. 213).

[10] For Court of Bologna, 6 July 2017, in Foro it. 2017, 9, I, 2852, "First, the new legislation has elected couples made up of people of the same sex, where there are emotional ties, to the rank of family".

who is married and, then, constitutes a civil union with a person of the same sex, or of one who has contracted a civil union and then contracted marriage.

However, although civil union concerns an emotional relationship, it does not share the **legal nature** of marriage, which is very different. The proof is given by the choice made by the legislator to configure the source of the civil union as a contract[11], so much so that the protagonists of this union are defined as 'parts'[12].

This choice is not persuasive since it is indisputable that the marriage shop, of which the civil union is in some ways a clone, generates a legal relationship permeated by the communion of spiritual and material life, while the patrimonial aspects still take on a secondary role. The other way around, the patrimonial character constitutes the soul of the contract, as can be seen from its own definition provided by art. 1321 c.c.[13]. It is known that the contract was conceived by the Italian civil code as an asset shop. This structure conforms to the rule of art. 1174 c.c., which considers the assets of the service essential to the obligation (of which the contract is a source, art. 1173 c.c.). On the other hand, the discipline prepared for the contract is ontologically aimed at regulating relationships with patrimonial content, which often are opposed to

[11] The explicit mention made in art is eloquent in this articolo 1, paragraph 16, of law n. 76/2016, which reads: "Violence is the cause of cancellation of the contract even when the threatened evil concerns the person or property of the other part of the civil union constituted by the contractor or by a descendant or ascendant of him".

[12] The concept of part does not mean a single subject but a center of interests which, therefore, can also consist of several subjects. There must be at least two parties otherwise there is a unilateral act (art. 1324 c.c.). With the contract, the parties intend to settle interests by producing precise legal effects. In order to speak of a contract, these interests must be property, so much so that it is not a contract, for example, marriage.

[13] Article 1321 c.c. reads: "The contract is the agreement of two or more parties to establish, settle or extinguish a patrimonial legal relationship".

those of a family type.

As for marriage, the law in question does not provide a **definition** of civil union; on the basis of the regulatory data, it can be said that this is an official affective, interpersonal relationship between two adults of the same sex, which is expressed in a coexistence characterized by a common life project and mutual moral and material assistance.

Civil union is a reality that arises from the free choice of people and is based on bonds of affection and solidarity, whose consolidation over time justifies and legitimizes the same legal bond.

The ***ratio legis*** of the 'Cirinnà' law can be found essentially in the need to provide people with a regulatory instrument for the protection of their fundamental rights.

This need is punctually reflected in the same Treaty of the European Union[14], which inspired the adoption of supranational legislation aimed at promoting the diffusion and transposition of these principles, as demonstrated by Directive 2003/86 on the right to family reunification and Directive 2004/38 on the right to free movement, which have allowed same-sex partners to be counted among family members[15]. Add to this that, in recent years, the civil

[14] Article 6, paragraph 2) of the EU Treaty states that Member States must comply with fundamental rights, with a prohibition of discrimination based on sexual orientation during the application of EU law. Therefore, although EU law does not oblige Member States to allow or recognize same-sex relationships or marriages, it nevertheless obliges Member States to treat same-sex couples in the same way as opposite-sex couples application of EU law (think, for example, of laws relating to the free movement of citizens, migration and political asylum).

[15] In this sense, see the draft legislative decree implementing article 1, paragraph 28, letter b) of the law of 20 May 2016, n. 76, which delegates the government to adopt provisions for the modification and reorganization of the rules of private international law relating to civil unions between people of the same sex in which it reads verbatim: "The Strasbourg Court has defined an

union has met with a large international consensus and has registered multiple legislative changes in different countries[16].

In some EU countries, registered partnerships are considered to correspond or compare to marriage[17]. All countries that allow same-sex marriages usually also recognize registered partnerships of this kind concluded in other countries.

In States that do not authorize same-sex marriages, but that have introduced some form of registered civil union, a same-sex marriage contracted abroad is attributed the same rights as a registered partnership. This treatment is also recognized in Italy[18], even if this applies only to national citizens, while the law

'artificial' approach that continue to exclude same-sex couples from the concept of family life with permanent ties, with the consequence that Governments are required to ensure respect for family life for same-sex couples (ECHR, 22 July 2010, PB and JS v. Austria; 28 September 2010, JM vs United Kingdom)".

