

Overview of Italian Adoption Law

As in most Continental European countries, in Italy, adoption historically was an institution to provide childless persons with the opportunity to transfer their name and estate to posterity. Thus, adoption of adults – implemented by contract between the adopter and the adoptee – was the rule. The Civil Code of 1942 (*Codice Civile*) took over this concept and required a minimum age of 50 for persons who wished to adopt. In addition to adoption, the Civil Code recognized a special form of foster care for abandoned children, based on an old custom in southern Italy, called *affilianzion*. While its legal effect fell somewhat short of adoption, this institution offered a viable way to integrate such children into new families.

In 1967, Italian adoption law opened up to modern concept of adoption, when the legislature introduced a new form of adoption for children up to the age of 8 and reduced the minimum age of adopters to 35. Yet, the adoption of adults was still considered the standard (and was thus called “ordinary adoption” or *adozione ordinaria*), while the adoption of children was called special adoption (*adozione speciale*). The reform recognized the principle that the adopted child would become a full member of the new family while losing all legal ties to his or her biological parents.

In 1983, Italy fundamentally reformed its adoption law, so that adoption of minors was formally recognized as the basic model of adoption law, regulated by a special law and removed from the Civil Code. While the old form of foster care (*affilianzione*) was abolished in 1983, Italy has established a form of temporary foster care in addition to adoption (*affidamento*). Italy also has kept the adoption of adults.

Italy has long recognized foreign adoptions and has ratified and implemented the Hague Convention on Protection and Co-operation in Respect of Intercountry Adoption, as well as the European Convention on the Adoption of Children of 1968.

I. General Acts and Regulations Governing the Adoption Process in Italy

The law on adoption of minors is governed by Act No. 184 of May 4, 1983 (“Law No. 184”) which has been amended by several acts, the latest being Law No. 149 of March 28, 2001.¹ The law on adoption of adults is still to be found in the Italian Civil Code (Art. 291 to 314). This memo, however, will concentrate on the adoption of minors.

II. Substantive Conditions for the Making of an Adoption Order

A. Who may be adopted?

A child may be adopted only if he or she has been declared “adoptable” by the juvenile court.² A child is to be declared adoptable if the child is in a state of abandonment due to the

¹ Law No. 149 of March 28, 2001 was published in the *Gazzetta Ufficiale*, no. 96 of April 26, 2001.

² Art. 7 (1) Law No. 184.

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lack of care by parents or relatives.³ “Abandonment” principally refers to situations in which a child lacks the opportunity to live in a family of his or her own.⁴ Thus, children who live in welfare institutions or in a foster family may also be declared adoptable due to a state of abandonment.⁵ The process of declaration of adoptability is regulated in great detail in Chapter II of Law No. 184 (Art. 8 to 21).⁶ The court declares a child’s adoptability by way of a formal judgment (*dichiarazione di adottabilità*)⁷ and may also revoke that declaration if such revocation is in the interest of the child.⁸

Children who have reached the age of 14 may not be adopted unless they personally express their consent to adoption.⁹

B. Who may adopt?

1. Civil status requirements

Only couples who have been married for at least three years may adopt.¹⁰ Married couples who have been separated at any time during the three years before adoption may not adopt.¹¹ This “stability requirement” may also be met if the couple establishes that it has lived together for a period of three years before marriage. In such cases, however, the juvenile court (*tribunale per il minorenni*) must make a finding of the continuity and stability of such a relationship, taking all circumstances into account.¹²

Generally, single persons may not adopt. There are exceptions in special cases: if, during the probationary period, one spouse dies, the adoption by the surviving spouse may still be authorized if it is found to be in the best interest of the child.¹³ Likewise, the adoption by one spouse may be authorized if the couple separated during the probationary period, but only if such authorization is motivated solely by the best interests of the child.¹⁴ Finally, a person may adopt the children of his or her spouse, but this is regarded as an “adoption in a special case.”¹⁵

The prohibition on adoption by single persons under Italian law¹⁶ has been the topic of considerable debate in Italy¹⁷ – even more so because the European Convention on the Adoption

³ Art. 8 (1) Law No. 184.

⁴ Art. 11 (1) Law No. 184.

⁵ Art. 8 (2) Law No. 184.

