JUDGMENT NO 183 YEAR 2023

In this case the Constitutional Court considered a referral order from the First Civil Division of the Court of Cassation raising questions as to the constitutionality of a provision of Law No 184/1983 regulating adoption. The Court of Cassation alleged that, because the provision failed to provide for an individual assessment of the interest of abandoned children in maintaining relationships with members of their family of origin by courts, it violated articles of both the Italian Constitution and applicable international law. The Court dismissed one of the questions as inadmissible because the Court of Cassation failed to provide reasoning supporting its allegation that adoptions fall under European Union law. It declared the other questions unfounded, finding that the challenged provision, read in the context of legislative and judicial developments in the area of adoptions, as well as the larger text of the law containing the challenged provision, did not preclude courts from making concrete determinations that the interests of a child were best served by maintaining social and emotional ties with members of their family of origin. The Court noted how this choice differed from earlier adoption laws, which always implied the radical dissolution of all ties with the child's family of origin. The Court's judgment turned on an interpretation of the provision as dissolving legal and formal ties only, therefore not precluding either the maintenance or dissolution of social-emotional bonds with members of the child's original family, based on a case-by-case assessment of a child's best interests. The Court also looked at clues from the overarching regulatory scheme which suggested that the presumption that cutting off relationships with biological family members is in the interests of the child is merely relative. The Court held that the rule does not envisage an absolute ban on maintaining bonds of affection with members of the child's family of origin.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

[omitted]

Conclusions on points of law

1.– By referral order of 5 January 2023, the First Civil Division of the Court of Cassation (*Corte di cassazione, sezione prima civile*) raised questions as to the constitutionality of Article 27(3) of Law No 184/1983, to the extent that it fails to provide for an individual assessment of the paramount interests of the child to maintain relationships, in the way prescribed by the courts, with members of their family of origin up to the fourth degree of kinship. The Court of Cassation alleges that this constitutes a violation of Articles 2, 3, 30 of the Constitution, as well as Article 117(1) of the Constitution in relation to Article 8 ECHR and Articles 3, 20(3), and 21 of the Convention on the Rights of the Child, and Article 24 of the Charter of Fundamental Rights of the European Union.

2.– The referring court reports that the Court of Appeal of Milan (*Corte d'appello di Milano*), with a judgment of 8 January 2021, held that two minors, Rayhan Zahir Sadique and Amir Zahir Sadique, had been abandoned and declared them adoptable. The Court of Appeal also ruled that the children could maintain a relationship with their maternal grandmother as well as some relatives on their father's side.

The Prosecutor General of the Court of Appeal of Milan appealed against this judgment before the Court of Cassation after the deadline for filing appeals had expired.

The Prosecutor General of the Court of Cassation claimed that the appeal had been filed out of time, but asked to proceed pursuant to Article 363 of the Code of Civil Procedure, asking the court to affirm the following legal principle in the interest of the law: the absolute prohibition contained in Article 27(3) of Law No 184/1983 does not prevent the paramount interests of the child from justifying continuation of ties between an adopted child and members of their family of origin,

following a thorough assessment by the courts. In the alternative, the Prosecutor General asked the Court of Cassation to raise questions as to the constitutionality of Article 27(3) of Law No 184/1983.

3.– The Court of Cassation referred the matter to this Court, considering the constitutional questions relevant to the main proceedings, on the ground that the conditions for declaring adoptability are a matter of the uniform judgment carried out pursuant to Article 363 of the Code of Civil Procedure.

4.– As regards the issue of non-manifest groundlessness of the questions, the Court of Cassation states that, in some scenarios, even when a child has been morally and materially abandoned such that they may be declared adoptable and finally adopted, the important bonds they have with one or more members of their family of origin should not be severed.

In particular, the referring court bases its reasoning on the assumption that the destructive effect Article 27(3) of Law No 184/1983 has on pre-existing relationships not only impacts legal-formal ties, but also prevents the continuation of any actual relationships.

