JUDGMENT NO 33 YEAR 2025

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

[omitted]

Conclusions on points of law

1.– By a referral order registered as No 139 of the 2024 Register of Referral Orders, the Family Court of Florence (*Tribunale per i minorenni di Firenze*) raised questions as to the constitutionality of Articles 29-*bis*(1) and 30(1) of Law No 184/1983, insofar as, respectively, they fail to allow single persons residing in Italy to apply for a decree of suitability for intercountry adoption (*dichiarazione di idoneità all'adozione internazionale*) and do not allow courts to issue a decree of suitability for intercountry adoption with respect to single persons found to be fit to parent by a preliminary assessment, with reference to Articles 2 and 117(1) of the Constitution, the latter in relation to Article 8 ECHR.

The referring court reports that the main proceedings arise from the resumption of a previous case, in the course of which a question had been raised concerning the constitutionality of Article 29-*bis*(1) of Law No 184/1983, for violation of Article 117(1) of the Constitution, in relation to Article 8 ECHR. The question was declared inadmissible by this Court in Judgment No 252/2021.

2.– The Family Court of Florence, after specifying that the conditions are met for the same court to raise new questions of constitutionality in the same proceedings, and after giving its reasons for their relevance, argues that they are not manifestly unfounded.

2.1.– According to the referring court, the challenged provisions are not suitable to achieve the goal of protecting the interests of the child and violate the right to respect for private life of single people.

In the referring court's view, a harmonious and stable family environment, which the court must identify in the best interests of the child, is not to "necessarily [...] be found in the family structure composed of a couple united by the bond of marriage".

It argues that the necessary environment can also be guaranteed by assessing the concrete suitability of a given family context to protect the minor, even if characterized by a single parent, including by considering the larger family network. It argues that this corresponds to the inclusion of single-parent family units within the constitutional fabric of Article 2 of the Constitution, which protects the social formations within which individuals express their personality.

2.2.– Assuming that excluding single people from access to intercountry adoption is not in the best interests of the child, the referring court finds an infringement of the right to respect for private life, as set forth in Article 8 ECHR, the interpretation of which it believes should be expanded and completed by reference to Article 2 of the Constitution.

According to the referring court, the notion of private life should encompass, by virtue of what is inferred from the case law on the Convention, "the right to establish and develop relationships with other human beings, as part of the right to personal development and the principle of human dignity, understood from the perspective of the right of self-determination".

This right may tolerate interference allegedly only when it complies with the law and is necessary in a democratic society, which would imply that it corresponds to a pressing social need and, in particular, that it is proportionate to one of the legitimate purposes pursued by the authorities.

According to the referring court, excluding single persons from accessing intercountry adoption is an inappropriate means for ensuring a stable and harmonious environment for the child, given that single-parent households are capable of ensuring a *foyer stable et harmonieux*.

[...]

4.– As a preliminary matter, it is necessary to lay out the subject matter of this case.

4.1.– The challenged provisions are Articles 29-*bis*(1) and 30(1) of Law No 184/1983, which regulate the initiation of the intercountry adoption procedure.

Article 29-*bis*(1) provides that "[t]he persons residing in Italy, who meet the conditions prescribed by Article 6, and who intend to adopt a foreign child residing abroad, shall submit a declaration of availability [*dichiarazione di disponibilità*] to the Family Court of the district in which they reside and request that the same declare their fitness for adoption". Specifically, Article 6(1) stipulates that "adoption is allowed for spouses who have been married for at least three years. The spouses must not be separated and must not have been separated at any time in the three years leading up to the adoption, even informally". Subsequent paragraphs of Article 6 then proceed to specify the prerequisites concerning the stable relationship and indicate additional requirements concerning, in particular, the age of the adoptive parents, as well as their emotional fitness and ability to educate, instruct and maintain children. Lastly, Article 6 allows adoptive parents to carry out multiple adoptions, including with subsequent acts, and regulates the measures that can be made available to support those who adopt minors over the age of 12 or with disabilities ascertained pursuant to Article 4 of Law No 104 of 5 February 1992 (Framework law for assistance, social integration and rights of handicapped persons).