⁶ See below section C.1. for more details on this process.

⁷ Art. 15 (2) Law No. 184.

⁸ Art. 21 Law No. 184.

⁹ Art. 7 (2) 1 Law No. 184.

¹⁰ Art. 6 (1) 1 Law No. 184.

¹¹ Art. 6 (1) 2 Law No. 184.

¹² Art. 6 (3) Law No. 184.

¹³ Technically, in this case, the adoption by both spouses is authorized even though one has died. Art. 25 (4) Law No. 184.

¹⁴ Art. 25 (5) Law No. 184.

¹⁵ Art. 44 (1) a Law No. 184.

¹⁶ The prohibition only applies to the adoption of minors. Single persons may adopt adults.

¹⁷ For an overview of this discussion see Dogliotti, *L'adozione dei minori*, in: BESSONE/DOGLIOTTI/FERRANDO, *GIURISPRUDENZA DEL DIRITTI DI FAMIGLIA, VOL. III, FILIAZIONE ED ADOZIONE*, (Milan, 2000) p. 585

of Children authorizes its member states to provide for adoption by single persons,¹⁸ though it does not require them to allow it. As a consequence, gay or lesbian couples have no possibility to adopt: they may not marry under Italian law and neither may they adopt as a single person (which is possible in other European Countries).

2. Age requirements

The adopting parents must be at least 18 years of age and may not be more than 45 years older than the child.¹⁹ Until 2001, the maximum age difference was 40 years, but since the strict limit was criticized and to some extent put aside in decisions by the Constitutional Court,²⁰ the legislature extended the limit.

These limits may be dispensed with if the juvenile court establishes that the denial of a proposed adoption would entail serious harm for the child.²¹ In addition, there are three express exceptions:²² Adoption will still be possible if

- a) the maximum age limit is exceeded by only one spouse and by no more than ten years, or
- b) the adoptive parents already have biological or adopted children of which at least one is still a minor, or
- c) the parents have already adopted a biological brother or sister of the minor they wish to adopt.

3. Adoption in special cases

In a separate title, Law No.184 waives some of the requirements for adoption in special circumstances, including if biological relatives who have, after the death of the biological parents, developed a strong relationship to the child they wish to adopt; if spouses wish to adopt biological or previously adopted children of the other spouse; if the adoptee is disabled and has lost his or her biological father and mother; or if pre-adoptive placement proves to be impossible.²³ In these cases, unmarried couples may also adopt.²⁴ If the adoptee is disabled or spouses adopt children of their respective husbands or wives, the law requires a minimum age difference of only 18 years.²⁵

C. Adoption authorities

In Italy, the entire process of adoption is in the hands of the juvenile courts (*tribunale per il minorenni*). They may delegate some tasks to social organizations or local institutions, but the court oversees every step of the process.

¹⁸ Art. 6 (1) the European Convention on the Adoption of Children of 1968.

¹⁹ Art. 6 (4) Law No. 184.

²⁰ All these decisions involved international adoptions; for an overview *see* Dogliotti, (footnote 17), p. 585

²¹ Art. 6 (5) Law No. 184.

²² Art. 6 (6) Law No. 184.

²³ Art. 44 (1) Law No. 184.

²⁴ Art. 44 (3) Law No. 184.

²⁵ Art. 44 (4) Law No. 184.

1. Process of declaration of adoptability

The juvenile court and its public prosecutor manage the process of declaration. Public entities such as local social services or welfare authorities are required to report any alleged case of child abandonment to the juvenile court.²⁶ Likewise, every six months public or private care institutions are required to deliver reports to the prosecutor service on children in their care. The public prosecutor must inspect each child's situation and then apply to the court for a declaration of adoptability for those children eligible for adoption. The prosecutor has an ongoing obligation to report to the court on the children's situations on the basis of the periodic reports received from the institutions.²⁷

Upon receipt of an application from the public prosecutor, the juvenile court must open proceedings. If necessary, the court may further investigate the child's situation with the help of local social services or law enforcement agencies.²⁸ The court will inform the biological parents (or, where there are no parents, biological relatives who have a meaningful relationship to the child) of the proceeding²⁹ and invite them to engage counsel to represent them; the court also notifies the biological parents that the court will appoint an *ex parte* counsel for them if the parents fail to do so.³⁰