[16] In Europe, after the legalization of same-sex marriage in the Netherlands in 2001 (the first country in the world) and the acknowledgments made by Belgium in 2003 and Spain in 2005, similar laws followed in many other European countries such as Sweden in 2009, Portugal and Iceland in 2010, Denmark in 2012, (ex) Catholic France in 2013, England, Wales and Scotland in 2014, Ireland and Luxembourg in 2015, Germany, Finland and Malta in 2017 and most recently Austria from 2019 and Northern Ireland in 2020. In other countries, such as Switzerland, Croatia, Greece, Liechtenstein, the Czech Republic, the Republic of San Marino, Slovenia, Estonia and Hungary, for homosexual couples, disciplines other than marriage exist, qualifying as civil unions. Limited rights are, however, guaranteed by Poland and Slovakia. Until May 2019, same-sex marriage is allowed in 28 countries around the world.

[17] This happens in Greece, Slovenia, Switzerland and the Republic of San Marino, where the respective laws substantially provide for the same rights that derive from the marriage, but exclude the possibility of adoption. Otherwise in Estonia the possibility of adopting the partner's natural child is also included (so-called stepchild adoption).

[18] For the Civil Court of Cassation, section I, 14 May 2018, n. 11696, in Guida al diritto 2018, 27, 16, con nota di M. FIORINI, the possibility of transcribing in Italy the same-sex marriage celebrated abroad between an Italian citizen and a foreigner must be excluded. However, the effects of the civil union must be recognized, even if it was contracted before the entry into force

of his State continues to apply to foreigners, in accordance with the principles of private international law.

### 3. Prerequisites, methods of establishment, preventive causes, invalidity causes, causes and methods of dissolution.

The civil union provided for by the Italian legal system, as an act differs in a contained way from civil marriage.

About the **conditions** and **methods**, the civil union, in accordance with art. 1, paragraph 2, of law n. 76/2016, can only be made up of adults[19] of the same sex, with declaration made in front of a registrar and the presence of two witnesses[20] and certified by specific document[21]. As is the case for marriage, there is the possibility of delegating the functions of registrar to celebrate the civil union, to councilors, assessors or private citizens who are eligible to be

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of law n. 76 of 2016, since the legal regime in force at the time of the decision must be applied regarding the recognition of the effects in a different order from the one in which the bond was contracted.

[19] It postulates the age of the parties, as the authorization provisions of art. Are not applicable 84, paragraph 2, of the Italian civil code, as confirmed by the failure to refer to art. 165 c.c. as for marriage agreements signed by the minor. It is a forecast that is founded on the intention to enhance the maturity of the people who are going to constitute this bond.

[20] This provision brings to mind the stipulation of solemn acts, to which the legal system reserves a specific discipline due to the existence of interests also of a general nature. It should be noted that special witness requirements are not indicated in the standard.

[21] From a procedural point of view, the procedure for establishing the civil union involves the following five phases: submission of the request for establishment; office checks; articles of association; registration; certification. The documents deriving from each phase initially had to be entered in a provisional register, based on article 9, 'transferred' to the definitive register after the issue of the legislative decree (s) of implementation. There is no constraint regarding the choice of the Municipality where to establish the relationship.

elected municipal councilors[22]. In the absence of a specific provision to the contrary, it is deduced that the parties must appear in person before the registrar, which excludes the possibility of delegating third parties through the granting of a power of attorney, as is, however, allowed for marriage in exceptional cases. Likewise, it is to be considered that the unjustified absence of one or both parties should be understood as a tacit renunciation of the request for the establishment of the civil union previously formulated. It follows the obligation to draft the minutes of non-appearance by the registrar, to be signed also by the party who may be present and by the witnesses.

If one of the parties is foreign, art. 116, paragraph, 1 of the civil code and a declaration of clearance from the competent authority of your country must be presented to the registrar. On the other hand, the free state certificate will be sufficient for foreigners from States in which sexual orientation is a cause of discrimination and in which homosexuality is criminally sanctioned.

Unlike marriage[23], for civil unions there are no publications, nor a real 'celebration'[24,] given that the new institute was conceived as an act in which the registrar merely receives the declaration of the constituents, without reading the law[25].

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[22] See CRA Brescia, section I, 29 December 2016, n. 1791, in Guida al diritto 2017, 6, 35, according to which "Civil unions must be celebrated in the same place as the one where civil marriages are celebrated and in front of the same celebrating subjects, ie the mayor or his delegates".

