



Press Office of the Constitutional Court

Press release of 9 March 2021

HETEROLOGOUS INSEMINATION CARRIED OUT BY TWO WOMEN ABROAD: LEGISLATION MUST BE ENACTED URGENTLY IN ORDER TO GUARANTEE NEW-BORN CHILDREN FULL RIGHTS TO CARE, UPBRINGING, EDUCATION AND STABLE PARENTAL BONDS

The inertia of the legislature will no longer be tolerable, should the current serious gap persist in protecting the interests of children born as a result of heterologous insemination, carried out abroad by two women whose long-term relationship has broken down.

This ruling is contained in [Judgment no.32](#) filed today (author of the judgment Silvana Sciarra), in which the Constitutional Court declared inadmissible certain questions, raised by the Court of Padua, concerning Articles 8 and 9 of Law no. 40 of 19 February 2004 (Provisions on medically assisted procreation) and Article 250 of the Civil Code (as previously announced in the [press release of 28 January](#)). The Court held that it is primarily for the legislature to strike a “reasonable balance between the various constitutional interests involved, whilst respecting the dignity of the human person” in order to provide, on a systemic level, adequate protection to children’s rights, such as “care, upbringing, education, maintenance, inheritance and, more generally, the continuity and comfort of shared habits”, thereby avoiding the emergence of inconsistencies in the legal system.

The Court of Padua had objected to an emerging lack of protection for minors, as the provisions cited do not enable those born as a result of jointly pursued medically assisted procreation carried out abroad by two women, to be recognised by the non-biological mother, should the “adoption under special circumstances” not be accessible for lack of the prerequisites, and should the courts indicate this to be in the child’s best interest. The case before the Court of Padua is the following: the breakdown of the couple’s relationship, following years of cohabitation and joint care for two female children born in Italy, interrupted the non-biological mother’s exercise of parental responsibility, despite her attempts to re-establish a normal affective bond with the minors.

Previous Constitutional Court's rulings refer to Articles 2, 30 and 31 of the Constitution, with constant attention for the best interests of the child, even when the latter was born as a result of heterologous medically assisted procreation. This was stated even before legislation intervened to regulate such a practice. The Court also affirmed the social relevance of the parental status, even when it does not coincide with the biological link, thus clarifying that a genetic relationship is not an indispensable prerequisite for the existence of a family. The judgment refers extensively to international human rights instruments and to the case law of the two European courts, in order to prove synergies in protecting "preeminent" and "best" interests of children, whenever bonds with both parents are at stake. The child's identity, which has been central within the decisions of the Strasbourg Court, ends up being "affected as an element of private life" if a stable emotional bond, reinforced by parental status, is not established.

The Constitutional Court provided examples of the paths that legislation could follow, in order to ensure adequate protection to children: rewriting provisions on *status filiationis*, as well as introducing new rules for adoption, adequate to guarantee full rights to new born children in a timely manner.

Rome, 9 March 2021