After its investigation, the court will issue a declaration of the child's adoptability (*dichiarazione di adottabilità*). The biological parents, the public prosecutor, or the guardian may appeal the decision.³¹ Once the decision is final, the order is kept in a special register of the clerk's (*cancelliere*) office of the court.³² When the adoptability of the child has been declared, the biological parents' custodial rights are suspended by law and the court will appoint a guardian for this period.³³

2. Pre-adoptive placement

Italian law requires that a child and the proposed adoptive parents live together for a probationary period, the so-called "pre-adoptive placement" (*affidamento preadottivo*).³⁴

To start the adoption process, couples may apply to one or more juvenile courts to be considered for the placement of children for the pre-adoptive probationary period.³⁵ In the application, couples must state whether they are willing to adopt several siblings or children who are handicapped.³⁶ The application will expire within three years and may be renewed.³⁷

²⁶ Art. 9 (1) 2, (2) 1 Law No. 184.

²⁷ Art. 9 (2) and (3) Law No. 184.

²⁸ Art. 10 (1) Law No. 184.

²⁹ Art. 11 (2) to (7) Law No. 184.

³⁰ Art. 10 (2) Law No. 184.

³¹ Art. 15 (2), 17 Law No. 184.

³² Art. 18 Law No. 184.

³³ Art. 19 Law No. 184.

³⁴ Regulated in Chapter III of the Law No. 184.

³⁵ Art. 22 Law No. 184.

³⁶ Art. 22 (1) 5 Law No. 184.

³⁷ Art. 22 (1) 1 Law No. 184.

Once the court has determined that a couple meets the formal requirements set out above,³⁸ it starts to investigate the couple's suitability to be adoptive parents. For this purpose, the court uses the assistance of the social services of local authorities and the opinion of local health institutions. The inquiry focuses on the applicants' ability to educate the child, their personal and economic situation, the health and family environment, and the reasons why they wish to adopt.³⁹ The inquiry is to be completed within 120 days, but this deadline may be extended once for another 120 days by court order.⁴⁰ Priority in review is given to applications for adoption of disabled children and children over the age of 5.⁴¹

From among all couples that have applied, the juvenile court selects the one best able to meet the child's needs.⁴² The fact that a couple already has adopted a sibling of the adoptee, has applied to adopt several siblings, or is willing to adopt a disabled child will be regarded as favorable in the selection process.⁴³ Before selecting adopters, the court will hear from the biological parents of the child or any other biological relatives. The court also will hear from the child if she or he is at least 12 years of age, or younger, based on the child's intellectual abilities.⁴⁴ Children aged 14 or older must expressly consent to placement with the chosen couple.⁴⁵ The order of the court, which may be appealed by the prosecutor or the guardian,⁴⁶ is also deposited with the clerk's office.⁴⁷

During the probationary period, the court monitors the progress of the pre-adoptive placement with the assistance of local social services.⁴⁸ The period of pre-adoptive placement lasts for one year.⁴⁹ If it is in the child's best interests, the court may – *ex officio* or on motion by the prospective adopters – extend the period for one additional year.⁵⁰

3. Adoption by Italians of children from abroad

If an Italian couple wishes to adopt a child from abroad, Law No.184 requires a special procedure. First, the couple must apply to the juvenile court. If the couple meets the general requirements, the court will ask social services to assess the couple's parental capacities and report to the court.⁵¹ If the couple is deemed suitable to raise a child, the court will issue a decree of suitability (*decreto di idoneità*).⁵² Within one year, the couple may approach an accredited agency, which cooperates with foreign authorities to place children with adoptive couples. Accredited agencies (*enti autorizzati*) handle the entire process and assist the couple

³⁸ See above B.

³⁹ Art. 22 (4) 1 Law No. 184.

⁴⁰ Art. 22 (4) 2 Law No. 184.

⁴¹ Art. 22 (3) Law No. 184.

⁴² Art. 22 (5) Law No. 184.

⁴³ Art. 6 (7) Law No. 184.

⁴⁴ Art. 22 (6) 1 Law No. 184.

⁴⁵ Art. 22 (6) 2 Law No. 184.

⁴⁶ Art. 24 Law No. 184.

