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FLASH REPORT

Country:	Italy
Title:	Clarifying the personal scope of the ban on dismissal on grounds of marriage
Date:	13 December 2018
Expert:	Simonetta Renga
<u>Context</u>	
Issue at stake:	The ban on dismissal on grounds of marriage does not apply to male workers.
Ground of discrimination:	Sex
Source:	National court decision
Field:	Employment, pregnancy and maternity
Applicable law:	Art. 35 of Decree N. 198/2006 on Equal Opportunities between men and women

Case: A male worker contested his dismissal sustaining that it was discriminatory under Art. 35 of Decree N. 198/2006 as it took place within the year following his marriage. Following his defence, the presumption that a dismissal which takes place within one year after marriage is discriminatory applies to male workers in the same way as to female workers. In fact, although Art. 35 expressly refers to female workers, it aims to protect the workers' right to have a family. Moreover, he argued that the personal scope of the Code for Equal Opportunities (Decree N. 198/2006) includes both sexes and that a differential treatment would not be consistent with EC Directive 76/207 as it would cause sex discrimination.

Decision of the Court: The Court of Cassation decision N. 28926 of 12 November 2018 confirmed the second instance judgment, which deemed the personal scope of Art. 35 to be limited to female workers, as this provision is the expression of the specific constitutional protection awarded to working women. The Court underlined that the protection against discriminatory dismissal on grounds of marriage had been introduced in the sixties to strengthen the protection of women's employment rights. This specific protection is perfectly in line with the social reality, since employers tended to dismiss female workers who got married as they expected long absences from work due to subsequent pregnancies. Moreover, it responds to the same objectives as the constitutional principles of both protection of motherhood and equality, which provide that maternity shall not be an obstacle to women's effective participation in the labour market on the same ground as men. As a consequence, this stronger protection awarded to women is not discriminatory, not even under EU law. In fact, the latter provides that some rights are strictly linked to the female gender in relation with the biological condition of pregnancy. This can justify a differential treatment as men are not in an analogous situation.

Key points of analysis: The Court underlines once again the principle ruled by the Constitutional Court, following which a different protection based on gender cannot be deemed to be discriminatory in itself. It mainly sheds light on the development of the protection of female workers as mothers in Italian legislation in order to clarify the reason for excluding male workers from the personal scope of Art. 35, and the consistency of this exclusion with the principle of equal opportunities. In particular, it recalled the legitimacy of measures of protection of maternity as an instrument to achieve the substantial equality of working women, in line with well-established CJEU case law.

Internet link source:

Court of Cassation N. 28926 of 12 November 2018, published in http://www.neldiritto.it/public/pdf/CASS_28926_2018.pdf, accessed 30 November 2018;

Art. 35 of Decree n. 198 of 11 April 2006, The Code for Equal Opportunities between men and women, published in OJ N. 125 of 31 May 2006, o.s. n. 133, <http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2006-05-31&atto.codiceRedazionale=006G0216¤tPage=1>, accessed 30 November 2018.