The second challenged provision, namely Article 30(1) of Law No 184/1983, provides that "[t]he Family Court, upon receiving the report referred to in Article 29-*bis*(5), shall hear the prospective adoptive parents, including through a delegated judge, shall arrange, if necessary, for the appropriate in-depth assessment and shall issue, within the following two months, a decree certifying the fulfilment or non-fulfilment of the requirements for adoption, with the reasons therefor".

Given that the referring court's challenges aim to remove the exclusion of single people from access to the procedure to assess suitability to adopt in order to obtain the decree of fitness needed to start an intercountry adoption process, it follows that constitutional scrutiny can focus only on Article 29-*bis*(1) of Law No 184/1983.

If, indeed, striking down this provision as unconstitutional results in single persons being included among those who are eligible to submit the declaration of willingness to

adopt and to apply for eligibility for adoption, a court could not issue a decree of non-fulfilment of the requirements, on the basis of Article 30(1) of the same law, due to unmarried status.

4.2.– Furthermore, it is also necessary to point out that the complaints raised by the referring court sometimes refers to unmarried persons and sometimes to single persons.

The question, therefore, pertains to people who have free status, in the sense that they are not bound by marriage (Article 86(1, first part) of the Civil Code).

On the contrary, the condition of people who do not have free status because they are party to a civil union (Article 86(1, second part) of the Civil Code) does not fall within the scope of the present constitutional review. This issue is not the subject of today's judgment and, therefore, remains unaffected by it.

5.– Having specified the object of the present judgment, this Court holds that, on the merits, the questions raised with reference to Articles 2 and 117(1) of the Constitution, the latter in relation to Article 8 ECHR, are well-founded.

6.– The questions concerning Article 29-*bis*(1) of Law No 184/1983 involve two types of interests: that of the individuals who aspire to be able to adopt, and with respect to whom the referring court alleges the violation of Articles 2 and 117(1) of the Constitution, the latter in relation to Article 8 ECHR, and that of the child who, as the referral order also notes, is at the core of the institution of adoption.

It becomes necessary, therefore, to first of all reconstruct, from a historical perspective, the relationship between the protection of the best interests of the child and the regulatory criteria with which the legislature has selected and selects would-be adoptive parents in the present. Indeed, it is necessary to ascertain whether and within what limits the legislature has recognised in the past, and continues to recognize, the fitness of single people to ensure a stable and harmonious environment for the child in the abstract (subject to a concrete assessment).

6.1.– A child-protective purpose was not a part of adoption at the time of the institution's earliest historical roots (Judgment No 5/2024), but was grafted on in the aftermath of World War I, when Royal Decree-Law No 1357 of 31 July 1919 (Rules for the adoption of war orphans and children born out of wedlock during wartime), converted, with amendments, into Law No 2137 of 6 December 1925, allowed the adoption of minors under the age of 18 if they fell into the categories indicated by the royal decree-law. Prior to that time, the regulation of adoption, as reflected in the Civil Code of 1865, had remained functionally faithful to its Roman imprint, enduring as an institution aimed solely at allowing persons with no children to transmit their surname and inheritance to others, on a purely consensual basis. It chiefly involved people who had attained the age of majority (21 years in this context) and was extended to minors only if they had reached 18 years of age (Article 206 of the Civil Code of 1865).

Adoption of minors, as indicated in the 1919 royal decree-law, was grafted onto the regulatory scheme of the Civil Code of 1865, which recognised both spouses (Article 204 of the 1865 Civil Code) and individual persons as potential adoptive parents, even if the latter were married, provided that the other spouse gave their consent (Articles 202 and 208(2) of the 1865 Civil Code).

Subsequently, the 1942 Civil Code extended the possibility of being adopted to any

minor (Article 291 of the Civil Code, in its original text, and Articles 301 and 303 of the Civil Code, later repealed by Article 67 of Law No 184/1983), confirming that not only spouses could adopt (Article 294(2) of the Civil Code), but also single individuals, including married persons with the consent of their spouse (Article 297 of the Civil Code). This expansion occurred within the framework of a regulatory scheme that preserved adoptees' ties with their family of origin and did not give rise to kinship ties with the relatives of the adoptive parent (Article 300 of the Civil Code). Nevertheless, it assigned "parental authority" over the child to the adoptive parent (today, "parental responsibility"), with the related obligations to maintain, educate and instruct the adoptee (Article 301 of the Civil Code).

