

Households

Separations and divorces

In Italy, married couples can end their marriage by legal separation, divorce and annulment. Divorce was introduced in the Italian law in 1970. Prior to that date, in order to end partially the obligations associated with married life, couples could only request legal separation from the Court, which was and still is the competent judicial office.

The information on the process of separation – from the moment of presenting the application to its acceptance – are taken from the surveys performed by the bodies responsible for judicial statistics. These bodies have changed over time: in 1979 and from 1907 to 1935 the surveys were performed under the responsibility of the Ministry of Grace and Justice; from 1880 to 1906 of the General Statistics Division of the Ministry of Agriculture, Industry and Commerce and from 1936 of ISTAT.

These data were transmitted using specific forms on a quarterly basis to the central bodies that provide to revise, process and publish them.

In the post-war period these forms were accurately revised to adapt them to statistical purposes. Their contents were reviewed by ISTAT, in collaboration with the Ministry of Grace and Justice, through a special Commission for Judicial Statistics as specified in the decree that also transfer these surveys' responsibility from the Ministry to ISTAT.

Surveys on this subject have changed little over time, and the modern-day survey on separations, launched in 1969, still requires the figures to be provided on a quarterly basis by courts which, just as in the past, fill out part of the survey form while the remaining part is compiled by the couple.

In contrast to what has happened in recent years for other civil law statistics, the subject has not been passed from ISTAT to the Ministry of Justice due to its interest for both judicial and social aspects. Rather, the work has been shared between the two bodies, also in consideration of their different institutional role, with ISTAT representing a scientific and statistical body and the Ministry of Justice responsible for management control and planning the distribution of ministerial resources.

The survey on divorce (the dissolution and termination of the civil effects of marriage) began in 1971, when Law no. 898 dated 1 December 1970 came into force, disciplining the cases of dissolution of marriage contracted only by civil rite and the termination of its legal effects in the case of celebration by religious rite.¹ The law, confirmed by popular referendum in May 1974, was later modified regarding the economic provisions in favour of the weaker spouse, by Law no. 436 dated 1 August 1978 and by Law no. 74 dated 6 March 1987 for other aspects.

The surveys on separations and divorces are conducted by ISTAT at the 165 civil courts in Italy, using the paper forms Istat M.252 for separations and Istat M.253 for divorces, with reference to every single procedure closed from a legal point of view in the year of observation.

Over the years the questionnaires for the two surveys have undergone some variations due to both the changes in the regulations and the need to adapt to new information requirements, leading to the inclusion of some socio-demographic questions in addition to the judicial and legal aspects (date of listing for trial, date of sentencing, the spouse presenting the application for separation or divorce); the economic provisions made (presence/absence of support assigned to the spouse and/or children, its amount, the party responsible); the gender, age and custody assigned for minors and, lastly, some information on the marriage (date, rite, property regime, number of children born during the marriage). The forms are compiled by the clerk of court and sent to ISTAT each quarter. The figures are acquired directly from the trial dossier, while the socio-demographic information, if not present in the

¹ The term divorce was never mentioned by Law no. 898 of 1970, which refers instead to "dissolution of marriage" (if celebrated by civil rite) or "termination of the civil effects" (if the marriage was celebrated by religious rite).

dossier, are requested from the couple or their lawyers.

It should be noted that legal separation only modifies the marriage bond without annulling it, resulting in the temporary suspension of obligations. Italian law allows for two types of separation: consensual or judicial. While judicial separation takes place in pre-trial proceedings and is concluded with a sentence, consensual separation comes under voluntary jurisdiction proceedings. The effects of the marriage are only dissolved when a divorce sentence is passed, with the exception of certain obligations regarding property and duties to children.² Separation, in contrast to divorce, also has a temporary nature allowing for reconciliation and termination of the effects of the separation itself. By agreement the couple may annul the effects of the separation sentence without the judge's intervention by making a declaration or through unequivocal behaviour considered incompatible with the state of separation.

Warnings for time series comparisons

- Due to the war and the consequent difficulties caused to the functioning of the various judicial offices, it has not been possible to reconstruct the series for the period between 1942-1946.
- The current survey on separations began in 1969, while the survey on divorces (Dissolution and termination of the civil effects of marriage) began in 1971, after the came into force of the Law no. 898 dated 1 December 1970 (Discipline of the dissolution of marriage).
- In 1975 the reform of Family Law³ resulted in a profound innovation in the concept of judicial separation, which is no longer based on the fault of a spouse but on the objective recognition of the existence of facts that make the continuation of the cohabitation intolerable or the education of the children seriously threatened.⁴ When Law no. 74 dated 1987 was introduced, the number of years of separation necessary before applying for divorce was reduced from five to three.

² Civil marriage and "*concordatorio*" religious marriages may also be declared null. "*Concordatorio*" marriages, i.e. those celebrated by religious rite, registered on the civil status registries and recognised by the State, are disciplined by Law no. 121 dated 25 March 1985 (ratified by the agreement signed in Rome on 18 February 1984 between the Republic of Italy and the Holy See, in modification of the Lateran Pact dated 11 February 1929).

³ Law no. 151 dated 19 May 1975.

⁴ Any violation of the obligations of marriage may constitute, only on request of one or both of the spouses, grounds for an accessory sentence declaring which of the spouses caused the separation.