Italy

I. General remarks

Italy was one of the first countries to adopt a codified system of Private International Law rules in 1865, immediately after the foundation of the unified Italian state. Influenced by the well-known expert of Private International Law, *Pasquale Stanislao Mancini*, who was at the time the Minister of Justice, these rules formed part of the general provisions of the first Italian Civil Code (Codice Civile, 4 April 1942, Gazz.Uff. No 79 and 79bis).

When a new Civil Code was enacted in 1942, the existing choice-of-law rules, with some minor modifications, were included in the preliminary provisions of this new Code (arts 17–31). These rules were in force until 1995, when they were repealed by a new statute entirely devoted to Private International Law (Riforma del Sistema italiano di diritto internazionale private, Act No 218 of 31 May 1995 in Gazz.

Uff., Supplemento Ordinario No 128 of 3 June 1995, henceforth Italian PILA).

The main reason for reform was to ensure the compliance of Italian conflicts rules with certain fundamental constitutional principles, in particular with the principle of equal treatment of men and women, enshrined within the Italian Constitution of 1948 (La Costituzione della Repubblica Italiana, 22 December 1947, Gazz.Uff. No 298 on 27 December 1947) (art 3 of the Constitution guarantees equal rights for all Italian citizens; art 29(2) guarantees equal rights for spouses except where the principle of family unity prevails). In addition, it was necessary to harmonize the Italian Private International Law system with several international conventions that had been ratified by Italy. The first of these objectives was achieved by using neutral, non-discriminatory connecting factors, and the second by making reference to certain international conventions in the Italian PILA itself and thereby extending their application beyond their own scope *ratione materiae* and/or *personarum*.

Following a growing trend in recent Private International Law codifications, this new statute is not limited to choice-of-law rules, but also covers matters of international civil procedure. In particular, it regulates the jurisdiction of Italian courts as well as the recognition and enforcement of foreign judgments. Until the 1995 reform, these two subject matters were regulated by specific provisions of the Code of Civil Procedure (Codice di procedura civile of 21 April 1942, R.D., 28 October 1940, No 1443 Gazz.Uff. No 253), which were outdated in certain respects.

Choice-of-law rules and international civil procedure are deeply interconnected. Consequently, it makes no sense to refer to the Italian choice-of-law rules in order to determine the law applicable to a certain issue if the jurisdiction of the Italian courts cannot be established. On the other hand, the recognition and enforcement of foreign judgments in Italy is only possible when the foreign country had jurisdiction, a requirement to be analysed on the basis of the rules governing the jurisdiction of the Italian courts (art 64 Italian PILA). It therefore appears to have been a rational decision to regulate all of these matters in one single statute, as has been done in Switzerland in the Swiss Private International Law Statute of 1987 (Bundesgesetz über das Internationale Privatrecht of 18 December 1987, 1988 BBl I 5, as amended, henceforth Swiss PILA) and in other countries with recent Private International Law codifications.

As in all Member States of the EU, the Italian Private International Law rules have been extensively superseded in the last few decades by a steadily growing number of European Regulations adopted on the basis of new competences provided for by the Treaty of Amsterdam (Treaty of Amsterdam amending the Treaty on the European Union, the Treaties establishing the European Communities and certain related acts (consolidated version), [1997] OJ C 340/01).

Some of the newly adopted European rules enjoy universal application, so that within their scope of application they replace the national rules in their entirety. This is the case for the uniform European choice-of-law rules relating to contractual and non-contractual obligations, divorce and legal separation (→ Divorce and personal separation), matrimonial property and the property consequences of registered partnerships, → maintenance obligations and → succession. The rules on jurisdiction included in some of the recent regulations are also applicable *erga omnes* (as in the case of the Matrimonial Property, the Registered Partnership, the Maintenance and the Succession Regulations). In other cases, the European rules permit national rules to be applied in certain circumstances, in particular when the case involves a connection with a non-Member State. This is the case for the jurisdictional rules included in the Brussels I Regulation (Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [2001] OJ L 12/1), the Brussels I Regulation (recast) (Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), [2012] OJ L 351/1) (→ Brussels I (Convention and Regulation)), the → Brussels IIa Regulation (Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, [2003] OJ L 338/1) and in the → Lugano Convention of 30 December 2007 (Lugano Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [2007] OJ L 339/3, which is in force between the EU and certain EFTA states,

ie → Iceland, → Norway and → Switzerland), and of the rules on recognition and enforcement of foreign judgments included in all of these instruments. Therefore, in these latter cases, the Italian rules are still applicable in a subsidiary manner.

II. Jurisdiction of Italian courts

1. Objective criteria for international jurisdiction

The Italian PILA has led to significant changes to the jurisdiction of Italian courts. Most of the nationalistic-oriented solutions which characterized the older Italian jurisdictional system have been abandoned. One of the most significant innovations is that Italian → nationality is no longer a general ground for jurisdiction, although it is still used as such in several fields of family law.

The traditional distinction between the rules on international jurisdiction and the internal rules on civil venue has been maintained: the former are included in the Italian PILA and the latter in the Code of Civil Procedure. However, at least for certain categories of disputes, international jurisdiction is determined by reference to domestic rules on the court's venue (see art 3(2) Italian PILA).