While, therefore, the rules of adoption took on a multi-functional dimension in the Code, coming to include the adoption of minors, Law No 431 of 5 June 1967 (Amendments to Title VIII of Book I of the Civil Code "On adoption" and insertion of the new Chapter III entitled "On special adoption") introduced a new form of special adoption, specifically for the protection of children younger than eight years of age, declared adoptable due to the absence of material and moral assistance from their parents or relatives required to provide for them (Articles 314/3 and 314/4 of the Civil Code, repealed by Article 67 of Law No 184/1983). Under these provisions, only spouses, married for at least five years, could become adoptive parents (Article 314/2 of the Civil Code, repealed by Article 67 of Law No 184/ 1983), and they provided for the breaking of the legal bond with the family of origin and the acquisition of the status of "legitimate child" by the adoptee, establishing kinship relations with the adoptive parents' relatives (*congiunti*), excluding people not in the same line of descent (*collaterali*) (Article 314/26 of the Civil Code, repealed by Article 67 of Law No 184/1983).

In the period following the entry into force of the aforementioned Law No 431/1967, the adoption of children was, in essence, possible both through the route of ordinary adoption, accessible to married and single persons, and through the route of special adoption, reserved for married couples, together for at least five years, such that the former model ended up, in effect, absorbing the cases excluded from special adoption.

6.2.– The regulatory framework changed profoundly with Law No 184/1983, which repealed special adoption, replacing it with a general set of rules for full adoption applicable to all minors in a state of abandonment and reserving code-based adoption for persons over the age of majority (as is evident from the new title of Chapter II of Title VIII of Book I of the Civil Code, which reads "Types of adoption of legal adults").

The reform creates a watershed between the adoption of minors, with its dedicated set of laws, and the provisions found in the Code, which became the source of adoption rules for persons over the age of majority. Nonetheless, the *reductio ad unum* of the adoption of minors was not fully completed, since a set of special case adoptions remained (Article 44 of Law No 184/1983), the effects of which were largely determined in reference to the code-based adoption of non-minors (Article 55 of the same law). Moreover, this Court, in Judgment No 79/2022, declared the aforementioned Article 55 unconstitutional insofar as, by referring to Article 300(2) of the Civil Code, it provided that adoption in special cases did not generate any legal relationship between the adoptee and the relatives of their adoptive parent.

The guiding principle of the new law is the best interests of children, which is pursued in two ways: affirming their right to be raised and educated within their family

of origin and, where this is not possible, ensuring a stable and harmonious family environment ("*un foyer stable et harmonieux*"), in line with the principle affirmed in Article 8(2) of the 1967 Strasbourg Convention on the Adoption of Children.

The best interest of the child was also the focus of subsequent interventions that amended and supplemented the 1983 regulations: Article 3 of Law No 476 of 31 December 1998 (Ratification and implementation of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on 29 May 1993: Amendments to Law No 184 of 4 May 1983, regarding the adoption of foreign children), which replaced Chapter I of Title III of Law No 184/1983, incorporating the contents of the Hague Convention; Law No 149 of 28 March 2001 (Amendments to Law No 184 of 4 May 1983, concerning "Regulation of adoption and foster care of minors", as well as Title VIII of Book I of the Civil Code), which reformed various aspects of the regulatory scheme, fully regulated family foster care (with the new Title I-*bis*) and placed the centrality of the child in the new title of the law, which refers to the "Right of the child to a family"; Legislative Decree No 154 of 28 December 2013 (Revision of the provisions in force on the parent-child relationship, pursuant to Article 2 of Law No 219 of 10 December 2012), Article 100 of which adapts Law No 184/1983 to the terminology introduced with the reform of the parent-child relationship; Law No 173 of 19 October 2015 (Amendments to Law No 184 of 4 May 1983 on the right to relational continuity of children in family foster care), which bolsters family foster care; Law No 4 of 11 January 2018 (Amendments to the Civil Code, the Criminal Code, the Code of Criminal Procedure and other provisions protecting orphans in situations involving domestic abuse crimes), which, for the present purposes, regulates family foster care for children one of whose parents was voluntarily responsible for the death of the other parent (Article 4(5-*quinquies*) of Law No 184/1983).