The referring court alleges that the wording of Article 27(3), therefore, does not permit a family court to "perform an individual assessment as to whether definitively cutting ties with the original family units that made up the context of the child's relationship with their biological parents is a solution that corresponds with the child's best interest or, on the contrary, their detriment".

For this reason, the referring court alleges that the challenged provision conflicts with Articles 2, 3, and 30 of the Constitution, as well as Article 117(1) of the Constitution in relation to Article 8 ECHR, Articles 3, 20(3), and 21 of the Convention on the Rights of the Child, and Article 24 of the Charter of Fundamental Rights of the European Union.

[omitted]

In the case here at issue, the referring court provided no argument nor explained its reasons for alleging that adoptions fall under European Union law.

This question is, therefore, inadmissible.

8.– Coming to the examination on the merits of the other alleged violations, this Court considers it useful to reconstruct the applicable statutory and judicial framework first, prior to evaluating the individual alleged violations.

8.1.– Article 27 of Law No 184/1983 governs the effects of full adoption.

Adoption, first of all, confers upon the adopted child the status of a child born in wedlock to the adoptive parents (paragraph 1) and is no longer subject to the limitations that once accompanied the status conferred by what was called "special adoption". Special adoption did not envisage the establishment of "kinship between the adopted child and the extended family of the adoptive parents" (Article 314/26(1) of the Civil Code, introduced by Article 4 of Law No 431 of 5 June 1967, "Modifications to Book I, Title VIII of the Civil Code 'Adoption' and addition of new Chapter III on 'Special Adoption'" and later stricken from Article 67(2) of Law No 184/1983).

Article 27(3) – the provision today under review – also envisages the dissolution of "the relationships between the adopted child and their family of origin, without prejudice to marital prohibitions". This phrase retraces what was previously provided for the old form of special adoption, which, unlike the new provision, also specified that it was without prejudice to "the criminal provisions that flow from kinship" (Article 314/26(2) of the Civil Code, no longer in force).

Full adoption was introduced in 1983 and was intended to confer the full effects associated with being the offspring of married parents as completely as possible. Adoption was, thus, envisaged as a sort of rebirth of the child.

The two-fold effect of full adoption, constructive and destructive, is linked to the underlying condition for adoption: the declaration of adoptability based on the state of abandonment, which the law defines as a situation in which a child is deprived of "moral and material support on the part of the parents and/or any relatives responsible for providing it" (Article 8(1) of Law No 184/1983).

The law breaks the bonds of kinship between the child and the people who have abandoned them and ensures that the child will have a new family, In its original form, it did this by erecting a

dividing wall between the two families, rendering the adoptive origins of the new parent-child relationship secret.

This may be inferred from two provisions in particular.

The first is Article 28, which prohibits any mention of the biological mother/father or the adoption in public records concerning the adoptee's family status. The article also forbids public record offices, public clerks, and any other public or private entity from giving out any information that would allow someone to infer that the person was adopted, unless expressly authorised by court order, or unless the request comes from the public record office in relation to an inquiry concerning potential impediments to a marriage.

The second is Article 73(1), which makes it a crime for "whoever has obtained knowledge through their position to provide any information that could be used to locate a child who has been adopted or to provide any information in any way about the state of a legally adopted child" (an expression later changed to "adopted child" by Article 100(1)(cc) of Legislative Decree No 154 of 28 December 2013, "Revision of the existing provisions on the parent-child relationship, pursuant to Article 2 of Law No 219 of 10 December 2012"). Paragraph 3 of the same article makes it a crime to "provide such information after a child has been placed in pre-adoption foster care and without authorisation by the family court".

8.2.– This was the original legal framework, but the evolution of society and the experience accumulated by applying this framework over time, together with input coming from the European Court of Human Rights (ECtHR), this Court, and the living law, gradually pushed the legislature to reconsider the presumption that adoption, as a chance for the child's rebirth, must necessarily entail the radical erasure of the child's past.