The first general rule (art 3(l) Italian PILA) provides that Italian courts have jurisdiction when the defendant has his or her domicile or residence in Italy (*actor sequitur forum rei*; → Domicile, habitual residence and establishment), irrespective of his or her citizenship. This corresponds to the general rule of the Brussels Convention (Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, [1972] OJ L 299/32, consolidated version, [1998] OJ C 27/1) and of the Brussels Regulations. For the purpose of this provision, a person's domicile is determined in accordance with the general definition of domicile under the Italian Civil Code (art 43; Cass 29 November 2006, No 25275).

This general principle is completed by specific rules relating to particular categories of disputes, which are either included in Title III of the Italian PILA (eg, for divorce (→ Divorce and personal separation), kinship (→ Kinship and legitimation), → adoption, protection of minors and adults (→ Adults, protection of), and → succession), or laid down in separate statutes, such as those relating to some intellectual property rights or maritime law (Codice della navigazione, Gazz.Uff. No 93 on 18 April 1942). In these areas, the reach of Italian jurisdiction is sometimes exorbitant. For instance, there appears to be no compelling reason for an Italian court to exercise jurisdiction over divorce cases simply because one of the spouses is Italian (see art 32 Italian PILA), at least when the other spouse is a non-Italian and the couple has never been domiciled in Italy.

With regard to such situations, it is regrettable that Italian law rejects the doctrine of → *forum non conveniens*. Whenever Italian courts have jurisdiction, they must hear the case and are not allowed to dismiss it, even if it involves only an insignificant connection with Italy.

On the other hand, with respect to → civil and commercial matters within the meaning of the Brussels Convention and Regulations, exorbitant jurisdictional rules have largely been excluded from the Italian legal system. In this area, the drafters of the Italian PILA made the bold but otherwise successful decision to extend the reach of certain jurisdictional rules of the Brussels Convention to disputes that are beyond their scope of application (art 3(2) Italian PILA). This unilateral extension does not cover the entire Convention, but only some of its jurisdictional rules, in particular those contained in ss 3, 4 and 5. These include the rules on 'special' jurisdiction for disputes relating to contracts, maintenance, → torts, trusts, etc, as well as the rules providing protection to some categories of weaker parties (insured persons and consumers). Under the system of the Brussels Convention, all these jurisdictional rules were applicable only if the defendant had his or her domicile in another contracting state; by virtue of the reference included in the Italian PILA, they are applicable in Italy even if the defendant is domiciled in a non-contracting state. After the replacement of the Brussels Convention by the Brussels I Regulation and the Brussels I Regulation (recast), the question is whether the Italian PILA is to be interpreted as referring to the Convention or to the Regulations; Italian case-law is not very clear on this point (for the Convention, see: Cass 21 October 2009, No 22239; Cass 4 November 2011, No 22883; Cass 12 April 2102, No 5765; for the Brussels I Regulation, see: Cass 20 February 2013, No 4211; Franco Mosconi and Cristina Campiglio, *Diritto internazionale privato e processuale*, vol 1: *Parte generale e obbligazioni* (UTET Giuridica 2013) 34 ff).

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In matters excluded from the scope of the Brussels Convention (such as family and succession law), the jurisdiction of the Italian courts is determined by reference to domestic rules on the court's venue, mostly included in the Code of Civil Procedure (art 3(2) Italian PILA). According to the Italian courts, this reference also includes the very wide-ranging rule of art 18 of the Code of Civil Procedure, pursuant to which the courts of the plaintiff's residence have jurisdiction whenever the defendant has neither domicile nor residence in Italy. In accordance with this disputable interpretation, in the case of any dispute outside the scope of the Brussels Convention, the Italian courts always have jurisdiction whenever the plaintiff resides in Italy. This interpretation would also lead to cases of excessive jurisdiction. To avoid such a result, art 3(2) Italian PILA should be construed as referring only to those rules of territorial competence that concern the 'special' matters referred to above.

However, in some areas that are not included in the Brussels Convention, the national rules of jurisdiction included in the Italian PILA have become (or will become) inapplicable because of the entry into force of other European Regulations. As mentioned above, the uniform jurisdictional rules included in some of these texts take precedence over the domestic jurisdictional rules in the Member States and sometimes completely replace them. This is currently the case in proceedings relating to → maintenance obligations and succession, by virtue of European Regulations No 4/2009 (Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, [2009] OJ L 7/1), No 2016/1103 and No 2016/1104 (Council Regulations (EU) No 2016/1103 and No 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property, resp. in matters of the property consequences of registered partnerships, [2016] OJ L 183/1 and L 183/30), and No 650/2012 (Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, [2012] OJ L 201/107; → Rome IV Regulation (succession)). By contrast, the Brussels IIa Regulation on matrimonial causes and parental responsibility allows for the residual application of the national jurisdictional rules of the Member State of the court seized, provided that the courts of no other Member State have jurisdiction under the Regulation (Case C-68/07 *Kerstin Sundelind Lopez v Miguel Enrique Lopez Lizazo* [2007] ECR I-10403).

2. Choice of forum agreements

An important innovation of the Italian PILA is its more liberal attitude with respect to choice of forum agreements. By virtue of art 4(2), the parties to a dispute can confer jurisdiction on a foreign court by an agreement evidenced in writing and thus exclude the jurisdiction of Italian courts, provided that the action concerns alienable rights. This rule represents a very important step forward as, until 1995, an exclusion of jurisdiction of Italian courts was not permitted unless both parties were foreigners or one of them was an Italian citizen with his or her domicile abroad.