Within this regulatory framework focused on the best interest of the child, Article 6(1) of Law No 184/1983 provides that "adoption is allowed for spouses who have been married for at least three years. The spouses must not be separated and must not have been separated at any time in the three years leading up to the adoption, even informally".

The legislature seems to have been responding to the need to ensure the child the status that, at the time, offered the broadest guarantees of protection: that of a "legitimate child", which presupposed married parents.

Moreover, although it ratified the 1967 Strasbourg Convention and was inspired by its principles, it did not avail itself of the option granted by that Convention to allow single persons to adopt as well, instead preferring two-parent scenarios, associated with stable couples, even at the cost of limiting the pool of potential adopters and, therefore, reducing the chances for children to be adopted.

Even after ratification of the Hague Convention on Intercountry Adoption, which includes single people among potential adoptive parents (Article 2), when the legislature implemented its regulations in Law No 184/1983, it continued to exclude them from access to adoption. Indeed, Article 29-*bis*(1) of Law No 184/1983 explicitly refers to Article 6 of the same law, as pointed out above (point 4.1. of the *Conclusions on points of law*).

6.3.– In light of this historical development, which has gradually moved away from the figure of the single person as adoptive parent of a child, it is necessary at this point to ascertain whether there are, nevertheless, indications in the current provisions that attest

to the legislature's recognition of the abstract suitability of single persons to guarantee a stable and harmonious environment for a child.

Law No 184/1983 itself has, indeed (albeit in limited cases), recognised the aptitude of single individuals to theoretically guarantee a stable and harmonious environment for children.

In particular, paragraphs 4 and 5 of Article 25 of Law No 184/1983 presuppose such suitability, referring to scenarios that are far from free of existential challenges, both for the adoptive parent and the potential impacts on the adoptee.

Paragraph 4 allows for full adoption if "one of the spouses dies or becomes incapacitated during pre-adoptive foster care". In such a case, the adoption, although ordered "with respect to both [spouses], effective, for the deceased spouse, from the date of death", in reality involves placing the child in a single-parent household.

Paragraph 5 further provides that full adoption may be ordered with regard to only one of the two prospective parents who applies for it, if "the foster spouses separate during the course of pre-adoptive foster care".

The law of adoption in special cases, regulated by Article 44 of Law No 184/1983, also reveals that the legislature recognises the abstract suitability of single persons to guarantee a stable and harmonious environment even with respect to children who, as a rule, require a particularly high level of commitment.

Article 44(3) of Law No 184/1983, in fact, allows unmarried people to adopt in the special cases indicated in paragraph 1, letters a), c) and d). Specifically, the last two provisions refer to children with disabilities (Article 3(1) of Law No 104/1992) who have neither father nor mother, and to children for whom pre-adoptive fostering has proved impossible.

The groups of scenarios mentioned above (Article 25(4) and (5) and Article 44(3) of Law No 184/1983) evidently respond to specific justifications, but on closer inspection, these justifications do not always fall within such narrow limits.

When it comes to the need to prioritise the continuity of the bond of affection with the child, this does not apply only in the cases referred to in Article 25(4) and (5) of Law No 184/1983. It may also be found in cases when a child is declared adoptable after a prolonged period of family foster care. If the foster carers apply for adoption, the court's decision must take into account the significant relational ties that have been established with the foster carers and the stable and lasting relationship between them and the child (Article 4(5-*bis*) of Law No 184/1983). However, only foster carers who meet the requirements of Article 6 of Law No 184/1983 can apply for adoption and invoke the aforementioned need, while single persons may not, despite qualifying as a foster carer of the child under Article 2(1) of the same law.

Similarly, if in the second group of cases mentioned above, the underlying *rationale* is to ward off the danger that the exclusion of single persons from the role of possible adoptive parents will turn into a barrier capable of hindering the very right of the child to be received in a stable and harmonious environment, on closer inspection, this need also occurs outside the limited scenarios envisaged by the legislature.

Indeed, the possibility of undermining the effective protection of abandoned children is a risk that can be more broadly attributed to other ways of restricting the pool

of potential adoptive parents.

