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## **GAY UNIONS: THE THOUGHT OF THE CASSATION**

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*The cassation, called to decide on the complaint of a gay couple, face the theme of homosexuals unions and of anti-discriminatory laws to safeguard the diversity.*

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Recently, the supreme court of cassation had the possibility to express itself on the theme of homosexual unions, indicating how much it is important to intervene so to mediate and guarantee them the fundamental rights of the person as single as well as in the social field where is present their personality.

The question happened after the complaint of a gay couple that, requesting to be married to the Hall of Rome, did ask for the publication of the marriage, and it was denied from the official of civil state.

With the **sentence n. 2400 of February 9th 2015**, the court rejected the complaint affirming that “in our juridical system, **marriage between people of the same gender is not suitable to make effort** since it's not foreseen in the legal hypothesis of marital union”. In Italy the absence of a law foreseeing homosexual marriage does not imply the “violation of an anti-discriminatory criteria”, strongly contested in the European headquarters, whether in the Amsterdam agreement, to the art. 13, foreseen that “(...) without prejudice to the dispositions of the Agreement and in the field of competences deriving from it, the Counsel, resolving to the unanimity based on the proposition of the Commission and upon consult of the European Parliament, may take the right measures to fight the discriminations proved on sex, race or ethnic origin, religion or personal beliefs, handicap, age or sexual tendencies”.

It has been identified the tutelage of these realities through the adoption of a “**protective statute**”, for other reasons already “**operated**”, with **rights and duties of de facto couples**. The judges of Cavour square, indeed, in the motion solicited a legal intervention in order to guarantee the full actuation of art. 2 of Constitution, to acknowledge to “a common unit of **rights and duties of assistance and solidarity that are of the affective relationships themselves**” since they enter “in the area of social formations aimed to the development, on a prime basis, of the human personality”. A point of view that is not a new one, being it similar to the one expressed by the constitutional court in one of the last sentences of the year (n. 170 of 2014).

However, it has to be remembered that Italy is between the European Countries less developed regarding the recognition of gay unions, and in general on the anti-discriminatory laws. In the other countries members of the EU the legislations in favour of the equal rights and the civil unions for homosexuals are dated, such as in the Netherlands, where anti-discriminatory laws have been actuated in 1992(followed by the legislations on marriage and the subject that makes it a possibility for same sex couples to adopt). The comparison with the nearby (culturally speaking) Spain, in these cases, become “embarrassing”: ten years ago, in 2005, they approved the laws allowing homosexual couples to marry and to adopt.

To validate their thesis, the judges of the cassation refers to, finally, the chart of fundamental rights of EU observing that “the art.12, even if formally referring to the heterosexual marital union, **does not exclude that the Members State extend their marital model also to the person of the same sex, but at the same time does not hold any obligation**”. The countries, then, can organize themselves with width autonomy about gay marital.

“In art.8 – the verdict continues – which confirms the right to the private life and family, is nonetheless held the right to live an affectional relationship between people of the same sex protected by the ordinance, but not necessarily, through the option of the wedding for these unions.”

Homosexual couples, as de facto couples, can “acquire a grade of protection and tutelage comparable to the marital one in all the situations in which the loss of a legislative protocol determines a fracture of the fundamental rights originated by these relations.