The scope of application of art 4(2) is limited by the special provisions on jurisdiction agreements contained in certain European Regulations and in the Hague Choice of Court Convention (Hague Convention of 30 June 2005 on choice of courts agreements, 44 ILS 1294). Thus, in → civil and commercial matters, after the entry into force of the Brussels I Regulation (recast), the Italian rule will only be applicable when the parties' agreement confers jurisdiction on the courts of a non-Member State that is not a party to the 2005 Hague Convention.

3. Lis pendens

The 1995 Italian PILA also includes a rule on international *lis pendens* inspired by the European legal instruments. According to art 7 Italian PILA, an Italian court must stay its proceedings when a foreign court has first been seized with an action between the same parties, involving the same issue and the same cause of action, provided that it finds that the foreign court will render a decision capable of being recognized in Italy.

In civil and commercial matters, this national rule has been superseded by arts 33 and 34 of the Brussels I Regulation (recast).

III. Choice-of-law rules: general aspects

1. Introductory remarks

Since Italian choice-of-law rules have been codified since the middle of the 19th century, the role of case-law in the resolution of conflicts issues has traditionally been very limited. Generally speaking, Italian decisions in conflicts cases do not introduce new rules; they only interpret the existing provisions. Notable exceptions were two judgments of the Constitutional Court that invalidated some discriminatory conflicts rules in the field of family law in 1987 (Corte costituzionale, No 7l/1987 and No 477/1987) and thus prompted the Private International Law reform.

Chapter I Italian PILA contains the general provisions on applicable law, while the subsequent chapters are devoted to single areas of private law (capacity and rights of natural persons, → companies, family relations, succession, property rights, contractual and non-contractual obligations).

2. General features of choice-of-law rules

The choice-of-law rules within the Italian PILA are mostly bilateral, ie they can lead to the application of either the law of the forum or foreign law. Regarded as one of the great achievements of the Italian school of Private International Law under the influence of *Mancini*, the principle of extending equal treatment to the → *lex fori* and to foreign law is still applicable today.

Most Italian conflicts rules can be regarded as 'jurisdiction-selecting' as opposed to 'result-selecting' rules. In other words, the court determines the applicable law without taking into account its content. Only after determining the applicable law can the court refuse its application in a particular case if the result would be contrary to a fundamental principle of Italian → public policy (*ordre public*). Pursuant to art 16 Italian PILA, public policy has to be evaluated in a concrete way. Instead of making an abstract assessment of the content of a foreign legal rule, the seized court must examine whether its application in the particular case would lead to intolerable results.

Only some choice-of-law rules of the Italian PILA reflect a 'functional' (rather than 'jurisdiction-selecting') approach.

As found in other modern Private International Law codifications, the Italian PILA expressly recognizes the existence of domestic overriding mandatory provisions (→ Overriding mandatory provisions) that must be applied to all cases falling within their scope, irrespective of the law designated by the choice-of-law rules (art 17 Italian PILA). A more precise definition of such overriding provisions (in Italian: 'norme di applicazione necessaria') can also be inferred from European law. Under art 9(1) of the Rome I Regulation (Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), [2008] OJ L 177/6; → Rome Convention and Rome I Regulation (contractual obligations)) they are defined as 'the provision the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation'. The application of this type of mandatory provision is based on a different approach to conflicts issues. Here the judge does not have to determine which law is applicable to the disputed legal relationship, but has to ask whether the policy of a specific domestic rule requires its application in the particular case.

Unfortunately, the Italian PILA does not deal with the question of whether the overriding mandatory rules of a foreign state must (or may) be applied in some circumstances, although they are not part of the law designated by the choice-of-law rules of the forum.

A second important exception to the traditional 'jurisdiction-selecting' approach is found in choice-of-law rules that seek to achieve a certain substantive result in accordance with a specific policy of the forum. In such cases, policy considerations do not lead to the courts refusing to apply foreign substantive rules, nor do they impose the mandatory application of domestic provisions, but they do influence the → choice-of-law process by orienting it towards the desired result.

Two different techniques are used to this purpose in the Italian PILA: 'alternative connections' and 'optional rules'. Alternative connections are used to uphold the formal validity of certain acts (→ marriage, recognition of an illegitimate child and testamentary wills: arts 28, 35 and 48) and more generally to favour the establishment of a parent–child relationship (arts 33 and 34). Optional rules are used in the field of torts, whereby the injured party is given the right to choose between different laws (arts 62 and 63).

Thus, the express rule on mandatory overriding provisions as well as the introduction of some result-oriented choice-of-law rules are

expressions of the 'methodological pluralism' that constitutes one of the distinguishing features of contemporary private international law.

Another characteristic of Italian choice-of-law rules is their lack of flexibility, which some commentators regard as one of the major shortcomings of the Italian system. As a matter of fact, the Italian PILA rarely empowers the courts to determine the applicable law on a case-by-case basis by assessing the case's existing connections with different countries. The only open-ended choice-of-law rules included in the Italian PILA concern the law applicable to the effects of marriage (the personal and financial relations between spouses, and the → matrimonial property regime) and to divorce and legal separation (→ Divorce and personal separation), which are governed, in the absence of a common → nationality, by the law of the country where the matrimonial life was mainly located (arts 29–31 Italian PILA).

A general escape clause, such as that included in the Swiss and Belgian codifications (art 15 Swiss PILA; art 19 Belgian Private International Law Act (Wet houdende het Wetboek von international privaatrecht/Code de droit international privé of 16 July 2004, BS 27 July 2004, p 57344, 57366)), is missing from the Italian PILA. However, Italian courts are often confronted with the → escape clauses included in most of the European Regulations (the Rome I Regulation, → the Rome II Regulation (Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), [2007] OJ L 199/40) and → the Rome III Regulation (Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, [2010] OJ L 343/10), the Maintenance Regulation (Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, [2009] OJ L 7/1) and the Succession Regulation (Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, [2012] OJ L 201/107; → Rome IV Regulation (succession))).

