“Dal matrimonio alle unioni civili: modelli europei a confronto”.

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Over the years the concept of the family has changed, and this evolution has been de-terminated by several factors: the change of sexual mores, the precariousness in the work environment, the increase in longevity, the elimination of preconceptions towards homosexuals.

Now we are faced with an archipelago consisting of a historical island, which would represent the "traditional" family based on marriage and many other islands around that symbolize other types of coexistence such as "the united family" and "disunited", "monoparental" and "biparental" or "m Faced with this picture our legal system has sometimes accepted some changes while other times resisting, this because the essence that forms the background, constitutes, binds and keeps alive the emotional relationships between two people is love, and being it an intangible and not palpable value, the legislature often struggles to regulate the situations that result.

The issue of protecting the rights of same-sex couples is one of the hottest issues of the 21st century.

It can be said that the development of these "new" rights has been facilitated by several factors:

-A first factor is the spread of the constitutional legitimacy control of laws in many countries through the establishment of constitutional courts even outside Europe's borders, whose basic idea is to increase the democratic image.

A second reason, however, is the emergence of the dialogue between the Constitutional Courts which has facilitated the movement of models born in other countries.

The problem of eligibility in our system of same-sex marriage, beyond the ethical and civil norms which, however, given the delicacy of the issue, must be taken into account, must be assessed on the basis of the constitutional and civil norms in force.

The approval of the rules on civil unions was preceded by two groups of legislative proposals discussed in Parliament. A first group envisaged a substantial equivalence between same-sex unions and heterosexual marriage, according to the paradigm contained in Art 29 Cost and, those that instead intended to establish a new institution, civil unions different from marriage. Law 76 of 2016 can be traced back to the second approach.

The first part of the thesis examines the stages of Italian jurisprudence, the Courts of

Constitutional Court, which with judgment No 138/2010 and subsequently with judgment No 170 of 2014, which affected the issue of ultiparental", "perennial" or "recomposed" and so on. "It would be up to the legislature to intervene and regulate the issue of homo-affetive unions," he said.

The case law of the European Court of Justice is also analysed

European Court of Rights, and then the jurisprudence of the European Court of Rights

of the Man who step by step have strengthened the protection of same-sex couples until the recent conviction in Italy, in July 2015, of The Oliari and other v. Italy, for not having yet adopted a law governing the matter.

After the double warning of the Consulta, together with the condemnation of Italy by the European Court of Human Rights, the law under consideration was therefore passed.

It was considered appropriate to compare the institution of civil unions with other European countries, including: Germany, France and Spain.

In Germany, there is a formal independent detail discipline, although similar in substance to marriage, except for referring to civil code rules for specific aspects.

So there is a CD regime. "double binary" where on the one hand there is marriage and on the other the cohabitation. The reason for the differentiated treatment lies in the guarantee of the marriage institution proclaimed by art. 6 of the Basic Law which states in paragraph 1 that 'marriage and the family enjoy the special protection of the state order'; This guarantee, according to constitutional jurisprudence, justifies the differentiated treatment between marriage and Lebenspartnerschaft.

France, on the other hand, gave birth to the PACS, establishing them by a 1999 law and regulating them in articles. 515 -1 ss. of the Code Civil. The aforementioned institution has an independent and different discipline than marriage, and is characterized by the important role assigned to the negotiating autonomy of the parties.

The "Civil Pacts of Solidarity" are extended to both heterosexual and homosexual couples who, while wishing to ensure a certain discipline to their "common life", do not want access to the

institution of ma In Spain, the same-sex marriage bill was passed in 2005. The Spanish Constitution establishes the right to marry in a different article, than the family. The concept of marriage is elevated to the rank of the person's law and also understood as an institution of social importance. Whether or not there is a connection between marriage and family is unclear in doctrine. Opinions are divided: among those who believe that, the right to marry in addition to being an individual right of the person, is also an institution that must be preserved in order to preserve the family cell, so there would be a link between marriage and family; and those who support, instead, the absence of an intrinsic relationship between marriage and family, arguing that they are institutions protected in two different articles.

In the second chapter, however, the personal and financial profiles of the civil union are addressed.

The union's surname represents the most innovative personal effect of the civil union. Although this is only a possible rule of application, the doctrine has indicated its obvious symbolic relevance, since the prediction of a common surname of the union emphasizes its family nature and emphasizes its unity.

With regard to the rights and duties born of civil union, the role model is, therefore, that of marriage. To the original formulation that provided for a mere reference to art. 143 and 144 cc was replaced a reformulation of the articles, purged of certain expressions, and in particular: "the obligation of fidelity" and the "duty of collaboration in the interests of the family".

Non-compliance with the duty of fidelity in the marital family is a serious violation that can result in the intolerability of the continuation of cohabitation and a circumstance suitable to justify the charge of the responsible spouse.