Nor is this risk purely theoretical, as evinced by the gradual reduction in adoption applications that has taken place since the turn of the millennium (both the Statistics Division of the Department of Juvenile and Community Justice and the Presidency of the Council of Ministers, Commission for Intercountry Adoption, Central Authority for the Hague Convention of 29 May 1993, document a drop in cases of intercountry adoption from nearly 7,000 applications in 2007 to an estimated 500 applications in 2024).

7.– Having seen, therefore, how the legislature itself, despite making a fundamental option not to include single persons in the scope of potential adoptive parents of minors, has nevertheless recognized their ability to ensure a stable and harmonious environment, it now bears asking whether their exclusion from access to intercountry adoption violates the right to respect for private life, pursuant to Article 8 ECHR, in coordination with Article 2 of the Constitution, including in view of the principle of solidarity enshrined therein.

7.1.– In this regard, it bears noting that the fact that the Strasbourg Court has not intervened to censure the exclusion of single persons from eligibility for intercountry adoption does not prevent this Court from reviewing a potential violation of Article 8 ECHR in coordination with Article 2 of the Constitution.

This may be inferred, first of all, from Article 117(1) of the Constitution, which, as constitutional case law has already had occasion to note (Judgments Nos 349/2007 and 348/2007), obliges the legislature to comply with ECHR standards, without prejudice to the "verification of compatibility with Constitutional provisions" (Judgment No 349/2007).

Moreover, the nature of the ECHR, characterised by "a system for the uniform protection of fundamental rights" (Judgment No 349/2007) entrusted to the Strasbourg Court, implies deference to the interpretations offered by the ECtHR, but does not create an obligation to wait for a precise ruling with respect to a specific case in order to ascertain that conventional rules have been infringed (Judgment No 10/2024). This is all the more true when it comes to rights under the Convention, such as that provided for in Article 8 ECHR, the protection of which – according to the case law of the Strasbourg Court – presupposes not only negative, but also positive obligations on the part of the Contracting States (see, among many, ECtHR, judgments of 27 May 2021, *Jessica Marchi v. Italy*; 21 July 2015, *Oliari and Others v. Italy*, paragraph 159; 20 January 2015, *Gözüm v. Turkey*, paragraph 44; 4 October 2012, *Harroudj v. France*; and 16 December 2010, *A, B and C v. Ireland*; 28 May 1985, *Abdulaziz, Cabales and Balkandali v. United Kingdom*).

Therefore, in keeping with the interpretive coordinates offered by the ECtHR, and in connection with domestic constitutional principles, it falls to this Court to step in to ensure protection of the rights provided by the Convention.

This is in accordance, moreover, with the general principle of subsidiarity, set forth in the Preamble to the Convention, as amended following the entry into force of Protocol 15, under which it is the responsibility of the Contracting States to guarantee conventional rights and freedoms within their respective legal systems, interpreting their regulatory scope in harmony with their own constitutional principles. This Court, by making an integrated interpretation of conventional guarantees and corresponding constitutional protections, also contributes to the establishment of common standards of protection at

the European level.

Finally, it bears noting that this Court's intervention, by virtue of the coordination between Article 2 of the Constitution and Article 8 ECHR, is, in any case, consistent with Article 53 ECHR, according to which "[n]othing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party." Contracting States may even strengthen the protection of human rights and fundamental freedoms recognised under their laws, in keeping with the provisions of the Convention (ECtHR, judgments of 17 January 2017, *A.H. and Others v. Russia,* and 22 January 2008, *E.B. v. France*).

8.– Having made this clarification, it is now necessary to determine, in the connection between Article 2 of the Constitution and Article 8 ECHR, the interest involved and the prerequisites for establishing the injury thereof.

8.1.– In general terms, choices oriented toward the establishment of parental bonds are ascribable to the broad content of freedom of self-determination.

This Court has confirmed this ascription, noting that the choice to become parents and to form a family that includes children constitutes an expression of the general freedom of self-determination, a freedom that can be traced back to Articles 2, 3 and 31 of the Constitution, since it concerns the private and family sphere (Judgment No 162/2014, and already found in Judgment No 332/2000 with regard to natural procreation).