In conclusion, it can be said that, from a comparative point of view, the Italian approach to conflict-of-laws problems is still relatively conservative. In Europe, the influence of what is known as the → American 'conflict of laws revolution' has been limited, and this is particularly true in the context of the Italian system.

3. Nationality versus habitual residence

With regard to natural persons and family relationships, ie in areas of law which are traditionally seen as pertaining to the 'personal status' (*statut personnel*, *Personalstatut*), → nationality is still a very important → connecting factor. The drafters of the Italian PILA did not want to abandon the nationality principle, which was one of the most significant of *Mancini's* contributions, nor did they want to renounce the applicability of Italian law to the millions of Italian citizens domiciled and resident abroad.

However, compared to previous legislation, the role of citizenship has been significantly reduced. There are several reasons for this. First, the older choice-of-law rules relating to the personal and property relations between spouses, which in the absence of a common nationality gave priority to the husband's nationality (art l8 of the preliminary provisions to the 1942 Civil Code), were manifestly at odds with the principle of equality between spouses guaranteed by the Italian Constitution. Pursuant to the current provisions, in the absence of a common nationality or when the spouses share more than one common nationality, their relationship is governed by the law of the state where their matrimonial life is mainly located (arts 29 and 30). A second derogation from the national law results from the acceptance of → party autonomy in new legal areas, such as the → matrimonial property regime and → succession (arts 30 and 46(2) Italian PILA).

Acceptance of the → *renvoi* doctrine (see below) can also lead to the application of a law other than that of the parties' nationality, whenever the law designated by the Italian choice-of-law rules refers to the law of a different country.

However, the most important reason for the progressive reduction of the role of nationality as a connecting factor is the continuous replacement of Italian choice-of-law rules by European Regulations. It is well known that → nationality only plays a secondary role compared to habitual residence (→ Domicile, habitual residence and establishment) in the European

Private International Law system. As a result, the nationality of the parties is no longer used as a connecting factor in the area of contractual and non-contractual obligations by virtue of the Rome I and Rome II Regulations. In other areas, the common nationality of the parties is only taken into account as a subsidiary connecting factor (eg for divorce, matrimonial property, or → maintenance obligations under the Rome III Regulation, the Matrimonial Property Regulation, or the 2007 Hague Protocol (Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations, [2009] OJ L 331/19)). Nevertheless, in some fields where party autonomy is recognized (such as divorce, maintenance obligations and succession), national law can be one of the options offered to the parties.

4. The acceptance of renvoi

From the viewpoint of Italian tradition, one of the most apparent novelties of the Italian PILA is art l3, which provides for an extended application of the *renvoi* doctrine.

Under the former law, the *renvoi* doctrine was expressly rejected (art 30 of the preliminary provisions to the 1942 Civil Code). Once the court had determined the applicable law designated by the Italian choice-of-law rule, it had to apply the substantive rules of that law.

However, under the rule of art 13(1) Italian PILA, Italian courts must apply → *renvoi* in two instances: first, when the choice-of-law rules of the *lex causae* refer back to Italian law (*renvoi au premier degré*, *Rückverweisung*) and, second, when the foreign choice-of-law rules refer to the law of a third state (*renvoi au deuxième degre*, *Weiterverweisung*), provided that that third state also considers that its law is applicable in the particular case ('accepted *renvoi*'). In the first instance, the *renvoi* doctrine has the merit of facilitating the decision to be taken on the merits of the dispute, since by virtue of the reference back, the court seized can apply the substantive rules of the forum; in the second instance, *renvoi* promotes uniform decisions, which is one of the purposes of all Private International Law systems.

Renvoi is excluded in some limited instances, in particular when the parties are permitted to choose the applicable law, or when conflict rules are based on a finding of proximity (eg the rules based on the localization of the marriage relationship under art 29 Italian PILA), or when the purpose is to achieve a certain substantive result. Thus, with regard to the issue of filiation, *renvoi* must be applied only if it leads to the application of a law which favours the establishment of the parental link (*renvoi in favorem*). In cases involving the formal validity of acts and non-contractual liability, where several alternative connecting factors are available, *renvoi* is completely excluded.

5. Ascertaining the content of foreign law

In conformity with the traditional approach of the Italian doctrine, judges are required to ascertain the content of foreign law *ex officio* (art l4 Italian PILA). In order to accomplish this difficult task, the courts may use the mechanisms provided for in international conventions or seek assistance from the Ministry of Justice, experts or specialized institutions. Italian courts can also require the cooperation of the parties; however, they cannot place on them the burden of proving the content of foreign law.

IV. Choice-of-law rules in specific areas of law

1. Marriage and divorce

Family matters are regulated by Title III, Chapter IV of the Italian PILA. In this area, → nationality still plays an important role as a connecting factor.

Like all other substantive requirements for → marriage, the capacity to marry is governed by the national law of each spouse (art 27 Italian PILA). However, if a foreigner wishes to marry in Italy, some of the essential requirements of marriage under Italian law are applicable as overriding mandatory rules (see art 116(2) of the Civil Code). Thus, a polygamous marriage is not valid even if it would be permitted under the national law of the spouses, and the same is also true for a marriage between a parent and his or her child, or between siblings.