These developments include, first, the additions made to Article 28 of Law No 184/1983 by Law No 149/2001. This reform added to paragraph 1 the right of adopted children to be "informed of their condition" by their adoptive parents, who may "go about doing so as and how they see fit". Paragraph 4 and the following paragraphs were also added to Article 1, allowing adoptive parents to have "information about the identity of the [child's] biological parents" with family court authorisation and in the presence of "serious and well-established reasons". At the same time, revised Article 28 allows adopted children who have reached the age of 25 years, or at least the age of majority in the case of "serious and well-established reasons pertaining to their mental or physical health", to access information concerning their origins and the identity of their biological parents.

"The increasing appreciation for the value of the right to personal identity" has, therefore, led the legislature to affirm "the child's right to know his or her origins and to receive information concerning his or her parents, as a 'significant element within the constitutional system ensuring protection for the individual' (see Judgment No 278/2013)". Against this background, this Court has held, even in the case of a mother's choice to remain anonymous, that an irreversible renunciation of "legal parenthood" cannot however reasonably also imply a definitive and irreversible renunciation of 'biological parenthood'". If this were the case, it would introduce into the legal system "a kind of prohibition aimed at precluding at root any possibility of a reciprocal de facto relationship between mother and child, the results of which would be difficult to reconcile with Article 2 of the Constitution" (Judgment No 278/2013). For this reason, this Court declared Article 28(7) of Law No 184/1983 to be partially unconstitutional.

Again in keeping with the growing attention being paid to the personal identity of the child, and with particular regard for the continuity of their bonds of affection, Law No 184/1983 was further amended by Law No 173 of 19 October 2015 (Modifications to Law No 184 of 4 May 1983, on the right to continuity of loving relationships of children in foster care).

New paragraph 5-*bis* of Article 4 of Law No 184/1983 provides that a foster couple who meet the requirements under Article 6 may ask to adopt a child if they are fostering that child and the child has been declared abandoned. This protects their emotional stability and further deconstructs the model of impenetrable secrecy between birth and adoptive families.

In addition, paragraph 5-*ter* of the same article provides that when a child who has spent time in foster care "returns to their family of origin or is entrusted to another foster family or adopted by another family, the continuity of the positive bonds of affection formed in foster care […] is subject to protection".

Finally, emotional stability is given specific and independent weight in the choice of foster guardians to care for "minors deprived of a suitable family environment when the death of one parent is intentionally caused by their spouse". Article 4(5-*quinquies*) provides that "the competent court, after carrying out the required investigation, shall give priority to ensuring the continuity of the existing loving relationships formed between the child and family members up to the third degree of kinship".

Ultimately, the idea that the personal development of an abandoned child does not always necessarily require a radical erasure of their past, no matter how complicated or painful it may be, has also been recognised in legislation.

Protecting the child's identity is associated with recognising how important it is to, first, have knowledge of one's roots, and, second, have continuity of social-emotional relationships with people who have had a positive role in their growth.

8.3.– Alongside the regulatory changes described above, the courts have developed a deepening awareness of the range of circumstances that can impact a child's condition and the importance of not separating them from their family of origin, whenever possible.

8.3.1.– The ECtHR has also consistently emphasised this need. By ascribing the protection of family relationships to respect for family life (Article 8 ECHR), it stresses the exceptional nature of solutions which sever all ties between a child and their family of origin (ECtHR, *Jìrovà and Others v. The Czech Republic*, judgment of 13 April 2023; Grand Chamber, *Strand Lobben and others v. Norway*, judgment of 10 September 2019; *S.H. v. Italy*, judgment of 13 October 2015; *Akinnibosun v. Italy*, judgment of 16 July 2015; *Zhou v. Italy*, judgment of 21 January 2014).