Similar considerations are made in subsequent rulings linking the choice to become or not become a parent with Article 2 of the Constitution (Judgment No 161/2023), as well as with the concept of "private life" under Article 8 ECHR (Judgment No 221/2019).

In a corresponding sense, the case law of the ECtHR notes that "the notion of 'private life' within the meaning of Article 8 of the Convention is a broad notion, which does not lend itself to an exhaustive definition. It encompasses a person's physical and psychological integrity (*X and Y v. The Netherlands*, 26 March 1985, § 22, [...]) and, within certain limits, the right of the individual to establish and develop relationships with other human beings (*Niemietz v. Germany*, 16 December 1992, § 29, [...]). It can sometimes include aspects of a person's physical and social identity (*Mikulić v. Croatia*, No 53176/99, § 53, [...]). The notion of private life also includes the right to personal fulfilment or the right to self-determination (*Pretty v. The United Kingdom*, No 2346/02, § 61 [...]), and the right to respect for decisions to become a parent or not (*Evans v. The United Kingdom* [GC], No 6339/05, § 71, [...], and *A, B and C v. Ireland* [GC], No 25579/05, § 212, [...])" (ECtHR, judgment of 27 May 2021, *Jessica Marchi v. Italy*, paragraph 60; similarly, see, judgments of 17 April 2018, *Lazoriva v. Ukraine*, paragraph 66; 16 January 2018, *Nedescu v. Romania*, paragraph 66; 24 January 2017, *Paradiso and Campanelli v. Italy*, paragraphs 159, 161-165).

8.2.– While the choice to become parents falls under the broad notion of self-determination, the latter may underlie different interests.

In particular, where parenthood is accessible either naturally or because a person already falls under national provisions allowing medically assisted reproduction or adoption, the freedom of self-determination in parenthood-related choices implies a claim not to have that freedom unduly restricted by the legislature. This Court has, in keeping

with this, declared a regulation that made childlessness a requirement to be recruited in the *Guardia di Finanza* Corps unconstitutional (Judgment No 332/2000).

Beyond these scenarios, there is an interest in expanding the spaces of parenting-oriented self-determination through overcoming the limits set by the legislature, which is primarily responsible for dictating the conditions of access to forms of parenting other than natural procreation.

One clearly cannot speak here of a claim or "right to parenthood", which have been expressly denied both by this Court (Judgments Nos 33/2021, 230/2020 and 221/2019) and by the Strasbourg Court (ECtHR, judgments of 24 January 2017, *Paradiso and Campanelli v. Italy*, paragraph 141; 22 January 2008, *E.B. v. France*, paragraph 41; 28 June 2007, *Wagner and J.M.W.L. v. Luxembourg*, paragraph 121; 26 February 2002, *Fretté v. France*, paragraph 29).

Indeed, the constitutive prerequisites of a parental bond not only involve a plurality of interests but must also be oriented toward realising the interest of the child, to which the parental bond is inseparably related (Judgments Nos 230/2020 and 221/2019). Thus, self-determination of parenthood may assert its expansive *vis* insofar as it opposes legislative choices that, in light of the totality of the interests involved, are unreasonable and not proportionate to the objective pursued (Judgment No 221/2019).

On the other hand, the primary consideration of the interest of the child (or the conceived or unborn) does not imply that the constitutional protection of that interest corresponds with whatever scenarios the legislature sees fit to accord it.

The individual needs of the potential adoptee must, in fact, be taken into consideration, together with any other specific realities relating to the child, as well as the interest of the aspiring parent.

From this perspective, this Court has found the interest in the child having the same genetic heritage as the parents to be non-decisive and has found, in reference to a couple of would-be parents, the absolute ban on donor fertilisation to be unreasonable and disproportionate. In particular, in this context, this Court has emphasised the importance, along with the reasonableness test, of the "proportionality test [...] which 'requires an assessment as to whether the provision under review, along with the arrangements stipulated for its application, is necessary and capable of achieving legitimately pursued objectives by requiring that the measure chosen out of those most appropriate imposes the least restriction on the rights in play and burdens that are not disproportionate having regard to the pursuit of those objectives (Judgment No 1/2014)" (Judgment No 162/2014).

The ECHR and the case law of the Strasbourg Court do not diverge from this view.

