

Court of Cassation, First Civil Section, Order 19502, 10 July 2023

(President: Francesco Antonio; rapporteur: Alberto Pazzi)

**(Change of religious convictions - religious freedom - separation between spouses-
separation with charge - child maintenance allowance)**

In its order of 10 July 2023, the Court of Cassation ruled on a case of personal separation of spouses in which the wife's change of religious conviction is particularly relevant. The case began in 2019. In the first instance, the Court of Naples (Judgment No. 8280 of 20 September 2019), rejecting the reciprocal claims for charges, established the husband's obligation to contribute to the maintenance of his wife and child to the extent of 400 and 250 euros per month, respectively.

In the second instance, the Court of Appeal held that the woman's changed religious conviction and her consequent attendance at the new religious congregation was irrelevant for the purposes of the charge decision, because her behaviour did not result in a breach of marital duties and did not play a causal role in causing the intolerability of cohabitation. In particular, the attitudes of indifference towards her husband "so much so that she no longer took care of the household chores" –, did not find adequate confirmation in the witness statement. Moreover, the woman's dedication to the new religious congregation or the time spent at the computer were part of a context of crisis, of separation at home, which was already in progress. In the second instance, the child maintenance allowance was also confirmed in full.

The Court of Cassation, however, deviates from the agreed position of the judges of first and second instance. Although the right to change one's religious conviction is constitutionally guaranteed (Article 19 of the Italian Constitution) – and cannot in itself be considered a reason for charging a separation – the Court of Cassation's First Civil Section affirms the need to verify in depth whether the wife's adherence to a new faith has not resulted in any behaviours incompatible with the duties of a spouse under Article 143 of the Civil Code.

The father's maintenance obligation in favour of his son, who has become economically self-sufficient in the meantime through permanent employment, also lapses.

For more in-depth studies on profiles relating to the protection of religious freedom in the family context, see the following contributions in this Review: SIMONA BRICCOLA, *L'esercizio del diritto di libertà religiosa in ambito familiare. Il sistema italiano e la prospettiva europea*, n. 1/2011, pp. 86-122; FABIO VECCHI, *Disparitas cultus circa «i matrimoni tra cattolici e musulmani in Italia». Tendenze effimere di interscambio tra modelli matrimoniali*, n. 1-2/2006, pp. 145-165.

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