In particular, the ECtHR has held that dissolving a family amounts to interference of an extreme degree, which must rest on considerations relating to the best interests of the child that are sufficiently weighty and substantial to justify the dissolution (ECtHR, judgment of 22 June 2017, *Barnea e Caldararu v. Italy*).

Removing a child from their family is, therefore, an extreme measure to be utilised only as a last resort, and always keeping in mind that all decisions involving minors must put their best interests first (ECtHR, judgment of 16 July 2015, *Akinnibosun*, paragraph 65).

8.3.2.– The living law, which has been receptive to the prompts coming from ECtHR rulings, has first of all sought alternatives to the strict binary of foster care versus full adoption. In particular, it has worked to provide suitable protection in situations that fall somewhere between a child temporarily lacking a suitable family environment and total abandonment (Court of Cassation, First Civil Division, Orders Nos 20322 of 23 June 2022; 40308 of 15 December 2021; 35840 of 22 November 2021; 1476 of 25 January 2021; and 3643 of 13 February 2020).

In the event of the so-called semi-abandonment of a child, particularly when this is due to the parents' addiction or physical or mental health problems, which often go hand in hand with financial and employment struggles, the courts have held that both foster care and full adoption are inadequate to address the non-transient but, nevertheless, not absolute state of parental unfitness to offer their children moral and material support.

By extending the concept of impossibility of pre-adoption foster care found in Article 44(1)(d) of Law No 184/1983, the courts have, therefore, moved toward a new model of "light" adoption. This model is an offshoot of adoption in special cases and, therefore, envisages the continuation of legal ties with the child's biological family.

8.3.3.– The on-going search for a solution that better fits the complex reality then led to the development, on the initiative of the family courts, of the idea of "open" adoption (see, recently, Court of Appeal of Bologna, Judgment of 2 February 2023; Court of Appeal of Milan, Judgment of 31 May 2022; Court of Appeal of Rome, Judgment of 3 January 2022; Court of Appeal of Milan,

Judgment of 8 January 2021; Court of Appeal of Turin, Judgment of 25 June 2019).

This form of adoption merges the full adoption model, in the event of the true and total abandonment of a child, with the need to preserve (and, therefore, keep open) certain social-emotional relationships with the biological family members the child has had positive interpersonal relationships with.

The possibility to preserve certain existing relationships, under the terms indicated in the adoption order, rests on an interpretation of Article 27(3) of Law No 184/1983, which restricts the ties to be cut with the family of origin in the case of adoption to legal ties only.

9.– The referring court rejects the interpretation of Article 27(3) of Law No 184/1983 that would allow an adoptee to continue to have bonds of affection with members of their family of origin. Therefore, it asks this Court to review whether the challenged provision, to the extent that it blocks access to the open adoption model, is compatible with Articles 2, 3, and 30 of the Constitution, and 117(1) of the Constitution in relation to Article 8 ECHR and Articles 3, 20(3), and 21 of the Convention on the Rights of the Child.

10.– In light of the above, this Court finds it appropriate to, first and foremost, examine the question as to constitutionality that the referring court raises with reference to Article 3 of the Constitution, on the basis of the "unjustified disparity of treatment compared with the other models of adoption provided under Article 44 of Law No 184/1983, which do not envisage cutting ties with the original family unit".

11.– The question is unfounded.

11.1.– The model which the referral order uses as a basis for comparison – adoption in special cases – as currently established by the legislature, does not sever the original parent-child bond, and the other kinship bonds within the biological family along with it, despite generating an adoptive parent-child relationship, which this Court has held, in the interests of the child and their identity, to be capable of generating new kinship ties which flow from the adoptive bond, perfectly in keeping with Article 74 of the Civil Code (Judgment No 79/2022).

Reflexively, adoption pursuant to Article 44 of Law No 184/1983 does not sever the legal/formal kinship relationships since nothing prevents existing relationships with the original family from continuing.