The ECtHR makes different assessments depending on whether a specific form of access to parenthood is already subject to regulation within the individual legal system (if so, it carries out a careful review of potentially unreasonably unequal treatment or ineffective solutions; ECtHR, judgments of 17 January 2023, *Fedotova and Others v. Russia*, paragraphs 152-153; 17 January 2017, *A.H. and Others v. Russia*, paragraph 381; 20 January 2015, *Gözüm v. Turkey*, paragraphs 51-54; 22 January 2008, *E.B. v. France*, paragraphs 44-49).

In addition, in order to ascertain whether there is an undue compression of privacy, the ECHR and the Strasbourg Court introduce a standard of judgment that broadly

corresponds with what has been referred to above.

Indeed, Article 8(2) ECHR stipulates that "[t]here shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

In particular, whether interference is necessary in a democratic society depends on whether it corresponds to a pressing social need, i.e. whether it is proportionate to the legitimate aim pursued, taking into account the fair balance which must be struck between the relevant competing interests, and with regard to the margin of appreciation left to the national authorities ("the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests. In determining whether an interference was 'necessary in a democratic society' the Court will take into account that a margin of appreciation is left to the national authorities", ECtHR, judgment of 18 May 2021, *Valdis Fjölnisdóttir and Others v. Iceland*, paragraph 68).

This assessment must be made in light of present-day conditions, since the ECHR is a living instrument ("the Convention is a living instrument which must be interpreted in the light of present-day conditions and of the ideas prevailing in democratic states today", ECtHR, judgment of 17 January 2023, *Fedotova and Others v. Russia*, paragraph 167; see also judgments of 19 February 2013, *X and Others v. Austria*, paragraph 139; 22 January2008, *E.B. v. France*; 28 June 2007, *Wagner and J.M.W.L. v. Luxembourg*; 26 February 2002, *Fretté v. France*). This means that the margin of discretion may vary over time, as well as being affected by the degree of consensus among Contracting States regarding the recognition of a right or faculty (ECtHR, judgment of 15 November 2016, *Dubská and Krejzová v. Czech Republic*).

9.– Based on the above principles, the exclusion of unmarried persons from access to intercountry adoption violates Articles 2 and 117(1) of the Constitution, the latter in relation to Article 8 ECHR.

9.1.– The challenged provisions have implications for the right to privacy, understood as the freedom of self-determination. In the context under consideration, this right manifests as an interest in being able to realise one's aspiration to become a parent by making oneself available to adopt a foreign child.

This means that this particular interest overlaps with a social solidarity-related purpose, as it focuses parenting aspirations on children or young people who already exist and need protection.

If the purpose of intercountry adoption is for people in Italy to take in foreign minors abandoned abroad, assuring them a stable and harmonious environment, the insuperable prohibition for unmarried persons to access such adoption does not meet a pressing social need and, in the current social-legal context, constitutes unnecessary interference in a democratic society.

9.2.– First of all, under the present legal structure, it no longer serves the need to ensure the child the full legal protections associated with legitimate child status. Indeed,

the parent-child relationship reform introduced in 2012-2013 (Law No 219 of 10 December 2012, containing "Provisions on the recognition of natural children", and Legislative Decree No 154 of 28 December 2013 on the "Revision of the provisions in force on the parent-child relationship, pursuant to Article 2 of Law No 219") introduced a single parent-child status (Article 315 of the Civil Code), eliminating the need to correlate this status exclusively with a pair of married parents in order to ensure the broadest legal protections to the adoptee (Judgment No 79/2022).

9.3.– In addition, the *a priori* exclusion of single persons from adoptive parenting is not an appropriate means of ensuring a stable and harmonious environment for children.

As noted above (point 6.3. of the *Conclusions on points of law*), the legislature itself has recognised that unmarried persons are, in theory, suitable to ensure a stable and harmonious environment for a child, even in complex contexts and with respect to children who require unusual levels of commitment.

More importantly, however, this Court has recognised the abstract fitness of single people to provide a stable and harmonious environment for many years, since its ruling No 183/1994.