With regard to the capital regime of the same-sex civil union, the legislature chooses to formulate ad hoc articles that essentially follow the rules of the civil code only with a few slight lexical changes. In terms of form, modification, simulation and capacity for the conclusion of capital agreements, there is also a reference to the code rules.

As with the institution of marriage, civil unions are subject to the institutions of legal communion, if not otherwise established, of the wealth fund, of conventional communion, of the regime of separation of assets, and, finally, of the family business.

In Germany, both cohabitants provide adequate support for their union with their work and assets. As a result, it also provides for solidarity responsibility for the debts contracted by one of the two parties in the interests of cohabitation. The statutoal scheme, unless otherwise agreed, is the ordinary one for married couples, that is, the communion of purchases referred to in the 1363 of the Civil Code (Zugewinngemeinschaft). However, cohabitants may enter into a cohabitation contract (Lebenspartnerschaftsvertrag) and opt in it for the separation of assets and other special asset agreements.

In France, the PACS's capital regime stipulates that each of the two cohabitants, barring several agreements in the aforementioned convention, retains the administration, enjoyment and availability of its personal assets. Thus, the presumption of indivisibility which, prior to the aforementioned law of 2006, concerned the goods acquired by each cohabitant is thus diminished.

The assets on which neither cohabitants can prove exclusive ownership are considered to be their undivided property, to the extent of half for each. However, the living may, in the Convention, choose to submit to the undivision regime the goods they acquire, together or separately, after the registration of the convention itself. Finally, for the administration of undivided assets, they may enter into a further agreement in order to agree with each other on the exercise of their respective rights.

In Spain, the detailed regulation of reciprocal rights and duties and the personal and financial relationships on which cohabitation is based can take place in verbal or written form, with a private document or with public writing.

In the absence of pacts expressed by the parties, the law gives some general indications on the couple's common expenses and on the maintenance of the house.

The third chapter disciplines, Therefore, the peculiarity of the discipline is that it does not provide for the application of the institution of separation of the parts of the civil union, so that for the voluntary dissolution of the union there is a particularly speedy procedure. In addition, the law provides for maintenance allowance for the weakest part of the union on the basis of the parties' incomes and the inability to provide for their adequate livelihood.

In Germany, the law aligns the discipline of the dissolution (Aufhebung) of the cohabitation registered with the legislation, personal and assets, in force in relation to separation and divorce. Cohabitation is dissolved at the request of one or both cohabitants by the judgment of the judge. It is sufficient – as for the spouses – that they have lived apart for a certain period of time. The dissolution judgment comes after a year or three years of separation have elapsed depending on whether the request comes from both cohabitants (or if submitted by one was approved by the other) or only one of them unilaterally.

There is also the rule that, in the case of litigation proceedings, there is no dissolution, even if there has been separation for three years, if it appears to be such a "hard burden" (so schwere H'rt), because of exceptional circumstances, that it is necessary to continue living together, considering also the reasons for the instant.

The right to maintenance arises only in the head of the cohabitant who proves that he is unable to take care of himself as a result of the impossibility of taking a job, in particular because of his age or state of illness or disability. The amount of maintenance is expressly referred by law to the standard of living enjoyed in constancy of the relationship of cohabitation. The allocation of the family home may also be established during the dissolution

In France, the PACS ends by joint or unilateral will of the contractors, as well as by marriage or the death of one of them. In the event of a consensual dissolution, the joint declaration must be submitted to the registrar of the tribunal in which the PACS was registered. In the case of the unilateral withdrawal of one of the two cohabitants, he must notify the other of his decision and produce a copy of that notification to the chancellery of the same court. The chancellor registers the dissolution and provides

necessary advertising. The dissolution takes effect, in the relations between the cohabitants, from the date of registration in the chancellery. It is, on the other hand, opposed to third parties from the day the advertising requirements were carried out.

The capital consequences of the dissolution, on the basis of the principle of contractual autonomy that pervades the entire discipline of the PACS, are regulated by the parties but, in the absence of agreement, it is up to the court to intervene, possibly establishing a reparations for the damage suffered.

Finally, in Spain, the dissolution of the union may entitle you to economic compensation or maintenance payments for the party that is disadvantaged.

Finally, in the fourth chapter, the following topics are addressed: parenting, medically assisted procreation and step child adoption.

In terms of the first aspect in our order, there is no recognition of a right to a homosexual couple, even if it is based on the establishment of a civil union, to parenthood. For a parenting understood as a project of couple, common and shared, the paths that should be traveled are either the full adoption of a child in a state of abandonment or assisted procreation of a heterologist type, which, for gay couples, must necessarily also provide for the use of gestation for others commonly referred to as surrogacy. In the adoption, nor are the techniques of assisted procreation accessible in Italy to same-sex couples, since for the first the request must come from a married couple, for the second from subjects 'majorities of different sex', married or cohabiting. Surrogacy is also essential for male same-sex couples to have children, and meets an absolute and general prohibition in the Assisted Fertilisation Act.

