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THE REGULATORY LAW ABOUT CIVIL UNIONS

Analysis of the most important aspects concerning the contentious law about the civil unions between people of the same gender.

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On 5th June 2016, the contentious Law “*Cirinnà*” (law of 20th May 2016, n.76) entered into force to regulate civil unions and the cohabitation between people of the same gender, concluding a troubled process during which different confrontations occurred, both within political representations and within public opinion. The article wants to provide a summary of the aforementioned law, and at the same time it wants to compare the most important aspects of the original bill that reached the Senate, from which the current law derives, to those of the finally approved law. Numerous amendments and modifications were introduced by the two Houses. Although they respected the purpose of the bill, they altered its balance. After its approval, the media and the public opinion focused on possible criminal consequences of the law. It is worth considering an important study about the matter by Gian Luigi Gatta, ordinary criminal law professor at the University of Milan, on a well-known law portal.

Institution of civil unions and constitutional modalities

Art.1, par.1 states that “*the present law establishes the civil union between people of the same gender as a specific social formation under articles 2 and 3 of the Italian Constitution...*”. The primary aim of the law is retained and the concept of “*specific social formation*” is restated, thus acknowledging art.2 of the Italian Constitution and respecting the equality principle (art.3 of the Italian Constitution). **Par.2** describes the constitutional modalities of this union, which consists in making a declaration in front of the public official (registrar) and two witnesses.

Impeditive causes

There are four types of impeditive causes, and the list remains unchanged compared to that contained in the bill:

- a. Existence, for one of the parties, of a bond of matrimony or a civil union between people of the same gender;
- b. Interdiction of one of the parties caused by insanity;
- c. Family tie, affinity, adoption, affiliation;
- d. The conviction of a contractor for committed or attempted murder against those who are married to or have a civil union with the other party.

According to **par.5**, if there is one of the abovementioned causes, the civil union between people of the same gender is cancelled.

Surname of a party

According to **par.10**, the parties can decide to take on a common surname choosing between their surnames by making a declaration to the registrar. The party can put their surname before or after the common surname if they are different, making a declaration to the registrar.

Absence of the obligation of fidelity

“With the constitution of the civil union between people of the same gender, the two parties have the same rights and the same duties; the reciprocal duty to moral and material assistance and to cohabitation derives from the civil union. Each party has to contribute to common needs, each one in relation to their wealth and professional and domestic abilities” (par.11).

In the bill, the expression *“the reciprocal obligation of fidelity derives from the civil union”* appears. It is one of the norms that caused the greatest criticism. To understand why, it is worth reading **par.20 of art.1**: *“to ensure the protection of the rights and the obligations deriving from the civil union between people of the same gender, the dispositions containing the words “spouse”, “spouses” or equivalent terms are also applied to each party of the civil union between people of the same gender, wherever they appear in the law, in acts, regulations and contracts...”*. Critics maintain that, if the extension aims to ensure the protection of rights and the fulfillment of obligations, it would not have criminal effects *in malam partem*. For this reason, the crime of bigamy **ex art.556 of the Italian Penal Code** would not be configurable (**par.1**: *“whoever has a bond of matrimony with civil effects and contracts another bond of matrimony is punished with the imprisonment from one to five years. The same happens to unmarried people who contract marriage with married people”*). Instead, those who believe that the extension of the law cannot be applied because there is no obligation of fidelity are wrong. The crime of bigamy subsists if there are the conditions foreseen by the norm: it has nothing to do with the behaviour of infidelity, which can be both sexual and spiritual.

In short, bigamy is not a synonym for infidelity and infidelity does not integrate the crime of bigamy.

The other obligations of people of the same gender contracting a civil union are identical to those expected for wife and husband according to art.143 of the Italian Civil Code.

On 12th April 2016, the **Legislation Committee** expressed its opinion in relation to the aforementioned **par.20**, observing that: *“some changes should be made in paragraph 20, which gives the parties of the civil unions the rights and duties deriving from the spousal relationship, except for those disciplined in the Italian Civil Code and not mentioned in the law n.184 of 1983 concerning adoptions: it seems appropriate to specify if with the aforementioned deferment the norms in malam partem deriving from the other party as the spouse should be added (as an example, consider article 557 of the Italian Penal Code, which, in case of murder, establishes an increase of penalty if the crime is committed against the spouse) and, in affirmative case, the aforementioned norms are identified in a precise way”*.

According to the disposition of **par.28 of art.1. lett.c)**, within six months after the introduction of Law Cirinnà, the Italian government has to adopt one or more legislative decrees about civil unions between people of the same gender.

In absence of the normative explanations, the interpreter has to decide, from time to time and depending on the examined case, if the general disposition can be applied to the case involving people of the same gender contracting a civil union.

Finally, it is worth remembering that criminal law has to inquire about the precision criterion, which is the unavoidable corollary of the principle of legality *ex* **art.25, par.2 of the Italian Constitution**: *“Nobody can be punished with a law that entered into force before the crime was committed”*.

Stepchild adoption

The most important change made to the bill registered at the Senate involves the impossibility for the people of the same gender who contract a civil union to adopt the

partner's child (*“stepchild adoption”* consists in the possibility, for a child, to be adopted by their parent's partner). **Art.5 of the bill**, which introduced the institution, was deleted. In addition, the dispositions contained in the law about the adoption (**law n.184/1983**, *“The child's right to have a family”*) do not apply to the civil unions between people of the same gender. However, Law *“Cirinnà”* states that *“as for the matter of adoption, the conditions foreseen and established by applicable laws are retained”* in order to allow the intervention and jurisprudential evolution in this field.

Finally, the first section of the Italian Court of Cassation (**n. 12962/2016**) also intervened in this matter.