



CAMMINO DIRITTO

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BEST REGARDS TO WIFE'S ALIMONY

With sentence No. 11870/2015, Court of Cassation's first civil division once again turns back to one of the most thorny aspects related to current family law: the alimony to still young and capable of gainful employment wives. Let us analyse specifically what judges have envisaged.

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Let us tell the truth: it is absolutely implicit that, when a husband and a wife decide to divorce, the wealthy spouse must support the one that does not perceive any income or does not have an open-ended employment, but mostly the spouse who needs this support is exactly the wife.

As far as this conception may seem extremely romantic, with sentence No. 11870 of 9th June 2015 Court of Cassation's first division completely retracted the first conception, rejecting the purposed alimony. Overturning a cliché –in reality already abandoned in different occasions (1) - which establishes that the unemployed housewife must enjoy, in any cases, the alimony, which makes this sentence really interesting.

The case

With the registered sentence, which dates back to 30th December 2009, the Court of Bari declared civil marriage effects between two spouses cessation, regretting the purposed alimony to wife. And this decision was also confirmed by Court of Appeal of Bari.

The bride sustained that during marriage the standard of living was equal to that of a family with middle income from employment, were the husband was working and the wife was an housewife who, being indigent and without unemployed, declared actually not to be able to supply the same standard of living. Moreover, she detracted that the unemployed husband, living together with another person who gave him also a daughter, decided voluntarily to abandon the employment with the purpose of creating an apparent lack of income situation. In effect, she objected the appellant that her husband still followed working for third party, and enjoyed of unemployment benefit; for that reason he benefited for sure of a more glowing economic situation. The hypothesis was strengthened by the appellant, considering that he possessed and maintained a car too.

On the contrary, the husband, provided of certain proof, simply demonstrated to have regularly provided resignation the day after he received a letter of reprimand, and for the following reason to be unemployed.

For that reason the woman purposed further appeal. She also deduced that both on first and second trial judges have not considered in a proper manner the real spouse's standard of life under marriage circumstances. In particular, she complained about the missing inquiry through tax police which the Court of appeal has did not ordered.

Court of Cassation's point of view

As regard the discussed question, the Supreme Court of Cassation highlights how second trial judges have exactly considered a worst economic situation absolutely unproven at wife's expense in relation to the marriage's standard of life. According to Ermellini's¹ opinion, the Court of Appeal has rightly deduced that the woman was absolutely able to work. Reiterating a well-known principle, the Court of Cassation highlighted that “in

order to evaluate the way as the lack of family unity has affected the applicant, is necessary a comparison between economical potentiality, with which we mean not only actual goods and income willingness, but also the inclination to obtain further more.” (2)

It is a veritable innovation as concerns family law's classical premises: a young and woman can also provide on her own and through her work and income to the maintenance of her marriage standard of life, and for that reason has no right to receive alimony. Even if during marriage the woman proved to be an housewife.

Criticism

The most plangent aspect related to the comment concerns an objective fact; having not showed any prove of the objective impossibility to obtain the proper means, which will allow her to reach a standard of life similar to that of marriage, the Court rejected alimony to the housewife. In other words, the demonstration of “economic difficulties” and “inability to obtain an income” is up to a women.

Therefore, the examined decision has overturned traditional perspective, which forecasted that alimonies should be given according to a simple request: the alimony was automatically granted, as if it was a sort of perpetual helpful measure, such as an “health insurance”.

It Seems to be consolidated the principle according to, if the applicant (usually the woman) does not show a persuasive economic justification, in particular a certain prove of inability to obtain an income, she will lose each right. And there is no way to complete appeal prove.

Calculation on alimony

In conclusion, it is useful to remember alimony's penal right inspection criterion. The procedure develops into two specific phases:

1. First phase: the judge verifies the existence of the applicant's alimony right: he checks that his economical means are effectively insufficient to grant a similar marriage standard of life. Reference parameter are not only the united family income, but also (in case of continue of marriage) the income that will come later. By this way, if the couple succeeds to get the business or career (of one of the spouses) off the ground after divorce, a part of the income will go also to the other partner, as a sort of work reward;
2. Second phase: the judge establishes alimony's amount, evaluates spouses conditions, reasons of decision, personal and economical contribute provided to family condition, but also to common and individual heritage's formation from each spouse. He scrupulously analyses both incomes and evaluates them in respect of marriage's length.

Having analysed this double clarification, through the analysed question it is easy to understand the great importance of both economical potentiality since the insufficiency of the simple demand for alimony, it implies that the economical disadvantaged party is involved in the attempt to demonstrate that He or She is not able to obtain a suitable income.

Sources and bibliography.

Among others, Cass. Sent. I No. 15610/2007

See also this comment;

- Francesco Caringella - Luca Buffoni, Manuale di diritto civile, V Edizione, 2015, Dike Giuridica

[1](#)Is a way to call the judges of Court of Cassation (which is due their particular way of dressing during important events)