Public policy also plays an important role in this field. For instance, if the national law of the spouses or of one of them prohibits the marriage because of the different religions of the spouses (as Islamic law does in certain cases), this rule cannot be applied in Italy as it violates the fundamental principle of non-discrimination on the grounds of religion or race (art 3 of the Italian Constitution). Similarly, if the foreign applicable law permits the marriage of a person under the age of 16, this marriage cannot be valid in Italy.

The personal and property effects of a marriage are governed by the law of the spouses' common nationality (arts 29 and 30). When the spouses do not have a common nationality or when they share several common nationalities, the applicable law is that of the country where their matrimonial life is mainly located. In the majority of cases, this will be the law of the place where the spouses have their common habitual residence (→ Domicile, habitual residence and establishment).

As far as their → matrimonial property regime is concerned, the spouses are permitted to choose the applicable law. They can select the law of the state of which one of them has nationality or the law of the state in which at least one of them has his or her habitual residence (art 30(l)). The → choice of law must be evidenced in writing and can be agreed upon either at the time of marriage or during the marriage.

It is important to note that the law applicable to the property regime can change as a result of a choice of law made by the spouses during marriage or by a modification of the (objective) connecting factor, for example, if the spouses acquire (or lose) a common nationality or if they move to a different country. Although the Italian PILA does not contain any explicit provision on this point, it appears that a change in the applicable law is retroactive, which means that – subject to third-party rights – all property acquired by the spouses during the marriage will be governed by the new applicable law. However, for spouses who marry or who specify the law applicable to their matrimonial property regime after 29 January 2019, the Matrimonial Property Regulation No 2016/1103 will supersede art. 30 Italian PILA. At the same time, the Registered Partnership Regulation will also become applicable.

Pursuant to Italian law, divorce and legal separation (→ Divorce and personal separation) were also primarily governed by the law of the spouses' common nationality. However, since the entry into force of the Rome III Regulation, this choice-of-law rule is no longer applicable. The applicable law is now that of the state where the spouses are habitually resident at the time the court is seized or, failing that, the law of the state where the spouses were last habitually resident, provided that the period of residence did not end more than one year before the court was seized and insofar as one of the spouses still resides in that state at the time the court is seized. The law of the spouses' common nationality is only applicable as a subsidiary rule when these conditions are not satisfied (see art 8 of the Rome III Regulation).

2. Kinship and adoption

The legitimacy of children is governed either by the national law of the child and or by the national law of his or her parents at the time of the child's birth. The law which is more favourable to the establishment of a parent–child relationship shall prevail (art 34(l) Italian PILA).

Similar rules apply to legitimation by subsequent marriage and to the recognition of a child born out of wedlock (→ Kinship and legitimation). In cases of subsequent marriage, legitimation is governed either by the child's national law or by the national law of either parent at the time when legitimation occurs. Similarly, the recognition of a child born out of wedlock is governed either by the child's national law or by the national law of the person recognizing the child at the time when recognition occurs.

These 'alternative connections' are designed to favour the establishment of the parental link. As mentioned above, *favor filiationis* also inspires the rule on *renvoi* with respect to kinship (art l3(3) Italian PILA, *renvoi in favorem*; → Kinship and legitimation).

Strangely enough, the Italian PILA does not provide for alternative connections for establishing the kinship of a child born out of wedlock. In the absence of explicit rules, some Italian scholars conclude that there is a gap in the law and consider that the rule on legitimation or on the recognition of a child should apply by analogy.

The Italian PILA also contains rules on adoption. These rules, however, are partly or completely superseded by other sources, both national and international, such as the substantive rules of the Statute on the International Adoption of Minors (Statute No 184 of 4 May 1982, Gazz.Uff. No 133 on 17 May 1983, as modified by Statute No 476 of 31 December 1998) and the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 1993 (Hague Convention of 29 May 1993 on protection of children and co-operation in respect of intercountry adoption, 32 ILM 1134, in force in Italy since 1 May 2000).

An international → adoption can take place in Italy when one or both of the adopters or the

adoptee are Italian nationals or reside in Italy, or when the adoptee is a minor abandoned in Italy (art 40(l) Italian PILA). In principle, the adoption is governed by the national law of the adopter or adopters, if common, or by the law of the state where their matrimonial life is mainly located at the time of the adoption (art 38(l) Italian PILA). However, Italian law applies whenever the adoption confers the status of legitimacy on the minor adoptee. In this case, the rules of Italian law on the adoption of minors are considered as overriding mandatory rules.

As far as the recognition of a foreign adoption is concerned, the general rules on the recognition of foreign judgments (arts 64 ff Italian PILA) are largely replaced by the special rules relating to the adoption of minors, which are now modelled on the Hague Adoption Convention of 1993. The principles underlying the Convention apply even when the adoption has been pronounced in a state that is not party to the Convention.

The role of European and international legal instruments is also very important with respect to the protection of minors. Thus, the rules on jurisdiction and the recognition and enforcement of foreign judgments included in the Brussels IIa Regulation take priority over the rules of Italian law. For issues which are not covered by this Regulation, art 42 Italian PILA refers to the Hague Infant Protection Convention of 5 October 196l (Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants, 658 UNTS 143). However, this convention is now superseded by the Hague Child Protection Convention of 19 October 1996 (Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcment and co-operation in respect to parental responsibility and measures for the protection of children, 35 ILM 1391), which is also in force in all other Member States of the European Union. Since 1995, Italy is also party to the Hague Child Abduction Convention of 25 October 1980 (Hague Convention of 25 October 1980 on the civil aspects of international child abduction, 1343 UNTS 89), as well as the European Child Custody Convention of 20 May 1980 (European Convention 20 May 1980 on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children, 1496 UNTS 37). By contrast, it has not yet ratified the Hague Adult Protection Convention of 13 January 2000 (Hague Convention of 13 January 2000 on the international protection of adults, Hague Conference of Private International Law (ed), Collection of Conventions (1951–2009) (Intersentia 2009) 426).