[23] The celebration of the wedding is necessarily preceded by the publication of the intention of the engaged, since it is a functional step to the possible proposition of opposition by interested third parties (art. 93 c.c.).

[24] For Court of Pordenone, 13 March 2019, "in reality the civil union is constituted; marriage is celebrated".

[25] For C.M. BIANCA, *Le Unioni civili e le convivenze*, Commento alla legge n. 76/2016 e ai d.lg.s. n. 5/2017; d.lgs. n. 6/2017; d.lgs. n. 7/2017, Turin, 2017, 6 and 7, "The Civil Status Officer reads

Furthermore, from a literal exegesis of the law in question, it does not seem that sacramental formulas are necessary[26], while there is no doubt that the determinations of the registrants must be unambiguous.

Despite the silence of the law, it can be considered that the public official is still required to verify that the content of the declaration complies with the principles of the legal system, therefore, is not contrary to mandatory rules, public order and morality.

The public form does not change the institute's negotiating nature, given that the public official has a mere 'certification', or 'recognition' function, of the will of the parties. This formal manifestation of will truly constitutes the basis of the *consortium vitae*. However, the special discipline on the promise of marriage provided for in articles **79** and following c.c. However, it is reasonable to argue that any promises about the conclusion of a civil union, then, disregarded, do not oblige the constitution of the same and, if the conditions exist, they could only generate a non-contractual liability.

The certificate of incorporation of the civil union must contain the personal and residence data of the parties, the property regime chosen by them, the personal and residence data of the witnesses (art. 1, paragraph 9, law n.

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nothing and therefore is not the bearer of any indication on the effects of the establishment of the civil union, effects also expressly established in law no 76/2016 (paragraphs 11 and 12, art. 1). The choice seems to have been inspired not only by the need to differentiate the constitution of civil unions from marriage, as if to favor a meager and discreet rite, but also, if not above all, by the opportunity to establish that the declaration made in the forms provided for by paragraph 2, of art. 1 of the law n. 76/2016 is aimed at establishing a legal relationship rather than creating an institution such as the family ".

[26] Of this opinion it is G. DE CRISTOFARO, *Le 'unioni civili' fra coppie del medesimo sesso. Note critiche sulla disciplina contenuta nei commi* 1°-34° *dell'art.* 1 *legge* 76/16 *integrata dal Dlgs.* 5/2017, in Nuove leggi civ. comm. 2017, 133.

76/2016) and must then be registered at the competent municipal registry office[27]. Such registration assumes a declarative advertising function towards third parties.

It is appropriate to highlight the fact that the articles of association drawn up by the registrar should be qualified as an act *ad substantiam* and not only as an act *ad probationem*, since it is a form required for the same validity of the act and not for the only purpose of proof of the legal transaction. Furthermore, a privileged evidentiary function must be recognized to the same[28].

In the absence of express indication, the property regime is made up of the communion of assets and in the case of the choice of the asset separation regime, it must be noted in the act of incorporation. With regard to the form, modification, simulation and capacity for the stipulation of capital agreements,

[27] With d.p.c.m. July 23, 2016, n. 144, published in the Official Gazette on July 28, 2016, a Regulation was issued containing transitional provisions necessary for the keeping of registers in the civil state archive, pursuant to art. 1, paragraph 34, l. n. 76/2016. The regulation was followed by a decree of the Minister of the Interior with the formulas to be used in drafting the civil status documents. For a reasoned reading of the d.p.c.m. n. 144/2016, reference was made to the opinion rendered by the Council of State, which first wanted to emphasize the temporary nature of the government decree. The Council of State reiterated that the recognition of civil unions has a constitutional basis, because it is based on the protection of 'social formations' ensured by articles 2 and 3 of the Constitution (and already invoked by judgments of the Constitutional Court preceding the law), with respect to which it is not allowed to oppose any motivation dictated by the conscience that could prevent the celebration of the union.

[28] By virtue of art. 451 c.c. for which "The civil status documents prove, up to a false complaint, of what the public officer certifies to have occurred in his presence or performed by him. The statements of the appearing parties are authentic until proven otherwise. The indications extraneous to the act have no value ", and art. 2700 c.c. for which "The public deed proves, up to a false complaint, the origin of the document from the public official who formed it, as well as the declarations of the parties and other facts that the public official certifies occurred in his presence or by him made".

articles **162**, **163**, **164** and **166** c.c. must be applied (art.**1**, comma **13**, law n. **76/2016**).