Concerning this regulatory scheme, the referral order complains, on the one hand, that there is disparity of treatment between full adoption and adoption in special cases when it comes to the possibility for children to maintain social-emotional ties.

Moreover, it asserts that the two models of adoption have different impacts on legal/formal relationships, and it reiterates the importance of not "further circumscribing recourse to full adoption, by proposing any further limits on it".

11.2.– In essence, the question as to constitutionality referred by the Court of Cassation recognises and does not call into question (point 6.1.) the different impact that full adoption has on a child's legal/formal ties with their family of origin when compared with adoption in special cases.

But then this very distinction between the two forms makes clear that adoption pursuant to Article 44 of Law No 184/1983 is not an appropriate point of comparison for supporting the allegedly unreasonable disparity of treatment between adoption in special cases and full adoption when it comes to the possible maintenance of bonds of affection with members of a child's family of origin.

The continuation or non-continuation of a legal kinship bond, one of the differences between the two models, may undoubtedly impact whether existing relationships are maintained.

Thus, the question as to the constitutionality of Article 27(3) of Law No 184/1983 with reference to Article 3 of the Constitution, on the grounds that there is an unreasonable disparity of treatment compared with how adoption in special cases is regulated, is unfounded.

12.– Now this Court turns to a review of the constitutionality of the challenged rule with reference to the other constitutional provisions cited by the referring court: Articles 2 and 30, as well as Article 117(1) in relation to Article 8 ECHR and Articles 3, 20(3), and 21 of the Convention on

the Rights of the Child, which apply to the protection of the supreme interests of the child and the defence of their identity.

13.– These questions are unfounded, as laid out below.

13.1.– Challenged Article 27(3) of Law No 184/1983 specifies, not unreasonably and without prejudice to the interests of the child, that declaring a state of abandonment (that is to say a ruling that the parents and other relatives with a responsibility to provide moral and material support for the child are totally unfit to do so) entails the dissolution of the legal/formal parent-child relationship together with the severing of kinship ties to the child's family of origin.

This effect, also envisaged by the European Convention on the Adoption of Children, signed at Strasbourg on 24 April 1967, ratified with Law No 357 of 22 May 1974, and in force since 5 September 1974 (Article 10(2)), is so typical a feature of full adoption that it goes to the very foundations of international adoption. In fact, Article 32(2)(b) of Law No 184/1983 does not allow for a declaration that adoption is in the best interests of a child "where, in the foreign nation, [the adoption] does not result in […] the termination of the legal relationship between the child and his or her family of origin, unless the biological parents have expressly agreed to this result".

Together with the dissolution of legal/formal ties, the breadth of the challenged provision's mention of the dissolution of "relationships […] with the family of origin" allows for the further presumption that it is in the best interest of child, precisely because they have been abandoned, to sever even the ties they have with their biological relatives.

In reality, in totally general and abstract terms, it is not unreasonable to consider this presumption to be in line with the best interests of the child. The need to distance a child (or youth) from a painful past and to ensure that the adoptive parents, on whom a well-balanced upbringing now depends, will have the greatest possible peace and autonomy in which to educate their child, make the dissolution of existing relationships with members of the family of origin consistent, as a rule, with the goal of protecting the adoptee.

13.2.– Nonetheless, were this presumption to be interpreted in absolute terms, prohibiting courts from finding that an adoptee has an interest in maintaining positive social-emotional bonds, this would amount to a break with the constitutional principles protecting the interests of the child, particularly their identity.

Articles 2, 30, and 117(1) of the Constitution, the last provision in relation to Article 8 ECHR and Articles 3, 20(3), and 21 of the Convention on the Rights of the Child, contain a twofold requirement.