3. Maintenance obligations

→ Maintenance obligations are entirely governed by the European Maintenance Regulation and by the 2007 Hague Protocol on the law applicable to maintenance obligations.

4. Succession

Italian choice-of-law rules remain true to the principles of unity of → succession and to the application of the national law of the deceased (art 46(1) Italian PILA). However, some exceptions from these principles result, on the one hand, from the acceptance of → *renvoi* and, on the other hand, from the choice of the applicable law by the testator. Thus, *renvoi* can lead to the application of the *lex domicilii* and/or of the *lex situs*, if the national law of the deceased refers to these laws, subject to the conditions of art 13 Italian PILA. In such cases, the acceptance of *renvoi* can also challenge the unity of succession. A testator can choose the law of the state of his or her habitual residence to apply to the succession of his or her estate (art 46(2) Italian PILA). However, if the deceased had Italian nationality, the choice of law cannot affect the forced heirship rights (*legittima*) conferred by Italian law upon heirs who have their habitual residence in Italy at the time of the death. Moreover, the choice of law is ineffective if, at the moment of death, the deceased was no longer resident in the state of the chosen law.

However, with respect to the succession of persons who die on or after 17 August 2015, these rules of Italian Private International Law have been entirely superseded by those included in the European Succession Regulation. Therefore, the law of the last habitual residence of the deceased is now applicable to the succession, subject to an → escape clause and *renvoi* (arts 21 and 34 of the Succession Regulation). The testator can also choose to have his or her national law applicable to the succession (art 22 of the Succession Regulation).

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5. *Property rights*

Article 51(1) Italian PILA provides that possession, property and other rights *in rem* in immovable and movable property (→ Property and proprietary rights) shall be governed by the *lex situs*. The law of the place where the property is situated governs not only the content and scope of property rights, but also their acquisition or loss, except in matters of succession and when the transfer of a right *in rem* depends on a family relation or a contract (art 51(2) Italian PILA).

With regard to chattels, the application of the *lex situs* can be complicated by the movement of assets from one country to another. In such cases, a right validly acquired under the law of the previous location is recognized in Italy, subject to adaptations necessary under the law of the new *situs*. On the contrary, if the right was not validly acquired under the law of the previous location, the legal effect of the events occurring before the asset's movement (for instance, the conclusion of a sale contract (→ Sale contracts and sale of goods) or the delivery of the assets) must be determined under the law of the new *situs*.

An important exception to the application of the *lex situs* is provided for cases involving property rights in goods in transit, which are governed by the law of the place of destination (art 52 Italian PILA).

Contrary to other Private International Law systems (such as under Swiss law – art 104 Swiss PILA), the parties do not have the right to choose the law applicable to the transfer of rights *in rem.*

6. *Contractual obligations*

The Italian PILA contains no specific → choice-of-law rules for contracts, but simply refers to the Rome Convention on the Law Applicable to Contractual Obligations of 19 June 1980 (Rome Convention on the law applicable to contractual obligations (consolidated version), [1998] OJ C 27/34; → Rome Convention and Rome I Regulation (contractual obligations)). In force in Italy since 1991, this Convention is applicable *erga omnes* (art 2 of the Rome Convention).

Pursuant to art 57 Italian PILA, the Convention governs → contractual obligations 'in all cases'. This means that the conflicts rules of the Convention are applicable before Italian courts even in respect of matters that are excluded from the scope *ratione materiae* of this instrument, provided that they can be characterized as 'contractual obligations' as understood in Italian Private International Law and that they are not governed by other provisions of the Italian PILA.

Since 2009, the Rome Convention has been replaced by the Rome I Regulation, which takes priority over the Italian conflict rules. It is not settled whether art 57 should be construed as referring to the rules of the Convention or to those of the Regulation.

With respect to international sales of goods, however, Italy is a party to both the Hague Sales Convention of 15 June 1955 (Hague Convention of 15 June 1955 on the law applicable to international sales of goods, 510 UNTS 147) and to the Vienna Convention of 1980 (CISG, United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods, 1489 UNTS 3). The substantive rules included in the CISG are directly applicable when the parties to an international sale contract have their places of business in two contracting states (art 1(1)(a) CISG); in this case, the CISG prevails over Private International Law rules, as was held in several Italian cases (eg Cass 18 October 2002, No 14837, CLOUT case No 648). They are also indirectly applicable when the Private International Law rules lead to the law of a contracting state (art 1(1)(b) CISG, which is applicable since Italy did not make the reservation under art 95 CISG). From an Italian point of view, the Private International Law rules applicable to an international sale contract are those included in the 1955 Hague Convention. This text (in force in Italy since 1 September 1964) takes precedence over both the Rome Convention (see art 21 of the Rome Convention) and the Rome I Regulation (see art 25 of the Rome I Regulation). Under this Convention, absent a party choice (art 3), the law of the seller applies, except in cases where the seller receives the order for the goods in the buyer's country (art 4).

