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NEWS REPORT

Country:	Italy
Title:	The Constitutional Court strengthens the right to compulsory maternity leave
Date:	6 November 2018
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<u>Context</u>	
Issue at stake:	Improving the coordination between the right to leave for the care of disabled people and the right to compulsory maternity leave
Ground of discrimination:	Sex
Source:	Case Law
Field:	Gender, parental leave
Applicable law:	Art. 24 of Decree N. 151 of 26 March 2001 on the Protection of Motherhood and Fatherhood, published in OJ N. 96 of 26 April 2001

Content

The Constitutional Court delivered a judgment on 13 July 2018, in which it ruled that para 3 of Art. 24 of Decree N. 151/2001 on the Protection of Motherhood and Fatherhood is in contradiction with the Constitution. Art. 24 extends the right to maternity allowance for the period of compulsory maternity leave to working mothers who, at the beginning of this period, are temporarily absent from work, or on leave from work with no right to remuneration or have been unemployed for less than 60 days. Under para 3 of Art. 24, absences due to illness or an accident at work, or leave due to care for a sick child, or absence due to foster care, or periods of interruption of work in case of a vertical part-time contract, are not to be reckoned for the time limit of 60 days.

The Constitutional Court ruled that para 3, which does not include periods of leave to take care of disabled relatives in these exceptions, is not consistent with Art. 3, 31 and 37 of the Constitution stating the principle of equality, the protection of the family and of motherhood.

Key points of analysis: The Court underlined that the remunerated period of leave to take care of a disabled relative, which is grounded on objective and strict requirements, must be included in the other exceptions provided by the law mentioned above as it responds to the need of assuring the assistance and the disabled person within his family.

Otherwise this lack would also arbitrarily sacrifice the special protection assured by Art. 37 of the Constitution to both the mother and the child as it would compel the mother to choose between taking care of the disabled person or returning to work to benefit from the maternity allowance. The judgment of the Constitutional Court which added the

period of leave to take care of disabled persons to the exceptions expressly ruled by para 3 of Art. 24 further strengthened the protection of maternity and was a necessary intervention as case law (as stated by the Court itself) could not merely add it to the list by way of interpretation.

Internet link source:

Judgment of the Constitutional Court N. 158 of 13 July 2018,
<http://www.giurcost.org/decisioni/index.html>, accessed on 26 July 2018;

Decree N. 151 of 26 March 2001 on the Sustain of Motherhood and Fatherhood,
published in OJ N. 96 of 26 April 2001,
<http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2001-04-26&atto.codiceRedazionale=001G0200¤tPage=1>, accessed on 26 July 2018.