⁴⁷ Art. 22 (7) 4 Law No. 184.

⁴⁸ Art. 22 (8) Law No. 184.

⁴⁹ Art. 25 (1) 1 Law No. 184.

⁵⁰ Art. 25 (3) Law No. 184.

⁵¹ Art. 29bis Law No. 184.

⁵² Art. 30 Law No. 184.

with the procedure required by the foreign country. The agency also gathers all required documents and submits them to the Italian authorities.⁵³

In order to allow the couple to bring the child to Italy, the Commission for Intercountry Adoption must declare that the adoption is in the best interest of the child and conforms with the Hague Convention.⁵⁴ If the adoption was declared by the child's country of origin, the juvenile court will verify that such adoption does not run counter to fundamental principles of Italian law and will, if all requirements are met, order its entry into the register of civil status.⁵⁵ If the adoption must be completed in Italy, the juvenile court will order a pre-adoptive placement period of one year before declaring the adoption effective.⁵⁶

D. Standard applied before making an adoption order

Though the standard for the adoption order is not explicitly mentioned in the relevant articles, a standard akin to the "best interests of the child" standard is applied. When making the adoption order, the court must decide "whether to proceed with the adoption"⁵⁷ – that is whether to leave the child with the couple he or she has lived with during the pre-adoptive placement. Since a child may only be placed with prospective adoptive parents only if the pre-adoptive placement is in the child's best interest, this standard is also applied to the adoption order.

III. Adoption Procedure

A. Who makes the adoption order?

At the end of the pre-adoptive placement period, the juvenile court decides whether or not "to proceed with the adoption."⁵⁸ The adoptive order (*dichiarazione di adozione*) may then be appealed by the public prosecutor, the adoptive parents (in case of a denial) or the guardian of the child.⁵⁹

B. Consents required for making of adoption order

If the child is 14 or older, he or she must consent to the adoption in person.⁶⁰ Other than that, no explicit consent is required for an adoption order.

The law does not require the consent of the biological parents or the guardian of the child. When the court investigates the situation of a child before deciding his or her adoptability, it also examines whether the biological parents want and are able to take care of the child themselves. Since an independent court rules on the declaration of adoptability and the biological parent may appeal the decision, their rights are protected. Consequently, in the

⁵³ Art. 31 Law No. 184.

⁵⁴ Art. 32 (1) Law No. 184.

⁵⁵ Art. 35 (3) Law No. 184.

⁵⁶ Art. 35 (4) Law No. 184.

⁵⁷ Art. 25 (1) 1 Law No. 184.

⁵⁸ Art. 25 (1) 1 Law No. 184.

⁵⁹ Art. 26 (1) 1 Law No. 184.

⁶⁰ Art. 7 (2) and Art. 25 (1) 2 Law No. 184.

subsequent proceedings on the adoption order, the court is no longer obliged to hear from the biological parents.⁶¹

Before making the adoption order, however, the court must hear from the following: the adoptive couple; the child if at least 12 years old or, if younger than 12, if deemed mature enough to participate meaningfully; the public prosecutor; the guardian; and those agencies involved in monitoring the pre-adoptive placement family.⁶² If the adoptive couple has other biological or adopted children, the court must hear from them as well.⁶³

In “special cases” adoptions,⁶⁴ consent of the biological parents is required but may be waived by the court, if it is deemed to be in the best interests of the child. Also, in cases of the adoption of the children of a spouse, the spouse of the adopter must consent. If, in any of these cases, a person’s consent cannot be expressed or the person cannot be located, the court may also waive consent by order.⁶⁵

C. Interim orders

During the process of declaration of adoptability, the juvenile court may take appropriate temporary measures in the best interest of the child, such as temporary placement with a family or family-type community, suspension of the parents’ or the guardian’s custodial rights, or appointment of a temporary guardian.⁶⁶ The court may also take such measures if the pre-adoptive placement order is revoked,⁶⁷ which may be deemed necessary to safeguard the best interests of the child.⁶⁸

D. Secrecy and anonymity of adoption procedure; possibility of origin tracing

All of the proceedings of the juvenile court are held *in camera*, i.e., meaning they are not open to the public. Private or public entities involved in any stage of the adoption process are obliged to keep all information secret unless they are ordered to reveal it by a judicial decision, or if the civil status registry asks for such information.⁶⁹