Italy is also a party to several uniform law conventions in the field of carriage of goods, such as the CMR (Convention of 19 May 1956 on the contract for the international carriage of goods by road, 399 UNTS 189, in force in Italy since 3 April 1961), the Montreal Convention (Convention of 28 May 1999 for the unification of certain rules relating to international carriage by air, 2242 UNTS 309, since 28 June 2004) and the Hague-Visby Rules (International Convention for

the unification of certain rules of law relating to bills of lading signed at Brussels, 25 August 1924, as amended by the 1968 Visby Protocol and the 1979 Brussels Protocol, since 22 November 1985).

7. Torts and other non-contractual obligations

Under art 62 Italian PILA, → torts are governed by the *lex loci delicti*. In the case of dissociation between the place of the wrongful act and the place of the damage, the law of the place of damage is applicable, unless the injured party requests the application of the law of the state where the wrongful act occurred. Notwithstanding this, if the tort only concerns persons with the same nationality and these persons reside in the state of which they are nationals, the law of that state is applicable.

However, since the entry into force of the Rome II Regulation in 2009, the Italian choice-of-law rules relating to torts have been largely superseded by this European instrument. This is also true for other non-contractual obligations such as unjust enrichment, → *negotiorum gestio* and pre-contractual liability.

As a consequence, art 62 is presently only applicable to torts which are excluded from the scope of application of the Rome II Regulation. In particular, the Italian rule remains applicable to violations of privacy and rights relating to personality, including defamation, which are expressly excluded from the scope of the Regulation (see art 1(2)(g) of the Rome II Regulation).

It is worth noting that Italy has not ratified the Hague Convention on the Law Applicable to Traffic Accidents (Hague Convention of 4 May 1971 on the law applicable to traffic accidents, 965 UNTS 415) or the Hague Convention on the Law Applicable to Product Liability of 2 October 1973 (Hague Convention of 2 October 1973 on the law applicable to products liability, 1056 UNTS 191). Therefore, the Rome II Regulation is applicable in Italy in relation to these matters.

V. Recognition and enforcement of foreign judgments

The rules applicable to the recognition and enforcement of foreign judgments in Italy were significantly modified in 1995, influenced by the Brussels Convention (Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, [1972] OJ L 299/32, consolidated version, [1998] OJ C 27/1), the → Lugano Convention (Lugano Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [2007] OJ L 339/3) and other European Regulations.

However, the rules of the Brussels Convention on recognition and enforcement could not simply be extended to judgments rendered in a non-contracting state, as was done with respect to jurisdiction. Third-party states are not bound by the uniform jurisdiction rules of the Convention and do not enjoy the mutual trust existing between Member States of the EU. Thus, stronger scrutiny of the judgments of non-contracting states is needed.

According to art 64 Italian PILA, recognition is subject to the following requirements:

(i) The foreign authority issuing the judgment had jurisdiction pursuant to the criteria of jurisdiction in force under Italian law.
(ii) The essential due process guarantees must have been respected in the proceedings before the foreign court.
(iii) If judgment was issued in default of appearance, the respondent must have been served with documents instituting the proceedings.
(iv) The judgment must be final under the law in force at the place where it was issued.
(v) The judgment does not conflict with any final judgment issued by an Italian court.
(vi) No proceedings initiated prior to the foreign proceedings are pending before an Italian court between the same parties and on the same issue.
(vii) The foreign judgment must not conflict with Italian public policy.

To a large extent, these requirements reflect those prescribed under the existing European Regulations. This is true with respect to → public policy and the requirement of compliance with due process, including the proper service of proceedings. The absence of conflict with a judgment of the requested state is also a common requirement.

However, some important differences exist. The most important one is that the (indirect) jurisdiction of the foreign court is always a condition for recognition under the Italian rules. As in other national systems, this requirement is

verified by applying, by analogy, the rules governing the international jurisdiction of Italian courts to the foreign judgment-issuing court. Among the admissible grounds of indirect jurisdiction is the voluntary submission to the jurisdiction of the foreign courts (→ Choice of forum and submission to jurisdiction), and this also applies in proceedings relating to → personal status (Cass 14 January 2003, No 365).

The general rule of art 64 Italian PILA provides that recognition of the foreign decision does not require 'any further proceedings'. This principle of 'automatic' (*ipso iure*) recognition reflects the approach adopted in Europe since the Brussels Convention and represents a significant change with respect to the traditional Italian recognition system, which was based on registration proceedings before the Court of Appeal ('delibazione').

However, judicial recognition proceedings can be initiated by all interested persons whenever a foreign judgment has not been complied with or when its recognition has been challenged. Moreover *exequatur* proceedings are necessary when the enforcement of a foreign enforceable judgment is sought (art 67(1) Italian PILA). The application for *exequatur* must be submitted to the Court of Appeal of the district where enforcement is sought. During the *exequatur* proceedings, which take the form of summary proceedings (*decreto legislativo*, 1 September 2011, No 150; arts 702bis *et seq* of the Code of Civil Procedure), the court must determine whether the foreign judgment fulfils all requirements for recognition under art 64 Italian PILA.

When a decision on the recognition of the foreign judgment is issued, it is purely declaratory in nature. This means that its effects are retroactive; in other words, the foreign judgment is capable of having effect in Italy from the moment it became final in its country of origin. Moreover, the statute of limitation under the country of origin's law applies rather than that provided for by Italian law.