First, Articles 2 and 30 of the Constitution, together with the aforementioned international sources, underscore the important function that is carried out, for purposes of the balanced development of the child's personality, by the protection of their identity. This identity develops in the present and in relationship with the new interpersonal bonds that flow from the adoption (Judgment No 79/2022), but is inevitably rooted in the past as well. Thus, protecting identity requires awareness of one's roots (Judgments Nos 286/2016 and 278/2013) and the preservation of continuity when it comes to pre-existing, positive bonds of affection. In parallel, the ECtHR interprets the right to respect for family life enshrined in Article 8 ECHR as placing a duty on Member States to make an individual assessment of whether it is in the best interests of a child to maintain contact with the individuals, whether or not they are biologically related to the child, who have cared for the child for a sufficiently long period of time (ECtHR, , *Jìrovà and Others v. The Czech Republic*, judgment of 13 April 2023; *V.D. and others v Russia*, judgment of 9 April 2019).

Second, protecting the child's identity (and, with it, their interest in maintaining positive emotional ties) is not compatible with rigidly abstract models and absolute presumptions, which do not take stock of the complexity of individual situations, the concrete circumstances of which may contradict the "generalisation underlying the presumption itself" (Judgment No 253/2019; see, similarly, Judgments Nos 286/2016, 185/2015, 232/2013, 213/2013, 57/2013, 291/2010, 265/2010, 139/2010, 41/1999, and 139/1982).

An absolute presumption that radically eliminating all bonds of affection with a child's family of origin always corresponds one-to-one with their interest in growing up happily in their new adoptive family would be inconsistent with these aims.

13.3.– On the contrary, however, the wording of challenged Article 27(3) of Law No 184/1983 suggests that the rule does not envisage an absolute ban on maintaining bonds of affection with members of the child's family of origin.

First, if it is true that the text of the provision is broad, to the extent that it can include even de facto ties under the notion of "relationships", it is equally true that it uses a generic expression that can easily accommodate a more limited definition of "relationships" to mean only legal/formal ones in the event that a child has a concrete, paramount interest in having their bonds of affection preserved in order to safeguard their constitutionally protected right to personal identity.

Second, it is crucial to acknowledge that the overall regulatory scheme which includes Article 27(3) has evolved over time to contain, in its present form, interpretative clues that, inspired by constitutional principles, allow for identifying situations in which a child has a supervening interest in keeping up their social-emotional ties with members of their family of origin. These clues indicate that the presumption that cutting off de facto relationships with biological family members is in the interests of the child is merely relative.

13.3.1.– First among these clues is Article 28(4) of Law No 184/1983, a product of the 2001 revision, which permits the veil of secrecy that generally separates adoptive families from families of origin to be pierced where there are "serious and well-established reasons", with prior authorisation of the family court.

Serious and well-established reasons clearly imply the risk of some disadvantage to the child. If such reasons allow for dissolving the anonymity of the family of origin, these same reasons, particularly the risk that dissolving bonds of affection may be detrimental to the child, provide the first grounds on which a court ruling, including the adoption order itself, may authorise disregard of the hard line of separation from their biological family.

13.3.2.– At the same time, Law No 184/1983 also specifies that at least one kind of social-emotional relationship with members of the family of origin is subject to express legal protection, in the best interest of the minor, and that is the relationship between brothers and sisters who have been abandoned.

This is clear, first, from the last part of Article 4(5-*quinquies*), which provides that, from the start of any foster care period, "in the event there are brothers and/or sisters", the court must "ensure the continuity of the emotional bond between them as much as possible".

Moreover, the law aims to facilitate joint adoptions of brothers and sisters as much as possible. This model involves the dissolution of the original kinship ties but ensures the continuation of a social-emotional relationship that will become the basis for a new parental relationship based on adoption.

This is implied by Article 6(6), which creates an exception to the maximum age of an adoptee where "the adoption concerns the brother or sister of a child already adopted by the same" adoptive parent(s). Paragraph 7 of the same article makes "having already adopted a brother or sister of the adoptee or having applied to adopt siblings" an element that is "preferential for purposes of adoption". This is confirmed by Article 22(1), which provides that people wishing to adopt must specify whether they are "willing to adopt siblings", while paragraph 7 establishes that "where two or more siblings are all adoptable, one may not be placed in foster care without the other(s) in the absence of serious justification".