Certainly, the legislature has intentionally avoided introducing rules in the Civil Unions Act that give a right to become parents. The Cirinna bill envisaged the adoption in particular cases of the child of the civil union partner, which constituted a compromise between homosexual claims to a full and shared parenting, on the one hand, and the opinion, widely disseminated across the board in society, aimed at excluding the right of same-sex persons to adopt and play the role of parents on the assumption that inclusion

in the homogenial household is detrimental to a balanced growth of the child, on the other hand. The legislation, as already mentioned, has been removed during the approval of the law.

In pulling the final lines, we note the distinction, made in this work, between the right of the homosexual couple to parenthood, currently not legislatively provided in Italy, and the right of the child, actually recognized by the judges, to a legal state of child corresponding to a situation of fact created within a homogenital family based on affections, material assistance and care of the child. There is therefore, therefore, also a relevance in this matter to the fact that it affects the law. The legal solution does not, in fact, stem from the pure application of a legal rule on parenthood in the context of civil unions between persons of the same sex, which, as we have seen, does not exist, but from the need to give concrete answers to concrete situations. Today's legal science points to the reversal of perspective in the relationship between legal categories and socio-economic facts, emphasizing the strong tendency towards the so-called 'factuality' of law' to use the phrase coined by an authoritative lawyer.

The central importance of the fact, read in the light of the values and interests expressed by the order in its current complexity, has the strength to affect the law and shape it.

In stepchild adoption, the fact of the presence of children within the homosexual household calls for forms of protection of the interests of minors, determining, as we can see, responses from the legal system and the production of similar effects to those that would have been realized if the rule on stepchild adoption had not been scrapped in the draft law, but more extensive as they were not necessarily related to the formal establishment of a civil union and , above all, only functional to the development and protection of the child's personality.

Finally, as we look at future prospects, there are strong signs of change in the review of the adoption institute. In particular, for the finality to realize more widely the best interest of the child to be loved and placed in a family group, interest that will always have to be verified

in practice, the requirement of adoptees' marriage and the opening of full adoption to unmarried couples, even if they are permanently cohabiting, and to the single person looms. Such an openness cannot exclude, under the principle of non-discrimination, same-sex cohabiting couples and single people solely because of their homosexuality, provided that, following the assessment of the particulars of the specific case, the decision is the one that best realizes the interest of the child.

In Germany, with regard to children, German law provides for the joint exercise, between the parent and his partner, of certain rights of the responsibility (kleines Arisecht: "small power"). In fact, when a parent, who by law exercises parental responsibility on a child alone, registers a cohabitation, his partner is entitled, in agreement with the other, to co-decision (Mitenscheidung) in matters of the child's daily life. However, the Court responsible for family cases (Familienrichter) may decide to limit this right when this is necessary to ensure the child's well-being.

The parent who has parental responsibility for a child and his partner may appeal to the child who has been accepted into their household the common surname chosen for cohabitation by making a special statement before the relevant authority.

Moving on to the subject of adoption, the German discipline on regi-strata cohabitation is not fully aligned with the existing one for marriage. When a cohabitant adopts a child alone, the consent of the other partner is required. In addition, one cohabitant may adopt the child of the other alone (Stiefkindadoption), under the 9th. A joint adoption is therefore not permitted, as in marriage.

In France, the silence of the PACS legislation leaves the previous legislation in this area unchanged, so adoption is not possible for couples who have signed a civil solidarity pact, no matter whether homosexuals or heterosexuals.

In Spain, one of the most controversial aspects remains that members of a registered couple can adopt minors. The scheme of Catalan law originally allowed a distinction, passed in 2005, which was not possible in other cases, placed the initial prohibition of all forms of discrimination related to sex or sexual orientation. The majority of the laws therefore contain no reference to the adoption of tout court, while five regions provide for it, also in favour of same-sex couples: Navarre, the Basque Country, Aragon, which in May 2004 amended the basic text of 1999, of Catalonia, following the changes made in 2005 to the basic text of 1998 and the Code of the Family. , and Cantabria, with the new law passed in 2005.

From what has been said so far, the positive and negative aspects of this law are evident, which, while on the one hand has finally achieved the goal of giving same-sex unions that protection and that recognition from the legal point of view that they lacked, on the other hand has nevertheless kept marriage a privilege of heterosexual couples. It has reduced, but not zeroed out, the inequalities of discipline between the two types of family relationships. As we have seen, in fact there are significant differences in the matter of personal obligations, surnames and dissolution of the union, which make civil unions and marriage two separate institutions although, they share, to a large extent, content and purpose.

The position taken by our Legislator aligns with other European countries, such as France and Germany. In the Spanish system, on the other hand, one of the most controversial aspects remains the adoption of children.