In any case, even if a decision on recognition has not been issued, a foreign judgment that complies with the requirement under art 64 is effective in Italy and the issues settled therein cannot be brought anew before an Italian court. If this happens, the foreign judgment could be pleaded against the non-compliant party, like an *estoppel per rem iudicatam* (see Cass 18 November 2008, No 27338). In this case, the court seized – after having established that the judgment satisfies the requirements under art 64 – declares its recognition with effects limited to the pending proceedings (art 67(3) Italian PILA).

As clarified in a directive by the Ministry of Justice (*circolare* No 1/50/FG/29 of 7 January 1997, [1997] Riv.Dir.Int'le Priv. & Proc. 224), foreign decisions having an effect on personal status, which are to be registered at the Civil Registrar's Office, such as foreign divorce decrees, do not need to be submitted to formal enforcement proceedings. The clerks of the Civil Registrar's Office (*ufficiali dello stato civile*) are to carry out the registration of the foreign decision upon request by the applicant, unless they have reason to believe that the recognition requirements are not fulfilled. In such a case, they must ask for instructions from the Prefect (the government's representative in a province). When the registration of the foreign decision is refused, the applicant always has the right to seize the Court of Appeal with a request for recognition.

Another alternative basis for the recognition of foreign judgments (including decisions in non-contentious proceedings) is laid down in arts 65 and 66. Under these provisions, decisions in matters of capacity, → personal status and family relations are recognized in Italy when they are issued by the authorities of the state whose law would be applicable under the Italian PILA, or when they are recognized in that state. This basis of recognition is an alternative to that provided under art 64 Italian PILA (Cass 28 May 2004, No 10378; Franco Mosconi and Cristina Campiglio, *Diritto internazionale privato e processuale*, vol 1: *Parte generale e obbligazioni* (UTET Giuridica 2013) 373). In such cases, the requirements for recognition are simplified, the only conditions being that the foreign decision is not in conflict with Italian public policy and that fundamental due process rights have been respected.

VI. International arbitration

International arbitration is not regulated in the Italian PILA, but in the Code of Civil Procedure. Originally, this text only regulated domestic arbitration, so that the only rules on international arbitration applicable in Italy were those included in international treaties, in particular the 1958 New York

Convention (New York Convention of 10 June 1958 on the recognition and enforcement of foreign arbitral awards, 330 UNTS 3, in force in Italy since 31 January 1969) and the 1965 Washington ICSID Convention (in force since 28 April 1971). A modern set of rules on international arbitration was included in the Code of Civil Procedure in 1994 (arts 832–838); however, in 2006, the Italian legislator decided to come back to a 'monistic' solution (Legislative Decree No 40 of 2 February 2006). Therefore, at present, domestic and international arbitration are subject to the same set of rules (arts 806–840 of the Code of Civil Procedure), subject to one single exception (under art 830(2), the Court of Appeal, after setting aside an international award, does not have jurisdiction to rule on the merits unless the parties agree on that, contrary to what is provided for in domestic arbitration).

While domestic arbitration has benefited of the adoption of a unified regime, the 2006 reform constitutes, for many reasons, a step back with respect to international arbitration. Several aspects of the Italian regulation are still obsolete if measured against international benchmarks, such as the 2006 UNCITRAL Arbitration Model Law (United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration, Vienna 2006). Among the most important drawbacks, we will mention the absence of a specific rule on the law applicable to the merits (ancient art 834 was abrogated in 2006), the exclusion of the arbitrator's jurisdiction to grant interim measures (art 818 of the Code of Civil Procedure) as well as a long and complex list of grounds for setting aside the award (art 829 of the Code of Civil Procedure).

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Literature

Tito Ballarino, *Diritto internazionale privato* (with the collaboration of Andrea Bonomi, 3rd edn, CEDAM 1999); Tito Ballarino, *Diritto internazionale privato italiano* (7th edn, CEDAM 2011); Bruno Barel and Stefano Armellini, *Manuale breve. Diritto internazionale privato* (Giuffrè 2010); Stefania Bariatti and others, 'Legge 31 maggio 1995, n. 218. Riforma del sistema italiano di diritto internazionale private' in *Le nuove leggi civili commentate* (CEDAM 1996) 877; Andrea Bonomi, 'The Italian Statute on Private International Law' [1999] Int'l J.Legal Info. 247; Nerina Boschiero, *Appunti sulla riforma del sistema italiano di diritto internazionale privato* (Giappichelli 1996); Giorgio Conetti, Sara Tonolo and Fabrizio Vismara, *Manuale di diritto internazionale privato* (Giappichelli 2013); Claudio Consolo, Massimo Benedettelli and Luca G Radicati di Brozolo, *Commentario breve al diritto dell'arbitrato interno e internazionale* (CEDAM 2010); Franco Mosconi and Cristina Campiglio, *Diritto internazionale privato e processuale*, vol 1: *Parte generale e obbligazioni* (UTET Giuridica 2013) and vol 2: *Parte speciale* (UTET Giuridica 2011); Paolo Picone, *La riforma italiana del diritto internazionale privato* (CEDAM 1998); Fausto Pocar and others, 'Riforma del sistema italiano di diritto internazionale private: legge 31 maggio 1995, n. 218 – Commentario' [1995] Riv.Dir.Int'le Priv. & Proc. 905; Fausto Pocar and Costanza Honorati, 'Italy' (National Report) in Symeon C Symeonides (ed), *Private International Law at the End of the 20th Century: Progress or Regress? XVth International Congress of Comparative Law* (Kluwer Law International 2000) 279.

† Deceased.