Normally, the adoptive parents receive no information on the biological parents. However, the 2001 amendment of Law No. 184 has recognized a child’s interest in tracing his or her origins and has liberalized the law in this area accordingly. Before 2001, most data on adoption was kept secret. Today, the adoptee may, upon reaching the age of 25, have access to such information. If the adoptee can show serious grounds pertaining to his or her physical or

⁶¹ See Luther, Das italienische sachliche und internationale Adoptionsrecht nach dem Gesetz vom 4. 5. 1983, DAS STANDESAMT, Vol. 36, 1983, p. 333 [336].

⁶² Art. 25 (1) 1 Law No. 184.

⁶³ Art. 25 (3) Law No. 184.

⁶⁴ See above Section II.A.3.

⁶⁵ Art. 46 Law No. 184.

⁶⁶ Art. 10 (3) Law No. 184.

⁶⁷ Art. 23 (3) Law No. 184.

⁶⁸ Art. 22 (6) 2 Law No. 184.

⁶⁹ Art. 28 (3) Law No. 184.

mental health, he or she may also have access upon reaching the age of 18. To get the information, the adoptee must apply to the juvenile court.⁷⁰

If the adoptee is still a minor, the adoptive parents may apply to the juvenile court for information on the identity of the biological parents, but they are required to demonstrate serious reasons for such a revelation.⁷¹ The juvenile court must also rule on their application.⁷² The court may also furnish such information to the head of a hospital if it is urgently needed to prevent grave danger to the child's health.⁷³

However, in no case may information be provided if the adoptee was not recognized at birth by the biological mother or if one of the biological parents has stated they do not wish to be named, or if one of them has agreed to the adoption only under the condition that he or she remain anonymous.⁷⁴

IV. Legal Effect of an Adoption

With the adoption order, the adopted child assumes the status of a legitimate child of the adoptive parents and also takes on their surname.⁷⁵ All ties to the biological parents are legally cut off.⁷⁶

V. Recognition of Foreign Adoptions

Under its conflict of law rules, Italy has always recognized foreign adoptions. In 1976, Italy ratified the European Convention on the Adoption of Children of 1968, and the Hague Convention on Protection and Co-operation in Respect of Intercountry Adoption (the "Hague Convention") in 2000. The Convention was implemented by Law No. 476 of December 31, 1998, which introduced its principles into Law No. 184.⁷⁷ Chapter I of Title III of Law No. 184 now regulates the recognition of foreign adoptions and provides for a special procedure for Italian couples who wish to adopt abroad.⁷⁸

In implementing the Hague Convention, Italy has established a new institution, the Commission for Intercountry Adoption, which is Italy's Central Authority under Art. 6 of the Convention. The Commission's headquarters are at the Prime Minister's Office's Department of Social Affairs. The Commission takes care of all issues of intercountry adoption in Italy, accredits and supervises agencies which carry out the special procedures required for an adoption abroad, collaborates with the central authorities of other States, and reports to the Italian government on developments in the area of intercountry adoption.

⁷⁰ Art. 28 (5) Law No. 184.

⁷¹ Art. 28 (4) 1 Law No. 184.

⁷² Art. 28 (4) 2 Law No. 184.

⁷³ Art. 28 (4) 3 Law No. 184.

⁷⁴ Art. 28 (7) Law No. 184.

⁷⁵ Art. 27 (1) Law No. 184.

⁷⁶ Art. 27 (3) Law No. 184; except for marriage prohibitions.

⁷⁷ Art. 29 ss. Law No. 184.

⁷⁸ See above Sec. II.C.3.

VI. Resources

The Commission for Intercountry Adoption features a comprehensive website (www.commissioneadozioni.it) with information on many aspects of Italian adoption law, with an emphasis on intercountry adoption. The site offers information and the main legal texts in Italian, English, French, and Spanish. Access to the English site is via www.commissioneadozioni.it/site/en-GB.

A good resource (though in Italian) is also www.adozioneminori.it, which contains most basic legal texts. In addition, at www.adozioneminori.it/entipubb_tribunali.html is a list with addresses and phone numbers of all juvenile courts (*tribunali per i minorenni*), indicating their territorial jurisdiction.