If, therefore, the law protects children's interests in maintaining stable bonds of affection with their siblings to the extent that it encourages placing them in foster care or adoptive homes together, surely this interest does not vanish in the event that the children are adopted by different families.

The interest remains woven into the fabric of the law, and it is protected when challenged Article 27(3) is interpreted in a way that complies with the Constitution. Indeed, the need to maintain a social-emotional bond with the people who, like brothers and sisters, are not only not at fault for

their abandonment, but often provide the child's only source of moral support by sharing the trauma they experience as a result of this failure of moral and material support. This is, without doubt, an integral part of the personal identity of the child.

In light of this need, which is clearly recognised by the legislature and solidly rooted in constitutional principles and the child's right to personal identity, a child also has a concrete need to maintain bonds of affection in similar scenarios, in which a child has had regular, positive interactions with biological relatives even if these interactions do not rise to the level of overcoming their state of abandonment.

One such scenario could include grandparents who are unable to take care of a child due to advanced age or ill health, but who are nonetheless an important emotional reference point, especially when an adoptee must overcome particularly serious trauma. This is the case at hand, where one parent was killed by the other, as Article 4(5-*quinquies*) of Law No 184/1983 makes clear for purposes of highlighting, albeit in the foster care context, the central need to ensure social-emotional continuity with the child's closest kin.

In short, particularly close and habitual positive relationships with relatives who cannot overcome the child's state of abandonment – of which sibling relationships are an emblematic, but by no means exclusive example – may lead the court to find that the child has a paramount interest in maintaining emotional relationships, the dissolution of which could inflict additional trauma on the child under protection, and all the more so in situations that call for heightened protection of the child.

13.3.3.– Alongside these general indications, other provisions of the law give courts tools for applying the regulatory and axiological contents to the reality, in order to make an individual assessment of the best interest of the child, which can overcome the underlying presumption of Article 27(3) of Law No 184/1983.

In particular, in the course of adoption proceedings courts rely not only on social services, which perform "thorough audits of the child's legal and factual circumstances, [as well as] of the environment in which he or she has lived" (Article 10(1) of Law No 184/1983), but must hear, above all, the children themselves, at all stages of the proceedings, and must also respect the wishes of children of fourteen years of age or older.

The first sentence of Article 7(2) provides that "a minor who is fourteen years of age or older may not be adopted without giving their personal consent", which they are free to withdraw until the adoption is finalised. Paragraph 3 of the same article provides that if "the adoptee is twelve years old or older, he or she must be personally consulted. Younger adoptees must be consulted, taking into consideration their capacity for discernment". Children must also be heard when a pre-adoption foster care assignment is to be revoked (Article 23(1)).

Finally, Article 25(1) provides that family courts "shall rule on adoption by judgment" only after having heard from the adopting couple and "any child twelve years of age or older, and any child younger than twelve years in keeping with their capacity for discernment". Courts must also first obtain the "explicit consent to adoption by the intended couple" from any "child over thirteen years of age".

In all the aforementioned scenarios, the court may, therefore, thoroughly assess whether there are concrete, serious reasons to conclude that severing a social-emotional relationship with a person who formed positive ties with the child in the past, has been an emotional reference point during their developmental process, and belongs to their memory would be detrimental.

The combination of abstract indicators and a factual assessment therefore allows the court to overcome the presumption, which underlies Article 27(3) of Law No 184/1983, that dissolving bonds of affection as a consequence of breaking the legal kinship is actually in keeping with the best interests of the child.

13.3.4.– Lastly, Law No 184/1983 does not lack interpretational clues, albeit general ones, as to, first, what weight to give, in adoption proceedings, to the interest in preserving existing relationships and, second, suitable ways to continue those relationships.