The civil union, like marriage, can be officiated by ship or plane if there is a danger of life.

The absence of **impedimental causes** of the civil union is a prerequisite expressly prescribed by art. **70**-*bis* Presidential decree n. **396/2000**, introduced by the legislative decree n. **5/2017**.

Among the preventive causes listed in paragraph 4 of art. 1, of the law n. 76/2016, include the subsistence for one of the parties to a marriage or civil partnership with another person of the same sex[29], the interdiction of one of the parties for mental illness[30], the existence between the parts of the relationship, affinity and adoption referred to in art. 87, paragraph 1, of the Italian civil code, the definitive sentence of a contractor of the civil union for murder committed or attempted against those who are married or united in civil partnership with the other party[31].

From this it is clear that the subjective requirements are the same as those required for marriage, that is to say the free state, necessarily extended also to the failure to establish a pre-existing civil union with another person, the

[29] The civil union undoubtedly generates a bond similar to marriage, so much so that it prevents each of the parties from contracting more than one bond, under penalty of the configuration of the crime of bigamy referred to in art. 556 of the Italian criminal code, also applicant in the event that an already married person constitutes a civil union.

[30] If the application for interdiction is only filed, the public prosecutor can request the constitution of the civil union to be suspended and in this case the proceeding cannot take place until the sentence he pronounced on the application has become final.

[31] If only indictment has been ordered or a first or second degree sentence has been issued or a precautionary measure, the establishment of the civil union is suspended until a acquittal sentence is pronounced.

absence of kinship ties or affinity between the parties and the exclusion of the impediment *ex delicto*.

It is the main duty of the registrar to verify this requirement for the purpose of establishing the union, with the right to acquire any documents it deems necessary to prove the absence of impediments[32].

These checks must be carried out within a maximum period of thirty days from the drafting of the minutes of the constitution request (art. 70-*ter*, paragraph 1, P.d. n. 396/2000) and if there is ascertainment of the absence of the legal requirements or of the existence of an impediment, the registrar is required to notify the parties and cannot proceed with the establishment of the civil union (art. 70-*ter*, paragraph 2, P.d. n. 396/2000). In addition, there is an obligation in this case to promptly inform the Public Prosecutor, so that he can propose opposition to the establishment of the civil union by appeal to the President of the Court, who - after hearing the parties - decides by reasoned decree on the opposition.

There is a large correspondence to the marriage also as regards the civil union as a relationship.

Analogous to marriage is the regime of the **invalidity** of the civil union for lack of subjective prerequisites and lack of a valid and free consent, as well as the related appeal in court.

The existence of one of the aforementioned impedimental causes involves the nullity of the civil union by explicit prescription of paragraph 5 of art. 1, of the law n. 76/2016.

It should be noted that when constituted in violation of one of the

[32] A hypothesis of exemption from verifications is provided (art. 70-decies of P.d. n. 396/2000) when there is an imminent danger of life of one of the parties, provided that they declare, by oath, that there are no impediments between them.

impedimental causes indicated above, or in violation of art. 68 c.c., the civil union can be contested by each of the parties of the union, by the next ascendants, by the public prosecutor and by all those who have a legitimate and current interest (art. 1, paragraph 6, law n. 76/2016).

The provision substantially follows the content of art. 102 c.c. in matters of marriage, expanding the legitimacy to propose opposition to anyone with a current and legitimate interest. This requirement of legitimacy of interest must be understood by reason of its compliance with the legislative precepts, as a legitimate interest must be considered to exist whenever there is a concrete and current cause impeding the establishment of the union.

If the absence of a part of the civil union occurs and as long as this absence lasts, the civil union formed by the other party with a third person is not subject to appeal.

With regard to the causes of invalidity of the civil union, the Italian legislation provides for the application of the same causes already provided for the invalidity of the marriage by referring to the articles 65 and 68, as well as articles 119, 120, 123, 125, 126, 127, 128, 129 and 129-*bis* c.c. Equally, the civil union is affected by invalidity when the consent has been extorted with violence or determined by fear of exceptional gravity, by causes external to the party itself, or when it was given as an effect of error on the identity of the person or error essential on personal qualities of the other party (art.1, comma 7, law n. 76/2016)[33]. However, the action cannot be proposed if there has been

[33] With regard to the error, the legislator regulates a more precise discipline. It is stated that the error on personal qualities is essential if, taking into account the conditions of the other party, it is ascertained that the same would not have given consent if it had known them exactly, provided that the error concerns: a) the existence of a physical or mental illness such as to prevent the development of common life; b) the circumstances referred to in art. 122, paragraph 3, n. 2, 3 and 4 c.c.

cohabitation for a year, after the violence has stopped or the causes that led to the fear or the error was discovered.