Called upon in that case to rule on questions of constitutionality raised in reference to Articles 3, 29 and 30 of the Constitution, as well as Article 6 of the 1967 Strasbourg Convention (which the referring court mistakenly deemed self-applicative), this Court noted that the aforementioned constitutional principles "do not bind the adoption of minors to the criterion of *imitatio naturae* in such a way as to disallow adoption by a single person except in the exceptional cases in which it is now provided for by Law No 184/1983". These constitutional principles do not prevent – as the same Judgment No 183/1994 points out – seeing adoption by single persons as a possible "solution in concrete terms more beneficial to the interests of the child", which presupposes their theoretical suitability to guarantee the child a stable and harmonious environment.

This becomes all the more clear when one considers that the single-parent family model is also recognised in the Constitution.

Moreover, in the context of adoption law, a child's best interest is directly protected by judicial assessment, which must establish the concrete fitness of would-be adoptive parents.

Constitutional case law has long emphasised the importance of such assessments in pursuing the "optimal solution *'in concreto'* in the best interests of the child" (Judgment No 11/1981). And again, this Court has not failed to highlight the importance of the support that can come from an extended family network (Judgments Nos 183/2023 and 79/2022), which the court can take into account when assessing an applicant's concrete fitness to adopt (Articles 29-*bis*(4)(c) and 30(1) of Law No 184/1983, and also, following the child's arrival in Italy, Articles 34(2) and 35(4) of the same law).

9.4.– If, therefore, it must be held that single people are suitable for guaranteeing a stable and harmonious environment to a child, the need to ensure the adoptee "the presence of both parental figures, from the emotional and educational point of view", which underlies the legislature's choice (Judgment No 198/1986) is not pursued by suitable and proportionate means.

As noted in the past (Judgment No 183/1994), "an indication of preference for

adoption by a married couple" may be justified, but not the decision to convert this family model into an *a priori* exclusion of single persons from the pool of adoptive parents.

Specifically, in case of intercountry adoption, the receiving state is only responsible for overseeing whether or not a person is fit for adoption, after which matching the minor with a person who has obtained a fitness declaration is the responsibility of the child's home state.

Therefore, insofar as the challenged rules create a barrier to access to intercountry adoption for single people, they infringe upon parenting-oriented self-determination. This creates a risk of negative impacts on the effectiveness of the child's right to be received in a stable and harmonious family environment itself, especially in the current legal-social context (point 6.3. of the *Conclusions on points of law* above).

As this Court has already had occasion to note, limits placed on parenting-oriented self-determination "cannot amount to an absolute prohibition [...] unless it is the only means of protecting other interests of constitutional relevance" (Judgment No 162/2014).

In light, therefore, of the complex of interests involved and the very purpose of the institution of intercountry adoption, the choice made by the legislature in Article 29-*bis*(1) of Law No 184/1983 is unnecessary in a democratic society, as it does not comply with the principle of proportionality, and ultimately hampers private life and parenting-oriented self-determination inspired by the principle of solidarity.

10.– For these reasons, the questions as to the constitutionality of Article 29-*bis*(1) of Law No 184/1983, insofar as it, in making reference to Article 6, fails to include single persons residing in Italy among those who may submit a declaration of availability to adopt a foreign child residing abroad and request the Family Court of the district in which they reside to decree their suitability for adoption, raised in reference to Articles 2 and 117(1) of the Constitution, the latter in relation to Article 8 ECHR, are well founded.

Therefore, the remaining provisions of Article 6 of Law No 184/1983 continue to apply to single persons. In particular, single adoptive parents must meet the other requirements, which are not incompatible with their free status and pertain to age and "being affectively fit and able to educate, instruct and maintain the minors they intend to adopt" (Article 6(2)).

Children adopted by single persons will be granted the unique status of offspring, under Article 315 of the Civil Code, to which Article 27 of Law No 184/1983 implicitly refers and which is mentioned, in turn, in Article 35(1) of the same law.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

declares that Article 29-*bis*(1) of Law No 184 of 4 May 1983 (Right of a child to a family) is unconstitutional, insofar as, by making reference to Article 6, it fails to include single persons residing in Italy among those who may submit a declaration of availability to adopt a foreign child residing abroad and request the Family Court of the district in which they reside to decree their suitability for adoption.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 29 January 2025.

Signed: Giovanni AMOROSO, President

Emanuela NAVARRETTA, Judge Rapporteur