First of all, Article 22(5) governs the identification of parents for pre-adoption foster care stating that the choice must fall upon the couple "most capable of meeting the child's needs" – needs which certainly include maintaining positive bonds of affection with members of their family of origin.

Moreover, Article 22(7) provides that the court must inform the pre-adoption foster couple "of the relevant facts about the child that have come to light during the investigation". Thus, the foster couple may be immediately informed of the child's primary interest in maintaining well-established, positive bonds of affection. Starting from the pre-adoption foster care phase, the couple may also assess the impact the visits have on the child.

Finally, courts must adjust adoption orders in consideration of the various interests involved, which Law No 184/1983 protects.

Without prejudice to the parental responsibility that falls to adoptive parents due to the parental ties flowing from the adoption order (Article 27(1)), social services may be entrusted with organising visits, provided that the needs brought to light by the adoptive parents in the interest of the child are given adequate weight.

Furthermore, courts must not overlook the needs for confidentiality that appear primarily in Article 28 of Law No 184/1983 and which, in general, refer to the child, the adoptive family, and the members of the family of origin (and, in the case of a minor, their representative as well). For this purpose, they may order that visits take place in a protected location and with the supervision of social services.

14.– In conclusion, Article 27(3) of Law No 184/1983 can be interpreted in line with the Constitution and in a way that distances it from any absolute presumptions and rejects any prohibition on courts finding that a child has a preeminent interest in maintaining positive bonds of affection with members of their family of origin.

The dissolution of ties with the child's biological family necessarily and unequivocally pertains to legal-formal ties.

On the contrary, when it comes to cutting off social-emotional ties, the provision contains a merely *iuris tantum* presumption that separation from the family of origin is in the best interests of the child.

Therefore, based on the regulatory clues which may be inferred from Law No 184/1983, interpreted through the constitutional lens of the protection of minors and their identity, this presumption does not prevent courts from determining that maintaining positive, well-established bonds of affection with members of a child's family of origin fulfils the best interests of the child. The same is true when, conversely, the interruption of such relationships would cause harm to the child.

Where a child has a deep emotional bond with relatives who cannot remedy their state of abandonment, the paramount interest is that of the adopted child in avoiding the additional trauma of losing these bonds and in maintaining some continuity in an emotional context that belongs to their memory and constitutes an important building block of their identity.

15.– In conclusion, the questions as to the constitutionality of Article 27(3) of Law No 184/1983, raised with reference to Articles 2 and 30 of the Constitution, as well as Article 117(1) of the Constitution in relation to Article 8 ECHR and Articles 3, 20(3), and 21 of Convention on the Rights of the Child, are unfounded, as laid out in the reasoning section.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

1) *declares* that the question as to the constitutionality of Article 27(3) of Law No 184 of 4 May 1983 (Child's right to a family), raised by the First Civil Division of the Court of Cassation with the relevant referral order with reference to Article 117(1) of the Constitution, in relation to Article 24 of the Charter of Fundamental Rights of the European Union, is inadmissible;

2) *declares* that the question as to the constitutionality of Article 27(3) of Law No 184/1983, raised by the First Civil Division of the Court of Cassation with the relevant referral order with reference to Article 3 of the Constitution is unfounded;

3) *declares* that the questions as to the constitutionality of Article 27(3) of Law No 184/1983, raised by the First Civil Division of the Court of Cassation with the relevant referral order with reference to Articles 2 and 30 of the Constitution, as well as Article 117(1) of the Constitution in relation to Article 8 of the European Convention on Human Rights and Articles 3, 20(3), and 21 of the Convention on the Rights of the Child, done at New York on 20 November 1989, ratified and enacted by Law No 176 of 20 May 1991, are unfounded, as laid out in the reasoning section.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 5 July 2023.

Signed:

Silvana SCIARRA, President

Emanuela NAVARRETTA, Judge Rapporteur