This is a hypothesis of remedying effectiveness of any anomalies of consent due to the prolonged cohabitation, confirming the fact that the relationship prevails over the act and this in any context in which there is a formalized couple relationship.

As for the **dissolution** of the civil union, the same is regulated by paragraphs 22, 23, 24, 25 and 26 of article 1 of law n. 76/2016, which provides for both automatic causes (paragraph 22), and voluntary causes remitted to the initiative of one or both parties (paragraphs 23 and 24).

Automatic causes of dissolution of the civil union are:

- the death or presumed death declaration of one of the parties (art. 1, paragraph 22, law n. 76/2016);
- the decision to rectify the attribution of sex of one of the members (art. 1, paragraph 26, law n. 76/2016). In this case, the prerequisite for contracting the bond represented by belonging to the same sex is lost; the parties, if they wish, can nevertheless enter into marriage[34].

Voluntary causes of dissolution of the civil union are:

- the cases provided for by law n. 898/1970 (art.1, comma 23, law n. 76/2016) and in particular the hypothesis referred to in article 3, number 1) and

[34] In this, the civil union differs from marriage at least in procedural terms, since in accordance with paragraph 27 of law n. 76/2016, "The rectification of the sex registry, where the spouses have expressed their will not to dissolve the marriage or not to end its civil effects, is followed by the automatic establishment of the civil union between people of the same sex", while in the civil union it will be necessary to put in place a new and different marriage act.

number 2), letters a), c), d) and e ), of the divorce law, if definitive criminal convictions for serious crimes against the other party are reported[35];

- the will to dissolve, also manifested separately before the registrar (art. 1, paragraph 24, law n. 76/2016)[36].

Divorce therefore occurs in the same way as for marriage, but the so-called short divorce: it takes three months instead of six. In this case, the request for dissolution of the civil union can be proposed, judicially or consensually, after three months from the date of the manifestation of the will to dissolve the union but without the separation period, given the failure to refer to letter b) art. **3** of the divorce law[37].

[35] Paragraph 23 of law n. 76/2016, refers to the cases referred to in art. 3, n. 1 and n. 2, letters a), c), d) and e), of law n. 898/1970 on divorce, that is to the hypothesis in which after the establishment of the civil union, a party is sentenced to the relevant penalties provided for by the aforementioned art. 3, with a final judgment, also for facts previously committed against the other party.

[36] From the comparison of paragraph 23 with the full text of art. 3 of the divorce law, it is clear that the causes of dissolution of the civil union do not include judicial or consensual separation, which as mentioned is an institution that does not apply between the parties of the civil union. Likewise, failure to consume the relationship is not envisaged as a case of dissolution of the civil union.

[37] For M. SESTA, *Unione civile: costituzione e scioglimento*, in I Quaderni della Fondazione Italiana del Notariato, March 2017, 15 and following "It should be emphasized that the real peculiarity of the dissolution of the civil union, which profoundly differentiates it from the divorce of the married couple, is represented by the provision of paragraph 24, which is equivalent to the civil union when the parties have manifested, even separately, the will to dissolve before the registrar, after which, after three months, the corresponding judicial request can be proposed before the competent court or specific administrative negotiation procedure assisted by a lawyer or agreement before the officer of the marital status (paragraphs 24-25). Evidently, this is a hypothesis of withdrawal, under which even a single part of the civil union can obtain the dissolution ruling".

Finally, from a procedural point of view, it is established by art. 1, paragraph 25, of law n. 76/2016, which apply, insofar as they are compatible, the rules on family and state of the persons referred to in title II, of the fourth book of the code of civil procedure, as well as the rules referred to in articles 6 and 12 of the law November 10, 2014, n. 162 regarding assisted negotiation of lawyers[38].

**4. Rights and duties of the parties.**

Between civil union and marriage there is a substantial legal equation resulting from a specific desire of the legislator to ensure wide-ranging protection to the status of part of the civil union, also evident from a thorough reading of the preparatory works for the law and evidenced by the reference to numerous norms of the civil code on the rights and personal, property and successor relationships of marriage.

The practical impact of this comparison appears to be far-reaching.

One of the inspiring principles of the new institute is equality between partners.

This concept must be understood in the sense of equality of **rights** and reciprocity of **duties** and must correlate with that of equal opportunity to develop and realize the personality of the individual within the relationship and not develop into a simple and reductive quantitative parity of rights and duties.

The rights and duties that derive from the civil union are mandatory for the parties (art. 1, paragraph 13, law n. 76/2016).

[38] For M. SESTA, *Unione civile: costituzione e scioglimento*, cit., 15 and following "Where instead - as even the same paragraph 25 allows - the dissolution is carried out through negotiation assisted by lawyers or by virtue of agreements reached before the registrar, the limits set out in articles 6 and 12 of legislative decree n. 132/2014, expressly referred to: yes, for example, it is excluded that the dissolution agreement may take place in the presence of civil status officers in the presence of minor children or adult children unable or economically not self-sufficient".

With regard to personal relationships, with the establishment of the civil union, the parties, like spouses in marriage, acquire the same rights and assume the same duties (art. **1**, paragraph **11**, law n. **76/2016**). In particular the parts:

- they are mutually obliged to moral and material assistance and to cohabitation (the latter's obligation suspended in the event of removal without just cause from the common residence and refusal to return there (art.1, paragraph 19, law n.76 / 2016). However, there is no obligation of loyalty and collaboration;
- they are both required, each in relation to their own substances and their working capacity, including at home, to contribute to common needs (art. 1, paragraph 11, law n. 76/2016);
- together agree the address of family life and each of them has the power to implement it (art. 1, paragraph 12, law n. 76/2016)[39];
- establish common residence (art.1, comma 12, law n. 76/2016).

The civil union therefore contains a series of so-called 'implicit duties' brought back to the bed of the generic mutual obligation of moral and material assistance, uncoded and oriented towards respect for the individual's

[39] For M. SESTA, *Unione civile: costituzione e scioglimento*, cit., "It is also to be noted that it is instead expressly provided that the parties agree among themselves 'the address of family life', which, although it is perhaps the result of a lapse of the legislator, is to confirm that the civil union gives life to a family consortium, falling within the orbit of articles 8 ECHR and 7 of the Charter of Fundamental Rights of the European Union. However, the same provision of paragraph 12 does not reproduce the words of art. 144 of the civil code, which require spouses, in agreeing on the direction of family life, to take into account not only the needs of both but of the 'pre-eminent ones of the family itself'; omission, this, particularly significant, because it highlights the legislator's reluctance to classify the civil union as a family, and to consider it as an institution that transcends the interests of the individuals who make it up, certainly also in relation to the fact that it reduces to the couple and, at least according to the legislative system, it does not provide for the presence of children".

personality according to the general duty of solidarity (art. 2 const.), which requires the recognition of the inviolable rights of the person in the social formations where his personality takes place. The legislator decided to delegate to the agreement of the parties the way of interpreting these rights and duties with their own conduct, the contents of which are not punctually outlined, but whose limits are well identified through the sanction established by the system for the prejudices caused to 'person value'[40].

With regard to common residence, it should be noted that the cohabitation obligation, explicitly provided for by the legislator, inevitably derives from the commonality of life and interests and from the daily *affectio* of each of the parties.

Still on the subject of personal relationships, another relevant provision is that concerning the surname which, for the duration of the civil union, can be common and chosen by means of a declaration to the registrar. The possibility remains to prepend or postpone one's surname to the common surname, always making a declaration to the registrar (art. 1, paragraph 10, law n. 76/2016)[41].

[40] We refer in particular to the express reference to the law of 4 April 2001, n. 154, operated by art. 1, paragraph 14, according to which: "when the conduct of the part of the civil union is a cause of serious prejudice to the physical or moral integrity or to the freedom of the other party, the judge, upon application by the party, can adopt by decree one or more of the measures referred to in art. 342-ter of the Italian civil code".

[41] For M. SESTA, *Unione civile: costituzione e scioglimento*, cit., "Paragraph 10 of art. 1, deserves particular emphasis, which, with the original provision - which differs considerably from the homologous codicistic provision, which obliges the wife to add her husband's surname to her own (art. 143-*bis* c.c.) -, provides that the parties may decide to assume, for the duration of the civil union, a common surname, choosing it among their surnames, which can be placed before or postponed to that of the part whose surname has not been chosen as the common". In this regard, a decision of Lecco Court assumes importance, which has ruled that art. 8 of legislative decree n. 5/2017, in the part in which it requires the registrar to cancel from the personal data the

The option of adopting the partner's surname does not entail modification of the personal data, so there is no change in the tax code or other identity documents.

As regards the protection of the person with particular regard to the matter of voluntary jurisdiction, it is prescribed that the tutelary judge, when choosing the support administrator, is required, where possible, to prefer the partner of the civil union, as well as the same is entitled to promote an interdiction or incapacitation procedure and request its revocation when the cause that gave rise to it ceases (art. 1, paragraph 15, law n. 76/2016).

The tenor of paragraph 20 of art. 1, of the 'Cirinnà' law is of great importance, according to which - for the only purpose of ensuring the effectiveness of the protection of rights and the full fulfillment of the obligations deriving from the civil union - the provisions relating to marriage and the provisions containing the words ‘spouse’, ‘spouses’ or equivalent terms, wherever they occur in the laws, in the acts having the force of law, in the regulations as well as in the administrative acts and in the collective agreements, they also apply to each of the parts of the civil union[42]. It is a

annotation relating to the choice of the common surname of the civil union, made pursuant to the previous d.P.M. n. 144/2016, since this is a provision that undermines the dignity of the person and the best interests of the minor and in clear contrast with the principles of community and supranational law. See Court of Lecco, section I, April 4, 2017.

[42] Court of Bologna, 6 July 2017, cit.; CRA Brescia, section I, 29 December 2016, n. 1791, cit. The rules of the civil code expressly referred to are also those of inheritance law (see art. 1, paragraph 21, law n. 76/2016), as well as the subject of reference are those of the code of civil procedure on family proceedings and status of the persons referred to in title II, book IV (art. 1, paragraph 25, law n. 76/2016) and those on family protection orders referred to in art. 342 *ter* of the Italian civil code (art. 1, comma 14, law n. 76/2016).

hypothesis of automatic extension, to the parts of the civil union, of the provisions that refer to marriage and spouses[43].

A direct consequence of this is that all the rules concerned in which the word 'spouse' appears will be replaced by that of 'part of the civil union'. It should also be added that by virtue of the precept contained in the aforementioned paragraph 20, numerous other rules concerning the spouse are applicable to the civilly united person, including worthy of mention is the tax treatment of various tax-related events[44], as well as the pension treatment.

Thus, the legislator makes a general reference to the special laws that refer to the marriage relationship, *lato sensu*, with the exception represented by the provisions of the civil code not expressly referred to[45] and by the law 4 May 1983, n. 184, containing the regulation of the adoption and custody of minors[46].

[43] For CRA Brescia, section I, 29 December 2016, n. 1791, cit., "By virtue of the automatic hetero-integration process generated by art. 1 paragraph 20, l.d. n. 76 of 2016, the rules originally provided for only the institution of civil marriage, must be considered automatically applicable, without the need for an express modification, also to civil unions. Consequently, the provisions of the municipal regulation for the celebration of civil marriages must also be considered applicable to the civil unions governed by law n. 76 of 2016".

[44] This refers to the benefits and facilities for purchases made in particular if the legal community scheme is adopted, to the deductibility of interest expenses paid for mortgages contracted for the purchase of the real estate unit to be used as the main home of the other part of the civil union. Furthermore, they should operate in favor of the other part of the civil union - given the total application of the successor mechanisms, in the matter of legitimate and necessary succession pursuant to paragraph 21, art. 1 of the law in question - also the provisions such as the exemption or facilitation from inheritance tax and donation of transfers of company compendiums or shareholdings under the conditions established by paragraph 4-*ter*, of art. 3, of l.d. n. 346/90.

[45] This is a safeguard clause which allows to affirm that the application of the rules in question is possible only in situations where it is essential to guarantee the effectiveness of the protection of rights and the full fulfillment of the obligations deriving from the union.

[46] For C.M. BIANCA, *Le Unioni civili e le convivenze*, cit., 2, "The application to the civil union of the only provisions of the civil code expressly referred to expresses the choice made by the law to reserve to the civil union an autonomous identity distinct from marriage. ... The choice made by law does not allow the rules of the civil code on marriage to find analogous application to the

In fact, the rules on adoptions are not applicable to the civil union, since the contested mechanism of stepchild adoption, contained in the original version of the bill, was excluded from the text of the law, namely the possibility of adopting the biological child of the partner for people who have contracted civil partnership[47].

This is without prejudice to what is foreseen and allowed in the matter of adoption by current national regulations[48].

Unlike marriage, the civil union does not lead to the establishment of an affinity bond between each of the parties and the relatives of the other, since the discipline referred to in art. 78 of the Italian civil code, which is why there is no impediment to mutual relations between each other in marriage or civil union[49].

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civil union on the basis of a supposed assimilation of the two institutions. The analogical application of civil code rules not expressly mentioned can be admitted rather when there is no reason that justifies a different rule of the case".

[47] The application for the adoption of the biological child of the same-sex partner with whom the applicant is registered in the register of civil unions must be rejected, cf. Juvenile Court of Milan, 17 October 2016, n. 261.

[48] According to the law n. 184 of 1983, art. 6, paragraph 1, full adoption is allowed only to spouses united in marriage, who, in Italian law is, in turn, only allowed to people of different sex.

[49] For M. SESTA, *Unione civile: costituzione e scioglimento*, cit., "In the first place, the law does not mention, directly or indirectly, the provisions relating to affinity (art. 78 c.c.), that is, the bond between a spouse and the relatives of the other spouse, while recalling (in paragraph 19, art. 1) the title XIII of the first book and, therefore, also the articles. 433, nn. 4 and 5, and 434 c.c. on the subject of maintenance obligations, which include the in-laws, the son-in-law and the daughter-in-law. It therefore appears that no legal constraint is created between one part of the union and the relatives of the other party and that the reference to alimony obligations between like, which has been carried out, is devoid of effects since the relative constraint cannot arise between part of the union and relatives of the other party, given the failure to refer to art. 78 of the Italian civil code and the general provision of art. 1, paragraph 20. The figure is significant, because affinity, like

With regard to property relations, as already anticipated, it is established by law that, in the absence of choice of the parties, the regime of legal communion of goods applies in the same way as for marriage. The parties can opt for the separation of property regime not only at the time of the declaration before the registrar, but also afterwards, by means of a property agreement to which all the rules, of form and substance, prescribed by articles **162**, **163**, **164** and **166** c.c. on property agreements.

Then, the reference to the application of the standards referred to in sections II, III, IV, V and VI, of Chapter VI, of Title VI, of the first book of the civil code, in other words the whole the entire regulatory package of property relations between spouses is of considerable importance. Thanks to this provision, the parties to a civil union will, like spouses, not only choose between communion and separation of property, but can access other property regimes such as the property fund or set up a family business (also referred to as the related rules of articles 2647, 2653, paragraph 1, n. 4 and 2659 of the civil code).

The civil union is also applicable - by reason of the reference to the provisions of title XIII, of the first book of the civil code - the legislation on the subject of food provided for in articles 433 and following of the civil code in favor of the spouse.

It should also be remembered that even for civil partnership, the prescription remains suspended between the parties in constant relationship, as is the case for the wedding.

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the ties of kinship, which do not come out in relation to civil union, is a consequence of the expansive capacity of marriage, which is not instead attributed to union, the effects of which essentially concern only the members of the couple who make it up".

With regard to successor relations, by virtue of the express reference to the provisions of chapter III, chapter X, of title I, title II and chapter II, chapter V-*bis*, of title IV, of the second book of the code civil, the parties in the civil union are recognized the discipline on the subject of unworthiness (articles **463-466** c.c.), of rights reserved to the legitimates (articles **536-564** c.c.)[50], of legitimate successions (articles 565-586 c.c.), of collation (articles 737-751 c.c.) and of the family agreement (articles 768-*bis* - 768-*octies* c.c.). Any reference to the spouse contained in the aforementioned rules must necessarily be understood as referring also to the part of the civil union.

Lastly, in the event of the death of one of the parties of the civil union who is a worker, the surviving partner is granted the right to the indemnity of notice and severance pay pursuant to articles 2118 and 2120 c.c. dictated on the subject of termination of the employment relationship, as well as the right to the survivor's pension.

[50] Think, for example, of art. 540, paragraph 2, of the Italian civil code, which recognizes the right of residence on the house used as a family residence also for the surviving part of the civil union.